

LAW REFORM COMMISSION, QUEENSLAND

WORKING PAPER

ON

**A BILL TO CONSOLIDATE, AMEND, AND REFORM
THE LAW RELATING TO CONVEYANCING, PROPERTY,
AND CONTRACT AND TO DETERMINE THE
APPLICATION OF CERTAIN IMPERIAL STATUTES**

A Bill to consolidate, amend, and reform the law relating to Conveyancing, Property, and Contract, and to determine the application of certain Imperial statutes.

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 and commencement. (1) This Act may be cited as the Property Law Act 197 .

(2) This Act shall come into operation on the first day of 197 .

(3) This Act, except where otherwise provided, binds the Crown not only in right of the State of Queensland but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

2. Division of Act. This Act is divided into Parts as follows:-

- PART I - PRELIMINARY, ss.1-6;
 - PART II - GENERAL RULES AFFECTING PROPERTY, ss.7-18;
 - PART III - FREEHOLD ESTATES, ss.19-29;
 - PART IV - FUTURE INTERESTS, ss.30-32;
 - PART V - CONCURRENT INTERESTS : CO-OWNERSHIP,
ss.33-43;
 - PART VI - DEEDS, COVENANTS, INSTRUMENTS AND
CONTRACTS, ss.44-75;
 - PART VII - MORTGAGES, ss.76-101;
 - PART VIII - LEASES AND TENANCIES, ss.102-167;
 - PART IX - POWERS OF ATTORNEY, ss.168-175;
 - PART X - INCORPOREAL HEREDITAMENTS AND
APPURTENANT RIGHTS, ss.176-181;
 - PART XI - ENCROACHMENT AND MISTAKE, ss.182-197;
 - PART XII - EQUITABLE INTERESTS AND THINGS IN ACTION,
ss.198-199;
 - PART XIII - POWERS OF APPOINTMENT, ss.200-204;
 - PART XIV - PERPETUITIES AND ACCUMULATIONS, ss.205-221;
 - PART XV - CORPORATIONS, ss.222-226;
 - PART XVI - VOIDABLE DISPOSITIONS, ss.227-229;
 - PART XVII - APPORTIONMENT, ss.230-232;
 - PART XVIII - UNREGISTERED LAND, ss.233-252;
 - PART XIX - MISCELLANEOUS, ss.253-257;
- FIRST SCHEDULE - Forms
SECOND SCHEDULE - Short forms of covenants in leases
THIRD SCHEDULE - Improvements by tenant
FOURTH SCHEDULE - Rules as to arbitration
FIFTH SCHEDULE - Acts repealed.

Abbreviations. Abbreviations used in references to other Acts in notes appearing at the beginnings of sections have the following meanings:- Eng. Law of Property Act 1925; Vic. Property Law Act 1958; N. S. W. Conveyancing Act 1919-1969; W. A. Property Law Act 1969; S. A. Law of Property Act 1936-1969; Qld. 1867 - Statute of Frauds and Limitations Act of 1867; Imp. 1677 - Statute of Frauds 1677; Qld. D. R. E. Act - Distress Replevin and Ejectment Act of 1867; Qld. R. P. A. - The Real Property Acts, 1861 to 1963.

3. Repeals. (1) The Imperial Acts and New South Wales Acts mentioned in Parts 1 and 2 of the Fifth Schedule to this Act shall to the extent indicated in the Schedule cease to apply in this State.

(2) The Acts mentioned in Part 3 of the Fifth Schedule to this Act are to the extent indicated in the Schedule repealed.

(3) The cesser of application of any of the Imperial Acts and New South Wales Acts mentioned in the Fifth Schedule shall not be taken to imply that such Act applied or, but for the passing of this Act, would have applied in Queensland.

(4) Notwithstanding subsections (1) and (2) of this section, the provisions of the Statute of Frauds 1677 (29 Car. 2, c. 3) and of The Statute of Frauds and Limitations Act of 1867 (31 Vic. No. 22) shall, unless a different intention appears in this Act, continue to apply to any contract, promise, ratification, assurance or disposition made, or to any interest created, before the commencement of this Act to the same extent as if this Act had not been passed.

4. Interpretation. [cf. N. S. W. s. 7(1)]. In 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;

"backward person" means a backward person within the meaning of The Backward Persons Act of 1938;

"bank" means any bank authorised under Part II of the Commonwealth Banking Act 1959 or under any other Commonwealth Act to carry on banking business in Australia;

"bankruptcy" includes any act or proceeding in law having under any Act or Commonwealth Act effects or results similar to those of bankruptcy, and includes the winding-up of an insolvent company; and "bankrupt" has a meaning corresponding with that of bankruptcy;

"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, 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" includes an instrument having under this or any other Act the effect of a deed;

"Department" means the Department of Lands;

"disposition" includes a conveyance, vesting instrument, declaration of trust, nomination of trustees, disclaimer, release and every other assurance of property by an instrument except a will, and also a release, devise, bequest, or an appointment of property contained in a will; and "dispose" has a corresponding meaning;

"District Court" means a District Court within the meaning of the District Court Act, 1967-1969, or any judge thereof;

"Imperial Act" means any statute law in force in the realm of England on the 25th day of July, 1828;

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

"incumbrance" includes a mortgage in fee or for a lesser estate or interest, and a trust for securing money, and a lien and a charge of a portion, annuity or other capital or annual sum; and "incumbrancee" has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or satisfaction thereof;

"instrument" includes deed, will, and Act of Parliament;

"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 Act" means the Land Act 1962-1970;

"land under the provisions of the Land Act", or any equivalent expression, means estates, interests, or any other rights in or in respect of land, granted, leased, or granted in trust or reserved and set aside under that Act, but does not include registered land or unregistered land;

"land under the provisions of The Real Property Acts", 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, administrators or assigns;

"lessor" includes landlord, his executors, administrators or assigns;

"local authority" means a local authority constituted under the Local Government Act 1936-1970, and includes the Brisbane City Council constituted under The City of Brisbane Acts, 1924 to 1966;

"The Miners' Homestead Leases Acts" means The Miners' Homestead Leases Acts, 1913 to 1965;

"The Mining Acts" means The Mining Acts, 1898 to 1967;

"mortgage" includes a charge on any property for securing money or money's worth; and "mortgage-money" means money or money's worth secured by a mortgage;

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

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

"nomination of trustees" means an instrument executed pursuant to section 77 of The Real Property Acts nominating any persons to be trustees of land or any estate or interest therein;

"notice" includes constructive notice;

"order" includes judgment and decree of Court;

"patient" means a patient as defined in the Third Schedule to The Mental Health Acts, 1962 to 1964;

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

"President of the Law Society" means the President for the time being of the Council of Queensland Law Society Incorporated;

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

"Public Curator" means the Public Curator of Queensland constituted by The Public Curator Acts, 1915 to 1957;

"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 the making or recording by proper authority in the appropriate register (if any) or other book, instrument or document of such entries, indorsements, particulars or other information as may be requisite for recording a dealing or other transaction with respect to land;

"registered land" means land under the provisions of The Real Property Acts;

"Registrar" means the Registrar of Titles appointed under The Registrar of Titles Act of 1884;

"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;

"sale" means only a sale properly so called;

"securities" include stocks, funds, and shares;

"The Real Property Acts" mean The Real Property Acts, 1861 to 1963;

"title deed" includes a certificate of title, or deed of grant in respect of, to registered land;

"trustee corporation" means the Public Curator and any corporation authorised by the Trustee Companies Act 1968 to administer the estates of deceased persons and other trust estates;

"valuable consideration" includes marriage but does not include a nominal consideration in money;

"unregistered land" means land alienated by the Crown for an estate of freehold other than registered land and other than land granted in trust under the Land Act;

"will" includes codicil.

5. Application of Act. (1) Except where otherwise provided, this Act shall -

- (a) apply to unregistered land;
- (b) apply to land under the provisions of The Real Property Acts, including any lease of such land, but subject to the provisions of those Acts;
- (c) apply to estates, interest, and any other rights in or in respect of land, granted, created or taking effect under or pursuant to any Act, but subject to the provisions of such Act;
- (d) without limiting the generality of paragraph (c) of this subsection:-
 - (i) subject to the provisions of the Land Act, apply to land under the provisions of that Act;
 - (ii) subject to the provisions of The Miners' Homestead Leases Acts, apply to land under the provisions of those Acts;
 - (iii) subject to the provisions of The Mining Acts, apply to leases, and any other rights in or in respect of land, granted, created or taking effect under or pursuant to the provisions of those Acts.

(2) Where by this Act (including this section) a provision is expressed to apply to land or interests in land under the provisions of a particular Act, such expression shall not, unless a different intention appears, be construed to mean that the provision -

- (a) applies exclusively to such land; or
- (b) does not apply to property other than land.

6. Savings in regard to ss. 10, 11, 12 and 59. [cf. N.S.W. s.23E; Eng. s.55; Vic. s.55] Nothing in sections 10, 11, 12 or 59 of this Act -

- (a) invalidates any disposition by will; or
- (b) affects any interest validly created before the commencement of this Act; or
- (c) affects the right to acquire an interest in land by virtue of taking possession; or
- (d) affects the law relating to part performance; or
- (e) affects a sale by the Court.

PART II - GENERAL RULES AFFECTING PROPERTY

7. Effect of repeal of Statute of Uses [cf. Eng. s.4(1)]. (1) Interests in land which under the Statute of Uses could before the commencement of this Act have been created as legal interests shall after the commencement of this Act be capable of being created as equitable interests.

(2) Notwithstanding subsection (1) of this section, an equitable interest in land shall, after the commencement of this Act, only be capable of being validly created in any case in which an equivalent equitable interest in property real or personal could have been validly created before such commencement.

(3) [Eng. s.60(3); cf. N.S.W. s.44(1)] In a voluntary conveyance executed after the commencement of this Act a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee.

8. Lands lie in grant only. [Vic. s.51; S.A. ss.9,10; Eng. s.51; W.A. s.32]. (1) All lands and all interests therein shall lie in grant and shall be incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale, or by lease and release, and a conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.

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

9. Reservation of easements, etc., in conveyances of land [cf. N.S.W. s.45A; Eng. s.65; Vic. s.65]. (1) In a conveyance of land a reservation of any easement, right, liberty, or privilege not exceeding in duration the estate conveyed in the land, shall operate without any execution of the conveyance by the grantee of the land out of which the reservation is made, or any regrant by him, so as to create the easement, right, liberty or privilege, and so as to vest the same in possession in the person (whether or not he be the grantor) for whose benefit the reservation was made.

(2) This section applies only to reservations made after the commencement of this Act.

10. Assurances of land to be in writing [cf. Imp.1677, s.3; Qld. 1867, s.4; Eng. s.52; N.S.W. s.23B]. (1) No assurance of land shall be valid to pass an interest at law unless made by deed or in writing signed by the person making such assurance.

(2) This section does not apply to -

- (a) a disclaimer not required to be evidenced in writing;
- (b) a surrender by operation of law, including a surrender which may, by law, be effective without writing;
- (c) a lease or tenancy or other assurance not required by law to be made in writing;
- (d) a vesting order;

- (e) an assurance taking effect under any Act or Commonwealth Act.

11. Instruments required to be in writing [cf. Imp. 1677, ss. 3, 7, 8, 9; Qld. 1867, s. 4; Eng. s. 53; N. S. W. s. 23C]. (1) Subject to the provisions of this Act with respect to the creation of interests in land by parol -

- (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised, in writing or by will, or by operation of law;
- (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
- (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be manifested and proved by some writing signed by the person disposing of the same or by his will, or by his agent thereunto lawfully authorised in writing.

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

12. Creation of interests in land by parol. [cf. Imp. 1677, ss. 1, 2; Qld. 1867, ss. 2, 3; Eng. s. 54; N. S. W. s. 23D] (1) All interests in land created by parol and not put in writing and signed by the person so creating the same, or by his agent thereunto lawfully authorised, shall have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

(2) Nothing in this Act shall affect the creation by parol of a lease taking effect in possession for a term not exceeding three years, with or without a right for the lessee to extend the term for any period which with the term would not exceed three years.

13. Persons taking who are not parties. [cf. N. S. W. s. 36C; Eng. s. 56(1); Vic. s. 56(1); W. A. s. 11] (1) In respect of an assurance or other instrument executed after this Act, a person may take -

- (a) an immediate or other interest in land; or
- (b) the benefit of any condition, right of entry, covenant or agreement over or respecting land -

notwithstanding that he may not have executed the assurance or other instrument, or may not be named as a party thereto, or may not have been identified or in existence at the date of execution of the assurance or other instrument.

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

14. Conveyances by a person to himself etc. [cf. Eng. s. 72; Vic. s. 72; N. S. W. s. 24; Qld. The Mercantile Acts, 1867 to 1896, s. 1.] (1) In conveyances and leases made after the 28th day of December, 1867, 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 (4) 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.

15. Rights of husband and wife. [Eng. s. 37; cf. N.S.W. No. 45 of 1901, s. 26] A husband and wife shall, for all purposes of acquisition of any interest in property, under a disposition made or coming into operation after the commencement of the Act, be treated as two persons.

16. Presumption that parties are of full age. [cf. Eng. s. 15] The persons expressed to be parties to any conveyance shall, until the contrary is proved, be presumed at the date of such conveyance to be of full age or of such other lesser age as to have capacity to give effect to the conveyance.

17. Merger. [cf. Vic. s. 185; Eng. s. 185; N.S.W. s. 10; Qld. J.A. 1876, s. 5(4); W.A. s. 18] An estate does not merge by operation of law only if the beneficial interest therein would not be merged or extinguished in equity.

18. Restrictions on operation of conditions of forfeiture. [N.S.W. s. 29C]

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

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

(b) notwithstanding any stipulation to the contrary in the instrument containing the condition no voluntary alienation made by him, with the sanction of the court, shall operate to create forfeiture under the condition.

(2) This section applies where the condition of forfeiture is contained in an instrument executed, made, or coming into operation before or after the commencement of this Act, but only in cases where such person becomes

entitled to receive payment of the income, or to call for an assurance or delivery of the other property, or, where the alienation with the sanction of the court is made, after such commencement.

PART III - FREEHOLD ESTATES

19. Freehold estates capable of creation. After the commencement of this Act the following estates of freehold shall be capable of being created and, subject to the provisions of this Act, of subsisting in land -

- (a) estate in fee simple;
- (b) estate for life or lives.

