

QUEENSLAND LAW REFORM COMMISSION

Copyright is retained by the Queensland Law
Reform Commission.

*THE LAW RELATING TO RELIEF FROM FORFEITURE OF LEASES
AND TO RELIEF FROM FORFEITURE OF AN OPTION TO RENEW
AND CERTAIN ASPECTS OF THE LAW RELATING TO LANDLORD AND TENANT*

WORKING PAPER NO. 1

3 June 1969

A Working Paper of the Queensland Law Reform Commission

**Box 312 PO
Roma Street 4003
Telephone: 227.4544
Fax: 227.9045**

PREFACE

The Law Reform Commission has been functioning since 1st March, 1969 and has been constituted by the Law Reform Commission Act, 1968. The members are:-

The Honourable Mr. Justice W. B. Campbell, Chairman
Mr. P. R. Smith
Mr. B. H. McPherson
Mr. J. J. Rowell.

The Secretary of the Commission is Mr. K. J. Dwyer. The office of the Commission is at William Street, Brisbane.

The short citation for this working paper is Q. L. R. C. W. 1.

LAW REFORM COMMISSION.

WORKING PAPER ON THE LAW RELATING TO RELIEF
FROM FORFEITURE OF LEASES AND TO RELIEF FROM
FORFEITURE OF AN OPTION TO RENEW AND CERTAIN
ASPECTS OF THE LAW RELATING TO LANDLORD AND
TENANT

The first programme of the Law Reform Commission of Queensland on reform as approved by the Honourable the Minister for Justice and Attorney-General includes an examination of the law in relation to the above.

The enclosed working paper contains suggestions for a proposed Bill and other explanatory matter. It is circulated to persons and bodies known to be interested, from whom comment and criticism is invited.

Recipients of the working paper will appreciate that it does not necessarily represent the concluded view of the Commission, nor is it intended that any implications be drawn as to Government Policy.

This paper is circulated on a confidential basis and recipients should bear in mind that any recommendations for the reform of the law which may ultimately be formulated by the Commission are required to be submitted to the Minister and must have the approval of the Governor in Council before being laid before Parliament.

It is requested that any comment you care to make be forwarded to the Secretary, Law Reform Commission, P.O. Box 312, North Quay 4000, so as to be received no later than Monday, 2nd February, 1970.

W.B. Campbell.

(W.B. Campbell)
CHAIRMAN.

1(3) Application of Act:

The Bill in cl. 1(3)(a) follows s. 116 of the New South Wales Conveyancing Act in expressly applying its provisions to land under the provisions of The Real Property Acts, 1861 to 1963. However, since the latter expression is confined by the definition in cl. 3 to "estates or interests registered under those Acts", and since short leases of land under those Acts are valid without registration, it is also expressly provided that the Bill will extend to all leases of such land. Because The Real Property Acts contain, particularly in ss. 71(2) and 72 thereof, provisions which might be construed to override some of the reforms which this Bill is designed to introduce, it is also expressly provided that the new Act will apply notwithstanding anything contained in The Real Property Acts. This is also taken from s. 116 of the Conveyancing Act and will cause no interference with the cardinal principle of indefeasibility of registered title except in the two instances of cl. 37 and cl. 38, where particular provision is made to avoid any such problem.

The Bill in cl. 1(3)(b) and (c), is also expressed to apply to leases of land under any Act, including land under the Land Acts, The Miners Homestead Leases Acts, and The Mining Acts. This is intended to ensure that the principles of the statutory law of landlord and tenant as contained in the Bill will continue to apply to their present extent to leases and more particularly under-leases of land under those Acts; but, because of special statutory and policy considerations peculiar to Crown leases under each of those Acts, it has been deliberately provided in each instance that the applicability of the provisions of the Bill will take effect subject to the provisions of the Act in question. Furthermore, since by cl. 1(5) the Bill will bind the Crown, it has also been necessary to provide in cl. 26(1)(a) that the new provision in Part IV for relief against forfeiture should apply only to under-leases and not to leases of land under each of the above statutes.

Finally, cl. 1(4) will ensure that the Bill will not interfere with the operation of The Landlord and Tenant Acts, 1948 to 1961, in relation to rent-restricted premises covered by those Acts.

2. Acts repealed:

The Bill affects some twenty-eight or twenty-nine existing statutes or statutory instruments, of which some

nineteen comprise Imperial enactments which are wholly repealed. In a few instances (principally the Cestui que vie Acts of 1666 and 1707, the Landlord and Tenant Acts of 1707 and 1730, and the Distress for Rent Act, 1737) particular provisions which remain of current legal importance have been preserved and are included in the Bill with some slight variations of language and form.

The principal local statute affected is the Distress Replevin and Ejectment Act of 1867. The reforms recommended by the Bill will enable this statute to be repealed in toto with the exception only of three sections, namely s. 40 (dealing with partial release of a rent charge) and ss. 138 and 139 (which are concerned with relief against mortgages). These sections do not fit naturally into the scheme of the legislation proposed in the Bill and therefore remain for attention and inclusion in the future general revision and reform of property law. Latter portions of this commentary indicate the extent to which and manner in which particular sections of the Distress Replevin and Ejectment Act have been affected, but a few of the repealed sections are not specifically adverted to and deserve mention at this point. These are the whole or portions of ss. 133, 134, 135, 136, 137, 140, 142, 143, 144 and 145, all of which are concerned with procedural provisions which have long since been superseded by The Judicature Act of 1876 and the detailed rules of the three courts of civil jurisdiction in Queensland (e.g. s.140 is in part concerned to affirm the abolition of the technique by which actions for ejectment were tried upon a fictitious allegation of entry and ouster). Of these sections, only s. 134 requires more specific mention. It is based upon the statute 1 Geo. IV c.87, s.2, of 1820 (which was carried into s. 214 of the English Common Law Practice Act) and is directed to ensuring that mesne profits or damages for trespass may be awarded down to the day of judgment or verdict in an action by a landlord for recovery of possession. The matter is now in part covered by provisions of The Rules of the Supreme Court and the Schedule of Forms thereto (see e.g. forms 71 and 72) and The District Courts Act and Rules, and the practice since The Judicature Act is in proper case to award mesne profits down to the date for possession: see Southport Tramways Company v. Gandy (1897) 1Q.B. 66; Dunlop v. Macedo (1891) 8 T.L.R.43. (Section 89 of The District Courts Act limits this to the date appointed for hearing and this may require consideration in the future). Both in England and in Victoria, the abolition of provisions corresponding to s. 134 has been held not to affect

the above jurisdiction and practice: see Southport Tramways Company v. Gandy, supra, and Lynch v. Port Jackson Trading Corporation Pty. Ltd. (1950) V.L.R.153, and it seems reasonable to suppose that the same result will follow in Queensland.

3. Interpretation:

The only points which deserve specific mention are that the term "lease" is expressly defined to include a periodical tenancy and tenancy at will, thus avoiding the technical difficulties associated with the use or omission of the word demise.

4. Conveyances by a person to himself:

At common law a person could not convey property to himself, nor to himself and his wife since husband and wife were for most purposes regarded as one: Megarry & Wade, The Law of Real Property (3rd ed.) at p. 159. As regards leasehold interests and assignable choses in action this inconvenient rule was abrogated in England by the Law of Property Act Amendment Act 1859, s.21, represented in Queensland by The Mercantile Acts, 1867 to 1896, s.1, and as regards freehold land in England by The Conveyancing Act 1881, s.50, which has not been adopted in Queensland.

Clause 4 of the Bill follows generally the provisions of the Law of Property Act 1925, s.72, which in Rye v. Rye (1962) A.C. 492, was held by the House of Lords not to permit of a lease by a person to himself or to himself and another (including a lease by two co-owners to themselves) and which is in part a result of the definition of "conveyance" in cl. 3 of the Bill. The decision is criticised in 35 A.L.J. 442 and 36 A.L.J. 45, where it is pointed out that there may be situations, particularly associated with partnership, which make such leases desirable.

We recommend the adoption of s.72 with the insertion of the words "or lease" after the words "conveyance" or "convey", and the addition of sub-cl. (5), so as to place beyond doubt in Queensland the power of persons, including co-owners, to lease to themselves. This will render obsolete The Mercantile Acts, s.1, which it is proposed should be repealed.

For repeal: The Mercantile Acts, 1867 to 1896, s.1.

5. Abolition of interesse termini:

The common law rule, which prevails in Queensland, is that, prior to actual entry into possession,

a lessee acquires only a right of entry or interesse termini, which falls short of an estate in the subject land. This prevents the creation of an effective reversionary lease, with resultant difficulties indicated by Megarry & Wade, op. cit., at p. 638.

Clause 5 of the Bill, which is modelled on s. 120A of the Conveyancing Act (N.S.W.) and Law of Property Act, s. 149, proposes the abolition of the doctrine and consequently avoids a term limited to take effect more than 21 years from the date of the instrument purporting to create it, and any contract to create such term. This provision does not affect an option for renewal of a lease which may be exercised more than 21 years after creation of the lease: Weg Motors Ltd. v. Hales (1962) Ch. 49.

6. Liability for waste:

Clause 6 follows, with minor modification, the terms of s. 32 of the "Imperial Acts Application Act, 1969" (N.S.W.) representing an attempt to state in modern language the provisions of the Statute of Marlborough (1267) 52 Henry III, c. 23, which imposed upon tenants liability for waste.

For the reasons indicated in the Report of the New South Wales Law Reform Commission (L.R.C. 4 at p. 48), we recommend the adoption of a provision in the form of cl. 6 and the repeal of c. 23 of the Statute of Marlborough, 1267.

For repeal: 52 Henry III, c. 23 (Statute of Marlborough, 1267)

7. Equitable waste:

Clause 7 requires no comment, since it is simply a rescript of s. 5(3) of The Judicature Act of 1876 produced by the fusion of courts of law and equity. Its inclusion in the present Bill is justified in the interests of completeness with a view to embodying all relevant statutory provisions relating to leases or tenancies for life in a single statute.

