

TASMANIA.

THE CONVEYANCING AND LAW OF
PROPERTY ACT 1935.

ANALYSIS.

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| <p>1. Short title.</p> <p>2. Repeal.</p> <p>3. Amendment of 47 Vict. No. 19.</p> <p style="padding-left: 20px;">Section 1.</p> <p style="padding-left: 20px;">Section 2.</p> <p style="padding-left: 20px;">Sections 3 to 15.</p> <p style="padding-left: 20px;">Section 16.</p> <p style="padding-left: 20px;">New section 16.</p> <p style="padding-left: 40px;">Effect of licences.</p> <p style="padding-left: 20px;">Section 20 now 19.</p> <p style="padding-left: 20px;">New section 20.</p> <p style="padding-left: 20px;">Section 22.</p> <p style="padding-left: 20px;">Sections 26, 27, 29, and 31.</p> <p style="padding-left: 20px;">New section 32.</p> <p style="padding-left: 40px;">Satisfied terms however created to cease.</p> <p style="padding-left: 20px;">New section 33.</p> <p style="padding-left: 40px;">Protection against liability in certain cases.</p> <p style="padding-left: 20px;">New section 34.</p> <p style="padding-left: 40px;">Devolution of trusts and powers.</p> <p style="padding-left: 20px;">New Part VII.</p> <p style="padding-left: 20px;">New section 35.</p> <p style="padding-left: 40px;">Forty years substituted for sixty years as the root of title.</p> <p style="padding-left: 20px;">New section 36.</p> <p style="padding-left: 40px;">Contracts for sale, &c., of land to be in writing.</p> <p style="padding-left: 20px;">New section 37.</p> <p style="padding-left: 40px;">Obligations and rights of vendor and purchaser.</p> <p style="padding-left: 20px;">New section 38.</p> <p style="padding-left: 40px;">Tacking and further advances.</p> <p style="padding-left: 20px;">New section 39.</p> <p style="padding-left: 40px;">Vendor or purchaser may obtain decision of judge in chambers as to requisitions or objections, or compensation, &c.</p> <p style="padding-left: 20px;">New section 40.</p> <p style="padding-left: 40px;">Voluntary conveyances to defraud creditors voidable.</p> <p style="padding-left: 20px;">New section 41.</p> <p style="padding-left: 40px;">Voluntary disposition of land how far voidable as against purchasers.</p> <p style="padding-left: 20px;">New section 42.</p> <p style="padding-left: 40px;">Acquisitions of reversions at an under value.</p> <p style="padding-left: 20px;">Section 44.</p> <p style="padding-left: 20px;">New section 45.</p> <p style="padding-left: 40px;">Restraint on anticipation abolished.</p> | <p>Section 46.</p> <p>New section 48.</p> <p style="padding-left: 20px;">Guardians of minors may surrender and renew leases by order of Court.</p> <p style="padding-left: 20px;">Cost of renewal charged on estate.</p> <p style="padding-left: 20px;">New leases shall be to the same uses.</p> <p>New section 49.</p> <p style="padding-left: 20px;">Infants empowered to grant renewals of leases.</p> <p>New section 50.</p> <p style="padding-left: 20px;">Court may authorise lease when for benefit of estate.</p> <p>New section 51.</p> <p style="padding-left: 20px;">Persons to renew out of the jurisdiction.</p> <p>New section 52.</p> <p style="padding-left: 20px;">Fines to be paid before renewals executed.</p> <p>New section 53.</p> <p style="padding-left: 20px;">Application of premiums, &c.</p> <p>New section 54.</p> <p style="padding-left: 20px;">Court may order dividends to be applied for maintenance.</p> <p>New section 55.</p> <p style="padding-left: 20px;">Costs may be directed to be paid.</p> <p>Section 48 now 56.</p> <p>New section 57.</p> <p style="padding-left: 20px;">Release of part of land charged not to be an extinguishment.</p> <p>New section 58.</p> <p style="padding-left: 20px;">Release of part of land not to affect judgment as to residue.</p> <p>Part XII. now XI.</p> <p>New section 59.</p> <p style="padding-left: 20px;">Lands lie in grant only.</p> <p>New section 60.</p> <p style="padding-left: 20px;">Conveyances to be by deed.</p> <p style="padding-left: 20px;">Instruments to be in writing.</p> <p>New section 61.</p> <p style="padding-left: 20px;">Conditions and covenants not implied.</p> <p style="padding-left: 20px;">Technicality unnecessary.</p> <p>New section 62.</p> <p style="padding-left: 20px;">Conveyance by a person to himself, &c.</p> <p>New section 63.</p> <p style="padding-left: 20px;">Execution of deeds by an individual.</p> |
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New section 89.

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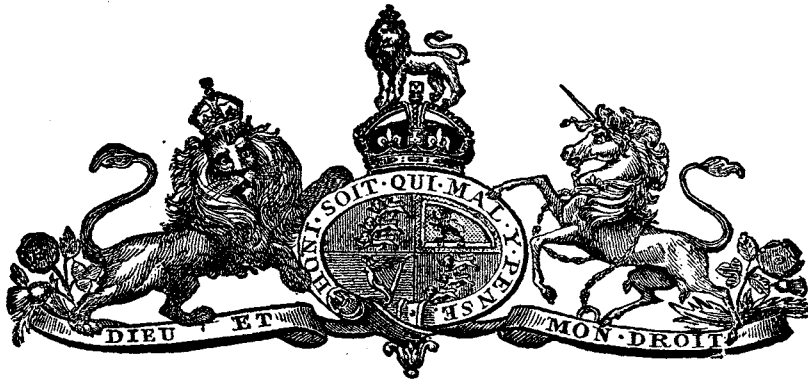
New section 91.

Application of Act to land
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1862.

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1559

TASMANIA.



1935.

ANNO VICESIMO SEXTO

GEORGII V. REGIS.

No. 97.



AN ACT to amend the *Conveyancing and Law of Property Act 1884*. [31 January, 1936.]

A.D.
1935.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as the *Conveyancing and Law of Property Act 1935*.

Short title.

2 The enactments enumerated in the first schedule are hereby repealed to the extent indicated therein.

Repeal.

3 The Principal Act is hereby amended—

Amend-
ment of 47
Vict. No.19.

I. By inserting "Part" before each of the Roman numerals "I." to "XVIII." in the divisional headings :

- II. By deleting from subsection (2) of section one thereof—
 - (a) "and" to "after" and substituting "on" :
 - (b) "Thirty-first" and substituting "first" :
 - (c) "December" and substituting "January" : and
 - (d) "eighty-three" and substituting "eighty-four"

Section 1.