20. Incidents of tenure on grant in fee simple. [cf. Tenures Abolition Act, 1660, s. 4; 12 Car. 2, c. 24; N. S. W. No. 30 of 1969, s. 37; N. S. W. No. 7 of 1964, s. 9] (1) All tenures created by the Crown upon any grant of an estate in fee simple made after the commencement of this Act shall be taken to be in free and common socage without any incident of tenure for the benefit of the Crown.

(2) Where any quit rent issues to the Crown out of any land, or the residue of any quit rent issues to the Crown out of any residue of any land in respect of which quit rent has been apportioned or redeemed, such land or residue is hereby released therefrom.

(3) In respect of property of any person dying intestate on or after the 16th day of April, 1968 -

- (a) escheat is abolished;
- (b) all such property, whether real or personal, shall be distributed in the manner and to the person or persons provided by The Succession Acts, 1867 to 1968, but subject to the provisions (including the provisions of Part V) of those Acts.

(4) Subject to the provisions of any other Act, property of any corporation dissolved after the commencement of this Act shall not escheat, but the Crown shall be entitled to and take as bona vacantia all such property, whether real or personal, as would apart from this Act be liable to escheat or pass to the Crown as bona vacantia.

(5) In this section "intestate" has the same meaning as in section 29 of The Succession Acts, 1867 to 1968.

21. Alienation in fee simple. [N. S. W. No. 30 of 1969, s. 36; cf. 18 Edw. 1, St. 1 (Quia Emptores).] Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect.

22. Abolition of estates tail. [cf. N. S. W. ss. 19, 19A; Vic. s. 249, W. A. s. 23] (1) In any instrument coming into operation after the commencement of this Act a limitation which, if this section had not been enacted, would have created an estate tail (legal or equitable) in any land in favour of any person shall be deemed to create an estate in fee simple (legal or equitable as the case may be) in such land in favour of such person to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail and to the exclusion of all estates or interests in reversion on any such estate tail.

(2) (a) Where at or after the commencement of this Act any person is entitled, or would, but for subsection (1) of this section, be entitled, to an estate tail (legal or equitable) and whether in possession, reversion, or remainder, in any land, such person, save as is hereinafter mentioned, shall be deemed to be entitled to an estate in fee simple (legal or equitable, as the case may be) in such land, to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail and to the exclusion of all estates or interests in reversion on any such estate tail.

(b) Where any such person is an infant and such land for any estate or interest would pass to any other person in the event of the death of the infant before attaining full age and without issue, then in such case the infant shall be deemed to take an estate in fee simple with an executory limitation over of such estate or interest on the happening of such event in favour of such other person.

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

(4) The Registrar is hereby authorised, on application in Form 1 of the First Schedule to this Act, to make all such entries in the register book as may be necessary to give effect to this section.

23. Abolition of quasi-entails. In any instrument coming into operation after the commencement of this Act a limitation which, if this section had not been passed, would have created in favour of any person a quasi-entail (legal or equitable) in respect of any estate for life or lives of another or others shall be deemed to create in favour of that person an estate (legal or equitable as the case may be) for the life or lives of that other.

24. Liability of life tenant for voluntary waste. [Statute of Marlborough 1267; 52 Hen. 3, c. 23; cf. N.S.W. No. 31 of 1969, s. 32] (1) A tenant for life or lives shall not commit voluntary waste.

(2) Nothing in subsection (1) 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 (1) of this section is liable in damages to his remainderman or reversioner, but this section imposes no criminal liability.

25. Equitable waste. [Qld. J.A. 1876, s. 5(3)] 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.

26. Recovery of property on determination of a life or lives. [The Cestui que Vie Act, 1666; 18 & 19 Car. 2, c. 11; The Cestui que Vie Act, 1707; 6 Anne, c. 72 (or c. 18); cf. Qld. R.P.A., s. 90; N.S.W. No. 31 of 1969, s. 38]

(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.

27. Penalty for holding over by life tenant. [Landlord and Tenant Act, 1730; (4 Geo.2, c.28), s.1; cf. Vic. No.6285, s.9] Where any tenant for life or lives or person who is or comes into possession of any land by, from or under or by collusion with such tenant, wilfully holds over any land after -

- (a) termination of the tenancy; and
- (b) after demand has been made and notice in writing given for the delivery of possession thereof by 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 the land, be liable to the person kept out of possession at the rate of double the yearly value of the land so detained for as long as the land shall have been so detained, to be recovered by action in a court of competent jurisdiction.

28. Abolition of the Rule in Shelley's Case. [Vic. s.130; cf. N.S.W. s.17; Eng. s.131; W.A. s.27] Where by any instrument coming into operation after the commencement of this Act an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class

of the heirs or issue of any person in words which, but for this section would, under the rule of law known as the Rule in Shelley's Case, and independently of section 22 of this Act, have operated to give to that person an interest in fee simple or an entailed interest, such words shall operate as words of purchase and not of limitation, and shall be construed and have effect accordingly, and in the case of an interest in any property expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person shall take as would in the case of freehold land have answered that description under the general law formerly in force.

29. Words of limitation. [cf. Eng. s. 60; Vic. s. 60; N.S.W. s. 47; W.A. s. 37] (1) A disposition of freehold land to any person without words of limitation, or any equivalent expression, shall pass to the donee the fee simple or other the whole interest which the donor had power to dispose of in such land, unless a contrary intention appears in the disposition.

(2) A disposition of freehold land to a corporation sole by his corporate designation without the word "successors" shall pass to the corporation the fee simple or other the whole interest which the donor had power to dispose of in such land, unless a contrary intention appears in the disposition.

(3) This section applies to dispositions effected after the commencement of this Act.

PART IV - FUTURE INTERESTS

30. Creation of future interests in land. [cf. Eng. s. 4(1)] (1) A future interest in land validly created after the commencement of this Act shall take effect as an equitable and not a legal interest.

(2) Notwithstanding the provisions of section 36 of The Real Property Acts, no entry in the register-book of the name of any person as remainderman, and no indorsement upon the certificate of title of a memorandum setting forth that such person has been entered in the register-book as such remainderman, shall be made in respect of a future interest created after the commencement of this Act.

(3) This section shall not apply to any future interest -

(a) created before the commencement of this Act whether that interest arose or arises before or after the commencement of this Act; or

(b) created or arising by virtue of section 22 of this Act.

(4) In this section "future interest" means -

(a) a legal contingent remainder; and

(b) a legal executory interest.

31. Power to dispose of all rights and interests in land. [cf. Vic. s. 19; Eng. s. 4(2); S.A. s. 10; N.S.W. s. 50(1)] (1) All rights and interests in land may be disposed of including -

(a) a contingent, executory or future interest in any land or a possibility coupled with an interest in any land, whether or not the gift or limitation of such interest or possibility be ascertained;

(b) a right of entry, into or upon land whether immediate or future, and whether vested or contingent.

(2) All rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason may, after the commencement of this Act, be made exercisable by any person and the persons deriving title under him, but, in regard to an estate in fee simple (not being a rentcharge held for a legal estate) only within the period authorised by the rule relating to perpetuities.

32. Restriction on executory limitations. [cf. Eng. s.134; N.S.W. s.29B; Vic. s.132] (1) Where there is a person entitled to -

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

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

(2) This section applies where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

PART V - CONCURRENT INTERESTS : CO-OWNERSHIP

Division 1 - General Rules

33. Forms of co-ownership. (1) Any property and any interest, whether legal or equitable, in any property may be held by two or more persons:-

- (a) as joint tenants; or -
- (b) as tenants in common.

(2) Any two or more persons acquiring land after the commencement of this Act in circumstances in which, but for the passing of this Act, they would have acquired the land as coparceners shall acquire such land as tenants in common and not as coparceners.

34. Power for corporations to hold property as joint tenants. [Eng. 62 & 63 Vict., c.20; N.S.W. s.25; Vic. s.28] (1) A body corporate shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual, and where a body corporate and an individual or two or more bodies corporate become entitled to any property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy they shall be entitled to the property as joint tenants:

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

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

(3) This section shall apply in all cases of the acquisition or holding of property after the commencement of this Act.

35. Construction of dispositions of property to two or more persons together. [cf. N.S.W. s.26] (1) A disposition of the beneficial interest in any property, whether with or without the legal interest, to or for two or more persons together beneficially shall be construed as made to or for them as tenants in common, and not as joint tenants.

(2) This section does not apply:-

(a) to persons who by the terms or by the tenor of the disposition are executors, administrators, trustees, or mortgagees, nor in any case where the disposition provides that persons are to take as joint tenants or tenants by entireties; and -

(b) to a disposition for partnership purposes in favour of persons carrying on business in partnership.

(3) Subject to the provisions of The Partnership Acts, 1891 to 1965, a disposition for partnership purposes of an interest in any property in favour of persons carrying on business in partnership shall, unless a contrary intention appears, be construed as:-

(a) a disposition (if any) of the legal interest to those persons as joint tenants;

(b) a disposition (if any) of the beneficial interest to those persons as tenants in common.

(4) This section applies to any disposition made after the commencement of this Act.

(5) In this section "disposition" includes a disposition which is wholly or partly oral.

36. Tenants in common of equitable estate acquiring the legal estate. [N.S.W. s.27] Where two or more persons entitled beneficially as tenants in common to an equitable estate in any property are or become entitled in their own right, whether as joint tenants or tenants in common, to the legal estate in such property equal to and co-extensive with such equitable estate both the legal and equitable estates shall be held by them as tenants in common unless such persons otherwise agree.

Division 2 - Statutory trusts, sale and division

37. Interpretation. [N.S.W. s.66F] In this Division -

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

(2) [cf. Eng. 1925, s.35] Property held upon the "statutory trust for sale" shall be held upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs and expenses, and of the net income until sale after payment of costs, expenses, and outgoings, and in the case of land of rates, taxes, costs of insurance, repairs properly payable out of income, and other outgoings upon such trusts, and subject to such powers and provisions as may be requisite for giving effect to the rights of the co-owners.

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

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

38. Statutory trusts for sale or partition of property held in co-ownership.
[N.S.W. s. 66G] (1) Where any property (other than chattels personal) is held in co-ownership the Court may, on the application of any one or more of the co-owners, and notwithstanding the provisions of any other Act, appoint trustees of the property and vest the same in such trustees, subject to incumbrances affecting the entirety, but free from incumbrances affecting any undivided shares, to be held by them on the statutory trust for sale or on the statutory trust for partition.

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

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

(b) On such appointment the property shall, subject to the provisions of section 90 of the Trusts Act, 1972, vest in the trustees.

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

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

(b) Where any of the co-owners is a backward person, a mentally ill person, or a patient, such notice shall be served on the committee of his estate, or, if there is no such committee, on the Public Curator.

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

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

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

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

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

(9) [cf. Eng. 15 Geo. V, c. 18, s. 75(10)] This section does not apply to property in respect of which a subsisting contract for sale (whether made under an order in a suit for partition, or by or on behalf of all the co-owners) is in force at the commencement of this Act, if the contract is completed in due course, nor to land in respect of which a suit for partition is pending at such commencement if a decree for a partition or sale is subsequently made in such suit.

39. Trustee on statutory trusts for sale or partition to consult persons interested. [N.S.W. s. 66H; cf. Eng. 1925, s. 26(3); Eng. 16 & 17 Geo. V., c. 11. Schedule] So far as practicable trustees on the statutory trust for sale, or on the statutory trust for partition, shall consult the persons of full age and not subject to disability for the time being beneficially entitled to the income of the property until sale or partition, and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in case of dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser shall not be concerned to see that the provisions of this section have been complied with.

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

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

41. Sale or division of chattels. [cf. 1 Eliz. 2, No. 42, s. 13; Eng. 1925, s. 188; N.S.W. s. 36A; Vic. s. 187; W.A. s. 129] (1) Where any chattel or chattels belong to two or more persons jointly or in undivided shares any such person or persons may apply to the Court for an order under this section.

(2) On any application under this section the Court may:-

- (a) order that the chattels in respect of which the application is made, or any one or more of them, be sold and the proceeds of sale distributed among the persons entitled thereto in accordance with their interests in the chattel or chattels; or
- (b) order that the chattels or some of them in respect of which the application is made be divided among the persons entitled thereto; or

- (c) order that one or more of such chattels be sold and the others be divided as aforesaid; and
- (d) make such other orders and give any consequential directions as it thinks fit.

(3) In this section "Court" means the Supreme Court or where the value of the chattel, or, if more than one, the aggregate value of the chattels the subject of the application does not exceed six thousand dollars, the District Court.

42. Powers of the Court. In proceedings under section 38 or section 41 the Court may on the application of any party to the proceedings or of its own motion:-

- (a) determine any question of fact arising in the proceedings or give directions as to how such question shall be determined; and -
- (b) where the Court is the Supreme Court, direct that such inquiries be made and such accounts be taken as may in the circumstances be necessary for the purpose of ascertaining and adjusting the rights of the parties.

43. Liability of co-owner to account. [cf. 4 & 5 Anne, c. 3, s.27] (1) A co-owner shall, in respect of the receipt by him of more than his just or proportionate share according to his interest in the property, be liable to account to any other co-owner of the property.

(2) In this section, "co-owner" means a joint tenant, whether in law or in equity, or a tenant in common, whether at law or in equity, of any property.

PART VI - DEEDS, COVENANTS, INSTRUMENTS AND CONTRACTS

Division 1 - Deeds and Covenants

44. Description and form of deeds. [Eng. ss.57, 56(2); Vic. ss.57, 56(2); W.A. s.12.] (1) A deed between parties, to effect its objects, has the effect of an indenture although not indented or expressed to be indented.

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

45. Formalities of deeds executed by individuals. [cf. N. S. W. s.38; Eng. s.73; Vic. s.73; W.A. s.9] (1) Where an individual executes a deed, he shall either sign or place his mark upon the same and sealing alone shall not be sufficient.

- (2) An instrument expressed:-
 - (a) to be an indenture or a deed, or
 - (b) to be sealed

shall, if it is signed and attested by at least one witness not being a party to the deed, be deemed to be sealed and, subject to section 47, to have been duly executed.

(3) No particular form of words shall be requisite for the attestation.

(4) [cf. The Evidence and Discovery Acts, s. 26A] A deed executed and attested in accordance with this section may in any proceedings be proved in the manner in which it might be proved if no attesting witness were alive.

(5) Nothing in this section shall affect -

- (a) the execution of deeds by corporations; or
- (b) the requirements as to attestation of instruments provided in section 115 of The Real Property Acts; or
- (c) the provisions of section 20 of the Bills of Sale and Other Instruments Act 1955-1971; or
- (d) any deed executed before the commencement of this Act.