The subject clause will involve repeal of s. 5(3) of the earlier Act.

For repeal: The Judicature Act of 1876, s. 5(3)

8. Recovery of property on determination of life or lives:

Certain Imperial Statutes entitled the Cestui que Vie Acts (18 & 16) Car. II, c. 11, of 1666 and 6 Anne c. 72

(or c. 18) of 1707 were designed primarily to obviate the difficulties associated with proof of death of a cestui que vie, i.e. the person upon whose death an estate pur autre vie came to an end. The application of the second of these statutes is expressly recognised in s. 90 of The Real Property Acts, 1861 to 1963.

Estates pur autre vie are extremely rare in Queensland but we deem it advisable to adopt cl. 8, which is a modern adaptation of the provisions of the foregoing Imperial Statutes and which is copied from c. 38 of the N.S.W. "Imperial Acts Application Act, 1969" (see N.S.W. L.R.C.4 at p. 56). This will result in the repeal of the Imperial Statutes referred to above.

For repeal: 18 & 19 Car. II c. 11 (1666)
6 Anne c. 72 (or c. 18) (1707)

9. Rents how to be recovered where demise not by deed:

The Distress for Rent Act, 1737 (11 Geo. II c. 19, s. 14), represented in Queensland by s. 7 of the Common Law Practice Acts, 1867 to 1964, was intended to overcome the procedural problem which arose when, in proceedings to recover compensation for use and occupation of premises, it appeared that the defendant was in occupation by virtue of an express agreement in that behalf. Section 14 of the Act of 1737 was designed to avoid the rule that in such event the plaintiff's claim was defeated. However, under the provision as it now stands, a claim for use and occupation may still be defeated by proof of the existence of a demise under seal: see Spektor v. Lees (1964) V.R.10, at p. 18, per Sholl J.; and N.S.W. L.R.C.4.

Both in Victoria (Landlord and Tenant Act 1958, s. 8) and New South Wales ("Imperial Acts Application Act, 1969", s.31) the latter rule is preserved. But there seems to be no good reason why, under modern conditions of emphasis on the substance rather than the forms of action, this should be so, and in re-formulating s. 7 of the Common Law Practice Acts the exception in respect of a demise under seal has not been retained.

Adoption of cl. 9 will involve the repeal of s. 14 of the Act of 1737 and s. 7 of the local Act.

For repeal: 11 Geo. II c. 19, s. 14 (1737)

Common Law Practice Acts, 1867 to 1964, s.7

10. Abolition of yearly tenancies arising by implication of law.

The rule at common law is that where there is a tenancy and no express agreement as to its duration the law will imply a periodic tenancy from year provided the rent is measured by reference to a yearly holding, irrespective of the fact that it may be payable at intervals of less than a year, e.g. quarterly.

This is a source of some inconvenience since the period of notice required in order to determine such a tenancy is six months and the rule has been held to apply to unregistered long tenancies of land under The Real Property Acts: see Hill v. Cox (1881) 1 Q.L.J. 78.

We favour the abolition of the legal implication of yearly tenancies in the circumstances outlined above, and in this respect cl. 9 follows the terms of s. 127 of the New South Wales Conveyancing Act which has applied in that State since 1920. Its effect is to substitute a tenancy at will determinable by one months notice in place of the yearly tenancy implied at common law, and it should be noticed that the proposed section is limited in its operation to cases in which, apart from its terms, a yearly tenancy would have arisen and not otherwise: see Rowston v. Sydney County Council (1954) 92 C.L.R. 605, at pp.615-616; Helmore: The Law of Real Property (2nd ed.) at pp.91 - 92.

The section will not apply to tenancies which have arisen prior to the commencement of the Act, subject however to the proviso that a tenancy which has arisen by implication prior to the Act and of which the date of its creation is unknown shall be determinable by six months written notice expiring on a date after the commencement of the Act (which will not be capable of being fixed until it becomes apparent when the Bill is likely to be passed into legislation) or any date thereafter.

11. Tenants and other persons holding over to pay double the yearly value:

The purpose of s. 1 of the Landlord and Tenant Act 1730 is to discourage tenants from holding over after determination of their lease or tenancy by penalising them at the rate of double the yearly value of the premises: cf. Woodfall on Landlord and Tenant (26th ed.) vol. 1 at p. 990, Soulsby v. Neving (1808) 9 East 310. This section, (which is not reprinted in the Queensland Statutes, but is set out in Woodfall at p. 989), has been held to apply in Queensland: see Public Curator v. L.A. Wilkinson (Northern)

Ltd. (1933) Q.W.N.28, and Trivett v. Hurst (1937) St.R.Qd. 265, and in Victoria is re-enacted in the Landlord and Tenant Act 1958. s.9.

In its present form the Act does not apply to weekly tenancies or periodic tenancies for any period less than from year to year: Lloyd v. Rosbee (1810) 2 Camp. 453; it requires a written demand for possession; and it applies only where the holding over is "wilful", i.e. without bona fide claim of right: French v. Elliott (1960) 1 W.L.R. 40; Megarry & Wade, op. cit., at p. 647.

There does not appear to be any real justification for extending the provisions of the Act to weekly and other short periodic tenancies. Such tenancies are generally of less valuable premises; they can be readily determined; there are summary procedures for recovery of possession; and, apart from the Act in question, the lessor in such cases remains entitled to damages in the form of mesne profits (which may be greater than the rent payable where the market value is higher than the agreed rent: Clifton Securities Ltd. v. Huntly (1948) 2 All E.R. 283, at p. 284) during the period of holding over.

The enactment of cl. 11 of the Bill will permit the repeal of s. 1 of the Act of 1730.

For repeal: 4 Geo.II, c. 28, s. 1 (1730).

12. Tenant holding over after giving notice to be liable for double rent:

Section 18 of the Distress for Rent Act 1737 was intended to provide for the converse case, i.e. where a tenant gives notice of his intention to quit but fails to deliver up possession on due date, and this section has been re-enacted in Queensland in s. 38 of the Distress Replevin and Ejectment Act of 1867.

By contrast with the earlier statute, the notice contemplated by the Act of 1737 need not be in writing; the better view is that short periodic tenancies are within its scope: see Woodfall, op. cit., at p. 993, n. 75; and the lessor's claim is limited to double rent, which may be less than the value of the premises on the open market.

The proposed cl. 12, read with the definition of "lease" and "lessee" in cl. 3, will confirm the view advanced

in Woodfall (supra) and will result in repeal of s. 18 of the Act of 1737 and of s. 38 of the Queensland Statute.

For repeal: 11 Geo.II, c.19, s.18 (1737)
Distress Replevin and Ejectment Act
of 1867, s.38.

13. Recovery of possession where half-year's rent is due:

The first part of s. 130 of the Distress Replevin and Ejectment Act of 1867 is taken from s. 210 of the English Common Law Practice Act which in turn re-enacts s. 2 of the Landlord and Tenant Act 1730. Its object was to relieve lessors of the necessity for compliance with the extremely technical and formal requirements of the common law relating to demands for rent in arrears, as laid down in Boroughe's Case (1596) 4 Co. Rep. 72 b.: see Woodfall, op. cit., at p. 889-890; Holdworth: History of English Law, vol. 7 at p. 268. The effect of the provision in s. 130 was and is to dispense with formal demand for rent in cases where the lease contains no provision in that behalf, and (i) six months rent is in arrear; (ii) the lease contains a proviso for re-entry in the event of non-payment of rent; and (iii) no sufficient distress can be found to cover such arrears. Similar provision appears in s.90 of The District Courts Act of 1967.

The provision is, we think, still capable of serving a useful function particularly in cases where the lessee has abandoned the premises and cannot be served with formal demand for rent; but cl. 13(1), like s. 90 of The District Courts Act, omits the requirement of an insufficient distress and is necessarily consequential upon the reform mooted in cl. 15 of the Bill.

Prior to ss.2 and 4 of the Landlord and Tenant Act, 1730 there was no limit upon the time within which a tenant might seek relief in equity against forfeiture for non-payment of rent. The object of the provision made by that Act was to limit such time to six months from execution and so relieve the lessor of the inconvenience of continuing uncertainty as to his right to possession: see Doe d. Hitchens v. Lewis (1751) 1 Burr 614 at p. 619. This policy is continued in the latter parts of s. 130 and by ss. 131 and 132 of the Distress Replevin and Ejectment Act, which require payment in full by the lessee of the rent in arrear together with the lessor's costs of proceedings for recovery of possession. Rule 169 of the

District Court Rules is similar, but further limits the tenant's right to relief by requiring payment five clear days before the hearing of the action for recovery of judgment; and in either case a full six months rent must be in arrear: see Standard Pattern Co. v. Ivey (1962) Ch. 432.

There is some justification for preserving the peremptory form of relief which is afforded to tenants by the existing provisions of ss. 130, 131 and 132 in cases where the lessor has allowed as much as six months rent to fall in arrear without instituting proceedings; but in view of the very wide powers of relief against forfeiture which are conferred in Part IV of the Bill, we recommend that the time within which peremptory relief may be obtained under cl. 13(2) be limited to the period before judgment is given. Clause 13(4) is intended to preserve the jurisdictional limitation in amount which is imposed in the District Court by s. 90.

For repeal: 4 Geo.II, c.28, ss.2,4(1730)
Distress Replevin and Ejectment Act
of 1867, ss.130, 131, 132.
District Court Rules, r.169.

14. Lessee to give notice of ejectment to lessor:

Clause 14, which has a long legislative history, serves to ensure that a lessor is informed by his tenant of any process served on the premises for recovery of the subject land, so as to afford the lessor proper opportunity of defending such proceedings.

The preservation of this provision is rendered necessary by the proposal to enlarge the power of the court to grant relief from forfeiture under cl. 27, but we think that the lessor is sufficiently protected by imposing a penalty of one years rent as in rule 170 of the District Court Rules in place of the period of three years allowed by s.129 of the Distress Replevin and Ejectment Act.