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Section 2.

III. As to section two thereof—

- (a) By deleting—
- (i) “and convey” to “conveyance” (at the end of v.):
 - (ii) “has” to “and” (in vii):
 - (iii) “and purchase” to “purchaser” (in viii):
 - (iv) “and bankrupt” to “bankruptcy” (in xv)
 - (v) “of Tasmania” (in xviii):
- (b) By expunging paragraphs xi, xii, and xvii: and
- (c) By deleting—
- (i) The numerals before all paragraphs: and
 - (ii) “unless a contrary intention appears” (five times occurring) and inserting “unless the contrary intention appears” (after “Act” in the first line):

Sections 3
to 15.

IV. By expunging—

- (a) Subsection (9) of section three:
- (b) Subsection (4) of section five:
- (c) Subsection (4) of section six:
- (d) Subsection (2) of section nine: and
- (e) Subsection (2) of section thirteen—

and deleting “(1)” in sections nine and thirteen thereof respectively; and renumbering (10) of section three as (9) and sections five to fifteen as four to fourteen:

Section 16.

V. As to section sixteen thereof—

- (a) By deleting from subsection (3)—
- (i) “heirs”:
 - (ii) “heirs” and substituting “successors”:
 - (iii) “heirs”: and
 - (iv) “heirs” and substituting “successors”:
- (b) By deleting (i) (in subsection (6)) and “or” (after paragraph (i)) and expunging paragraph (ii) thereof: and
- (c) By expunging subsection (7) and renumbering (8) and (9) as (7) and (8)—
- and renumbering the section as fifteen:

New
section 16.

VI. By inserting after section sixteen (now fifteen) thereof the following subheading and new section sixteen:—

“Licences.

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

- i. The permission actually given:
- ii. The specific breach of any provision or covenant referred to: or

Effect of
licences.
15&16 Geo.
V., c. 20, s.
143.
[Cf. 24 Vict.
No. 2, ss. 1
and 2.]

Conveyancing and Law of Property.

iii. Any other matter thereby specifically authorised to be done—

A.D.1935.

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

(2) Notwithstanding any such licence—

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

(3) Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting, or doing any other specified act without a licence, and a licence is granted to—

- i. Any one of two or more lessees to do any act, or to deal with his equitable share or interest : or
- ii. Any lessee, or any one of two or more lessees, to assign or underlet part only of the property, or to do any act in respect of part only of the property—

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the lessee or lessees of the rest of the property, as the case may be, in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests, or property not subject to the licence.

(4) This section applies to licences granted after the fourth day of October, one thousand eight hundred and sixty.” :

VII. As to section twenty thereof—

- (a) By renumbering the section as section nineteen :
- (b) By renumbering subsections (16) and (17) as (14) and (15)—

and inserting thereafter new section twenty and transposing subsections (14) and (15) of former section twenty and inserting them as subsections (1) and (2) of new section twenty :

Section 20
now 19.

New
section 20.

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A.D.1935. Section 22.
 ——— 56 Vict.
 No. 21, s. 5.

VIII. By inserting in section twenty-two thereof—

- (a) “(1)” (at beginning): and
 (b) The following new subsections (2), (3), and (4):—

“(2) The notice required by this section may be a notice of a general intention to exercise the power of sale conferred on a mortgagee by this Act.

(3) At any time subsequent to the termination of one month after such notice has been served on the mortgagor or one of several mortgagors, or has been published as provided by this section, and without any further notice of intention to sell in respect of the same default, the mortgagee may exercise the power of sale conferred by this Act.

(4) Any mortgagor, by writing under his hand, may waive notice either in any particular case or generally, and may accept less than one month’s notice.” :

Sections
 26, 27, 29,
 and 31.

IX. As to sections—

(a) Twenty-six, by inserting (after “Act,” twice occurring in (1)) “or by the *Real Property Act* 1862” :

(b) Twenty-seven—

(i) By substituting “action” for “suit,” with the appropriate article where required (wherever occurring) :

(ii) By deleting “But” in (3): and

(iii) By expunging subsections (5) and (6) : and

(c) Twenty-nine and thirty-one, by deleting “statutory” in the first line of each :

New section 32. Satisfied terms however created to cease.
 15&16 Geo. V., c. 20, s. 5.
 [Cf. 17 Vict. No. 11.]

X. By substituting for repealed section thirty-two thereof (in Part VI.) the following new sections thirty-two to thirty-four:—

“**32**—(1) Where the purposes of a term of years, created or limited at any time out of freehold land, become satisfied either before or after the commencement of this Act (whether or not that term, either by express declaration or by construction of law, becomes attendant upon the freehold reversion), it shall merge in the reversion expectant thereon and shall cease accordingly.

(2) Where the purposes of a term of years created or limited, at any time, out of leasehold land, become satisfied after the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly.

Conveyancing and Law of Property.

(3) Where the purposes are satisfied only as respects part of the land comprised in a term, this section shall have effect as if a separate term had been created in regard to that part of the land.

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“33—(1) Where a personal representative or trustee liable as such for—

i. Any rent, covenant, or agreement—

(a) Reserved by or contained in any lease : or

(b) Payable under or contained in any grant made in consideration of a rent-charge :

ii. Any indemnity given in respect of any such rent, covenant, or agreement—

has satisfied all liabilities under the lease or grant which may have accrued or been claimed up to the date of the conveyance hereinafter mentioned, and where necessary, has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, such personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof.

(2) After such conveyance the personal representative or trustee—

i. May distribute the residuary real and personal estate of the deceased testator or intestate, or the trust estate, as the case may be (exclusive of any fund set apart as aforesaid,) to or amongst the persons entitled thereto, without appropriating any part or any further part, as the case may be, of such estate to meet any future liability under such lease or grant: and

ii. Notwithstanding such distribution, shall not be personally liable in respect of any subsequent claim under such lease or grant.

(3) This section shall not prejudice the right of the essor or grantor, or the persons deriving title under them respectively, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been distributed.

(4) This section shall apply notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

Protection
against
liability in
certain
cases.
15 & 16 Geo.
V., c. 19,
s. 26.
[Cf. 24 Vict.
No. 2, ss.
26 & 27.]

New
section 33.

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(5) In this section "lease" includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; and "grant" applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; and "lessee" and "grantee" include persons deriving title under the lessee and grantee respectively.

New section 34. Devolution of trusts and powers.
Ib., s. 18.
[Cf. 24 Geo. V. No. 27.]

"34—(1) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be, and shall be deemed at all times to have been, capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(2) This section shall take effect subject to any direction to the contrary expressed in the instrument, if any, creating the power or trust.