46. Execution of instruments by or on behalf of corporations. [N.S.W. s. 51A; Eng. s. 74; Vic. s. 74; W.A. s. 10] (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, subject to section 47, 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 executing the same in accordance with section 45 of this Act, 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, either generally or in the particular instance, by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the 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 affect the requirements as to attestation of instruments provided in section 115 of The Real Property Acts.

47. Delivery of deeds. (1) After the commencement of this Act, execution of a document -

(a) in the form of a deed, or

(b) in the form provided in section 45 or section 46 -

shall not of itself import delivery, nor shall delivery be presumed from the fact of such execution only, unless it appears that execution of the document was intended to constitute delivery thereof.

(2) Subject to subsection (1) of this section, delivery may be inferred from any fact or circumstance, including words or conduct, indicative of delivery.

(3) In this section "delivery" means the intention to be legally bound either immediately or subject to fulfilment of a condition.

48. Construction of expressions used in deeds and other instruments. [cf. Eng. s. 61; Vic. s. 61; N.S.W. s. 181; W.A. s. 8] (1) 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.

(2) [cf. N.S.W. s. 76; Eng. s. 83; Vic. s. 83; W.A. s. 46] A covenant, power or other provision implied in a deed or other instrument by virtue of this or any other Act shall be construed in accordance with subsection (1) of this section.

49. Implied covenants may be negated. [cf. N.S.W. s. 74] (1) A covenant, power or other provision implied under this or any other Act shall have the same force and effect, and may be enforced in the same manner, as if it had been set out at length in the instrument wherein it is implied.

(2) Any such covenant or power may, unless otherwise provided in this or such other Act, be negated, varied, or extended by -

(a) an express declaration in the instrument wherein it is implied; or

(b) another instrument.

(3) Any such covenant or power so varied or extended shall, so far as may be, operate in the like manner and with all the like incidents, effects and consequences as if such variations or extensions were implied under the Act.

50. Covenants and agreements entered into by a person with himself and another or others. [Eng. 1925, s. 82; Vic. s. 82; N.S.W. s. 72; W.A. s. 52]

(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.

51. Receipt in instrument sufficient. [cf. Eng. s. 67; Vic. s. 67; N.S.W. s. 39; W.A. s. 14] (1) A receipt for consideration money or securities in the body of a deed or other instrument shall be a sufficient discharge for the same to the person paying or delivering the same without any further receipt for the same being indorsed on the deed or instrument.

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

52. Receipt in instrument or indorsed evidence. [cf. Eng. s. 68; Vic. s. 68; N.S.W. s. 40; W.A. s. 15] (1) A receipt for consideration money or other consideration in the body of a deed or instrument or indorsed thereon shall in favour of a subsequent purchaser not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given wholly or in part be sufficient evidence of the payment or giving of the whole amount thereof.

(2) This section applies to deeds or instruments executed or indorsements made before or after the commencement of this Act.

53. Benefit and burden of covenants relating to land. [Eng. ss. 78, 79; Vic. ss. 78, 79; N.S.W. ss. 70, 70A; W.A. ss. 47, 48] (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.

(2) 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.

(3) For the purposes of this section 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 such land.

(4) This section applies only to covenants made after the commencement of this Act, but shall take effect subject, in the case of registered land, to the provisions of The Real Property Acts.

Division 2 - General rules affecting contracts

54. Effect of joint contracts and liabilities. [cf. Eng. s. 81; Vic. s. 81]

(1) Subject to this and to any other Act -

- (a) a promise made by two or more persons shall, unless a contrary intention appears, be construed as a promise made jointly and severally by each of those persons;
- (b) a liability which is joint shall not be discharged, nor shall a cause of action with respect thereto be extinguished, by reason of any fact, event, or matter except to the extent that the same would by reason thereof be discharged or extinguished if the liability were joint and several and not joint.

(2) In this section "promise" includes a promise under seal, a covenant, whether express or implied under this Act, and a bond or other obligation under seal.

(3) This section applies only to a promise, liability or cause of action coming into existence after the commencement of this Act.

55. Contracts for the benefit of third parties. (1) A promisor who, for a valuable consideration moving from the promisee, promises to do or to refrain from doing an act or acts for the benefit of a beneficiary shall, upon acceptance by the beneficiary, be subject to a duty enforceable by the beneficiary to perform that promise.

(2) Prior to acceptance the promisor and promisee may without the consent of the beneficiary vary or discharge the terms of the promise and any duty arising therefrom.

(3) Upon acceptance -

- (a) the beneficiary shall be entitled in his own name to such remedies and relief as may be just and convenient for the enforcement of the duty of the promisor; and relief by way of specific performance, injunction or otherwise shall not be refused solely on the ground that, as against the promisor, the beneficiary may be a volunteer;
- (b) the beneficiary shall be bound by the promise and subject to a duty enforceable against him in his own name to do or refrain from doing such act or acts (if any) as may by the terms of the promise be required of him;
- (c) the promisor shall be entitled to such remedies and relief as may be just and convenient for the enforcement of the duty of the beneficiary;
- (d) the terms of the promise and the duty of the promisor or the beneficiary may be varied or discharged with the consent of the promisor, the promisee, and the beneficiary.

(4) Subject to subsection (1) of this section, any matter which renders a promise void, voidable or unenforceable, whether wholly or in part, or which in proceedings to enforce a promise or any duty arising from a promise is available by way of defence shall, in like manner and to the like extent, render void, voidable or unenforceable or be available by way of defence in proceedings for the enforcement of a duty to which this section gives effect.

(5) In so far as a duty to which this section gives effect may be capable of creating and creates an interest in land, such interest shall be capable of being created and of subsisting in land under the provisions of any Act but subject to the provisions of that Act.

(6) In this section -

- (a) "acceptance" means an assent by words or conduct communicated by or on behalf of the beneficiary to the promisor, or to some person authorised on his behalf, in the manner and within the time specified in the promise or, if none is specified, within a reasonable time of the promise coming to the notice of the beneficiary;
- (b) "beneficiary" means a person other than the promisor or promisee, and includes a person who, at the time of acceptance is identified and in existence, although that person may not have been identified or in existence at the time when the promise was given;
- (c) "promise" means a promise which is or appears to be intended -

- (i) to be legally binding; and
- (ii) to create a duty enforceable by a beneficiary -

and includes a promise whether made by deed, or in writing, or orally, or partly in writing and partly orally;

- (d) "promisee" means a person to whom a promise is made or given;
- (e) "promisor" means a person by whom a promise is made or given.

(7) Nothing in this section affects any right or remedy which exists or is available apart from this section.

(8) This section applies only to promises made after the commencement of this Act.

56. Guarantees to be in writing. [cf. 1677, s.4; Qld. 1867, s.5] (1) No action may be brought upon any promise to guarantee any liability of another unless the promise upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged, or by some other person thereunto by him lawfully authorised.

(2) A promise, or memorandum or note thereof, in writing shall not be treated as insufficient for the purpose of this section by reason only that the consideration for such promise does not appear in writing or by necessary inference from a written document.

57. Recovery of sums paid under discharged contract. [cf. The Contracts of Sale of Land Act of 1933, s.13(5); N.S.W. s.55(1); (2A); Vic. s.49(2); Eng. s.49(2)]

(1) A party who is discharged from the duty of further performance of a contract may, whether or not he is himself in breach of that contract but subject to the provisions of this section, recover from the other party to the contract -

- (a) a sum or sums of money paid to that other party pursuant to the contract;
- (b) a sum or sums representing the reasonable value to that other party of any services rendered, goods supplied, or benefit furnished pursuant to the contract and not justifiably rejected by him.

(2) A party shall not under this section be entitled to recover -

- (a) any sum of money, including a deposit, agreed to be payable and paid by way of liquidated damages (whether so described in the contract or not) in the event of breach or discharge of the contract, unless the retention by the other party of such sum or sums would in the circumstances be unconscionable;
- (b) any sum or sums under paragraph (b) of subsection (1) of this section where the conduct of that party has been such as to render it inequitable or unjust that he should recover such sum or sums.

(3) Notwithstanding any provision of the contract -

- (a) damages shall be recoverable in respect of a loss resulting from a breach of contract on the part of a party claiming under this section, and such damages may be raised by way of set-off or made the subject of a counterclaim in proceedings to recover a sum under subsection (1) of this section;
- (b) this section shall apply to a contract made after the commencement of this Act, but shall be subject to any agreement made by the parties at or after the time of discharge of that contract.

(4) Nothing in this section shall affect the provisions of The Hire-Purchase Act of 1959.

(5) In this section "discharge" means discharge by breach, but includes a discharge resulting from the exercise of an express power to determine the contract, and "discharged" has a corresponding meaning.

58. Effect of provisions as to conclusiveness of certificates, etc. (1) Subject to any other Act, a provision in a contract or instrument to the effect that a certificate, statement or opinion of any person shall be or be received as conclusive evidence of any fact therein contained shall be construed to mean only that such certificate, statement or opinion shall be or be received as prima facie evidence of that fact.

(2) This section shall not apply to -

- (a) a certificate, statement or opinion of a person who, in making the certificate or statement or in forming the opinion, is bound to act judicially or quasi-judicially or as arbitrator or quasi-arbitrator;
- (b) a provision agreed to after a dispute has arisen as to the relevant fact.

(3) This section applies to a contract made or instrument executed after but not before the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

(4) In this section "fact" includes any matter, thing, event, circumstance or state of affairs.

Division 3 - Sales of land

59. Contracts for sale, etc. of land to be in writing. [cf. Imp. 1677, s. 4; Qld. 1867, s. 5; 1925, s. 40] No action may be brought upon any contract for the sale or other disposition of land or any interest in land unless the contract

upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged, or by some person thereunto by him lawfully authorised.

60. Sales of land by auction. [N.S.W. s. 65; Eng. 30 & 31 Vict. ss. 4-6]

(1) In the case of a sale of land by auction -

- (a) where the sale is not notified in the conditions of sale to be subject to a right to bid on behalf of the vendor, he shall not be entitled to bid himself or to employ any person to bid at the sale, nor shall the auctioneer be entitled to take any bid from the vendor or any such person; any sale contravening this rule may be treated as fraudulent by the purchaser;
- (b) a sale may be notified in the conditions of sale to be subject to a reserved or upset price, and a right to bid may also be therein expressly reserved by or on behalf of the vendor;
- (c) where a right to bid is expressly reserved, but not otherwise, the vendor or any one person on his behalf may bid at the auction.

(2) This section applies to sales effected after the commencement of this Act.

61. Conditions of sale of land. [cf. N.S.W. s. 57] (1) Under a contract for the sale of registered land the purchaser shall be entitled at the cost of the vendor -

- (a) to receive from the vendor sufficient particulars of title to enable him to prepare the appropriate instrument to give effect to the contract; and
- (b) to receive from the vendor an abstract of any instrument, forming part of the vendor's title, in respect of which a caveat is entered upon the register; and
- (c) to have the relevant certificate of title or other document of title lodged by the vendor at the office of the Registrar to enable the instrument to be registered; and
- (d) to have any objection to the registration of the instrument removed by the vendor: Provided that, as to any such objection which the purchaser ought to have raised on the particulars or abstract, or upon the investigation of the title, or which arises from his own act, default, or omission, he shall not be entitled to have the same removed except at his own cost.

(2) Under any contract for the sale of any land there shall be implied a term that -

- (a) payment or tender of any moneys payable pursuant to the contract may be made by cheque drawn by any bank;
- (b) an obligation on the part of the vendor to execute and deliver a conveyance of the subject land free of incumbrances shall be satisfied if the vendor will, upon completion of the contract, be able to and does in fact discharge any existing incumbrance out of the purchase moneys payable under the contract by the purchaser.

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

62. Stipulations not of the essence of the contract. [Qld. J.A.1876, s.5(7)] Stipulations in contracts, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract, shall be construed and have effect at law in accordance with rules of equity.

63. Application of insurance money on completion of a sale or exchange. [Eng. s.47; Vic. s.47] (1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

(2) For the purpose of this section, cover provided by such a policy maintained by the vendor extends until the date of completion, and money does not cease to become payable to the vendor merely because the risk has passed to the purchaser.

(3) This section shall apply only to contracts made after the commencement of this Act, and shall have effect subject to -

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

(4) This section shall apply to a sale or exchange by an order of Court, as if -

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

64. Rights of purchaser as to execution. [Eng. s.75(1); Vic. s.75(1); N.S.W. s.59] (1) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

(2) This section applies only to sales made after the commencement of this Act.

65. Receipt in instrument or indorsed authority for payment. [cf. Vic. s.69; Eng. s.69(1)] (1) Where a banker or a solicitor produces an instrument, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the instrument being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, or produces a duly executed instrument in respect of

registered land, the instrument shall be a sufficient authority to the person liable to pay or give the same for his paying or giving the same to the banker or solicitor, without the banker or solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the receipt or instrument.

(2) In this section -

- (a) "instrument" includes a discharge of mortgage; and
- (b) "banker" means a person acting in his official capacity as general manager or manager of a bank.

66. Restriction on vendor's right to rescind on purchaser's objection.
[N.S.W. s. 56] (1) In any contract the vendor shall not be entitled to exercise any right to rescind the contract, whether given by the contract expressly or otherwise, on the ground of any requisition or objection made by the purchaser unless and until he has given the purchaser seven days notice of his intention to rescind so as to enable the purchaser to withdraw or waive the requisition or objection.

(2) This section applies only to contracts made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

67. Damages for breach of contract to sell land. (1) A vendor who in breach of contract fails to perform a contract for the sale of land shall be liable by way of damages as compensation for the loss sustained by the purchaser in such sum as at the time the contract was made was reasonably foreseeable as the loss liable to result, and which does in fact result, from the failure of the vendor to perform the contract; and, unless the contract otherwise provides, the vendor shall not be relieved, wholly or in part, of liability for damages measured in accordance with this section by reason only of his inability to make title to the land the subject of the contract of sale, whether or not such inability was occasioned by his own default.

(2) This section shall not affect any right, power or remedy which, apart from this section, may be available to a purchaser in respect of the failure of a vendor to show or make good title or otherwise to perform a contract for the sale of land.

(3) This section shall not apply to contracts for the sale of unregistered land.

68. Rights of purchaser where vendor's title defective. [cf. N.S.W. s. 55(1)(2)] (1) Where specific performance of a contract would not be enforced against the purchaser by the court by reason of a defect in or doubt as to the vendor's title, but the purchaser is not entitled to rescind the contract, the purchaser shall nevertheless be entitled to recover his deposit and any instalments under the contract whether at law or in equity, unless the contract discloses such defect and contains a stipulation precluding the purchaser from objecting thereto.