The foregoing statutory provisions will then become redundant and may be repealed.

For repeal: Distress Replevin and Ejectment Act
of 1867, s.129
District Court Rules, r.170.

15. Distress for rent:

Distress is the extra-judicial remedy which

enables a lessor when rent is in arrear to seize and sell chattels found on the leased premises. In the past, when modes of execution and the officers who enforced them were much less reliable than they are now, distress was accounted a valuable remedy and, in consequence, it was the subject of a series of statutes, of which the first are the statute 51 Henry III St. 4 (1266) and the Statute of Marlborough (52 Henry III) in 1267. However, the tendency in mature systems of law is limit and, so far as possible, suppress forms of self-help such as distress, and we consider that this step should now be taken in Queensland. Amongst the reasons justifying this course are the following:-

- (a) The availability of the remedy is at present severely limited by statute. Section 36 of The Landlord and Tenant Acts 1948 to 1961 prohibits the levy of distress in the case of a dwelling-house; in other cases its utility is greatly diminished by the fact that it is not available in the case of insolvent individuals and companies; and it is further circumscribed by the provisions of The Law of Distress and Other Acts Amendment Act of 1934, a statute which is exceedingly ill-drawn and difficult to interpret.
- (b) In practice distress is seldom resorted to, and inquiries made of the Sheriff and immediate past Sheriff indicate that warrants of distress are very rarely encountered by the officer and his staff.
- (c) The law of distress developed at an early stage and at a time when land was the principal, if not the only, form of investment: cf. Holdsworth: History of English Law, vol. 3 at p. 215. Under modern conditions there is no longer any real justification for affording to a landlord in respect of his rent special privileges over and above those conferred on other creditors of the tenant. In assessing the creditworthiness of a tenant, a landlord is in no different position from that of any other person, and in some respects his position is in fact superior, both because of the form in which covenants to pay rent are customarily drawn and because of the expedition with which he can eject a non-paying tenant and so reduce the loss which he will suffer.
- (d) The law of distress is embodied partly in the common law and in part in a series of no less than fourteen statutes (of which some ten such statutes are old Imperial enactments ante-dating settlement in Australia), including some fifty sections of the Distress Replevin and

Ejectment Act. These do no more than add unnecessary complexity and hazard to the ordinary processes of execution.

To attempt to codify or even consolidate the law of distress, and the associate remedy of replevin for wrongful distress, is a task which would be not justified either by the nature of the remedy or its present-day utility; and we therefore recommend that the law of Queensland in this respect be brought into harmony with that of New South Wales, Victoria and other Australian States where distress has been abolished. These remarks apply equally to the rights of distress conferred upon mortgagees and encumbrancees by ss. 60 to 61A of The Real Property Acts 1861 to 1963.

The considerations which favour this step apply equally to distress for rent-seck (i.e. rent due on a rent-charge, for which distress was first made available in 1730 by the Landlord and Tenant Act, s.5) and distress for rates under s.27(9) of the Local Government Acts, 1936 to 1968 and under s. 100(3) of The Metropolitan Water Supply and Sewerage Acts, 1909 to 1962. As to the latter enactments, it is clear that local authorities are already sufficiently well protected by the available remedies of action and statutory charge on the premises in respect of unpaid rates.

If distress is abolished the following statutes will become obsolete and may be repealed:-

- 1266 51 Henry III St. 4.
- 1267 52 Henry III c.1,2,4,15,21,23.
- 1275 3 Edward I, c. 16.
- 1285 13 Edward I, St.1, c.2,37.
- 1554 1 & 2 Phillip & Mary, c.12.
- 1665 17 Charles II, c.7.
- 1689 2 William & Mary, Sess. 1, c.5.
- 1709 8 Anne, c.14 (or 18), ss.1 to 8 (inclusive).
- 1737 11 Geo.II, c.19, ss.1 to 10 (inclusive).
ss.19,20,22,23.
- 1817 57 Geo.III, c.93.
- 1861 Real Property Acts, 1861 to 1963, ss.61,61A,135,136.
- 1867 Distress Replevin and Ejectment Act of 1867,
ss.32 to 37 (inclusive), ss.41 to 77 (inclusive).
- 1909 The Metropolitan Water Supply and Sewerage Acts,
1909 to 1962, s. 100(3).
- 1934 The Law of Distress and Other Acts Amendment
Act of 1934.

Clause 15(2) is designed to avoid difficulties in the case of a distress which is under way at the time of the coming into force of the Act, and uses language taken from s.228 of The Companies Acts, 1961 to 1964.

16. Head leases may be surrendered without surrendering under-leases:

If a lessee for a term, who had sub-let for a lesser term, surrendered his term to the lessor, this surrender of the head lease destroyed the reversion of the under-lease and the under-lessee's liability for rent ceased: see Hammond and Davidson's Law of Landlord and Tenant (4th ed.) at p. 263.

Clause 16 will allow a lessee to surrender his lease for a new lease without surrender of any under-lease.

For repeal: 4 Geo.II, c.28, s.6.

17. Provision as to attornment by tenants:

"Attornment is the act of the tenant's putting one person in the place of another as his landlord" - per Holroyd J. in Cornish v. Searell (1828) 8 B. & C. 471 at p. 476. Prior to the statute 4 & 5 Anne c.3 (or c.16) in 1709 an attornment was necessary, where the lessor assigned his reversion, in order to complete the title of the reversioner: Hammond and Davidson, op. cit., at p.22. Woodfall, op. cit. at p. 825, attributes this requirement to the Statute Quia Emptores 1290.

Clause 17 follows the provisions of s.151 of the English Law of Property Act 1925 and renders obsolete 4 & 5 Anne c.3 (or 16), ss.9,10, and the Distress for Rent Act, 1737; 11 Geo.II c.19, s.11, which was re-enacted in Queensland in s.128 of the Distress Replevin and Ejectment Act of 1867. All these provisions may be repealed.

For repeal: 4 & 5 Anne c.3 (or c.16), ss.9,10 (1707)
11 Geo.II c.19, s.11 (1737)
Distress Replevin and Ejectment Act
of 1867, s. 128.

18. When reversion on a lease is surrendered the next estate to be deemed to be the reversion:

Clause 18 of the Bill makes provision ancillary to that in cl. 17 by ensuring that, upon surrender or merger of a head lease, the covenants of the under-lease will be

preserved for the benefit of the reversioner or his grantee. This obviates the common law rule exemplified in Webb v. Russell (1789) 3 T.R. 393 that merger or surrender destroyed all the incidents to the reversion: see Megarry & Wade, op. cit., at p. 741; Hammond & Davidson, op. cit., at p. 258.

19. Apportionment of conditions on severance:

Clause 19 is necessitated by the curious common law rule, laid down in Dumpor's Case (1603) 4 Co. Rep. 119b, that conditions unlike covenants are incapable of severance, and hence that rights of re-entry dependent on conditions were not apportionable if the reversion were severed: see Holdsworth, op. cit., at pp. 269, 282-4.

For repeal: Distress Replevin and Ejectment Act of 1867, s.126.

20. Rent and benefit of lessee's covenants to run with the reversion:

Clause 20 (which is taken from s.141 of the English Law of Property Act 1925) is a re-statement of the provisions of the Grantees of Reversions Act 1540; 32 Hen.VIII, c.34, which enable assignees of reversions, whether of the whole or a part, to sue on the lessee's covenants. The Act of 1540 was held only to apply to a demise by deed: Standen v. Christmas (1847) 10 Q.B.135, but cl. 20 will extend it to all leases since "covenant" is not confined to a promise under seal: Weg Motors Ltd. v. Hales (1962) Ch.49. Sub-clause (2) overrules the decision that, before apportionment of rent, the assignee could not give notice to quit that portion: Woodfall, op. cit., at p. 807.

For repeal: Grantees of Reversions Act 1540;
32 Hen. VIII, c.34.

21. Obligation of lessor's covenants to run with reversion:

Clause 21 is directed to ensuring that the burden as well as the benefit of the covenants in the lease pass to the assignee of the reversion.

22. Waiver of a covenant in a lease:

Another consequence of the rule in Dumpor's Case, supra, that conditions were not severable, was that waiver of a condition was treated as a waiver of all future breaches: see Holdsworth, op. cit., at p. 282 et seq.; and this applied also to an express licence: ibid. This rule was overcome by ss.124 and 125 of the Distress Replevin and Ejectment Act. (which was based on English legislation passed

in 1859 and 1860) and which came into force on 28th December, 1867: cf. cl.22(2).

For repeal: Distress Replevin and Ejectment Act of 1867, ss. 124, 125.

23. Effect of licences granted to lessees:

Clause 23 provides for the case of licences mentioned above.

For repeal: Distress Replevin and Ejectment Act of 1867, ss. 124, 125.

24. Provisions as to covenants not to assign without consent:

Apart from express provision forbidding it, a tenant may assign or underlet without the landlord's consent. Leases, however, commonly contain a prohibition upon such assignment or underletting without consent, which may be absolute, or qualified by the requirement that such consent shall not be unreasonably withheld.

Clause 24(1)(a) (which follows s.19 of the English Landlord and Tenant Act 1927 and s.133B of the New South Wales Conveyancing Act) will make it impossible for the landlord to withhold his consent unreasonably, the onus of proving unreasonableness being on the tenant: see Mills v. Cannon Brewery Co. Ltd. (1920) 2 Ch.38 at p.46; Megarry & Wade, op. cit., at pp. 698-702.

Clause 23(b) (which is based on s.132 of the New South Wales Act and s.144 of the English Law of Property Act) will prevent the landlord from making payment of a premium a condition of granting his consent unless the lease expressly so provides; but in all cases the landlord may require payment of his reasonable legal and other expenses incurred in connection with the licence or consent.

Sub-clause (2) extends the principle of the above legislation to covenants etc. against making of improvements without consent, and sub-clause (3) does the same in respect of covenants against user or alteration of the premises without consent, where no structural alteration is involved.