(3) In this section "personal representative" does not include an executor who has renounced or has not proved.

(4) The provisions of this section are subject to any restrictions affecting receipts by a sole trustee other than a trust corporation."

and by substituting for the words in the heading to Part VI. "Satisfied Terms: Trust Estates."

New Part VII.

XI. By substituting for repealed Part VII. the following new heading and sections thirty-five to forty-two:—

"PART VII.

"TITLE: SALE AND PURCHASE.

"Title.

New section 35. Forty years substituted for sixty years as the root of title.
39 Vict. No. 2, s. 1.

"35 In the completion of any contract of sale of land subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the former period required for such commencement; but earlier title than forty years may be required in cases similar to those in which earlier title than sixty years might formerly be required.

"Contracts.

New section 36. Contracts for sale, &c., of land to be in writing.

"36—(1) No action may be brought upon any contract for the sale or other disposition of land, or any interest in land, unless the agreement upon which such action is

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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.

15 & 16 A.D.1935.

Geo. V., c. 20, s. 40.

(2) This section applies to contracts whenever made and does not affect the law relating to part performance or sales by the court.

[Cf. 29 Car. II., c. 3.]

“**37** In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules—

Obligations and rights of vendor and purchaser. New section 37.

- i. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold :

39 Vict. No. 2, s. 2.
- ii. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions :
- iii. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents :
- iv. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser :
- v. Where the vendor retains any part exceeding one-half of an estate to which any documents of title relate, he shall be entitled to retain such documents ; but, if such vendor shall have parted with more than one-half of the estate to which such documents relate, he shall be bound to deposit such documents in the office of the Registrar of Deeds for safe custody on behalf of all parties interested.

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A.D.1935. Tacking
and further
advances.
New section
38. 15 and 16
Geo. V., c.
20, s. 94.
[Cf. 39
Vict. No. 2,
s. 7.]

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

- i. If an arrangement has been made to that effect with the subsequent mortgagees :
- ii. If he had no notice of such subsequent mortgages at the time when the further advance was made by him : or
- iii. Whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances—

whether or not the prior mortgage was made expressly for securing further advances.

(2) Where the prior mortgage was made expressly for securing a current account or other further advances, a mortgagee in relation to the making of further advances shall not be deemed to have notice of a mortgage merely by reason that it was registered, if it was not registered at the date of the original advance or when the last search, if any, by or on behalf of the mortgagee was made, whichever last happened.

(3) Save in regard to the making of further advances as aforesaid, the right to tack is hereby abolished; but this provision shall not affect any priority in respect of further advances made without notice of a subsequent encumbrance or by arrangement with the subsequent encumbrancer.

New section
39. Vendor or
purchaser
may obtain
decision of
judge in
chambers as
to requisitions
or
objections,
or compensation,
&c.
39 Vict.
No. 2, s. 9.

“**39** A vendor or purchaser of real or leasehold estate, or their representatives respectively, may at any time apply in a summary way to a judge in chambers in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract, not being a question affecting the existence or validity of the contract, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

“Voidable Dispositions.”

New section
40. Voluntary
conveyances
to defraud
creditors
voidable.
15 & 16 Geo.
V., c. 20,
s. 172.

“**40**—(1) Save as provided in this section, every conveyance of property whenever made, with intent to defraud creditors shall be voidable at the instance of any person thereby prejudiced.

(2) This section does not affect the operation of a disentailing assurance.

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(3) This section does not extend to any estate or interest in property conveyed for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the conveyance, notice of the intent to defraud creditors.

“41—(1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser. Voluntary New section disposition of land how far voidable as against purchasers. *Ib.*, s. 173. 41.

(2) For the purposes of this section, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made, if such subsequent conveyance was made after the twenty-third day of October, eighteen hundred and ninety-six.

“42—(1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of under value. In this subsection 'reversionary interest' includes an expectancy or possibility. Acquisitions of reversions at an under value. *Ib.*, s. 174. [Cf. 60 Vict. No. 16.] New section 42.

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

XII. By deleting the words “and the provisions” to “thereto” in subsection (1) of section forty-four thereof; and inserting thereafter (in Part VIII.) the following new section forty-five :— Section 44.

“45 No restraint on anticipation contained in any will taking effect after the thirty-first day of December, one thousand nine hundred and thirty-six, or in any other instrument executed after the thirty-first day of December, one thousand nine hundred and thirty-five, shall affect the power of a married woman to dispose of or deal with any property.” : Restraint on New section 45. abolished.

XIII. By deleting from section forty-six thereof— Section 46.

- (a) “and being” to “unmarried” in (1):
- (b) “and being” to “married” in (5)—

and by expunging paragraph (ii) of (5) and renumbering (iii) as ii. :

XIV. By inserting after section forty-seven thereof (in Part IX.) the following new sections forty-eight to fifty-five :—

“48—(1) Where any infant is entitled to any lease made or granted for the life of any person, or for any term of years, either absolute or determinable upon the death of any person or otherwise, such infant, or his guardian, or Guardians of minors may surrender and renew leases by order of Court. New section 48.

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A.D.1935. 11 Geo. IV.
 & 1 Wm.
 IV., c. 65,
 s. 12.

Cost of
 renewal
 charged on
 estate.

Ib., ss. 14
 and 15.

New leases
 shall be to
 the same
 uses.

New
 section 49. Infants
 empowered
 to grant
 renewals of
 leases.
Ib., s. 16.

New
 section 50. Court may
 authorise
 lease when
 for benefit
 of estate.
Ib., s. 17.

other person on his behalf, may apply to the Court, in a summary way ; and by the order and direction of the Court such infant, or his guardian, or any person appointed in the place of such infant by the Court may, by deed, surrender such lease, and accept and take, in the place and for the benefit of such infant, a new lease of the premises comprised in such lease so surrendered for and during such number of lives, or for such term of years determinable upon such number of lives, or for such term of years absolute, as was mentioned or contained in the lease so surrendered at the making thereof, or otherwise as the Court shall direct.

(2) Every sum of money and other consideration paid by any guardian or other person as or in the nature of a fine, premium, or income for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the Court shall direct.

(3) Every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, encumbrances, dispositions, devises, and conditions as the lease to be surrendered would have been subject to in case such surrender had not been made.

“49 Where any infant might, in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life of any person, or for any term or number of years absolute or determinable on the death of any person, such infant, or his guardian in the name of such infant, may, by the direction of the Court, to be signified by an order to be made in a summary way upon the application of such infant or his guardian, or of any person entitled to such renewal, accept a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease, for and during such number of lives, or for such term determinable upon such number of lives, or for such term of years absolute, as was mentioned in the lease so surrendered at the making thereof, or otherwise, as the Court by such order shall direct.