(2) If such undisclosed defect is one which is known or ought to have been known to the vendor at the date of the contract the purchaser shall in addition be entitled to recover his expenses of investigating the title.

(3) This section applies -

- (a) to a contract for the sale or exchange of land or any interest in land;

- (b) to a contract made after the commencement of this Act;
- (c) notwithstanding any provision to the contrary contained in the contract.

69. Applications to court by vendor and purchaser. [Eng. s.49(1); Vic. s.49(1)] A vendor or purchaser of land, or their respective representatives, may apply in a summary way to the Court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with a contract (not being a question affecting the existence or validity of the contract), and the Court may make such order upon the application as to the Court may appear just, and may order how and when and by whom all or any of the costs of and incident to the application are to be borne and paid.

Division 4 - Instalment sales of land

70. Application of Division. [cf. Qld. The Contracts of Sale of Land Act of 1933; Vic. Sale of Land Act 1962 (as amended)] (1) This Division shall not bind the Crown.

(2) In this Division -

- (a) "deposit" means a sum -
 - (i) not exceeding ten per centum of the purchase price payable under an instalment contract;
 - (ii) paid or payable in one or more amounts; and
 - (iii) liable to be forfeited and retained by the vendor in the event of a breach of contract by the purchaser;
- (b) "instalment contract" means an executory contract for the sale of land in terms of which the purchaser is bound to make a payment or payments (other than a deposit) without becoming entitled to receive a conveyance in exchange therefor;
- (c) "mortgage" includes any incumbrance or charge other than a charge attaching by the operation of any statutory enactment;
- (d) "purchaser" includes any person from time to time deriving an interest under an instalment contract from the original purchaser under the contract;
- (e) "sale" includes an agreement for sale and an enforceable option for sale;
- (f) "vendor" includes any person to whom the rights of a vendor under an instalment contract have been assigned.

(3) Where a contract for the sale of land may, at the election of the purchaser, be performed in a manner which would constitute it an instalment contract, it shall, unless and until the purchaser elects to perform it in some other manner, be presumed to be an instalment contract within the meaning of this section.

(4) This Division applies -

- (a) to an instalment contract entered into after the commencement of this Act; and

- (b) notwithstanding anything to the contrary contained in any contract.

71. Restriction on vendor's right to rescind. [cf. Qld. The Contracts of Sale of Land Act of 1933, s.13(1), (2), (3)] (1) An instalment contract shall not be determinable or determined by reason of default on the part of the purchaser in payment of any instalment or instalments due and payable under the contract until the expiration of a period of thirty days after service upon the purchaser of a notice in Form 2 of the First Schedule or to like effect.

(2) A purchaser upon whom a notice in the form of the Schedule or to like effect has been served may within the period mentioned in subsection (1) of this section pay or tender to the vendor or his agent such instalment or instalments as are at the date of service due and payable under the contract.

(3) Upon payment or tender in accordance with subsection (2) of this section any right or power of the vendor to determine the contract by reason of the default specified in the notice shall cease and the purchaser shall be deemed not to be in default under the contract.

(4) A notice shall be deemed to be to the like effect of that in Form 2 of the First Schedule if it is reasonably sufficient fully and fairly to apprise the purchaser of his default and of the effect of his failure to remedy the default within the time specified in this section.

72. Land not to be mortgaged by vendor. [cf. Vic. Sale of Land Act 1962, s. 7; Qld. The Contracts of Sale of Land Act of 1933, ss.18(4), 26] (1) A vendor under an instalment contract shall not without the consent of the purchaser sell or mortgage the land the subject of the contract.

(2) Where land is mortgaged in contravention of this section -

- (a) the instalment contract shall be voidable by the purchaser at any time before completion of the contract;
- (b) the vendor shall be guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars.

(3) Nothing in this section affects -

- (a) the rights of any bona fide purchaser from the vendor for value and without notice of the instalment contract; or
- (b) the provisions of The Real Property Acts.

73. Right of purchaser to lodge caveat. [cf. Qld. The Contracts of Sale of Land of 1933, s.9(c)] (1) A purchaser under an instalment contract for the sale of land under the provisions of The Real Property Acts may by caveat in accordance with those Acts forbid the registration of any interest affecting the land the subject of the contract until completion of the instalment contract, and such caveat shall, within the meaning of section 39 of The Real Property Act of 1877, be deemed to be and to have been lodged with the written consent of the vendor as registered proprietor of the land.

(2) A caveat lodged pursuant to this section may on the application of any person interested be removed upon proof to the satisfaction of the Court -

- (a) that the purchaser has consented to removal of the caveat; or
- (b) that the instalment contract has been rescinded or determined or discharged by performance or otherwise; or

(c) of any other ground which justifies removal of a caveat.

74. Right to require conveyance. [cf. Vic. Sale of Land Act 1962, s.4, 7; Qld. The Contracts of Sale of Land Act of 1933, s.9(b)] (1) A purchaser who is not in default under an instalment contract may at any time after an amount equal to one third of the purchase price has been paid serve upon the vendor a notice in writing requiring the vendor, at the expense of the purchaser, to convey the land to the purchaser conditionally upon the purchaser at the same time executing a mortgage in favour of the vendor or such other person as the vendor may specify to secure payment of all moneys which would thereafter but for the execution of such mortgage have become payable by the purchaser pursuant to the instalment contract.

(2) A vendor who is not in default under an instalment contract may at any time after an amount equal to one third of the purchase price has been paid serve upon a purchaser a notice in writing requiring the purchaser to accept a conveyance of the land from the vendor conditionally upon the purchaser at the same time executing a mortgage or mortgages in favour of the vendor or such other person or persons as the vendor may specify to secure payment of all moneys which would thereafter but for the execution of such mortgage or mortgages have become payable by the purchaser pursuant to the instalment contract.

(3) A vendor who requires a purchaser to accept a conveyance pursuant to the provisions of the last preceding subsection shall be obliged to advance to the purchaser -

- (a) an amount equal to the duty (if any) payable by the purchaser pursuant to the provisions of the Stamp Act 1894-1970 on the conveyance; and
- (b) an amount equal to legal costs of preparation, execution and registration of transfer of the land to the purchaser -

but such obligation shall be conditional upon the purchaser agreeing to the amount so advanced being added to the principal sum secured by the mortgage or by such one of the mortgages as is specified by the vendor.

(4) A mortgage executed pursuant to this section shall -

- (a) contain all such terms and all such powers and covenants on the part of the mortgagor as may be agreed by the vendor and the purchaser and shall accord with and provide for observance of all obligations of the purchaser pursuant to the instalment contract; and
- (b) in the case of subsection (1) of this section, but subject to subsection (6), be prepared at the expense of the purchaser.

(5) In the event of the vendor and the purchaser failing to agree upon the terms, covenants and powers, or any of them, to be contained in the mortgage, the mortgage and any such term, covenant or power to be contained therein shall be settled by an independent practising solicitor appointed by the President of the Law Society on the application thereto of the vendor and the purchaser or either of them, and the mortgage so settled shall be deemed to have been agreed upon by both the vendor and the purchaser.

(6) The reasonable costs of settling a mortgage in accordance with subsection (5) of this section shall be borne by the vendor and the purchaser in such proportions (if any) as in the circumstances the President of the Law Society thinks fit; and such costs shall be recoverable by the solicitor in those proportions (if any) from the vendor and the purchaser in any court of competent jurisdiction.

(7) A person liable for costs by virtue of subsection (6) of this section shall be entitled to require those costs to be taxed in accordance with the Costs Act of 1867.

(8) Where a notice in writing under this section has been served upon a vendor by a purchaser or upon a purchaser by a vendor, and such vendor or, as the case may be, purchaser without lawful excuse fails to convey or to accept a conveyance of the land or to execute any instrument requisite for giving effect to this section, such vendor or purchaser -

(a) shall be deemed to have broken a condition of the contract, and the purchaser or, as the case may be, vendor shall be entitled to all civil remedies accordingly; and

(b) the party so failing shall be guilty of an offence under this Act and liable to a penalty not exceeding five hundred dollars.

(8) In any contract entered into after the commencement of this Act, a reference to section 9 of The Contracts of Sale of Land Act of 1933 shall be construed as a reference to this section.

75. Deposit of title deed and conveyance. (1) A purchaser who is not in default under an instalment contract may at any time after the contract has been entered into direct the vendor to deposit with a prescribed authority -

(a) the title deed or deeds relating to the land the subject of the contract; and

(b) a duly executed conveyance or memorandum of transfer in favour of the purchaser, which shall be deemed to be delivered by the vendor in escrow pending discharge of the contract by performance or otherwise.

(2) A vendor who fails to comply with a direction given in accordance with subsection (1) of this section shall be deemed to have broken a condition of the contract, and the purchaser shall be entitled to all civil remedies accordingly.

(3) The title deed or deeds and the conveyance or transfer referred to in subsection (1) of this section shall be held in trust by the prescribed authority who shall not, except for the purpose of safe-keeping, deliver the same to any person (other than another prescribed authority, to be held by him in accordance with the provisions of this section) until -

(a) the time for performance of the contract arrives; or

(b) the contract is discharged by performance or otherwise; or

(c) the Court otherwise orders on the application of the prescribed authority or of the vendor or the purchaser or some interested person.

(4) In this section, "prescribed authority" means any of the following -

(a) any person, firm or corporation who at the commencement of this Act is a prescribed authority for the purposes of section 5(i) of The Contracts of Sale of Land Act of 1933;

(b) any bank carrying on business in the State;

(c) a trustee corporation;

- (d) a solicitor or conveyancer or firm of solicitors or conveyancers approved by the Minister upon the recommendation of the President of the Law Society.

PART VII - MORTGAGES

76. Application of Part and interpretation of terms. (1) Except where the context or subject-matter otherwise indicates or provides, the provisions of this Part -

- (a) apply to unregistered land and to any mortgage of such land;
- (b) apply to land and any mortgage of land which is subject to the provisions of -
- (i) The Real Property Acts;
 - (ii) the Land Act;
 - (iii) The Miners' Homestead Leases Acts;
 - (iv) The Mining Acts, or the Regulations made under those Acts;
 - (v) The State Housing Acts;
 - (vi) any other Act, and any repealed Act the provisions of which continue to apply to mortgages made before that Act was repealed;
- (c) subject to the provisions of any other Act, apply to any other mortgage whether of land or any other property.

(2) In the interpretation of this Part, unless the context or subject-matter otherwise indicates or requires -

- (a) "instrument of mortgage" includes -
- (i) a bill of mortgage and a bill of encumbrance within the meaning of The Real Property Acts;
 - (ii) a memorandum of mortgage under the Land Act, The Miners' Homestead Leases Acts, or The Mining Acts and the Regulations made under those Acts;
- (b) "mortgagee" includes an encumbrancee under a registered bill of encumbrance;
- (c) "mortgagor" includes an encumbrancer under a registered bill of encumbrance;
- (d) "principal money" includes any annuity, rentcharge or principal money secured or charged by a bill of encumbrance registered under The Real Property Acts.

[cf. Qld. R. P. A. s. 69; N. S. W. s. 80(1)]

77. Implied obligations in mortgages. / (1) In every instrument of mortgage there shall be implied on the part of the mortgagor the following obligations -

- (a) that he will pay the principal money and interest thereby secured according to the rate and at the times therein mentioned without any deduction whatever;

- (b) that he will keep all buildings and other improvements erected and made upon the land in as good and substantial repair as the same were in at the date of the mortgage, and that he will permit the mortgagee at all convenient times, until such mortgage is redeemed, with or without surveyors or others, to enter into and upon such land to view and inspect the state of repair of such buildings and improvements.

(2) An obligation implied by virtue of this section shall, if the mortgage is by deed, take effect as a covenant on the part of the mortgagor.

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

(4) Subject to subsection (3) of this section, an obligation implied by this section shall have effect as if it were in terms contained in the instrument of mortgage.

78. Variation of mortgage. [cf. N.S.W. s.91] (1) A mortgage of land may be varied by memorandum of mortgage, which may -

- (a) increase or reduce the rate of interest payable in respect of the mortgage debt;
 - (b) increase or reduce the amount secured by the mortgage;
 - (c) shorten, extend or renew the term or currency of the mortgage; or
 - (d) provide for any one or more of the foregoing.
- (2) A memorandum of variation shall be -
- (a) in the form, or to the effect of one or more of Forms 3, 4 or 5 of the First Schedule, with such variations or additions as circumstances may require;
 - (b) signed by the persons to be bound thereby;
 - (c) attested by at least one witness;
 - (d) indorsed upon or annexed to the instrument of mortgage; and
 - (e) registered.

79. Inspection and production of instruments. [cf. N.S.W. s.96; Eng. s.96; Vic. ss.95, 97] (1) A mortgagor, as long as his right to redeem subsists, shall by virtue of this Act, be entitled from time to time at reasonable times, on his request and at his own cost and on payment or tender of the mortgagee's proper costs and expenses in that behalf, by himself or his solicitor, to inspect and to make or be supplied with copies or abstracts of, or extracts from, the documents of title or other documents relating to the mortgaged property in the possession, custody or power of the mortgagee.

(2) In the case of a mortgage of land the mortgagor shall, at his own cost and upon payment or tender of the mortgagee's proper costs and expenses in that behalf, be entitled to have the relevant certificate of title or instrument of lease or other documents of title lodged at the office of the Registrar or in the Department or in the warden's office, as the case may be -

- (a) to permit of the registration of any authorised dealing by the mortgagor with the land; or
- (b) to permit of registration of a second or subsequent mortgage.

(3) A mortgagee, whose mortgage is surrendered, discharged or otherwise extinguished, shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto, unless he has notice of the right or claim of a person having a better right, whether by virtue of a right to require a surrender, discharge or re-conveyance or otherwise.

(4) This section shall apply to mortgages made after but not before the commencement of this Act and shall have effect notwithstanding any stipulation to the contrary.

80. Actions for possession by mortgagors. [cf. Eng. s.98; Vic. s.98; N.S.W. s.11; S.A. s.14; Qld. J.A. of 1876, s.5(5)] (1) A mortgagor for the time being entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to take possession or to enter into the receipt of the rents and profits thereof, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

(2) This section does not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of any legal estate vested in him or otherwise.

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

81. Tacking and further advances. [cf. Eng. s.94; Vic. s.94] (1) After the commencement of this Act, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable) -

- (a) if an arrangement has been made to that effect with the subsequent mortgagees; or
- (b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or
- (c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.