Because cl. 24 is designed to improve the position of tenants, it is necessary by sub-cl.(5) to limit the operation of s.41(5)(n) and (o) of The Landlord and Tenant Acts, 1948 to 1961.

25. Involuntary assignment no breach of covenant:

Clause 25 is taken from s.133 of the New South Wales Conveyancing Act and is concerned with the case where an assignment, etc. of a lease takes place without any act of the lessee.

26. Interpretation:

Clause 26 forms part of Part IV dealing with relief against forfeiture, as to which see below.

Because of the policy considerations which apply to Crown leases under the Land Acts and similar statutes it is necessary to exclude such leases from the operation of the power to grant relief, without, however, withholding the benefit of Part IV from under-lessees of such land where the head-lessee seeks to forfeit the under-lease: hence the provisions of cl.26(1)(b).

Clause 26(1)(a) and the provision in cl.1(3)(a) will ensure that the power to grant relief applies to land under The Real Property Acts, 1861 to 1963, notwithstanding sections 71(2) and 72 thereof.

The definition of "proceedings" is defined to include an application by originating summons thus reversing the decision in Hebbard v. Lang (1937) Q.W.N.42, but without affecting the general judicial discretion conferred by Order 64, rule 10 of The Rules of the Supreme Court.

27. Restriction on and relief against forfeiture:

Ever since the decision in Hill v. Barclay (1811) 18 Ves. 56 the power of equity to relieve against re-entry or forfeiture of a lease by reason of a breach by the lessee of a covenant or condition has been virtually limited to the case of non-payment of rent: see Holdsworth, op. cit., vol. 8, at p.298. In Queensland there is a very limited additional power conferred by ss.63 to 68 of the Equity Act of 1867 to relieve against breach of covenant to insure, but in other respects a lease remains liable to forfeiture without relief for even the most trivial breaches of covenant. This can and does lead to the most serious injustice (particularly in the case of long leases where considerable improvements may have been effected by a lessee who may also have paid a heavy premium for the lease) and in Baier v. Heinemann (1962) Qd. R.192 at p.204, Gibbs J., in describing the law of Queensland as in this respect "seriously defective", remarked on the desirability of adopting of statutory provisions such as those contained in s.146 of the English Law of Property Act 1925,

which have a history dating as far back as the Conveyancing Act 1831.

The proposed cl.27 to 29 are derived from the New South Wales Conveyancing Act, which in turn is modelled on the English legislation mentioned above. A minor but important provision is cl.26(3) which is intended to avoid the conclusion reached in David Jones Ltd. v. Leventhal (1927) 27 S.R.(N.S.W.) 350, and Woods v. Tomlinson (1964) N.Z.L.R.399, that an application for relief could not be made without an admission on the part of the lessee that he was in breach of a covenant or condition and that the notice required by cl.27(2) has been duly served. The above decisions have the effect that a lessee may not safely seek a determination as to whether or not a breach has been committed, and only if so that relief be granted. The position has been strongly criticised (see 38 A.L.J.67) and is clearly productive of great inconvenience.

A provision in the form of cl. 27 has been held in other jurisdictions to confer on the court a complete discretion as to whether relief should be granted, and if so, on what terms: see Hyman v. Rose (1912) A.C.623; although in practice the court will take into account a variety of circumstances (including the past conduct of the parties to the lease) as is recognised by the foregoing decision of the House of Lords and in the decision appealed from in that case.

Clause 27(8) preserves the long-standing equitable power of the court to relieve against forfeiture in the case of non-payment of rent.

For repeal: Distress Replevin and Ejectment Act of 1867, ss. 118 to 123 (inclusive).
Equity Act of 1867, ss. 63 to 68 (inclusive).

28. Power of court to protect under-lessee on forfeiture of superior leases:

This provision enables an under-lessee, as defined in cl.28(2) to obtain an order vesting in him a head lease or other superior lease which is in danger of forfeiture through some default on the part of a superior lessee.

29. Costs and expenses:

Since relief by the court against forfeiture or the possibility of such relief is a privilege which may involve the lessor in expense, cl. 29 ensures that such expense is

borne by the defaulting lessee.

30. Relief against notice to effect decorative repairs:

Clause 30 is a particular provision intended to enable the court to relieve a lessee from liability to effect decorative repairs where such repairs are unreasonably required by the lessor.

31. Provision as to covenants to repair:

A lessee who, during the currency of the lease, is liable for breach of a covenant to repair, may be required to pay damages measured by reference to the resulting diminution in the value of the reversion; if the lease has expired, the damages are measured by reference to the cost of the repairs, and it is irrelevant that the lessor intends forthwith to demolish the premises: Joiner v. Weeks (1891) 2 Q.B.31; Megarry & Wade, op. cit., at p.705.

Clause 31, which is founded on s.18 of the English Landlord and Tenant Act 1927, places an upper limit on the amount of damages recoverable and in effect provides that these shall in no case exceed the value of the reversion (i.e., the difference between the value of the reversion with the repairs and its value without): see Woodfall, op. cit., at pp.671-2.

Clause 31(1) also disposes of Joiner v. Weeks, supra, by enabling account to be taken of the fact that the premises are about to be demolished.

32. Relief against option to renew, etc:

Options for renewal or extension of leases, or for purchase of the reversion, are commonly conferred in or in conjunction with leases. Where, as is usual, the exercise of such options is made dependent or conditional upon due performance and observance by the lessee of all conditions, covenants, and agreements in the lease, the rule is that such options are strictly construed and will be lost to the lessee by reason of even the most trivial breach of his part, e.g. a single late payment of rent: see Gilbert J. McCaul (Aust.) Pty. Ltd. v. Pitt Club Ltd. (1957) 59 S.R. (N.S.W.) 122. In such cases the lessor would very often not be entitled to utilise the breach as a ground for forfeiture, but can and does take advantage of it for the purpose of destroying the option he has conferred.

The Commission has received requests from members of the practising professions that the law in this

regard should be amended, and we recommend that, with the addition of sub-cll.(5) and (6), a provision be adopted substantially in the form of that contained in the Bill prepared for this purpose by the New South Wales Law Reform Commission in its report numbered L.R.C.5.

It is important to note the time limitation imposed in cl.32(4), which restricts applications for relief against loss of the option to three months after notice has been given by the lessor. This will, in conjunction with cl. 32(2)(b), safeguard the lessor or his assigns in cases where, in reliance upon the breach, he has disposed or agreed to dispose of the subject premises to some third party.

33. Apportionment: Interpretation of terms:

34. Rents etc. apportionable in respect of time:

The general rule at common law is that rent and other payments falling due at periodic intervals are not due and payable until the expiration of the full period in question: Clun's Case (1614), 10Co. Rep. at p.18a. Hence, if for some reason the full period is never completed, for example, where a lease determines on a date between two rent days, no part of the rent or payment is recoverable at all in respect of that part of the period which had expired. The rule (which originated with rent and was later applied to other periodic payments: see Holdsworth, op. cit., vol. 7 at pp. 267-270) was further complicated in the case of rents due from tenants for life by the principle that there could be no personal action in debt for rent, which could not be reserved on an estate of inheritance, and was partly responsible for statutory extensions of the remedy of distress: see Holdsworth, loc. cit., at p. 263. A somewhat similar difficulty arose in the case of the death of a tenant for life during the currency of a lease granted by him. The latter problems were in part overcome in 1709 by the statute 8 Anne c.14, s.4 (which did not however apply to rent-charges) but did not finally become obsolete until the abolition of the real actions by the Common Law Procedure Acts passed in the nineteenth century: see Thomas v. Sylvester (1873) L.R. 8 Q.B. 368, at p. 371. The non-apportionability of other rents and periodical payments was tackled by a series of statutes including s. 15 of the Distress for Rent Act 1737 (11 Geo.II, c.19) and 4 & 5 Wm.IV c.22, s.2.

The provisions of the last-mentioned Act, which has been judicially described as "one of the worst drawn, possibly the worst drawn, on the statute book", have been

copied in Queensland in s.39 of the Distress Replevin and Ejectment Act of 1867, although replaced in England by the Apportionment Act 1870; in New South Wales in 1901 by what is now s.142 of the Conveyancing Act; and in Queensland in relation to the voluntary winding up of companies (only) by reg.53 of The Companies Regulations 1963.

Clauses 33 and 34 are based on the above New South Wales section, which is rather more widely drawn than its earlier English counterpart, and furthermore the proposed clause will apply to dividends payable by any company incorporated under statute.

For repeal: 32 Henry VIII c.37, ss.3,4 (1540)
8 Anne c.14, s.4 (1709)
11 Geo.II, c.19, s.15 (1737)
Common Law Practice Acts, 1867 to 1940, s.9
Distress Replevin and Ejectment Act
of 1867, ss.35, 36, 39.

35. Construction of expressions used in deeds and other instruments:

Clause 35 is taken from s.61 of the English Law of Property Act and has its analogue in the similar provisions of The Acts Interpretation Acts, which, of course, apply only to statutes. It expresses what may seem obvious but is sometimes overlooked; thus, for example, at common law "month", unless otherwise specified in the instrument, means lunar and not calendar month. In Kodak (Australasia) Pty. Ltd. v. Hally (1960) Qd.R.452 this inconvenient and unexpected rule was applied by the Full Court to invalidate a notice to quit which had erroneously been based upon measurement in calendar rather than lunar months.

36. Execution of deeds by individuals:

At common law a deed under seal is valid if sealed although not signed. This archaic survival in an age of widespread literacy is capable of providing opportunities for frauds and cl.36 will require signing in all cases where a deed is executed by an individual.

37. Execution of instruments by or on behalf of corporations:

In Equity Nominees Ltd. v. Tucker (1967) 41 A.L.J.R. 80, a guarantee under seal given by a company was held void because the seal was affixed and attested by one director and the company secretary (who was also a director) instead of by two directors and secretary as required by the articles of association. In favour of a purchaser (see

definition) cl. 37(1) specifies a form of execution of deeds by companies which will validate deeds in all cases without the necessity for the purchaser to scrutinise the articles of association, but cl. 37(6) expressly preserves the validity of deeds executed by a corporation if carried out in accordance with the provisions of its constitution.