“50 Where any infant is seised or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Court to be for the benefit of such infant that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or otherwise

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improving the same, or for farming or other purposes, such infant, or his guardian in the name of such infant, may, by the direction of the Court, to be signified by an order to be made in a summary way upon the application of such infant or his guardian, to make such lease of the land or any part thereof, according to his interest therein, and to the nature of the tenure of such estates respectively, for such term of years, and subject to such rents and covenants as the Court shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent that can be obtained, regard being had to the nature of the lease, shall be reserved upon such lease; and the leases, and covenants and provisions therein, shall be settled and approved of by the Court, and a counterpart of every such lease shall be executed by the lessee therein to be named, and such counterparts shall be deposited for safe custody in the office of the Court until such infant shall attain twenty-one, but with liberty to proper parties to have the use thereof, if required in the meantime, for the purpose of enforcing any of the covenants therein contained.

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“51—(1) Where any person who, in pursuance of any covenant or agreement in writing, might, if within the jurisdiction and amenable to the process of the Court, be compelled to execute any lease by way of renewal, shall not be within the jurisdiction or not amenable to the process of the Court, the Court, by an order to be made upon the petition of any of the persons entitled to such renewal (whether such person be or be not under any disability), may direct such person as the Court shall think proper to appoint for that purpose to accept a surrender of the subsisting lease, and make and execute a new lease in the name of the person who ought to have renewed the same.

Persons to New
renew out of section 51.
the jurisdic-
tion.
Ib., s. 18.

(2) Such deed, executed by the person appointed as aforesaid, shall be as valid as if the person in whose name the same is made had executed the same, and had been alive and not under any disability.

(3) In every such case it shall be in the discretion of the Court, if under the circumstances it shall seem requisite, to direct proceedings to be instituted to establish the right of the party seeking the renewal, and not to make the order for such new lease except by the order to be made in such proceedings, or until after such order shall have been made.

“52—(1) No renewed lease shall be executed by virtue of this Act, in pursuance of any covenant or agreement, unless the fine, if any, or such other sum of money, if any, as ought to be paid on such renewal, and such things,

Fines to be New
paid before section 52.
renewals
executed.
Ib., ss. 20
and 31.

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if any, as ought to be performed in pursuance of such covenant or agreement, by the lessee or tenant, be first paid and performed.

(2) Counterparts of every such renewed lease shall be duly executed by the lessee.

(3) Every lease and surrender executed in pursuance of this Act shall be as valid and effectual as if the infant, by or on whose behalf the same is executed, had been of full age.

New section 53. Application of premiums, &c. *Ib.*, s. 21.

“**53**—(1) All fines, premiums, and sums of money which shall be had, received, or paid for or on account of the renewal of any lease, after deduction of all necessary incidental charges and expenses, shall be paid, if such renewal shall be made by or in the name of an infant, to his guardian, and be applied and disposed of for the benefit of such infant, in such manner as the Court shall direct.

(2) If such renewal shall be made in the name of any person out of jurisdiction or not amenable as aforesaid, all such fines, premiums, and sums of money shall be paid to such person or in such manner, or into Court to such account, and to be applied and disposed of as the Court shall direct.

New section 54. Court may order dividends to be applied for maintenance. *Ib.*, s. 32.

“**54** The Court, by order to be made on the petition of the guardian of any infant in whose name any stock is standing, or any sum of money, by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by order to be made in any cause depending in the Court, may direct all or any part of the dividends due or to become due in respect of such stocks, or any such sum of money, to be paid to any guardian of such infant, or to any other person, according to the discretion of such Court, for the maintenance and education or otherwise for the benefit of the infant, such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same.

New section 55. Costs may be directed to be paid. *Ib.*, s., 35.

“**55** The Court may order the costs and expenses of and relating to any proceedings, orders, and directions to be made in pursuance of this Part, or any of them, to be paid and raised out of or from the lands or stock or the rents or dividends in respect of which the same respectively shall be made, in such manner as the Court shall think proper.”:

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XV. By inserting “: Judgments” (after “sums” in the heading) and renumbering section forty-eight as fifty-six; and inserting thereafter (in Part X.) the following new sections fifty-seven and fifty-eight:—

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Section 48
now 56.

“57 The release from a rent-charge of part of the land charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the land released, without prejudice nevertheless to the rights of all persons interested in the land remaining unreleased and not concurring in or confirming the release.

Release of part of land charged not to be an extinguishment.

New section 57.
24 Vict. No. 2, s. 10.

“58 The release from a judgment (including a writ or order imposing a charge) of part of any land charged therewith shall not affect the validity of the judgment as to the land remaining unreleased or as to any other property not specifically released, without prejudice nevertheless to the rights of all persons interested in the land or property remaining unreleased, and not concurring in or confirming the release.”:

Release of part of land not to affect judgment as to residue.

New section 58.
Ib., s. 11.

XVI. By expunging the heading to repealed Part XI. and renumbering Part XII. as Part XI. :

Part XII.
now XI.

XVII. By substituting for repealed section fifty-four thereof the following new sections fifty-nine to sixty-four:—

“CONVEYANCES AND OTHER INSTRUMENTS.

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

Lands lie in grant only.

New section 59
15&16 Geo. V., c. 20, s. 51.
[*Cf.* 10 Vict. No. 3, ss. 1 and 3.]

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

“60—(1) All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed; but this provision does not apply to—

Conveyances to be by deed.
New section 60.
Ib., ss. 52 to 55.

- i. Assents by a personal representative :
- ii. Disclaimers made in accordance with the law relating to bankruptcy, or not required to be evidenced in writing :
- iii. Surrenders by operation of law, including surrenders which may by law be effected without writing :
- iv. Leases or tenancies or other assurances not required by law to be made in writing :
- v. Receipts not required by law to be under seal :

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Instruments
to be in
writing.

- vi. Vesting orders of the Court or other competent authority: or
 - vii. Conveyances taking effect by operation of law.
- (2) Except as hereinafter provided—
- i. 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:
 - ii. 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: and
 - iii. 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—

but this provision does not affect the creation or operation of resulting, implied, or constructive trusts.

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

(4) This section shall not 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 power to extend the term) at the best rent that can be reasonably obtained without taking a fine.

(5) Nothing in subsections (2), (3), or (4) of this section shall—

- i. Invalidate dispositions by will:
- ii. Affect any interest validly created before the commencement of this Act:
- iii. Affect the right to acquire an interest in land by virtue of taking possession: or
- iv. Affect the operation of the law relating to part performance.