(2) In relation to the making of further advances after the commencement of this Act a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered under an Act providing for registration of mortgages or deeds, if it was not so registered at the date of the original advance or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

This subsection applies only where the prior mortgage was made expressly for securing a current account or other further advances.

(3) Save in regard to the making of further advances as aforesaid, the right to tack is hereby abolished:

Provided that nothing in this Act shall affect any priority acquired before the commencement of this Act by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancee.

(4) This section applies to mortgages of land made whether before or after the commencement of this Act.

82. Powers incident to estate or interest of mortgagee. [cf. Vic. s.101; S.A. s.47; W.A. s.57; Eng. s.101; N.S.W. ss.109, 110] (1) A mortgagee, where the mortgage is made by instrument, shall, by virtue of this Act, have the following powers, to the like extent as if they had in terms been conferred by and were contained in the instrument of mortgage, but not further, namely:-

- (a) a power to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, in subdivision or otherwise, by public auction or by private contract, and for a sum payable either in one sum or by instalments, subject to such conditions respecting title, or evidence of title, or other matters as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby, with power to make such roads, streets and passages and grant such easements of right of way or drainage over the same as the circumstances may require and he thinks fit; and
- (b) a power, at any time after the date of the instrument of mortgage, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
- (c) a power to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged property consists of an interest in income, or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof; and
- (d) a power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract; and
- (e) a power to sell any easement, right or privilege of any kind over or in relation to the mortgaged property.

(2) The power of sale aforesaid includes the following powers as incident thereto, namely:-

- (a) a power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or

reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing;

- (b) a power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface:-
 - (i) with or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold; and
 - (ii) with or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage and other powers, easements and rights and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold; and
 - (iii) with or without covenants by the purchaser to expend money on the land sold.

(3) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may, except where otherwise provided, be varied or extended by the instrument of mortgage.

(4) This section applies only -

- (a) to an instrument of mortgage of land executed whether before or after the commencement of this Act;
- (b) if and so far as a contrary intention is not expressed in the instrument of mortgage and has effect subject to the terms of the instrument and to the provisions therein expressed.

(5) The provisions of this Act relating to the foregoing powers comprised in this section, or in any other section regulating the exercise of those powers, apply to mortgages of land under the provisions of -

- (a) the Land Act;
- (b) The Miners' Homestead Leases Acts; and
- (c) The Mining Acts, and the Regulations made under those Acts;

but subject to and to the extent only that the provisions of this Act are consistent with those provisions.

83. Regulation of exercise of power of sale. [cf. Qld. R.P.A. ss. 57, 59; N.S.W. s.111(2); Eng. s.103; Vic. s.103; W.A. s.59; S.A. s.48] (1) A mortgagee shall not exercise the power of sale conferred by this Act unless and until -

- (a) default has been made in payment of the principal money or interest or any part thereof secured by the instrument of mortgage, and notice requiring payment of the money then due or owing under such instrument of mortgage has been served on the mortgagor or one of the mortgagors, and such default has continued for a space of 30 days from service of the notice; or

(b) default has been made in the observance or fulfilment of some provision contained in the instrument of mortgage or implied by this or any other Act and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed and performed, and notice requiring the default to be remedied has been served on the mortgagor or one of the mortgagors, and such default has continued for the space of 30 days from service of the notice.

(2) A notice under this section may be in Form 6 of the First Schedule or to like effect.

(3) The provisions of this section apply, notwithstanding any stipulation to the contrary, to mortgages made whether before or after the commencement of this Act; but only to the exercise of a power of sale arising upon or in consequence of a default occurring after the commencement of this Act.

(4) Nothing in this section applies to the exercise by a mortgagee of the power of sale conferred on a mortgagee by the Land Act, or by The Miners' Homestead Leases Acts, or by the Regulations made under The Mining Acts.

84. Duty of mortgagee as to sale price. (1) It is the duty of a mortgagee, in the exercise after the commencement of this Act of a power of sale conferred by the instrument of mortgage or by this or any other Act, to take reasonable care to ensure that the property is sold at the market value.

(2) Within twenty-eight days from completion of the sale, the mortgagee shall give to the mortgagor notice in Form 7 of the First Schedule.

(3) The title of the purchaser is not impeachable on the ground that the mortgagee has committed a breach of any duty imposed by this section; but a person damnified by the breach of duty has a remedy in damages against the mortgagee exercising the power of sale.

(4) A mortgagee who, without reasonable excuse, fails to comply with subsection (3) shall be guilty of an offence and liable to a penalty not exceeding \$100.

(5) An agreement or stipulation is void to the extent that it purports to relieve, or might have the effect of relieving, a mortgagee from the duty imposed by this section.

(6) Nothing in this section affects the operation of any rule of law relating to the duty of the mortgagee to account to the mortgagor.

(7) This section applies to mortgages whether made before or after the commencement of this Act but only to a sale in the exercise of a power arising upon or in consequence of a default occurring after the commencement of this Act.

85. Effect of conveyance on sale. [cf. W.A. s.60(1); Eng. s.104(1); Vic. s.104(1); N.S.W. s.112; S.A. s.49(1); Qld. R.P.A. s.57] (1) A mortgagee exercising the power of sale conferred by this Act has, in the case of unregistered land, power by deed or instrument in writing to convey to and vest in the purchaser the property sold for all the estate (including the legal estate) and interest therein which the original mortgagor had power to dispose of freed from all estates, interests and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage.

(2) A mortgagee exercising the power of sale conferred by this Act has, in the case of land the subject of a bill of mortgage registered in accordance

with The Real Property Acts, power to sell and transfer the land mortgaged and all the estate or interest therein of the mortgagor.

(3) A conveyance on sale by a mortgagee, made after the commencement of this Act, shall be deemed to have been made in exercise of the power of sale conferred by this Act unless a contrary intention appears.

(4) This section shall not apply to a transfer in the exercise of the power of sale conferred on a mortgagee by:-

- (a) the Land Act 1962-1970; or
- (b) The Miners' Homestead Leases Acts, 1913 to 1965; or
- (c) The Mining Acts and Regulations made thereunder.

86. Protection of purchasers. [cf. Eng. s.104(2); Vic. s.104(2); W.A. s.60(2); S.A. s.49(2); N.S.W. s.112(3); Qld. R.P.A. s.57] (1) Where a conveyance is made in exercise of the power of sale conferred by this Act the title of the purchaser shall not be impeachable on the ground -

- (a) that no case had arisen to authorise the sale; or
- (b) that due notice was not given; or
- (c) that leave of the Court, when so required, was not obtained; or
- (d) whether the mortgage was made before or after the commencement of this Act, that the power was otherwise improperly or irregularly exercised;

and a purchaser is not, either before or on conveyance, concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of power shall have his remedy in damages against the person exercising the power.

(2) A conveyance on sale by a mortgagee, made after the commencement of this Act, shall be deemed to have been made in exercise of the power of sale conferred by this Act unless a contrary intention appears.

(3) The preceding provisions of this section shall not apply to a transfer made in exercise of the power of sale conferred upon a mortgagee by -

- (a) the Land Act 1962-1970; or
- (b) The Miners' Homestead Leases Acts, 1913 to 1965; or
- (c) The Mining Acts and Regulations made thereunder -

save that where, after the commencement of this Act, a transfer is so made the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, and the purchaser is not, either before or on conveyance, concerned to see whether a case has arisen to authorise the sale; but any person damnified by an unauthorised exercise of such power of sale shall have his remedy in damages against the person exercising the power.

87. Application of proceeds of sale. [cf. Eng. s.105; Vic. s.105; N.S.W. s.112(4); W.A. s.61; S.A. s.50; Qld. R.P.A. s.57] (1) Subject to this section, the money arising from sale, and which is in fact received by the

mortgagee, shall, after discharge of prior incumbrances to which the sale is not made subject, if any, be held by him in trust to be applied by him -

- (a) firstly, in payment of all costs, charges and expenses properly incurred by him as incident to the sale, or any attempted sale, or otherwise; and
- (b) secondly, in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage; and
- (c) thirdly, in payment of any subsequent mortgages or incumbrances;

and the residue, if any, of the money so received shall be paid to the person entitled thereto or entitled to give receipts for the proceeds of sale of the mortgaged property.

(2) The money which is in fact received by a mortgagee arising from sale in the exercise of the power conferred by -

- (a) The Miners' Homestead Leases Acts; or
- (b) The Mining Acts and Regulations made thereunder -

shall, subject to paragraphs (a) and (b) of subsection (1) of this section, be dealt with as provided in those Acts or Regulations.

(3) The proceeds of sale arising from a sale by a mortgagee in the exercise of the power conferred by the Land Act shall be disposed of as provided in that Act.

88. Provisions as to exercise of power of sale. [cf. Eng. s. 106; Vic. s. 106; N.S.W. s. 112(7); W.A. s. 62; S.A. s. 51; Qld. R.P.A. s. 57] (1) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(2) The power of sale conferred by this Act does not affect the right of foreclosure.

(3) Subject to section 84, the mortgagee shall not be answerable for any voluntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith, or of any power or provision contained in the instrument of mortgage.

(4) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

89. Mortgagee's receipts, discharges, etc. [cf. Eng. s. 107; Vic. s. 107; N.S.W. s. 113; W.A. s. 63; S.A. s. 52; Qld. R.P.A. s. 57] (1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage or to see to the application of the money or securities so paid or transferred.

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

90. Amount and application of insurance moneys. [Eng. s.108; Vic. s.108; N.S.W. s.114; W.A. s.64] (1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed such amount as is specified in the mortgage, or, if no amount is therein specified, the full insurable value of the buildings upon the mortgaged land or the amount owing to the mortgagee in respect of the mortgage.

(2) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases, namely:-

- (i) where there is a declaration in the instrument of mortgage that no insurance is required:
- (ii) where an insurance is kept up by or on behalf of the mortgagor in accordance with the instrument of mortgage:
- (iii) where the instrument of mortgage contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Act authorised to insure.

(3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act or on an insurance for the maintenance of which the mortgagor is liable under the instrument of mortgage, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act or on an insurance for the maintenance of which the mortgagor is liable under the instrument of mortgage, be applied in or towards the discharge of the mortgage money.

91. Appointment, powers, remuneration and duties of receiver. [cf. Eng. s.109; Vic. s.109; N.S.W. s.115; W.A. s.65; S.A. s.53] (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this or any other Act, but may then appoint such person as he thinks fit to be receiver:

Provided that in the case of a mortgage registered under -

- (a) the Land Act;
- (b) The Miners' Homestead Leases Acts; or
- (c) The Mining Acts and Regulations made thereunder -

a mortgagee entitled as aforesaid may appoint a receiver at any time after he has become entitled to enter upon and take possession of the land subject to the mortgage.

(2) A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the instrument of mortgage otherwise provides.

(3) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Act.

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

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

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose.

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

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:-

- (a) in discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and
- (b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (c) in payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the instrument of mortgage or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (d) in payment of the interest accruing due in respect of any principal money due under the mortgage; and
- (e) in or towards discharge of the principal money if so directed in writing by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(9) The appointment of a receiver or of a new receiver under this section shall be -

- (a) made by the mortgagee by writing in Form 8 of the First Schedule; and
- (b) registered, in the case of a mortgage -
 - (i) of registered land, by the Registrar;
 - (ii) of land under the provisions of the Land Act, in the Department;
 - (iii) of land under the provisions of The Miners' Homestead Leases Acts, or of The Mining Acts and Regulations made thereunder, in the warden's office.

92. Effect of advance on joint account. [Eng. s.111; Vic. s.112; N.S.W. s.99; W.A. s.67; Qld. R.P.A.1877, s.21] (1) Where -

- (a) in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account; or
- (b) a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly,

the mortgage money, or other money or money's worth, for the time being due to those persons on the mortgage or obligation, shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2) This section applies if and so far as a contrary intention is not expressed in the mortgage, obligation, or transfer, and has effect subject to the terms of the mortgage, obligation, or transfer, and to the provisions therein contained.

(3) Where the Act, if any, under which the mortgage is registered provides for registration of transmission on death, this section shall have effect only upon registration of transmission as provided by that Act.

(4) This section applies only to mortgages made or obligations created after the commencement of this Act.

93. Obligation to transfer instead of discharging mortgage. [cf. N.S.W. ss.94, 95; Eng. s.95; Vic. s.95; S.A. s.45] (1) Where a mortgagor is entitled to redeem he shall by virtue of this Act have power to require the mortgagee, instead of discharging, and on the terms on which he would be bound to discharge, to transfer the mortgage to any third person as the mortgagor directs; and the mortgagee shall by virtue of this Act be bound to transfer accordingly.

(2) The right of the mortgagor conferred by this section shall belong to and be capable of being enforced by each incumbrancee, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancee shall prevail over a requisition of the mortgagor, and as between incumbrancees a requisition of a prior incumbrancee shall prevail over a requisition of a subsequent incumbrancee.

(3) This section shall not apply in the case of a mortgagee being or having been in possession.

(4) This section applies to mortgages whether made before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

94. Relief against provision for acceleration of payment. [cf. Ontario Mortgages Act, 1960, s.20; Eng. s.146] (1) Where default has taken place -

- (a) in payment of any instalment due of principal or interest under a mortgage; or
- (b) in the observance of any covenant or obligation in a mortgage -

and under the terms of the mortgage an accelerated sum may or has, by reason of such default or of the exercise upon such default of any option or election conferred by the mortgage, become due and payable, the mortgagor shall be entitled to relief in accordance with this section.

(2) A mortgagor who, at any time before sale by the mortgagee or before the commencement of proceedings to enforce the rights of the mortgagee -

- (a) performs any such covenant or obligation; and
- (b) tenders to the mortgagee, who accepts payment of, the amount of such instalment and any reasonable expenses incurred by the mortgagee -

is thereupon relieved from the consequences of such default.

(3) Where tender of payment or performance referred to in subsection (2) of this section is not accepted by the mortgagee, the mortgagor, in any proceedings brought to enforce the rights of the mortgagee or brought by the mortgagor himself, may -

- (a) upon undertaking to the Court to perform any such covenant; and
- (b) upon tender or payment into Court of such instalment -

apply to the Court for relief from the consequences of such default; and the Court may grant or refuse relief (whether by staying proceedings brought by the mortgagee or otherwise) as the Court, having regard to the conduct of the parties and to all other circumstances, thinks fit; and in the case of relief may grant it on such terms, if any, as to payment of any reasonable expenses of the mortgagee and as to the costs or otherwise as the Court in the circumstances thinks fit.