38. Benefit of covenants relating to land:

39. Burden of covenants:

Clauses 38 and 39 are concerned with the passing upon an assignment of an estate of the benefit and of the burden of covenants which "touch and concern the land". These provisions merely affirm the common law as stated in Spencer's Case (1583) 5 Co. Rep. 16a (see Helmore op. cit., at p. 124), but dispenses with the necessity for express reference in the instrument to the covenantor's successors in title. It is thus essentially a "word-saving" provision: see Megarry & Wade, op. cit., at pp.727-728, 750-751, although these clauses also nullify the common law rule that the assignee must have had the same estate as the covenantee: Megarry & Wade, loc. cit., citing Smith v. River Douglas Catchment Board (1949) 2 K.B. 590.

Sections 70 and 70A of the New South Wales Conveyancing Act (from which cll. 38 and 39 are taken) are expressly applied to land under the Real Property Act in that State; but, in view of the desirability of maintaining the principle of indefeasibility of title of a registered proprietor against unregistered interests and equities, it seems necessary to provide expressly that these clauses of the Bill should be subject to the provisions of The Real Property Acts, 1861 to 1963 (cf. Friedman v. Barrett (1962) Qd.R.498).

40. Effect of covenants with two or more jointly:

The general rule of construction at common law is that a single promise made by two or more persons is to be regarded as joint, rather than joint and several, unless there are words indicating a contrary intent. The extreme consequences, both procedural and substantive, of this rule are well known (e.g. cesser of obligation on death, survivorship, and necessity for joinder of all parties in actions on the joint promise) and are amply demonstrated by Professor Glanville Williams in his work Joint Obligations. As the same author remarks: "It is somewhat odd that, whereas any would-be creditor who is versed in the law would insist on the obligation being made joint and several rather than joint,

the law makes it only joint unless special pains are taken to render it joint and several".

Clause 40 will have the effect of reversing the presumption in favour of joint promises contained in contracts under seal made after the commencement of the Act: see Halsbury's Laws of England (3rd ed.), vol. 8, at p.61. The power of the parties to express their undertaking in a form which will render their obligation joint is preserved by cl. 39(2).

41. Covenants and agreements entered into by a person with himself and another or others:

At common law a person could not effectively contract with himself, and the same result followed even if the agreement were entered into with himself and another or others: see Halsbury's Laws of England, vol. 8 at p.59. This is an inconvenient rule, and the effect of cl.41, following s.82 of the Law of Property Act 1925, is that such an agreement will be construed as if made with the other person or persons alone, and so is to this extent complementary to cl.4.

A Bill for the Reform, Consolidation and Amendment of the Law relating to Leases and for other purposes incidental thereto.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

PART I - PRELIMINARY

1. Short Title. (1) This Act may be cited as the Law Reform (Leases) Act, 1970.

(2) Arrangement of Act. This Act is divided into Parts as follows:-

- PART I - PRELIMINARY (ss. 1-3)
- PART II - PROVISION AS TO LEASES AND PROPERTY GENERALLY (s. 4)
- PART III - LEASES AND TENANCIES (ss. 5-25)
- PART IV - RELIEF AGAINST FORFEITURE (ss. 26-32)
- PART V - APPORTIONMENT AND DEEDS (ss. 33-41).

Abbreviations. The following abbreviations are used in the marginal notes to this Act:- Q'ld. C. L. P. A. 1867 - "The Common Law Practice Acts, 1867 to 1964"; Q'ld. D. R. E. Act 1867 - "The Distress Replevin and Ejectment Act of 1867" of Queensland; N. S. W. Conv. Act, 1919-1967 - "Conveyancing Act, 1919-1967"; N. S. W. L. R. C. - Report of the Law Reform Commission of New South Wales; Vict. No. 6285 - "Landlord and Tenant Act, 1958" of Victoria; Eng. L. P. A. 1925 - "Law of Property Act, 1925" of England.

(3) Application of Act. Except where otherwise provided, this Act shall -

- (a) notwithstanding anything contained in "The Real Property Acts, 1861 to 1963", apply to land under the provisions of those Acts, including any lease of such land;
- (b) apply to leases granted, created or taking effect under or pursuant to any Act, but subject to the provisions of such Act;
- (c) without limiting the generality of paragraph (b) of this subsection:-
 - (i) subject to the provisions of the "Land Acts, 1962-1968", apply to land under the provisions of those Acts;
 - (ii) subject to the provisions of "The Miners Homestead Leases Acts, 1913 to 1965", apply to land under the provisions of those Acts;

(iii) subject to the provisions of "The Mining Acts, 1898 to 1967", apply to leases granted, created or taking effect under or pursuant to the provisions of those Acts.

(4) Except where otherwise provided, nothing in this Act shall affect the operation of "The Landlord and Tenant Acts, 1948 to 1961".

(5) This Act binds the Crown.

2. Acts Repealed. The Acts mentioned in the Second Schedule to this Act (herein referred to as "the repealed Acts") are repealed to the extent indicated in the Schedule. Provided that the repeal by this Act of any Imperial Act shall not be taken to imply that such Imperial Act applied or, but for the passing of this Act, would have applied in Queensland.

cf. N. S. W. Conv.
Act, 1919-1967,
s. 7(1)

3. Interpretation. In the interpretation of this Act, unless the context or subject matter otherwise indicates or requires:

"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.

"Conveyance" includes a transfer within the meaning of "The Real Property Acts, 1861 to 1963" and any assignment, appointment, lease, settlement, or other assurance in writing of any property; and "convey" has a meaning corresponding with that of conveyance.

"Court" means the Supreme Court or any Judge thereof.

"Deed" in relation to land under the provisions of "The Real Property Acts, 1861 to 1963", includes an instrument having the effect of a deed under those Acts.

"Imperial Act" means any statute law in force within the realm of England on the twenty-fifth day of July, 1828.

"Land" includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein whether vested or contingent, freehold or leasehold, and whether at law or in equity.

"Land under the provisions of the 'Land Acts, 1962-1968', or any equivalent expression, means estates or interests in land leased, granted or reserved and set aside under those Acts.

"Land under the provisions of 'The Miners' Homestead Leases Acts, 1913 to 1965', or any equivalent expression, means estates or interests in land leased under those Acts.

"Land under the provisions of 'The Real Property Acts, 1861 to 1963', or any equivalent expression, means estates or interests registered under those Acts.

"Lease" includes demise and tenancy, whether for a term, for a period, or at will.

"Lessee" includes tenant, his executors or assigns.

"Lessor" includes landlord, his executors or assigns.

"Order" includes judgment and decree of Court.

"Property" includes real and personal property and any estate or interest in any property real or personal.

"Purchaser" means a purchaser for valuable consideration, and includes a lessee, mortgagee, or other person who for valuable consideration acquires an interest in property.

"Registered" means registered in the appropriate register in the office of the Registrar of Titles.

"Rent" includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise; and "fine" includes premium or foregift, and any payment, consideration, or benefit in the nature of a fine, premium or foregift.

PART II - PROVISION AS TO LEASES AND
PROPERTY GENERALLY

Eng. L. P. A. 1925,
s. 72. Cf. Q'ld.
The Mercantile
Acts, 1867 to 1896,
s. 1.

4. Conveyances by a person to himself etc. (1) In conveyances and leases made after the twenty-eighth day of December, eighteen hundred and sixty-seven, personal property, including chattels - real, may be conveyed or leased by a person to himself jointly with another person by the like means by which it might be conveyed or leased by him to another person.

(2) In conveyances or leases made after the commencement of this Act freehold land, or a thing in action, may be conveyed or leased by a person to himself jointly with another person, by the like means by which it might be conveyed or leased by him to another person; and may, in like manner, be conveyed or leased by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(3) After the commencement of this Act a person may convey or lease land to or vest land in himself.

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

(5) For the purpose of subsection four of this section, the words "or more of themselves" shall be construed to include all the persons by whom the conveyance or lease is or, as the case may be, has been made.

PART III - LEASES AND TENANCIES

Eng. L. P. A. 1925,
s. 149. N. S. W.
Conv. Act, 1919-
1967, s. 120A.

5. Abolition of interesse termini as to reversionary leases and leases for lives. (1) The doctrine of interesse termini is hereby abolished.

(2) As from the commencement of this Act 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 commencement of the term, without actual entry.

(3) A term, at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, 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) Nothing in subsections (1) and (2) of this section prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or, as respects terms or interests created before the commencement of this Act, operates to vary any statutory or other obligations imposed in respect of 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.

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

Statute of
Marlborough, 52
Hen. III, c. 23.
N. S. W. Imperial
Acts Application
Act 1969, s. 32.

6. Liability for waste. (1) A tenant for life or lives or a lessee shall not commit voluntary waste.

(2) Nothing in subsection one of this section applies to any estate or tenancy without impeachment of waste, or affects any licence or other right to commit waste.

(3) A tenant who infringes subsection one of this section is liable in damages to his remainderman or reversioner but this section imposes no criminal liability.

(4) This section does not affect the operation of any event which may determine a tenancy at will.

Q'ld. The
Judicature Act
of 1876, s. 5(3).

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

The Cestui que Vie Act, 1666; 18 and 19 Car. II, c. 11. The Cestui que Vie Act, 1707; 6 Anne c. 72 (or c. 18). Cf. Q'd. Real Property Acts, 1861 to 1963, s. 90. N.S.W. Imperial Acts Application Act, 1969, s. 38.

8. Recovery of property on determination of a life or lives.

(1) Every person having any estate or interest in any property determinable upon a life or lives who, after the determination of such life or lives without the express consent of the person next immediately entitled upon or after such determination, holds over or continues in possession of such property estate or interest, or of the rents, profits or income thereof, shall be liable in damages or to an account for such rents and profits, or both, to the person entitled to such property, estate, interest, rents, profits or income after the determination of such life or lives.