“61—(1) In respect of instruments executed after the first day of January, one thousand eight hundred and forty-seven—

- i. An exchange or partition made by deed does not imply any condition in law:
- ii. The word ‘give’ or the word ‘grant’ does not imply any covenant in law, except as otherwise provided by statute:

New
section 61. Conditions
and coven-
ants not
implied.
Ib., s. 59.
[Cf. 10 Vict.
No. 3, s. 8.]

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- iii. A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant, or agreement over or respecting land or other property, although he may not be named as a party to the conveyance or other instrument : and
- iv. A deed between parties, to effect its objects, has the effect of an indenture though not indented or expressed to be an indenture.

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(2) Any conveyance made after the eighteenth day of September, one thousand eight hundred and seventy-four, of freehold land to any person without words of limitation, or any similar expression, shall pass to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

[Cf., *ib.*,
s. 4.]Technicality unnecessary.
Ib., s. 60.
[Cf. 38 Vict. No. 1, s. 16.]

“ 62—(1) In a conveyance made after—

- i. The fourth day of October, one thousand eight hundred and sixty, personal property including chattels real :
- ii. The thirty-first day of December, one thousand eight hundred and eighty-three, freehold land or a thing in action—

Conveyance New by a person section 62. to himself, &c.
15 & 16 Geo. V., c 20, s. 72.

may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person ; and, after the last-mentioned date, freehold land or a thing in action may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(2) After the thirty-first day of December, one thousand nine hundred and thirty-five, a person may convey land to, or vest land in, himself.

(3) Two or more persons, whether or not being trustees or personal representatives, may convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third person ; provided that, if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

“ 63 Where an individual executes a deed, he shall either sign or place his mark upon the same, and sealing alone shall not be deemed sufficient.

Execution of deeds by an individual. New section 63.
Ib., s. 73.

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A.D. 1985. Construction of expressions used in deeds and other instruments.
 —
 New section 64.
Ib., s. 61.

“64 In all deeds, contracts, wills, orders, and other instruments executed, made, or coming into operation after the commencement of this Act, unless the contrary intention appears—

- i. “Month” means calendar month :
- ii. “Person” includes a corporation :
- iii. The singular includes the plural and *vice versa* :
- iv. The masculine includes the feminine and *vice versa*.”—

and by renumbering sections fifty-six to sixty-two as sixty-five to seventy-one ; sections sixty-four to sixty-seven as seventy-two to seventy-five ; sections sixty-nine and seventy as seventy-six and seventy-seven ; and Part XIII. as Part XII. :

XVIII. By inserting at the end of new Part XII. the following new section seventy-eight :—

New section 78
 Mode of execution of powers.
 24 Vict. No. 2, s. 12.

“78 A deed executed after the fourth day of October, one thousand eight hundred and sixty, in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it may have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity : Provided always that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument, and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.”:

Part XIV.

XIX. As to Part XIV. thereof—

- (a) By deleting “XIV.” and substituting “XIII.” and inserting “: Contingent Interests : Reversions.” (after “Limitations” in the heading thereto):
- (b) By deleting “71” and substituting “79”: and

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(c) By inserting thereafter the following new sections eighty to eighty-two:—

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“**80**—(1) A contingent, an executory, and a future interest, and a possibility coupled with an interest, in any tenements or hereditaments of any tenure, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry whether immediate or future, and whether vested or contingent, into or upon any tenements or hereditaments of any tenure, may be disposed of by deed, but no such disposition shall by force only of this Act defeat or enlarge an estate tail.

Contingent and certain other interests made alienable by deed. 10 Vict. No. 3, s. 5. New section 80.

(2) A contingent remainder shall be capable of taking effect notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold, in the same manner in all respects as if such determination had not happened.

Protection against failure of reversion. *Ib.*, s. 7.

“**81** Every contingent remainder created after the tenth day of September, one thousand eight hundred and seventy-eight, in tenements or hereditaments of any tenure, which would have been valid as a springing or shifting use or executory devise or other limitation had it not had a sufficient estate to support it as a contingent remainder, shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other executory limitation.

Cases in which contingent remainders capable of taking effect. 42 Vict. No. 1. New section 81.

“**82** When the reversion expectant on a lease of any tenements or hereditaments of any tenure is surrendered or merged, the estate which for the time being confers the next vested right to the land shall be deemed the reversion for the purpose of preserving such incidents to, and obligations on, the reversion, as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease.”

When the reversion on a lease fails the next estate to become the reversion. 15 & 16 Geo. V., c. 20, s. 139. New section 82.

XX. By renumbering Part XV. thereof as Part XIV. and section seventy-two as section eighty-three :

Part XV.

XXI. By renumbering Part XVI. as Part XV. and section seventy-three as section eighty-four and deleting “ but ” in the first line of subsection (2) of that section :

Part XVI.

XXII. As to Part XVII. thereof—

Part XVII.

(a) By renumbering that Part as XVI. and section seventy-four as eighty-five :

(b) By deleting “ or in case ” to “ mine ” in subsection (3) of that section : and

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New section 86. Legal assignments of things in action.
15&16 Geo. V., c. 20, s. 136.

(c) By inserting thereafter the following new sections eighty-six to ninety-one:—

“ 86—(1) Subject to the provisions of subsection (2) hereof, any absolute assignment by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

- i. The legal right to such debt or thing in action :
- ii. All legal and other remedies for the same :
- iii. The power to give a good discharge for the same without the concurrence of the assignor.

(2) If the debtor, trustee, or other person liable in respect of such debt or thing in action has notice—

- i. That the assignment is disputed by the assignor or any person claiming under him : or
- ii. Of any other opposing or conflicting claims to such debt or thing in action—

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or may pay the debt or other thing in action into Court under the provisions of the enactments relating to the relief of trustees.

(2) This section does not affect the provisions of the *Life Assurance Companies Act 1874*.

New section 87. Fraudulent concealment and falsification actionable.
Ib., s. 183.

“ 87—(1) Any person disposing of property or any interest therein for money or money’s worth to a purchaser, or the solicitor or other agent of such person, who—

- i. Conceals from the purchaser any instrument or encumbrance material to the title : or
- ii. Falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept the title offered or produced—

shall be liable to an action for damages by the purchaser or the persons deriving title under him for any loss sustained by reason of the concealment of the instrument or encumbrance, or by reason of any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.

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(2) In estimating damages, where the property or any interest therein is recovered from the purchaser or the persons deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

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“88 The provisions of the Imperial Act intituled the *Inheritance Act* 1833 extended to this State are hereby amended as set forth in the third schedule, and as therein amended shall have effect in this State.