(4) Where in granting relief under subsection (3) of this section the Court stays proceedings for the enforcement of the rights of the mortgagee, the Court may on application thereto remove the stay if default again takes place.

(5) This section applies to mortgages of any property whether made before or after the commencement of this Act, but only to a default occurring after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

(6) In this section "accelerated sum" means the whole or part of principal or interest secured by the mortgage other than the instalment referred to in paragraph (a) of subsection (1) of this section.

95. Mortgagee accepting interest on overdue mortgage not to call up without notice. [cf. N.S.W. s.92; N.Z. (1908) No.152, s.68] (1) Where the mortgagor has made default in payment of the principal sum at the expiry of the term of the mortgage, or of any period for which it has been renewed or extended, and the mortgagee has accepted interest on the said sum for any period (not being less than three months) after default has been so made, then so long as the mortgagor performs and observes all covenants expressed or implied in the mortgage, other than the covenant for payment of the principal sum, the mortgagee shall not be entitled to take proceedings to compel payment of the said sum, or for foreclosure, or to enter into possession, or to exercise any power of sale, without giving to the mortgagor three months' notice of his intention so to do.

(2) No purchaser from the mortgagee exercising his power of sale shall be concerned to inquire whether the mortgagee has accepted interest as aforesaid after such default.

(3) This section applies to mortgages whether made before or after the commencement of this Act, but only where the default has occurred after such commencement, and shall have effect notwithstanding any stipulation to the contrary.

96. Period of notice for redemption after default. (1) Where a mortgagor has made default in payment of the principal sum at the expiry of the term of the mortgage, or of any period for which it has been renewed or extended, the mortgagor may -

- (a) at the expiration of three months after giving to the mortgagee notice of his intention in that behalf; or
- (b) upon paying to the mortgagee three months interest on the principal sum in lieu of such notice; and
- (c) upon paying to the mortgagee the principal sum and any other moneys due under the mortgage -

redeem the mortgaged property.

(2) This section does not affect any other right of a mortgagor to redeem the mortgaged property at any time whether with or without notice and whether with or without payment of interest.

(3) This section applies to mortgages whether made before or after the commencement of this Act, but only where the default has occurred after such commencement, and shall have effect notwithstanding any stipulation to the contrary.

97. Right to redeem before time fixed for redemption. [cf. N.S.W. s.93; N.Z. (1908) No.152, s.70(2)] (1) Subject to any other Act, a mortgagor is entitled to redeem the mortgaged property although the time appointed for redemption has not arrived; but in such case he shall, subject to the provisions of the mortgage and of any other Act, pay to the mortgagee, in addition to any other moneys then owing under the mortgage, interest on the principal sum secured thereby for the unexpired portion of the term of the mortgage:

Provided that redemption under this subsection shall not prejudice the right of the mortgagee to any collateral benefit, or to enforce any burden or restriction to the extent to which he would be entitled under the mortgage or otherwise if the mortgage were paid off at the due date.

(2) For the purposes of this section "moneys owing under a mortgage" includes all costs, charges, and expenses reasonably and properly incurred by the mortgagee -

- (a) for the protection and preservation of the mortgaged land or the title thereto, or otherwise in accordance with the provisions of the mortgage; and
- (b) with a view to the realisation of his security;

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

(3) This section applies to mortgages whether made before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

98. Abolition of consolidation of mortgages. [cf. W.A. s. 56; N.S.W. s. 97; Eng. s. 93; Vic. s. 93] (1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

(2) This section has effect notwithstanding any stipulation to the contrary.

(3) This section applies only where the mortgages are or one of them is made after the commencement of this Act.

99. Sale of mortgaged property in action for redemption or foreclosure. [cf. Eng. s. 91; Vic. s. 91; N.S.W. s. 103; W.A. s. 55; S.A. s. 44; Qld. Equity Act 1867, s. 74] (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding that -

- (a) any other person dissents; or
- (b) the mortgagee or any person so interested does not appear in the action;

and without allowing any time for redemption or for payment of any mortgaged money, may direct a sale of the mortgaged property, on such terms subject to subsection (3), as it thinks fit, including the deposit in court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.

(3) In an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrances.

(5) This section applies to actions brought whether before or after the commencement of this Act.

(6) In this section "mortgaged property" includes the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.

(7) For the purposes of this section the Court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any incumbrance, as the Court may think fit; or, in the case of an equitable mortgage, may create and vest a legal estate in the mortgagee to enable him to carry out the sale as if the mortgage had been made by deed or instrument by way of legal mortgage.

100. Realisation of equitable charges by the Court. [cf. Eng. s. 90; Vic. s. 90; W.A. s. 54; S.A. s. 43] (1) Where an order for sale is made by the Court in reference to an equitable mortgage of land the Court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land or create and vest in the mortgagee a legal estate in the land to enable him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by instrument or deed by way of legal mortgage, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancee consents to the sale.

(2) This section applies to equitable mortgages whether made or arising before or after the commencement of this Act.

101. Facilitation of redemption in case of absent or unknown mortgagees. [cf. N. S. W. s. 98] (1) When any person entitled to receive payment of any money secured by mortgage is out of the jurisdiction, cannot be found, or is unknown, or it is uncertain who is so entitled, the Court, upon the application of the person entitled to redeem the mortgaged premises, may order the amount of such debt to be ascertained in such manner as the Court thinks fit, and direct the amount so ascertained to be paid into court.

(2) A certificate of the Registrar of the Court that such payment was directed and has been made, shall operate to discharge the mortgage debt; but, as between the mortgagor and the person so entitled to receive payment as aforesaid, any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due or payable over and above the amount so paid shall continue to be a debt due under the mortgage.

(3) The Court shall order the amount so paid into court to be paid to the person entitled, upon the application of such person, and on proof that the deed or instrument of mortgage, and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same, or in connection therewith, have been delivered up to the person by whom the amount was so paid into court, or his executors, administrators, or assigns, or have been otherwise satisfactorily accounted for.

(4) The certificate referred to in subsection (2) of this section -

(a) shall, in the case of a mortgage of unregistered land, upon registration of the certificate under this Act operate in favour of a purchaser of the land as a discharge of the land as from the date of the certificate and as a re-conveyance of the estate and interest of the mortgagee of and in the mortgaged property to the person who at the date of the certificate is entitled to the equity of redemption thereof according to his interest therein;

(b) shall, in the case of a mortgage of registered land, be registrable in the manner of an indorsement of discharge under section 63 of The Real Property Acts, and upon registration shall have effect

as a discharge in accordance with the provisions of that section;

- (c) shall, in the case of a mortgage registered under the Land Act, be registered in the manner of a discharge of mortgage under that Act and upon registration shall have effect accordingly;
- (d) shall, in the case of a mortgage registered under The Miners' Homestead Leases Acts, be registered in the manner in which the memorandum of mortgage was registered and upon registration shall operate as a discharge of the land from the mortgage;
- (e) shall, in the case of a mortgage registered under the Regulations made under The Mining Acts, be delivered as required by and have effect as a certificate of cancellation under those Regulations.

(5) Nothing in this section affects the provisions of section 56 of The Public Curator Acts, 1915 to 1957.

PART VIII - LEASES AND TENANCIES

Division 1 - Rights, powers and obligations

102. Abolition of interesse termini as to reversionary leases and leases for lives. [Eng. s.149; N.S.W. s.120A] (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.

103. 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 pursuant to subsections (9) and (14) of section 27 of the Local Government Act, 1936-1970, distress pursuant to sections 60, 61A, 135 and 136 of The Real Property Acts, and distress pursuant to subsection (3) of

section 100 of The Metropolitan Water Supply and Sewerage Acts, 1909 to 1962, is abolished.

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

104. Voluntary waste. [cf. 52 Hen. 3, c. 23 (Statute of Marlborough, 1267); N.S.W. 30, 1969, s. 32] (1) A lessee shall not commit voluntary waste.

(2) Nothing in subsection (1) of this section applies to any lease without impeachment of waste, or affects any licence or other right to commit waste.

(3) A lessee who infringes subsection (1) of this section is liable in damages to the 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.

105. Obligations of lessees. [cf. N.S.W. s. 84] (1) Subject to this Act, in every lease of land made after the commencement of this Act there shall, unless otherwise agreed, be implied the following obligations by the lessee, for himself, his executors, administrators, and assigns, with the lessor, his executors, administrators, and assigns:-

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

Provided, however, that in case the demised premises or any part thereof shall at any time during the continuance of the lease be destroyed or damaged by fire, flood, lightning, storm, or tempest so, in any such event as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved, or a proportionate part thereof, according to the nature and extent of the damage sustained shall abate, and all or any remedies for recovery of the rent or such proportionate part thereof shall be suspended until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee;

- (b) To keep in repair - that he or they will, at all times during the continuance of the said lease, keep and, at the termination thereof, yield up the demised premises in good and tenantable repair, having regard to their condition at the commencement of the said lease, damage from fire, flood, lightning, storm and tempest, and reasonable wear and tear excepted.

(2) In the case of a lease by deed any obligation implied by this section shall take effect as a covenant.

106. Fitness of premises for human habitation. [cf. Eng. 5 & 6, Eliz. 2, c. 56, s. 6; Ont. c. 236, s. 96 (1970)] (1) In a lease of premises or any part thereof for the purpose or principally for the purpose of human habitation for a term of three years or for any lesser period there is an obligation -

- (a) on the part of the lessor to provide and, during the lease, maintain the premises, or such part as is let for such purpose, in a good state of repair and reasonably fit for human habitation; and
- (b) on the part of the lessee -

- (i) to care for the premises in the manner of a reasonable tenant; and
- (ii) to repair damage caused by him or by persons coming on the premises with his permission.

(2) This section applies -

- (a) to leases made after the commencement of this Act;
- (b) notwithstanding any other provision of this Act or any agreement to the contrary.

107. Powers in lessor. [cf. N.S.W. s.85] Unless otherwise agreed, in every lease of land made after the commencement of this Act there shall be implied the following powers in the lessor, his executors, administrators, or assigns:-

(1) To enter and view - that he or they may, by himself or themselves, or his or their agents, twice in every year during the term at a reasonable time of the day upon giving to the lessee two days' previous notice, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee, his executors, administrators, or assigns, or leave at his or their last or usual place of abode in the State, or upon the demised premises, a notice in writing of any defect, requiring him or them, within a reasonable time, to repair same in accordance with any covenant or obligation expressed or implied in the lease.

(2) To enter and repair - that in default of the lessee his executors administrators or assigns repairing any defect according to notice, he or they may from time to time enter the premises and execute the required repairs.

(3) To enter and carry out requirements of public authority, and repair under the lease - that he or they may, by himself or themselves, or his or their agents, at all reasonable times during the term, with workmen and others and all necessary materials and appliances, enter upon the demised premises or any part thereof, for the purpose of complying with the terms of any present or future legislation affecting the said premises, and of any notices served upon the lessor or lessee by the licensing, local, municipal, or other competent authority, involving the destruction of noxious weeds or animals, or the carrying out of any repairs, alterations, or works of a structural character, which the lessee may not be bound, or if bound, may neglect to do, and also for the purpose of exercising the powers and authorities of the lessor under the lease: Provided that such destruction, repairs, alterations, and works shall be carried out by the lessor without undue interference with the occupation and use of the demised premises by the lessee.

(4) To re-enter and take possession - that, in case the rent or any part thereof is in arrear for the space of one month (although no formal demand therefor has been made), or in case default is made in the fulfilment of any covenant, obligation, condition, or stipulation, whether expressed or implied in the lease, and on the part of the lessee to be performed or observed, and such default is continued for the space of two months, or in case the repairs required by such notice as aforesaid are not completed within the time therein specified, he or they may re-enter upon the demised premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee, his executors, administrators, or assigns, therein, but without releasing him or them from liability in respect of the breach or non-observance of any such covenant, condition, or stipulation.

108. Recovery of possession where half-year's rent is due. [Qld. D.R.E. Act, ss.130, 131, 132; District Courts Act 1967-1969, s.90] (1) In addition to any other powers, 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 hold the land discharged from the lease.

(4) Rule 169 of the "District Court 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 90 of the District Courts Act, 1967-1969.

109. Short forms of covenants and obligations of lessees. [cf. N.S.W. s. 86] (1) Whenever in any lease which expressly refers to the Second Schedule to this Act there is used the form of words contained in the first column of the Second Schedule to this Act and distinguished by a number therein, such form of words shall imply an obligation by the lessee or the lessor for himself, his executors, administrators, and assigns, with the lessor or the lessee, his executors, administrators, and assigns, in the terms contained in the second column of the said Schedule, and distinguished by the corresponding number.

(2) There may be introduced into or annexed to any form in the first column any addition to, exception from, or qualification of the same; or any words in such column may be struck out or omitted; and a proviso which would give effect to the intention indicated by such addition, exception, qualification, striking out, or omission, shall be taken to be added to the corresponding form in the second column.

(3) In the case of a lease by deed any obligation implied by this section shall take effect as a covenant.

(4) This section applies only to leases made after the commencement of this Act.

110. Cases in which statutory obligations or powers not implied. [cf. N.S.W. s. 87] Where on the face of any lease it appears that any of the short forms of words contained in the first column of the Second Schedule to this Act has been struck out, the covenant, obligation or proviso represented by such short form of words shall not be implied in the lease by sections 105 and 109 of this Act.

111. Lessee to give notice of ejectment to the lessor. [cf. Eng. s.145; Qld. D.R.E. Act, 1867, s.129; District Court Rules 1968, r.170; Ont. c.236 (1970), s.29] 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 agent, and, if he fails to do so, he shall be liable to the person of whom he holds the land for any damages sustained by that person by reason thereof, to be recovered by action in any court of competent jurisdiction.

112. Provisions as to covenants to repair. [N.S.W. s.133A; Eng. Landlord and Tenant Act, 1927, s.18] (1) Damages for a breach of a covenant, obligation 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, obligation 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, obligation, or agreement as aforesaid; and in particular no damage shall be recovered for a breach of any such covenant, obligation, 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, obligation, or agreement.

(2) A right of re-entry or forfeiture for a breach of any such covenant, obligation, 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 124 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 the State, 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.

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

Division 2 - Surrenders, assignments and waiver

113. Head leases may be renewed without surrendering under-leases. [cf. 4 Geo. II, c.28, s.6; Eng. s.150; N.S.W. s.121] (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, obligations, 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.

114. Provision as to attornments by tenants. [cf. Eng. s.151(1); 4 Anne, c.16 (c.3), ss.9, 10; N.S.W. s.125(1)] (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.