(2) Where a reversion, remainder, or other estate or interest in any property is expectant upon the determination of a life or lives, the reversioner, remainderman, or other person entitled to such reversion, remainder, or estate or interest may in any proceeding claiming relief on the basis that such life or lives has or have determined, adduce evidence of belief that such life or lives has or have been determined and of the grounds of such belief, and thereupon the court may in its discretion order that, unless the person or persons on whose life or lives such reversion, remainder, or other estate or interest is expectant is or are produced in court or is or are otherwise shown to be living, such person or persons shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

(3) If in such proceedings the lastmentioned person is shown to have remained beyond Australia, or otherwise absented himself from the place in which if in Australia he might be expected to be found, for the space of seven years or upwards, such person, if not proved to be living, shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

(4) If in any such proceedings judgment has been given against the plaintiff, and afterwards such plaintiff brings subsequent proceedings upon the basis that such life has determined, the court may make an order staying such proceedings permanently or until further order or for such time as may be thought fit.

(5) If in consequence of the judgment given in any such proceedings, any person having any estate or interest in any property determinable on such life or lives has been evicted from or deprived of any property or any estate or interest therein, and afterwards it appears that such person or persons on whose life or lives such estate or interest depends is or are living or was or were living at the time of such eviction or deprivation, the court may give such relief as is appropriate in the circumstances.

Distress for Rent Act, 1737, s. 14; 11 Geo. II c. 19. Q'd. C.L.P.A. 1867, s. 7.

9. Rents how to be recovered where demise not by deed.

(1) Where the agreement between a lessor and lessee is not by deed, the lessor may recover a reasonable satisfaction for the land held or occupied by the defendant in an action for use and occupation of what was so held or enjoyed.

(2) If in evidence on the trial of such action any parol demise or any agreement (whether by deed or otherwise) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not be nonsuited but may rely on such demise or agreement as evidence of the quantum of damages to be recovered.

N. W. Conv.
Act, 1919-1967,
s. 67.

10. Abolition of yearly tenancies arising by implication of law.

(1) No tenancy from year to year shall, after the commencement of this Act, be implied by payment of rent; if there is tenancy, and no agreement as to its duration, then such tenancy shall be deemed to be a tenancy determinable at the will of either of the parties by one month's notice in writing expiring at any time.

(2) This section shall not apply where there is a tenancy from year to year which has arisen by implication before the commencement of this Act.

Provided that in the case of any such tenancy in respect of which the date of its creation is unknown to the lessor or lessee, as the case may be, who is seeking to determine the same, such tenancy shall, subject to any express agreement to the contrary, be determinable by six months' notice in writing expiring on the day of _____, nineteen hundred and seventy or any date thereafter.

Landlord and
Tenant Act 1730,
s. 1: 4 Geo. II,
c. 28. Cf. Vict.
No. 6285, s. 9.

11. Tenants and other persons holding over to pay double the yearly value. Where any tenant for life or lives or for years, or other person who is or comes into possession of any land by from or under or by collusion with a tenant for life or lives or for years, wilfully holds over any land after -

- (a) determination of the lease or term; and
- (b) after demand made and notice in writing has been given for the delivery of possession thereof by the lessor or landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorised -

then the person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession of such land, be liable to the person so kept out of possession at the rate of double the yearly value of the land so detained for so long as the land shall have been so detained, to be recovered by action in any court of competent jurisdiction.

Distress for
Rent Act 1737,
s. 18: 11 Geo. II
c. 19. Cf. Vict. No.
6285, s. 10. Cf.
Q'ld. D. R. E. Act
1867, s. 38.

12. Tenant holding over after giving notice to be liable for double rent. Where a lessee who has given notice of his intention to quit the land held by him at a time specified in such notice does not accordingly deliver up possession at the time so specified, then he shall thereafter be liable to the lessor for double the rent or sum which would have been payable to the lessor before such notice was given. Such lessee shall continue to be liable for such double rent or sum during the time he continues in possession as aforesaid, to be recovered by action in any court of competent jurisdiction.

Q'ld. D. R. E.
Act, ss. 130, 131,
132. The District
Courts Act of
1967, s. 90.
District Court
Rules, 1968, Rule
169.

13. Recovery of possession where half-year's rent is due.

- (1) A lessor -
 - (a) to whom half a year's rent is due and in arrear, and
 - (b) who has power to re-enter for nonpayment of rent -

may, without any formal demand or re-entry, commence proceedings in any court of competent jurisdiction for recovery of the land the subject of the lease, and upon proof to the satisfaction of the court -

- (c) that half a year's rent was due before the writ, or as the case may be, plaint was served, and
- (d) that the lessor has power to re-enter, and
- (e) if the title of the plaintiff has accrued since the letting of the land, of the title of the plaintiff -

judgment may, subject to the provisions of this section, be given in favour of the lessor as if the rent in arrear had been duly demanded and a re-entry made.

(2) If at any time before judgment is given in such proceedings the lessee pays into court or tenders to the lessor or his solicitor all rent and arrears and the costs of such proceedings, the proceedings shall be stayed, and thereupon the lessee shall continue to hold and enjoy the land leased according to the terms of the lease without necessity for any new lease.

(3) If in any such proceedings judgment is given in favour of the lessor for recovery of possession of the land leased, the lessor shall thereafter hold the land discharged from the lease.

(4) Rule 169 of the "District Courts Rules, 1968" is hereby repealed, but this section shall take effect subject, in the case of proceedings in the District Court, to the provisions of section ninety of "The District Courts Act of 1967".

Eng. L. P. A. 1925, s. 145. Q'd. D. R. E. Act, 1867, s. 129. District Court Rules 1968, rule 170.

14. Lessee to give notice of ejectment to the lessor. Every lessee to whom there is delivered any writ or plaint for recovery or for delivery of land leased to or held by him, or to whose knowledge any such writ or plaint comes, shall forthwith give notice thereof to his lessor or his bailiff or receiver, and, if he fails to do so, he shall be liable to the person of whom he holds the land in an amount equal to one years rent of the land to be recovered by action in any court of competent jurisdiction.

15. Abolition of distress for rent and rates. (1) As from the commencement of this Act, distress for rent (whether rent-service or rent-seck), distress for rates pursuant to subsection nine of section twenty-seven of "The Local Government Acts, 1936 to 1968", distress pursuant to sections sixty, sixty-one, sixty-one A, one hundred and thirty-five and one hundred and thirty-six of "The Real Property Acts, 1861 to 1963" is abolished, and distress pursuant to subsection three of section one hundred of "The Metropolitan Water Supply and Sewerage Acts, 1909 to 1962".

(2) This section shall not apply to any distress which has been put in force but not completed before the commencement of this Act.

4 Geo. II, c. 28, s. 6. Eng. L. P. A. 1925, s. 150. N. S. W. Conv. Act 1919-1967, s. 121.

16. Head leases may be renewed without surrendering under-leases. (1) In case any lease is duly surrendered in order to be renewed, and a new lease made and executed by the head landlord, such new lease shall without a surrender of all or any of the under-leases, be as good and valid to all intents and purposes as if all the under-leases derived thereout had been likewise surrendered at or before the taking of such new lease.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease and his executors and administrators shall be entitled to

the rents, covenants, and duties, and have like remedy for the recovery thereof, and the under-lessees shall hold and enjoy the lands in the respective under-leases comprised, as if the original leases out of which the respective under-leases are derived had been still kept on foot and continued.

(3) The head landlord shall be entitled to the same remedy by entry in and upon the lands comprised in any such under-lease for the rents and duties reserved by such new lease (so far as the same do not exceed the rents and duties reserved in the lease out of which such under-lease was derived) as he would have had in case such former lease had been still continued or as he would have had in case the respective under-leases had been renewed under such new principal lease.

Eng. L. P. A.
1925, s. 151(1).
4 Anne c. 16 (c. 3),
ss. 9, 10. N. S. W.
Conv. Act, 1919-
1967, s. 125(1).

17. Provision as to attornments by tenants. (1) Where land is subject to a lease -

- (a) the conveyance of a reversion in the land expectant on the determination of the lease; or
- (b) the creation or conveyance of a rentcharge to issue or issuing out of the land;

shall be valid without any attornment of the lessee:

Nothing in this subsection -

- (i) affects the validity of any payment of rent by the lessee to the person making the conveyance or grant before notice of the conveyance or grant is given to him by the person entitled thereunder; or
- (ii) renders the lessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the lessee.

Eng. L. P. A.
1925, s. 151(2).
11 Geo. II c. 19,
s. 11, Q'ld.
D. R. E. Act,
1867, s. 128.

(2) An attornment by the lessee in respect of any land to a person claiming to be entitled to the interest in the land of the lessor, if made without the consent of the lessor, shall be void.

This subsection does not apply to an attornment -

- (a) made pursuant to a judgment of a court of competent jurisdiction; or
- (b) to a mortgagee, by a lessee holding under a lease from the mortgagor where the right of redemption is barred; or
- (c) to any person rightfully deriving title under the lessor.

Cf. Eng. L. P. A.
1925, s. 139.
N. S. W. Conv.
Act, 1919-1967,
s. 122.

18. When reversion on a lease is surrendered, &c., the next estate to be deemed the reversion. When the reversion expectant on a lease of land made either before or after the commencement of this Act is surrendered or merges after the commencement of this Act, the estate which for the time being confers as against the lessee under the lease the next vested right to the land, shall, to the extent and 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.

Eng. L.P.A.,
1925, s.140.
N.S.W. Conv.
Act, 1919-1967,
s.119. Cf. Q'ld.
D.R.E. Act, 1867,
s.126.

19. Apportionment of conditions on severance. (1) Notwithstanding the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) In this section "right of re-entry" includes a right to determine the lease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.