Application of 3 & 4 Wm. IV., c. 106. New section 88.

“89 No estate of dower or tenancy by the curtesy shall be capable of coming into existence or taking effect in respect of any land.

Dower and tenancy by curtesy. New section 89.

“90 Such of the covenants set out in the fifth schedule as shall be expressed as to be implied in any instrument executed or made by way of security for the repayment of moneys shall, if expressed in the form of words appointed and described for the case of each such covenant respectively, be so implied as fully and effectually as if such covenants were set forth fully, and in words at length in such document, except so far as the same may be altered or added to in such document, and, where the word ‘mortgagor’ is used, the same shall include all and each of the mortgagors if more than one, and will imply a joint and several covenant on their behalf, and that the word ‘mortgagee’ shall, if there are more mortgagees than one, include the survivors and survivor of them and the personal representatives of such survivor and their or his assigns.

Covenants to be implied by use of certain phrases. New section 90.

“91—(1) The provisions of this Act which are enumerated in the fourth schedule shall not apply to any land held under the provisions of the *Real Property Act* 1862.

(2) Except as aforesaid the provisions of this Act so far as the same are applicable shall apply, and shall be deemed, as from the commencement of this Act, to have applied at all times, to such land as aforesaid.” :

Application of Act to land under *Real Property Act* 1862. New section 91.

XXIII. As to Part XVIII. thereof—

Part XVIII.

(a) By renumbering that Part as XVII. and sections seventy-seven and seventy-eight as ninety-two and ninety-three respectively :

(b) As to the said section ninety-two—

(i) By expunging subsections (1) and (8) and re-numbering the remaining subsections as (1) to (6) :

(ii) By deleting “by petition or” in (3), now (2) :

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(iii) And by inserting at the end—

“ (7) The provisions of this section shall be subject to Rules of Court made for the purposes of this Act, under the *Supreme Court Civil Procedure Act, 1932.*”:

(c) By expunging subsection (2) of the said section ninety-three : and by deleting—

(i) “ (3) ” and substituting “ (2) ” : and

(ii) “ except ” to “ invalid ” in that subsection :

Part XIX
and first
schedule.

XXIV. By expunging Part XIX. thereof, and the first schedule thereto and renumbering the remaining schedules as the first and second schedules respectively and correcting citation of schedules accordingly ; and by inserting the second, third, and fourth schedules (hereby enacted) as the third, fourth, and fifth schedules to the Principal Act : and

XXV. By deleting the words “ of Parliament ” wherever occurring after the word “ Act.”.

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THE FIRST SCHEDULE.

REPEALS.

Regnal Year and Number.	Title of Act.	Extent of Repeal.
32 Henry VII., c. 9	<i>The Bill of Bracery and Buying of Titles</i>	The whole Act
13 Eliz., c. 5	<i>An Act against Fraudulent Deeds, Gifts, Alienations, &c.</i>	The whole Act
27 Eliz., c. 4	<i>An Act against Covinous and Fraudulent Conveyances</i>	The whole Act
11 Geo. IV. and 1 Wm. IV., c. 65	<i>The Infants Property Act 1830 (Imperial)</i>	The whole Act
3 and 4 Wm. IV., c. 106	<i>The Inheritance Act 1833</i>	The whole Act
3 and 4 Wm. IV., c. 105	<i>The Dower Act 1833</i>	The whole Act
4 Wm. IV. No. 12	<i>An Act for extending to Van Diemen's Land certain Statutes passed in the ninth year of His late, and the first year of His present, Majesty for the Amendment of the Law</i>	The whole Act
6 Wm. IV. No. 16	<i>An Act for extending to the Colony the provisions of certain Acts of Parliament passed for shortening the time of prescription in certain cases—for the Limitation of certain Actions—for the Improvement of the Law in certain respects relating to Real Property—and for amending the Law of Evidence and the Law of Inheritance and of Dower</i>	The whole Act
10 Vict. No. 3	<i>An Act to amend the Law of Real Property</i>	The whole Act
16 Vict. No. 9	<i>An Act to confer certain Powers in Van Diemen's Land upon Receivers appointed under the Act of Parliament, intituled An Act for the regulation of the Care and Treatment of Lunatics</i>	The whole Act
17 Vict. No. 11	<i>An Act to render the Assignment of Satisfied Terms unnecessary</i>	The whole Act
24 Vict. No. 2	<i>An Act to amend the Law of Property and to relieve Trustees</i>	The whole Act
32 Vict. No. 12	<i>An Act to amend the Law relating to Estates Tail, reversionary Interests, and Appointments</i>	The whole Act
39 Vict. No. 2	<i>The Vendor and Purchaser Act 1875</i>	The whole Act
42 Vict. No. 1	<i>An Act to amend the Law as to Contingent Remainders</i>	The whole Act

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A.D. 1935.	Regnal Year and Number.	Title of Act.	Extent of Repeal.
	47 Vict. No. 19	<i>The Conveyancing and Law of Property Act 1884</i>	Sections 4, 19, 32, 45, 54, 55, 63, 68, 76, and 79
	56 Vict. No. 21	<i>The Conveyancing and Law of Property Amendment Act 1892</i>	The whole Act
	60 Vict. No. 16	<i>The Voluntary Conveyances Act 1896</i>	The whole Act
	23 Geo. V. No. 58	<i>The Supreme Court Civil Procedure Act 1932</i>	Subsection (6) of section 11
	24 Geo. V. No. 27	<i>The Conveyancing and Law of Property Act 1933</i>	The whole Act

THE SECOND SCHEDULE.

PROVISIONS ADOPTED (AS FROM THE FIRST DAY OF OCTOBER, 1836) FROM THE INHERITANCE ACT, 1833 (3 AND 4 WM. IV., c. 106), AS AMENDED.

Interpretation.

1. In this schedule, unless the contrary intention appears, the word "land" shall extend to messuages and all other hereditaments, whether corporeal or incorporeal, and whether freehold or of any other tenure, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right, or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles, and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words "the purchaser" shall mean the person who last acquired the land otherwise than by descent, partition, or inclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent; and the word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression "descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity.

Descent to be traced from purchaser; the last owner shall be considered purchaser, unless the contrary be proved.

2. In every case descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this Act, be considered to have been the purchaser thereof unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser unless it shall be proved that he inherited the same;

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and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same.

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3. When any land shall have been devised by any testator who shall die after the thirtieth day of September, one thousand eight hundred and thirty-six, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee, and not by descent; and when any land shall have been limited, by any assurance executed after the said thirtieth day of September, one thousand eight hundred and thirty-six, to the person or to the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

Heir under will to take as devisee; limitation to the grantor or his heirs.