(2) [cf. Eng. s.151(2); 11 Geo.2, c.19, s.11; Qld. D.R.E. Act, 1867, s.128] 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.

115. When reversion on a lease is surrendered, &c., the next estate to be deemed the reversion. [cf. Eng. s.139; N.S.W. s.122] 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.

116. Apportionment of conditions on severance. [Eng. s.140; N.S.W. s.119; cf. Qld. D.R.E. Act, 1867, s.126] (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.

117. Rent and benefit of lessee's covenants to run with the reversion. [cf. Grantees of Reversions Act, 1540 (32 Hen. 8, c. 34); Eng. s.141; N.S.W. s.117] (1) Rent reserved by a lease, and the benefit of every covenant, obligation, or provision therein contained, touching and concerning the land, 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, obligation, 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, obligation, 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, obligation or provision contained in the lease.

118. Obligation of lessor's covenants to run with reversion. [cf. Grantees of Reversions Act, 1540 (32 Hen. 8, c. 34); Eng. s.142; N.S.W. s.118] (1) The obligation under a condition or of a covenant or other obligation entered into by a lessor touching and concerning the land 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.

119. Waiver of a covenant in a lease. [cf. Eng. s.148; N.S.W. s.120; Qld. D.R.E. Act, 1867, s.127] (1) Where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant, obligation, 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, obligation, or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit of any such covenant, obligation, or condition.

(2) Unless a contrary intention appears this section applies and extends to waivers effected after the twenty-eighth day of December, 1867.

120. Effect of licences granted to lessees. [Eng. s.143; cf. N.S.W. ss. 123, 124; Qld. D.R.E. Act, 1867, ss.124, 125] (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, obligations, and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, obligation, 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, obligation, 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 28th day of December, 1867.

121. Provisions as to covenants not to assign &c., without licence or consent. [cf. N.S.W. ss.132, 133B; Eng. s.144; Eng. Landlord and Tenant Act, 1927, s.19(1)] (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 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 under-lessee 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, whether with or 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.

122. Involuntary assignment no breach of covenant. [cf. N. S. W. s.133] Neither the assignment nor the underletting of any lease by the official assignee of a bankrupt, or by the liquidator on behalf 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.

Division 3 - Relief from forfeiture

123. Interpretation. (1) The provisions of this Part apply to under-leases of land under the provisions of the Land Acts, The Miners' Homestead Leases Acts and The Mining Acts, but not to leases of such land, other than leases of land under Part XII of the Land Acts.

- (2) [cf. Eng. s.146(5); N. S. W. s.128] For the purposes of this Division -
"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.

124. Restriction on and relief against forfeiture. [Eng. s.146; N.S.W. s.129; cf. Qld. D.R.E. Act, 1867, ss.118-123; Equity Act, 1867, ss.63-68] (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant, obligation, 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 (1) hereof has been served by the lessor; or
- (b) that any such breach as is mentioned in subsection (1) 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 or obligation 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 licensed premises under the Liquor Act 1912-1970;
 - (iv) a house let as a dwelling-house;
 - (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 Form 9 of 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.

125. Power of court to protect under-lessee on forfeiture of superior leases. [Eng. s. 146(4); N.S.W. s. 130] (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.

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

The lessor shall be so entitled to recover whether the lessee has or has not rendered forfeiture unenforceable against him under subsection (2) of section 124 of this Act.

127. Relief against notice to effect decorative repairs. [Eng. s. 147] (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:-

- (a) 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;
- (b) to any matter necessary or proper -
 - (i) for putting or keeping the property in a sanitary condition; or
 - (ii) for the maintenance or preservation of the structure;

- (c) to any statutory liability to keep a house in all respects reasonably fit for human habitation;
- (d) 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.

128. Relief against loss of lessee's option. [cf. N.S.W. L.R.C.5] (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 (1) 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 (2) of section 124 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.

Division 4 - Termination of tenancies

129. Abolition of yearly tenancies arising by implication of law. [N.S.W. s. 67] (1) No tenancy from year to year shall, after the commencement of this Act, be implied by payment of rent; if there is a 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, and, 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 _____ 197 , or any date thereafter.

130. Notice of termination of tenancy. [cf. Ont. 1970 R.S.O., c. 236, s. 98]

(1) Subject to the other provisions of this Division, a weekly, monthly, yearly, or other periodic tenancy may be terminated by either the landlord or the tenant upon notice to the other and, unless otherwise agreed upon, the notice -

- (a) shall satisfy the requirements of section 131;
- (b) shall be given in the manner prescribed by section 132;
- (c) shall be given in sufficient time to provide the period of notice required by section 134, 135, or 136 as the case may be.

(2) Subject to section 129, any other kind of tenancy determinable on notice may, unless otherwise expressly agreed upon, be terminated as provided by section 131 and section 132.

(3) In this section "yearly tenancy" means a tenancy from year to year other than a tenancy from year to year arising by implication before the commencement of this Act.

131. Form and contents of notice. [cf. Ont. 1970 R. S. O., c. 236, s. 99]

(1) A landlord or a tenant may give notice to terminate either orally or in writing, but a notice by a landlord to a tenant shall not be enforceable under Division 5 of this Part unless it is in writing.

(2) A notice in writing -

- (a) shall be signed by the person giving the notice or by his agent;
- (b) shall identify the land or premises in respect of which the notice is given; and
- (c) shall state the date on which the tenancy is to terminate or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice.

(3) A notice may state both -

- (a) the date on which the tenancy is to terminate; and
- (b) that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice,

and if it does state both, and the date on which the tenancy is to terminate is incorrectly stated, the notice shall nevertheless be effective to terminate the tenancy on the last day of the period of the tenancy next following the giving of the notice.

(4) A notice need not be in any particular form, but a notice by a landlord to a tenant may be in Form 10 of the First Schedule with such variations or additions (if any) as may be requisite by reason of section 137; and a notice by tenant to landlord may be in Form 11 of the First Schedule.

132. Manner of giving notice. [cf. Ont. 1970 R. S. O., c. 236, s. 100; Qld. No. 12 of 1970, s. 20] (1) Notice to terminate shall be sufficiently given if delivered personally to the tenant or, as the case may be, to the landlord or his agent.

(2) Where the tenant cannot be given notice by reason of his absence from the land or premises, or by reason of his evading service, the notice may be given to the tenant -

- (a) by delivering it to some person apparently over the age of eighteen years and apparently residing on or in occupation of the land or premises; or
- (b) by delivering it to the person by whom the rent is usually paid, if such person is apparently over the age of eighteen years; or
- (c) by posting it up in a conspicuous place upon some part of the land or premises; or
- (d) by sending it by registered post to the tenant at the address where he resides.

(3) (a) Where a tenant has died and probate or letters of administration of his estate have not been granted, any notice to terminate which might have been given to the legal personal representative of the deceased tenant had probate or letters of administration of his estate been granted shall be sufficiently given if -

- (i) where any person is or persons are apparently residing on or in occupation of the land, it is delivered to any of such persons apparently over the age of eighteen years;

(ii) in any other case, it is advertised twice in a daily newspaper circulating in the district in which the land is situated.

(b) Where a proceeding for the recovery of the possession of land is taken in reliance on a notice to terminate given in a manner provided in subparagraph (i) of paragraph (a) of this subsection, any occupier of the land or other person claiming an interest in the land shall be entitled to be heard in the proceeding and the contesting of the proceeding shall not of itself be regarded as an act of administration or as inter-meddling in the estate of the deceased tenant or as constituting the person so contesting the proceeding an executor de son tort of the deceased tenant.

(4) Nothing in this section shall affect the right of a landlord to give notice to terminate otherwise than as provided in this section.

133. Notice to terminate weekly tenancy. [cf. Ont. 1970 R. S. O. c. 236, s. 101] (1) A notice to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on the last day of the following week of the tenancy.

(2) For the purposes of this section, "week of the tenancy" means the weekly period on which the tenancy is based and not necessarily a calendar week, and, unless otherwise expressly agreed upon, the week shall be deemed to begin on the day on which the rent is payable.

134. Notice to terminate monthly tenancy. [cf. Ont. 1970 R. S. O. c. 236, s. 102] (1) A notice to terminate a monthly tenancy shall be given on or before the last day of one month of the tenancy to be effective on the last day of the following month of the tenancy.

(2) For the purposes of this section, "month of the tenancy" means the monthly period on which the tenancy is based and not necessarily a calendar month, and, unless otherwise expressly agreed upon, the month shall be deemed to begin on the day on which the rent is payable.

135. Notice to terminate yearly tenancy. [cf. Ont. 1970 R. S. O. c. 236, s. 103.] (1) A notice to terminate a yearly tenancy shall be given on or before the first day of the period of six months ending with the last day of any year of the tenancy to be effective on the last day of that year of the tenancy.

(2) For the purposes of this section, "year of the tenancy" means the yearly period on which the tenancy is based and not necessarily a calendar year, and, unless otherwise expressly agreed upon, the year shall be deemed to begin on the day, or the anniversary of the day, on which the tenant first became entitled to possession.

136. Notice to terminate other periodic tenancy. (1) A notice to terminate a periodic tenancy other than a weekly, monthly, or yearly tenancy shall be given on or before the last day of any period of the tenancy to be effective on the last day of the following period of the tenancy.

(2) For the purposes of this section, "period of the tenancy" means the period on which the tenancy is based, and, unless otherwise expressly agreed upon, such period shall be deemed to begin on the day on which the rent is payable.

137. Termination of tenancy of dwelling-house. [cf. Qld. No.12 of 1970, s.18] (1) Subject to this section, a notice to terminate a tenancy shall not, if given by a landlord, be effective to terminate a tenancy of a dwelling-house unless it is given in writing on one or more of the following grounds -

- (a) that the tenant has failed to pay the rent in respect of a period of not less than fourteen days; or
- (b) that the tenant has failed to perform or observe some other term or condition of the tenancy and the performance or observance of that other term or condition has not been waived or excused by the landlord; or
- (c) that the tenant has failed to take reasonable care of the premises, or of any goods let therewith, or has committed waste; or
- (d) that the tenant has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers; or
- (e) that the tenant himself or any other person has been convicted during the currency of the tenancy of any offence arising out of the use of the premises for any illegal purpose or a court of competent jurisdiction has found or declared that the premises have, during the currency of the tenancy, been used for an illegal purpose; or
- (f) that the tenant has sublet the premises or some part thereof without the consent or approval of the landlord; or
- (g) that the tenant without just cause or excuse has parted with possession of the premises without the consent or approval of the landlord; or
- (h) that the tenant without just cause or excuse, not having parted with possession of the premises, has, without the consent or approval of the landlord ceased for a period exceeding three months to be a bona fide occupant of the premises; or
- (i) that the premises are reasonably required by the landlord for occupation by himself or by his spouse, a parent, child, brother or sister; or
- (j) that the landlord has agreed to sell the premises by an agreement which requires the purchaser to pay not less than one-fourth of the whole purchase price within twelve months from the date thereof and which requires the landlord to deliver vacant possession of the premises; or
- (k) that the premises have been condemned by or on behalf of the local authority having jurisdiction in respect of them and are reasonably required by the landlord for demolition.

In a proceeding before any court, where it is material to conclude whether a tenancy of a dwelling-house has been terminated by a notice to terminate, the notice shall not be held to be ineffective for that purpose by reason only of the fact that it was given on a ground that is not prescribed by this subsection if the court finds that the ground is a proper and sufficient ground on which to terminate the tenancy and is established on the evidence.

(2) This section applies only in respect of a tenancy of a dwelling-house other than a tenancy for a fixed term and applies notwithstanding any agreement to the contrary.

(3) In this section "dwelling-house" means premises let principally for the purpose of residence: The term includes any land and appurtenances let with any premises that are a dwelling-house within the foregoing provisions

of this definition: The term does not include -

- (a) licensed premises within the meaning of the Liquor Act 1912-1970;
- (b) the premises of a club that holds a registered club licence under the Liquor Act 1912-1970;
- (c) premises which are ordinarily leased for holiday purposes;
- (d) premises of which the tenant is mortgagor under a mortgage in favour of, or purchaser under a contract for the sale by, the landlord in terms of which the mortgagor or purchaser agrees or is required to attorn tenant to the landlord.

138. Tenants and other persons holding over to pay double the yearly value. [cf. Landlord and Tenant Act 1730, s.1 (4 Geo. II, c.28); Vict. No. 6285, s.9] Where any tenant for life or lives or for years, including a tenant from year to year or other person who is or comes into possession of any land by from or under or by collusion with such tenant, 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.

139. Tenant holding over after giving notice to be liable for double rent. [cf. Distress for Rent Act 1737, s.18 (11 Geo. II, c.19); Vict. No. 6285, s.10; cf. Qld. D. R. E. Act 1867, s.38] 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.

Division 5 - Summary recovery of possession

140. Interpretation. [cf. Qld. No.12 of 1970, s.3] In this Division unless the context or subject-matter otherwise indicates or requires -

"agent" means -

- (a) a person usually employed by the landlord in the letting of the land or in the collection of the rents thereof;
- (b) a person specially authorised to act in the particular matter by writing under the hand of the landlord;
- (c) a solicitor authorised to act on behalf of the landlord;

"court" means a Magistrates Court;

"defendant" means the person alleged in a complaint laid pursuant to this Act to be a person who fails to deliver up possession of land;

"justice" means a justice of the peace for Queensland;

"Magistrates Court" means a Magistrates Court constituted under The Justices Acts 1886 to 1968;

"Magistrates Court District" means a district for the purposes of Magistrates Courts appointed under The Justices Acts 1886 to 1968 or, pursuant to The Decentralization of Magistrates Courts Act of 1965, deemed to be such a district.

141. Summary proceedings for recovery of possession. [cf. Qld. S. E. Act 1867, s. 2] (1) When the term or interest of the tenant of any land held by him as tenant for any term of years or for any lesser estate or interest whether with or without being liable for payment of rent -

- (a) has expired by effluxion of time; or
- (b) has been determined by notice to terminate or demand of possession -

and the tenant or any person claiming under him and in actual occupation of the land or any part thereof fails to deliver up possession of such land or part, the landlord may by complaint in accordance with this Division proceed to recover possession of that land or part thereof.

(2) The power to recover possession of any land or part thereof conferred by this Division shall be in addition to, and not, except where otherwise provided, in derogation from, any other power, right, or remedy of the landlord.

142. Mode of proceeding. [Qld. No. 12 of 1970, s. 4] (1) Subject to this Act proceedings under this Division for the recovery of possession of any land referred to in section 141 may be heard and determined by a Magistrates Court in a summary way under The Justices Acts 1886 to 1968, upon the complaint in writing of the landlord or his agent.