(3) This section applies to -

- (a) leases made after the commencement of this Act; and
- (b) leases made before the commencement of this Act where the reversionary estate in the lands comprised therein is severed or there is an avoidance or cesser of the term as above mentioned after the commencement of this Act.

The Grantees of
Reversions Act,
1540: 32 Hen.
VIII, c. 34. Eng.
L.P.A., 1925,
s.141. N.S.W.
Conv. Act, 1919-
1967, s.117.

20. Rent and benefit of lessee's covenants to run with the reversion. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.

(2) Any such rent, covenant or provision shall be capable of being recovered, received, enforced, and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(3) Where that person becomes entitled by conveyance or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

(4) This section applies to -

- (a) leases made after the commencement of this Act; and
- (b) leases made before the commencement of this Act, but with respect only to rent accruing due after the commencement of this Act and to the benefit of a condition of re-entry or forfeiture for a breach committed after the commencement of this Act of any covenant, condition, or provision contained in the lease.

The Grantees of Reversions Act, 1540: 32 Hen. VIII, c. 34. Eng. L. P. A., 1925, s. 142. N. S. W. Conv. Act 1919-1967, s. 118.

21. Obligation of lessor's covenants to run with reversion.

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

(2) This section applies to -

- (a) leases made after the commencement of this Act; and
- (b) leases made before the commencement of this Act so far only as relates to breaches of covenant committed after the commencement of this Act.

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

Eng. L. P. A. 1925, s. 148. N. S. W. Conv. Act, 1919-1967, s. 120. Q'd. D. R. E. Act, 1867, s. 127.

22. Waiver of a covenant in a lease. (1) Where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit of any such covenant or condition.

(2) Unless a contrary intention appears this section applies and extends to waivers effected after the twenty-eighth day of December, eighteen hundred and sixty-seven.

Eng. L. P. A. 1925, s. 143. Cf. N. S. W. Conv. Act, 1919-1967, ss. 123, 124. Cf. Q'd. D. R. E. Act, 1867, ss. 124, 125.

23. Effect of licences granted to lessees. (1) Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only -

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

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

(2) Notwithstanding any such licence -

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

- (a) to any one of two or more lessees to do any act, or to deal with his equitable share or interest; or
- (b) to any lessee, or to any one of two or more lessees to assign or underlet part only of the property, or to do any act in respect of part only of the property;

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

(4) This section applies to licences granted after the twenty-eighth day of December, eighteen hundred and sixty-seven.

N.S.W. Conv.
Act, 1919-1967,
ss. 132, 133B.
Cf. Eng. L. P. A.
1925, s. 144.
Eng. Landlord
and Tenant Act,
1927, s. 19(1).

24. Provisions as to covenants not to assign &c., without licence or consent. (1) In all leases whether made before or after the commencement of this Act, containing a covenant, condition, or agreement against assigning, underletting, charging, or parting with the possession of premises leased or any part thereof without licence or consent, such covenant, condition, or agreement shall:-

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

(b) unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such licence or consent.

(2) In all leases, whether made before or after the commencement of this Act, containing a covenant, condition, or agreement against the making of improvements without licence or consent, such covenant, condition, or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to the proviso that such licence or consent is not to be unreasonably withheld; but this proviso does not preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the lessor, and of any legal or other expenses properly incurred in connection with such licence or consent nor in the case of an improvement which does not add to the letting value of the holding, does it preclude the right to require as a condition of such licence or consent, where such a requirement would be reasonable, an undertaking on the part of the lessee to reinstate the premises in the condition in which they were before the improvement was executed.

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

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

(5) Paragraphs (n) and (o) of subsection five of section forty-one of "The Landlord and Tenant Acts, 1948 to 1961" shall take effect subject to the provisions of this section.

Official manager
or N. S. W. Conv.
Act, 1919-1967,
s. 133.

25. Involuntary assignment no breach of covenant. Neither the assignment nor the underletting of any lease by the official assignee of a bankrupt, or by the liquidator of a company (other than a liquidator in a voluntary winding-up of a solvent company), nor the sale of any lease under an execution, nor the bequest of a lease, shall be deemed to be a breach of a covenant, condition, or agreement against the assigning, underletting, parting with the possession, or disposing of the land leased.

PART IV - RELIEF AGAINST FORFEITURE

Eng. L. P. A.
1925, s.146(5).
N. S. W. Conv.
Act, 1919-1967,
s. 128.

26. Interpretation. (1) The provisions of this Part shall apply -

- (a) to land under the provisions of "The Real Property Acts, 1861 to 1963"; and
- (b) to under-leases of land under the provisions of the "Land Acts, 1962-1968", and "The Miners' Homestead Leases Acts, 1913 to 1965", but not to leases of such land, other than leases of land under Part XII of the "Land Acts, 1962-1968".

(2) For the purposes of this Part, -

Eng. L. P. A.
1925, s.146(5).
N. S. W. Conv.
Act, 1919-1967,
s. 128.

"Bankruptcy" includes any act or proceeding in law having, under any Act heretofore or for the time being in force, effects or results similar to those of bankruptcy, and includes the winding-up of a company under "The Companies Acts, 1961 to 1964", (other than the voluntary winding-up of a solvent company) and the placing of a company under official management in accordance with those Acts; and "bankrupt" has a meaning corresponding with that of bankruptcy.

"Lease" includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition, and an agreement for a lease where the lessee has become entitled to have his lease granted.

"Lessee" includes an original or derivative under-lessee, a grantee under such a grant as aforesaid, his executors, administrators, and assigns, a person entitled under an agreement as aforesaid, and the executors, administrators, and assigns of a lessee.

"Lessor" includes an original or derivative under-lessor, a grantor as aforesaid, a person bound to grant a lease under an agreement as aforesaid, and the executors, administrators, and assigns of a lessor.

"Proceedings" include an application commenced by originating summons.

"Under-lease" includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted.

"Under-lessee" includes any person deriving title through or from an under-lessee.

Eng. L. P. A.
1925, s.146.
N. S. W. Conv. Act,
1919-1967, s. 128.
Cf. Q'ld. D. R. E.
Act, 1867, ss. 118-
123; Equity Act,
1867, ss. 63-68.

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

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
- (c) in case the lessor claims compensation in money for the breach, requiring the lessee to pay the same,

and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and where compensation in money is required to pay reasonable compensation to the satisfaction of the lessor for the breach.

(2) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, or has re-entered without action the lessee may, in the lessor's action, if any, or in proceedings instituted by himself, apply to the Court for relief; and the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, may grant or refuse relief, as it thinks fit; and in case of relief may grant the same on such terms (if any) as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit.

(3) The making of an application under this section shall not of itself be construed as an admission on the part of the lessee -

- (a) that any such notice as is mentioned in subsection one hereof has been served by the lessor; or
- (b) that any such breach as is mentioned in subsection one hereof has occurred or that any right of or cause for re-entry or forfeiture has accrued or arisen,

and the Court may, if it thinks fit, grant relief as aforesaid without making a finding that, or arriving at a final determination whether, any such notice has been served, or any such breach has occurred, or that any such right has accrued or cause arisen.

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

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

(6) This section does not extend -

- (a) to any lease or tenancy for a term of one year or less; or
- (b) to a covenant, condition, or agreement against the assigning, under-letting, parting with the possession or disposing of the land leased where the breach occurred before the commencement of this Act; or
- (c) to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest in any lease of -
 - (i) agricultural or pastoral land;
 - (ii) mines or minerals;
 - (iii) a house used or intended to be used as licenced premises under "The Liquor Acts, 1912 to 1965";
 - (iv) a house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures;

- (v) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor or to any person holding under him;
 - (d) in case of a mining lease to a covenant, condition, or agreement for allowing the lessor to have access to or inspect books, accounts, records, weighing-machines, or other things, or to enter or inspect the mine or the workings thereof;
 - (e) to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest in any lease (other than a lease mentioned in paragraph (c) of this subsection) after the expiration of one year from the date of the bankruptcy or taking in execution, provided the lessee's interest be not sold within such one year: But if the lessee's interest be sold within such one year this section shall extend and be applicable to such condition for forfeiture.
- (7) When a lessee has assigned or transferred the lease with the consent of the lessor or without such consent where it is not required by the lease, the bankruptcy of the lessee after such assignment or transfer shall not work a forfeiture or determine the lease unless the condition for forfeiture on bankruptcy contained in the lease be therein expressly extended to bankruptcy of the lessee after the date of such assignment or transfer.
- (8) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.
- (9) The notice mentioned in this section shall be in the form set out in the First Schedule to this Act or to a similar effect.
- (10) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Eng. L. P. A.
1925, s.146(4).
N.S.W. Conv.
Act, 1919-1967,
s. 130.

28. Power of court to protect under-lessee on forfeiture of superior leases. (1) Where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture, under any covenant, proviso, or stipulation in a lease made either before or after the commencement of this Act or for non-payment of rent, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease, or any part thereof, make an order staying any such action or other proceeding on such terms as to the Court may seem just, and vesting, for the whole term of the lease, or any less term, the property comprised in the lease or any part thereof, in any person entitled as under-lessee to any estate or interest in such property, upon such conditions as to execution of any deed or other document, payment of proper and reasonable rent, costs, expenses, damages, compensation, giving security, or otherwise as the Court in the circumstances of each case, and having regard to the consent or otherwise of the lessor to the creation of the estate or interest claimed by the under-lessee, thinks fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for a larger area of land or for any longer term than he had under his original under-lease.

(2) Any such order may be made in proceedings brought for the purpose by the person claiming as under-lessee or, where the lessor is proceeding by action or otherwise in the Court, may be made in such proceeding.

Eng. L. P. A.
1925, s.146(3).
N.S.W. Conv.
Act, 1919-1967,
s.131.

29. Costs and expenses. 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.

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 twenty-seven of this Act.

Eng. L. P. A.
1925, s.147.