4. When any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said thirtieth day of September, one thousand eight hundred and thirty-six, or under a limitation to the heirs or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said date, then and in any of such cases such land shall descend, and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land.

Limitations to the heirs of ancestor.

5. No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent.

Brothers trace descent through parent.

6. Every lineal ancestor shall be capable of being heir to any of his issue; and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

Lineal ancestor may be heir in preference to collaterals.

7. None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and also that no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and that no female maternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

Male line to be preferred.

8. Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male maternal ancestor, and her descendants.

The mother of more remote male ancestor to be preferred.

9. Any person related to the person from whom the descent is to be traced by the half blood shall be capable of being his heir; and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where

Order of inheritance by half blood.

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Descendants
of person
attainted may
inherit.Total failure of
heirs of pur-
chaser.

Citation.

the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

10. When the person from whom the descent of any land is to be traced shall have had any relation who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated in consequence of such attainder before the first day of January, one thousand eight hundred and thirty-seven.

11. Where there is a total failure of heirs of the purchaser, or where any land is descendible as if an ancestor had been the purchaser thereof, and there is a total failure of the heirs of such ancestor, then and in every such case the land shall descend and the descent shall be traced from the person last entitled to the land as if he had been the purchaser thereof.

12. The provisions contained in this schedule may be cited as the Inheritance Act, 1836.

THE THIRD SCHEDULE.**PROVISIONS OF THIS ACT WHICH DO NOT APPLY TO LAND HELD UNDER THE REAL PROPERTY ACT, 1862.**

Sections 2, 3, 5 to 9, 18 to 20, 21 (except paragraphs II., III., and IV. of subsection (1)), 22 to 25, 27 to 31, 35, 37, 38, 65, 70, 74, 75, and 85.

THE FOURTH SCHEDULE.

1. The words "current account" shall imply.—All and every sum and sums of money which shall for the time being be due, owing, or payable by the mortgagor, either alone or together with any other person to the mortgagee on account current or for moneys advanced, lent, or paid, or in respect of bills or promissory notes or drafts paid or discounted, or in respect of any guarantee or on any other account whatsoever, together with interest on all and every such sum and sums of money at the current rate for the time being and in the manner usually charged by the mortgagee in Tasmania on overdrawn accounts of a similar nature, commission, and all usual or customary charges, and all costs and expenses which may be incurred in respect of the premises, and that all such interest shall be considered as accruing from day to day, and shall be payable when demanded, but that until demanded the mortgagor will pay the same on the half-yearly balancing days of the mortgagee in Tasmania, and will make the first of such half-yearly payments on the next half-yearly balancing day of the mortgagee in Tasmania, and includes any sum or sums which, under any bill of exchange, promissory note, or other instrument, may not then have arrived at maturity as and when the same shall become due and payable.

2. The words "interest may be capitalised" shall imply.—In case any interest upon the moneys for the time being owing on this

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security (inclusive of any interest which may be added to principal by virtue of this present proviso), or any part thereof respectively, or any commission or charges, shall remain unpaid on any half-yearly day of payment, the same may be turned into principal, and shall thenceforth be deemed part of the principal moneys intended to be hereby secured, and shall carry interest in like manner, and the covenant for payment of principal moneys and interest shall extend to all additions to the said principal moneys arising from such capitalised interest, or commission, or charges, and the interest to accrue due thereon, and the premises hereby mortgaged shall stand charged therewith accordingly: AND FURTHER that, until realised or fully discharged, this security shall be a continuing security for the full amount of the said hereinbefore mentioned indebtedness and liability and all other moneys expressed to be hereby secured, and it shall be optional with the mortgagee whether all or any moneys which may from time to time be paid in or standing to the credit of the account of the mortgagor with the mortgagee shall be applied in or towards satisfaction of the moneys hereby secured or not. A.D. 1935.

3. The words "the mortgagee may grant time and shall not be liable to merger" shall imply.—This mortgage shall be a security as well for any bill of exchange or promissory note held by the mortgagee in respect of all or any of the moneys intended to be hereby secured as also for any and every bill of exchange and promissory note which may be hereafter taken in respect of the said moneys or any part thereof or by way of full or partial renewal of or substitution for any or either of such bills of exchange or promissory notes as are hereinbefore mentioned: AND FURTHER that the mortgagee may grant time or other indulgence to or compound with or release any drawers, acceptors, or indorsers of bills or notes or any person, liable upon any guarantee or other security without discharging or affecting this mortgage: AND FURTHER that all dividends, compositions, and payments received from the mortgagor or from any person shall be taken and applied as payments in gross, and that this security shall extend to any ultimate balance which shall remain due to the mortgagee within the limit hereinafter mentioned and interest as aforesaid: AND FURTHER that nothing herein contained shall be held to discharge, abate, merge, or prejudice any other security now held or which may hereafter be held or taken by the mortgagee for any of the moneys intended to be hereby secured, and that no action upon any promissory note, bill of exchange, or other instrument, the payment whereof is intended to be hereby secured, shall be defended upon the ground of any supposed merger, nor shall this mortgage or any such other security affect any claim or demand which the mortgagee now has or may hereafter have against any other person as surety on any bill of exchange or promissory note or guarantee or otherwise.

4. The words "the mortgagee when in possession shall have extended powers of leasing and granting options" shall imply.—That, in addition to the powers conferred on mortgagees while in possession by subsection (2) of section 20 of the *Conveyancing Act 1884*, it shall be lawful for the mortgagee from time to time to let or demise the lands described in the schedule hereto or any part thereof, either with or without option of purchase or renewal, to any person for any term, at such rent, with such powers, and, if with option of purchase, at such price, and subject to such covenants and conditions as the mortgagee shall require, and to accept surrenders of any leases or tenancies now existing, or which may hereafter be created, of any such lands and premises, and also to determine such leases and tenancies or any of

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them: AND the mortgagor hereby irrevocably constitutes and appoints the mortgagee, or, if a bank or company, the manager, and accountant for the time being of the head office of the mortgagee in Tasmania, during the continuance of this security, jointly and severally to be the attorneys and attorney of the mortgagor for the purpose of carrying out the powers of leasing and of sale contained in this proviso: AND the mortgagor agrees to ratify and confirm any such lease so as aforesaid granted by the mortgagee, and to do and execute all acts and deeds which may be requisite for the purpose of effectuating and carrying out a conveyance to any person purchasing under an option of purchase contained in any such lease as aforesaid.