30. Relief against notice to effect decorative repairs. (1) After a notice is served on a lessee relating to the internal decorative repairs to a house or other building, he may apply to the Court for relief, and if, having regard to all the circumstances of the case (including in particular the length of the lessee's term or interest remaining unexpired), the Court is satisfied that the notice is unreasonable, it may, by order, wholly or partially relieve the lessee from liability for such repairs.

(2) This section does not apply:-

- (i) where the liability arises under an express covenant or agreement to put the property in a decorative state of repair and the covenant or agreement has never been performed;
- (ii) to any matter necessary or proper -
 - (a) for putting or keeping the property in a sanitary condition, or
 - (b) for the maintenance or preservation of the structure;
- (iii) to any statutory liability to keep a house in all respects reasonably fit for human habitation;
- (iv) to any covenant or stipulation to yield up the house or other building in a specified state of repair at the end of the term.

(3) This section applies whether the notice is served before or after the commencement of this Act, and has effect notwithstanding any stipulation to the contrary.

N.S.W. Conv.
Act, 1919-1967,
s.133A. Eng.
Landlord and
Tenant Act,
1927, s.18.

31. Provisions as to covenants to repair. (1) Damages for a breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease, whether such covenant or agreement is expressed or implied, and whether general or specific, shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to the breach of such covenant or agreement as aforesaid; and in particular no damage shall be recovered for a breach of any such covenant

or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the lease have been or be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement.

(2) A right of re-entry or forfeiture for a breach of any such covenant or agreement as aforesaid shall not be enforceable, by action or otherwise, unless the lessor proves that the fact that such a notice as is required by section twenty-seven of this Act had been served on the lessee was known either -

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

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

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

This subsection shall be construed as one with section twenty-seven of this Act.

(3) This section applies whether the lease was created before or after the commencement of this Act.

cf. N.S.W.
L.R.C. 5.

32. Relief against loss of lessee's option. (1) The Court may make orders for the relief of a lessee, or of any person deriving title through a lessee, from the consequences of any breach of any condition of a lessee's option, and, in particular, may order that an exercise of a lessee's option shall be valid, or that the lessee or any person deriving title through the lessee shall be entitled to a conveyance transfer, renewal, extension or grant, as the case may be, pursuant to a lessee's option, notwithstanding any breach of any condition of the lessee's option.

(2) An order under subsection one of this section may be made:-

- (a) whether or not the lessor may have granted any estate or interest in the leased premises to any person other than the lessee;
- (b) upon terms as to costs, expenses, damages, compensation or otherwise.

(3) An application for relief under this section may be made:-

- (a) in proceedings instituted for that purpose; or
- (b) in proceedings instituted for determining or enforcing any rights arising out of a lessee's option or arising out of a breach of any condition of a lessee's option; or
- (c) in the action mentioned in subsection two of section twenty-seven of this Act.

(4) Where a lessor serves on a lessee a notice objecting to give effect to a lessee's option on the ground of any specified breach of any specified condition of the lessee's option, an application under this section by the lessee, or by any person deriving title through the lessee, for relief from the consequences of the breach shall not be maintainable against the lessor unless made in proceedings instituted within three months after service of the notice or within such extended period as for good cause and in the circumstances the Court considers just to allow.

(5) The making of an application under this section shall not of itself be construed as an admission on the part of the applicant of a breach of any condition of a lessee's option.

(6) Where the Court grants relief from the consequences of any breach of any condition of a lessee's option, such option shall (subject to due compliance with any term or terms which may be imposed in granting such relief) be exercisable as if no such breach had occurred, provided that the relief so granted shall not extend to any breach or breaches other than that or those in respect of which relief has been granted.

(7) For the purpose of this section -

- (a) "breach" in relation to a condition includes an omission to perform or to fulfil the condition;
- (b) "condition", in relation to a lessee's option, means a term or condition (express or implied and whether or not contained in the lease) upon or subject to which -
 - (i) the lessee's option is exercisable; or
 - (ii) a lessee or any person deriving title through a lessee is, upon or after exercise of the lessee's option, entitled to a conveyance, transfer, renewal, extension or grant pursuant to the lessee's option; but does not include a stipulation fixing the time for exercise of a lessee's option or the time within which a lessee's option is to be exercised where it is further stipulated that time is to be of the essence of the contract;
- (c) "lessee's option" means -
 - (i) an option of purchase, right of pre-emption or other like right in respect of the whole or any part of the reversion of the lessor in the whole or any part of the demised premises; or
 - (ii) any option or other like right for the renewal or extension of a lease, or for a new lease, exercisable by the lessee, in respect of the whole or any part of the leased premises.

(8) The provisions of this section shall apply to a lessee's option whether given before or after the commencement of this Act and shall have effect notwithstanding any stipulation to the contrary.

PART V - APPORTIONMENT AND DEEDS

33. Interpretation of terms. For the purposes of this Part -

"Annuities" include salaries and pensions.

"Dividends" include (besides dividends strictly so-called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of any company incorporated under any statute, divisible between all, or any, of the members of such respective companies, whether such payments shall be usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Part, be deemed to have accrued by equal daily increment during, and within, the period for or in respect of which the payment of the same revenue shall be declared, or expressed to be made; but the said word "dividend" does not include payments in the nature of a return or reimbursement of capital.

"Rents" include rent-service, rent-charge, and rent-seck, and all periodical payments or renderings in lieu of or in the nature of rent.

N.S.W. Conv.
Act, 1919-1967,
s. 142. Eng.
Apportionment
Act 1870. Cf.
Q'ld. D. R. E.
Act, 1867, s. 39.

34. Rents, &c., apportionable in respect of time. (1) All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

(2) The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment, when the entire portion of which such apportioned part forms part becomes due and payable, and not before; and in the case of a rent annuity or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before.

(3) All persons and their respective executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies, at law and in equity, for recovering such apportioned parts as aforesaid when payable (allowing proportionate parts of all just allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively:

Provided that where any person is liable to pay rent reserved out of or charged on lands, that person and the said lands shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically; but the entire or continuing rent, including such apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under this section or otherwise, would have been entitled to such entire or continuing rent; and such apportioned part shall be recoverable from such lastmentioned person by the executors, administrators,

or other parties entitled thereto under this section by action or suit.

(4) Nothing in this section shall render apportionable any annual sums payable under policies of assurance of any description.

(5) This section shall not extend to any case in which it is expressly stipulated that no apportionment shall take place.

(6) This section extends to and includes deeds, wills, and other instruments made before the commencement of this Act.

Eng. L. P. A.
1925, s. 61.

35. Construction of expressions used in deeds and other instruments. In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Act, unless the context otherwise requires -

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

Eng. L. P. A.
1925, s. 73.

36. Execution of deeds by individuals. (1) 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.

(2) This section applies only to deeds executed after the commencement of this Act.

Eng. L. P. A.
1925, s. 74.
N. S. W. Conv.
Act, 1919-1967,
s. 51A.

37. Execution of instruments by or on behalf of corporations.

(1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be 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.

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

(3) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution 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 convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument 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 this Act, except that, in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Act 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 statute, 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.

(7) Nothing in this section shall effect the operation of section one hundred and fifteen of "The Real Property Acts, 1861 to 1963".

Eng. L. P. A.
1925, s. 78.
N. S. W. Conv.
Act, 1919-1967,
s. 70.

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

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

(2) This section applies to covenants made after the commencement of this Act, but shall take effect subject, in the case of land under the provisions of "The Real Property Acts, 1861 to 1963"; and to leases of such land, to the provisions of those Acts.

Eng. L. P. A.
1925, s. 79.
N. S. W. Conv.
Act, 1919-1967,
s. 70A.

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

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

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

(3) This section applies only to covenants made after the commencement of this Act, but shall take effect subject, in the case of land under the provisions of "The Real Property Acts, 1861 to 1963", and to leases of such land, to the provisions of those Acts.

Eng. L. P. A.
1925, s. 81.
N. S. W. Conv.
Act, 1919-1967,
s. 71.

40. Effect of covenant with two or more jointly. (1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves, and where made after the commencement of this Act shall be construed as being also made with each of them.

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

(3) This section applies to a covenant, contract, bond, or obligation made after the commencement of this Act.

Eng. L. P. A.
1925, s. 82.
N. S. W. Conv.
Act, 1919-1967,
s. 72.

41. Covenants and agreements entered into by a person with himself and another or others. (1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

(2) This section applies to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the Court made before such commencement.

THE FIRST SCHEDULE

Notice of breach of covenant

Sec. 27.
Notice to
lessee to
remedy
breach.

To

The lessee of (here describe premises with reasonable certainty as for instance, "No. 800 George Street, Brisbane.")

With reference to the lease of the abovementioned premises, dated the _____ day of _____, 19____ from A. B. to C. D., and the covenant by the lessee therein contained (here state concisely the nature of the covenant or covenants breach of which is complained of, as for instance, "to repair"), and the breach by you of that covenant I hereby give you notice and require you to remedy that breach by (here set out the remedy as, for instance, "by putting the said premises in repair by doing and executing the repairs in and upon the said premises which are specified in the Schedule hereto annexed." Add if compensation is claimed.) And I further require you to pay to me the sum of _____, as compensation for the breach already committed.

(italics)

(italics)

Dated the _____ day of _____, 19____.

Lessor.

NOTE. - The lessor will be entitled to re-enter or forfeit the lease in the event of the lessee failing to comply with this notice within a reasonable time - see section 27 of the "Law Reform (Leases) Act 1970".

THE SECOND SCHEDULE

| Year and Number | Short Title (if any) or Subject-matter | Extent of Repeal |
|-----------------|--|------------------|
| 1266 | 51 Henry III St. 4 | The whole |
| 1267 | 52 Henry III (Statute of Marlborough) | |
| | c. 1 - The Distress Act, 1267 | do |
| | c. 2 - Distress | do |
| | c. 4 - Distress | do |
| | c. 15 - Distress | do |
| | c. 21 - Replevin | do |
| | c. 23 - Waste | do |
| 1275 | 3 Edward I, (Statute of Westminster the First) | |
| | c. 16 - Distress | do |