5. The words "extended power of sale may be exercised" shall imply.—The power of sale conferred by the *Conveyancing and Law of Property Act 1884*, on mortgagees shall apply to this security, and that on any sale under such power any time may be allowed for the payment of the whole or any part of the purchase money, either with or without interest in the meantime, and, if with interest, then at any rate, and either with or without taking security, and on any such sale the mortgagee may set out, grant, or reserve such roads, ways, or easements as he shall think fit, and that where default has been made in payment of any moneys hereby secured, the mortgagee may enforce this security at any time notwithstanding the currency of any bills or notes or other instruments covered by it, and that, in the event of the said power of sale being exercised, the amount of any bill of exchange, promissory note, or other instrument upon which the mortgagor, either alone or together with any other person, shall be liable to the mortgagee, but which may not then have arrived at maturity or any part thereof respectively, may be deducted from the purchase money to arise from any such sale in addition to all other moneys owing hereunder: AND FURTHER that the mortgagee shall be at liberty to include in any sale hereunder any other property, real or personal, over which he shall then have a power of sale held as security for any moneys owing from the mortgagor and deal with it as though portion of the premises comprised herein, with full power to apportion the costs, expenses, and proceeds of such sale between the respective securities: AND FURTHER that, upon a sale hereunder by the mortgagee in applying the purchase moneys towards satisfaction of the moneys hereby secured, the mortgagor shall be credited only with so much of the said moneys available for that purpose as shall be received in cash by the mortgagee, such credit to date from the time of such receipt. AND all purchase money left outstanding on credit or otherwise shall, until actually received by the mortgagee in cash, be deemed a continuing unsatisfied part of the principal moneys hereby secured and carry interest accordingly: BUT any interest paid by the purchaser shall be set off *pro tanto* against the interest hereby secured.

6. The words "will insure" shall imply.—That the mortgagor will, during the continuance of this security, keep the buildings now erected, or which may hereafter be erected, on the mortgaged premises insured in the name of the mortgagee against loss or damage by fire to the amount specified in this security, or, if no amount be specified, then to the full insurable value thereof in some public insurance office in Tasmania approved of by the mortgagee, and will pay all premiums and moneys necessary for such purpose on the first day on which the same respectively ought to be paid, and will deliver to the mortgagee the policy of such insurance and the receipt for every such payment. AND that if the mortgagor shall at any time refuse

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or neglect to deliver any such policy or receipt as aforesaid the mortgagee shall be entitled to assume that the said premises are not insured in accordance with the covenant hereinbefore contained and to exercise the powers conferred by the *Conveyancing and Law of Property Act 1884* in that behalf.

A.D. 1935.

(The foregoing covenant, with the necessary alteration in terms, shall be implied on the part of the lessee where the words "will insure" are used for that purpose in a lease.)

7. The words "will pay rates, taxes, and other outgoings" shall imply.—That the mortgagor will, throughout the continuance of this security, and whether the mortgagee shall or shall not have entered upon or taken possession of the said lands and premises, pay any land tax and all other rates, assessments, and outgoings charged thereon or payable by the owner, occupier, and mortgagee in respect thereof immediately the same become payable, and will observe, comply with, and perform all laws, by-laws, regulations, and requirements made by any Federal, State, or local authority relating to the said premises or concerning the destruction of noxious weeds and animal and insect pests thereon; and that the mortgagee may, but without obligation on his part so to do, pay all such taxes, rates, assessments, and outgoings, and observe, comply with, and perform all such laws, by-laws, regulations, and requirements as aforesaid in the event of the mortgagor failing to do so, and charge or debit all sums of money paid under the above authority, or for any of the aforesaid purposes, against the mortgagor, and such sum may, at the discretion of the mortgagee, be added to the principal moneys and carry interest accordingly.

8. The words "will keep in repair" shall imply.—That the mortgagor will, at all times during the continuance of this security, at his own expense, keep the dwelling-house and buildings which now are, or which may hereafter be, erected on the said lands, and also all gates and fences, in good and tenantable repair, order, and condition in all respects: AND FURTHER that the mortgagor will, at all times during the continuance of this security, at his own expense, keep those parts or portions of the said lands which are now used as gardens, orchards, or cultivated lands well cultivated, manured, and sprayed, and manage the same according to the most approved methods of gardening, orcharding, or farming, and shall and will carefully prune, foster, and preserve all fruit trees now growing, or which may during the continuance of this security grow upon the said lands; and will not cut down, bark, or destroy any fruit trees or timber trees, excepting such trees as shall be decayed or such fruit trees as shall cease to be productive of fruit. AND that, in case the mortgagor at any time fail to keep the said lands and premises in good and tenantable repair, order, and condition as aforesaid, it shall be lawful for, but not obligatory upon, the mortgagee to effect and maintain such repairs and order as the case may be; and the mortgagee may, at his discretion, add the costs and expenses of so doing to the principal moneys hereby secured, and the same shall bear interest accordingly.

9. The words "attorns tenants at the rent of pounds" shall imply.—That the mortgagor attorns tenant from year to year to the mortgagee in respect of the lands hereby mortgaged, or of so much thereof as are now in the possession of the mortgagor at the yearly rent of pounds clear, of all deductions, to be paid by equal payments on the days appointed for payment of interest: AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful for the mortgagee, at any time

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A.D. 1936.

after default in payment of the moneys hereby secured or any part thereof, without giving any previous notice of his intention so to do, to enter upon and take possession of the said lands and immediately to determine the tenancy created by the aforesaid attornment: PROVIDED ALWAYS that, until payment of the moneys hereby secured or of any part thereof shall be demanded by the mortgagee as aforesaid, payment of the interest on the principal moneys hereby secured, on the days and in the manner hereinbefore appointed for payment thereof, shall be accepted in lieu of and in full satisfaction for the rent hereby reserved: PROVIDED FURTHER that, after demand shall have been made as aforesaid, payment of the rent reserved by the said attornment shall be deemed and taken to be in part satisfaction of the moneys hereby secured: PROVIDED ALSO, and it is hereby agreed, that neither the receipt of the said rent nor the tenancy created by the said attornment shall render the mortgagee liable to account as mortgagee in possession.

10. The words "provided that, upon punctual payment, interest shall be reduced to per centum per annum if paid within days of due date" shall imply.—PROVIDED ALWAYS, and it is hereby agreed and declared, that if and whenever interest upon the principal moneys secured after the rate of per centum per annum shall be paid at the time herein appointed for payment of interest, or within days next thereafter, as to which time shall be of the essence of the contract, and if the mortgagor shall duly perform and observe all the covenants and conditions contained in this security other than payment of the interest at the higher rate, then and in such case interest at the reduced rate of per centum per annum shall be accepted in lieu of and in satisfaction for interest payable for that period under the foregoing covenant in that behalf.