(2) The complaint shall be heard and determined at a place where it could be heard and determined were it a complaint of a breach of duty committed in the Magistrates Courts District within which the land concerned is situated or, where the land concerned is situated in more than one such district, in any of those districts.

143. Contents of complaint. [Qld. No. 12 of 1970, s. 5] A complaint under this Division for the recovery of the possession of land shall state -

- (a) the description in brief of the land or premises or such other particulars as are sufficient to identify the land;
- (b) where the land is situated;
- (c) the landlord of whom the land was held;
- (d) that the land was held under a tenancy and (if practicable) the nature of the tenancy under which the land was so held;
- (e) the date on which the tenancy expired by effluxion of time or, as the case may be, was determined by a notice to terminate;
- (f) that the defendant fails to deliver up possession of the land.

A complaint may be in or to the effect of the form of complaint set out in Form 12 of the First Schedule to this Act.

144. Summons upon complaint for recovery of possession of land. [Qld. No. 12 of 1970, s. 6] (1) Upon complaint in accordance with section 143 of this Act signed by the complainant or his agent a justice may issue his summons directed to the defendant requiring him to appear on the day and at the time stated in the summons at the Magistrates Court at the place stated

in the summons to answer the complaint and to show cause why a warrant to eject him from the land should not be issued.

Such summons may be in or to the effect of the form of summons set out in Form 13 of the First Schedule to this Act.

(2) Every summons shall be indorsed on its face with a notice directed to the defendant that unless the defendant, not less than three days before the day on which he is required by the summons to appear, gives written notice to the clerk of the court whereat he is summoned to appear that he wishes to appear to answer the complaint, the complaint may be heard and determined in his absence and evidence by affidavit on behalf of the complainant may be admitted.

(3) The summons shall be served within a reasonable time before the time appointed for the defendant to appear and in the manner provided by The Justices Acts 1886 to 1968, provided that, where it is made to appear by evidence or affidavit (including affidavit founded upon information and belief and stating the sources of such information and grounds of belief) to the court before which the defendant is required by the summons to appear that for any cause the service of a summons issued and complaint made pursuant to this Division cannot be effected in the manner provided by those Acts, the court may -

- (a) make such order for substituted or other service as it thinks proper, in which case the summons and complaint served in the manner provided by such order shall be deemed to have been duly served on the defendant; or
- (b) upon being satisfied that the summons and complaint have by any means come to the knowledge of the defendant, order that the defendant be deemed to have been duly served therewith and on the making of such order may deal with the complaint as if such complaint and summons had been duly served pursuant to The Justices Acts 1886 to 1968.

145. Hearing and determination. [cf. Qld. No.12 of 1970, s.7] (1) At the hearing and upon proof of -

- (a) the tenancy;
- (b) the expiry or determination, by notice to terminate or demand of possession, of the tenancy;
- (c) the lawful right of the landlord as against the defendant to possession;
- (d) the failure of the defendant to deliver up possession; and
- (e) (where the defendant does not appear in person or by counsel or solicitor) due service of the summons upon the defendant a reasonable time (being in no case less than seven days) before the time appointed for his appearance,

the court, unless the defendant appears and shows to its satisfaction reasonable cause why such a warrant should not be issued, or the court is otherwise satisfied that there is such cause, may order that a warrant be issued against the defendant requiring and authorising any person to whom it is addressed to take and give possession of the land the subject of the complaint to the landlord or, where the complaint was made by an agent, such agent.

(2) Where a defendant does not, at least three days before the day on which he is required by the summons to appear, give written notice to the clerk of the court whereat he is summoned to appear, that he wishes to appear to answer the complaint, and proof is made to the court upon oath,

or by deposition made in manner prescribed by The Justices Acts 1886 to 1968, or by admission of the defendant, of due service of the summons upon the defendant a reasonable time (being in no case less than seven days) before the time appointed for his appearance, then -

- (a) an affidavit or affidavits, made by some person or persons having personal knowledge of the facts therein deposed to and deposing to all or any of the matters prescribed in subsection (1) of this section, shall, until the contrary is shown, be accepted by the court as prima facie evidence of all or, as the case may be, each of such matters; and
- (b) the court shall hear and determine the matter of the complaint upon all the evidence properly adduced at the hearing or any adjourned hearing of the complaint, including any evidence adduced by or on behalf of the defendant, and any further evidence (which the complainant shall be at liberty to adduce) in rebuttal or in support of the complaint.

146. Warrant for possession. [cf. Qld. No.12 of 1970, s.8] (1) The warrant issued by order of the court shall be in the form set out in Form 14 of the First Schedule to this Act, or in a form to the like effect, may be issued by the court (or, after the case has been heard and determined, by the clerk of the court), and shall require and authorise any person to whom it is addressed, within the period therein specified (not being more than three months from the date of the order), to enter (by force if necessary) into and upon the land therein specified and to eject therefrom the defendant and all persons claiming under or through him together with his or their goods and effects, and to give possession of the same to the landlord or, as the case requires, his agent.

(2) Such warrant shall be sufficient authority to any person to whom it is addressed to enter (by force if necessary) into and upon the land therein specified, with such assistants as he deems necessary, to eject therefrom the defendant and all persons claiming under or through him together with his or their goods and effects, and to give possession to the landlord or, as the case requires, his agent accordingly.

(3) Such warrant may be executed not only against the defendant but also against every person claiming under or through him who is in actual occupation of the land therein specified or any part thereof and for this purpose a person whose occupation is referable to a tenancy held of the defendant (whether the tenancy was created before or after the commencement of the proceeding out of which the warrant was issued) shall be deemed to claim under the defendant notwithstanding that such tenancy has expired by effluxion of time, has been determined by a notice to terminate, or has been otherwise terminated.

(4) Such a warrant issued in relation to a building, or a unit or part of a multiple house or other building, shall be sufficient authority to any person to whom it is addressed to pass (by force if necessary), with such assistants as he thinks necessary, through, along, across, over or under any land (including in the case of any such unit or part, any other part of the multiple house or other building in which it is comprised) ordinarily used as a means of access to such building, or unit or part.

(5) No entry upon such a warrant shall be made on a Sunday, Good Friday, Christmas Day or Anzac Day, or at any time except between the hours of nine o'clock in the morning and four o'clock in the afternoon.

(6) Where the complaint has been heard and determined ex parte such a warrant shall not be issued within seven days after the determination.

(7) Where the circumstances of the case make it appear to the court proper so to do, the court may, upon making an order that such a warrant be issued, further order that the issue of the warrant be postponed for such time (not exceeding fifteen clear days from the date of the adjudication) and on such conditions (if any) as appear to it just and are specified in the order, whereupon the warrant shall not be issued within such time while such conditions are complied with.

Notwithstanding a postponement of the issue of a warrant pursuant to this subsection the maximum period within which the warrant, when issued, may be executed shall not exceed three months from the date on which was made the order that the warrant be issued.

147. Arrears of rent, etc. [cf. Qld. No. 12 of 1970, s. 9] (1) In a complaint under this Division for the recovery of the possession of land, it may be joined as a further matter of complaint that the defendant is indebted to the landlord for rent or mesne profits, or both, in respect of the land the subject of the complaint.

Such further matter of complaint shall be set out in a separate paragraph in the complaint.

(2) In respect of such further matter of complaint the same particulars of the complainant's claim for rent or mesne profits, or both, shall be supplied and served as would be required if the said claim were being made by way of a plaint filed in a Magistrates Court exercising jurisdiction under The Magistrates Courts Acts 1921 to 1964.

(3) In any case where the court orders that the further matter of complaint be heard separately it may, by the same or any subsequent order, give directions for the conduct of the proceedings in relation thereto or may order that the said proceedings be carried on in the same manner as if the said claim were being made by way of a plaint filed in a Magistrates Court exercising jurisdiction under The Magistrates Courts Acts 1921 to 1964.

(4) Where the matters of complaint are heard together, if, pursuant to subsection (2) of section 145 of this Act, the matters prescribed by subsection (1) of that section may be proved by affidavit, the amount of indebtedness the subject of the further matter of complaint may also be proved by affidavit.

(5) In respect of the further matter of complaint, the court shall order the defendant to pay to the landlord such amount, if any, (but not exceeding one thousand two hundred dollars) as it determines to be payable and unpaid in respect of the indebtedness the subject thereof when it makes the determination.

An order made by a court pursuant to this subsection shall, for the purposes of the enforcement thereof, be deemed to have been made by a Magistrates Court in the exercise of its jurisdiction under The Magistrates Courts Acts 1921 to 1964, and shall be enforceable accordingly, and not otherwise:

Provided however that where the matters of complaints are heard and determined together ex parte action to enforce the order made in respect of the further matter of complaint shall not be taken within seven days after the determination.

(6) A postponement of the issue of a warrant pursuant to subsection (7) of section 146 of this Act shall not affect any order for payment made pursuant to this section.

148. Rehearing where proof made by affidavit. [cf. Qld. No.12 of 1970, s10] (1) Where, in default of appearance of the defendant at the time and place appointed by the summons for hearing and determining the complaint, or at any time or place to which the hearing is adjourned, the court has, upon proof by affidavit of the matters required by subsection (1) of section 145 of this Act to be proved, ordered that the warrant mentioned in that subsection be issued, a Magistrates Court at the place where the order was made may, upon application in that behalf made by the defendant or by his counsel or solicitor, within seven days after the date on which the order was made, if in its opinion there is a proper reason for so doing, grant a re-hearing of the complaint upon which the order was made on such terms and subject to the payment of such costs as it thinks fit.

(2) Upon and by virtue of the grant of a re-hearing -

- (a) subject to subsection (4) of this section, the order for the issue of a warrant made upon the first hearing and any warrant issued thereunder shall cease to have effect;
- (b) the court may, with the consent of the complainant, proceed with the re-hearing forthwith or it may and, if the complainant does not consent to the court proceeding with the re-hearing forthwith, shall set down the re-hearing for a later date;
- (c) on the re-hearing, the complaint shall be re-heard and re-determined as if the re-hearing were the original hearing and determination.

(3) Upon the re-hearing proof shall not be made by affidavit of any of the matters required by subsection (1) of section 145 of this Act to be proved.

(4) If the defendant when called does not appear at the time and place appointed for the re-hearing, the court, if it thinks fit, may without re-hearing the complaint order that the original order (and where applicable warrant) be restored and such order (and, where applicable, warrant) shall be restored to effect accordingly and shall be deemed to have had force and effect on and from the date when the order was first made or, in the case of such warrant, it was first issued:

Provided however that in the case of such a warrant the time thereby limited for its execution shall begin to run on and from the date of the order restoring it to effect.

(5) (a) Where in the case of a complaint containing a further matter of complaint pursuant to section 147 of this Act, the matters of complaint have been heard together, then upon and by virtue of the grant of a re-hearing of the complaint the order, if any, made against the defendant in respect of such further matter of complaint shall, subject to paragraph (b) of this subsection, cease to have effect and upon the re-hearing such further matter of complaint shall be re-heard and re-determined as if the re-hearing were the original hearing and determination thereof.

(b) If, pursuant to subsection (4) of this section, the court orders the original order for the issue of a warrant made upon the complaint to be restored the order, if any, made against the defendant in respect of the further matter of complaint shall, without any order of the court be also restored to effect:

Provided that the court, upon the application of the complainant and upon proof, which may be by affidavit, of the amount payable and unpaid at the date it restores the order for the issue of a warrant made upon the original complaint, may vary the order made in respect of the further

matter of complaint so as to require thereby the payment of such amount.

149. Court's powers in proceeding under this Division. [cf. Qld. No. 12 of 1970, s. 11] The powers conferred on a court by this Division are in addition to the powers (including any power of amending a complaint) of the court under The Justices Acts 1886 to 1968.

In respect of a proceeding under this Division upon a complaint that includes a claim for the recovery of land the court shall have and may exercise all or any of its powers as if the proceeding were upon a complaint for a breach of duty.

In respect of a claim for rent or mesne profits made before it by way of complaint pursuant to this Division the court shall have and may exercise all or any of the powers conferred by The Magistrates Courts Acts 1921 to 1964 on a Magistrates Court constituted by the person or persons who constitute the court in the proceeding in which the claim is made.

An order made in a proceeding under this Division for the payment of money (including by way of costs) shall, for the purposes of the enforcement thereof, be deemed to have been made by a Magistrates Court in the exercise of its jurisdiction under The Magistrates Courts Acts 1921 to 1964 and shall be enforced accordingly and not otherwise.

150. Protection of justices, etc. [cf. Qld. No. 12 of 1970, s. 12] An action or prosecution shall not be brought against -

- (a) a justice who constituted a court which issued a warrant pursuant to this Division;
- (b) a clerk of the court who issued a warrant pursuant to an order of a court made under this Division;
- (c) a person by whom any such warrant was executed,

on account of the issue or execution of the warrant by reason that the landlord by or on whose behalf the warrant was obtained had no lawful right to possession of the land for the recovery of which the warrant was issued.

151. Protection of landlord entitled to possession. [cf. Qld. No. 12 of 1970, s. 13] In all cases where at the time of the execution of a warrant issued pursuant to this Division the landlord by or on whose behalf the warrant was obtained, had as against the person in possession of the land lawful right to the possession thereof, then neither such landlord, nor his agent nor any other person acting on his behalf, shall be a trespasser by reason merely of any irregularity or informality in the manner of obtaining possession under the authority of this Division but the party aggrieved may, if he thinks fit, bring an action for any such irregularity or informality.

152. Persons lacking right to possession not protected. [cf. Qld. No. 12 of 1970, s. 14] (1) Neither a provision of this Division nor a warrant to take and give possession of land issued pursuant to this Division shall be construed to protect a landlord by whom or on whose behalf the warrant was obtained from action brought against him on account of entry upon or taking possession of the land or any part thereof by virtue of the warrant where the landlord, at the time the warrant was executed, had not lawful right to possession of the land or part as against the person in possession thereof at that time.

(2) Without prejudice to the rights to which any person may be entitled as out-going tenant, where the landlord had not such right to possession he shall be liable in respect of the entry and taking possession as if the same were made or effected by him or at his direction without the authority of the warrant.

Division 6 - Agricultural holdings

153. Application. [cf. Qld. 5 Ed. 7, No. 11, s. 3] (1) Except where otherwise provided, this Division -

- (a) applies to any contract of tenancy entered into after the commencement of this Act;
- (b) does not apply to any lease or licence from the Crown under any law in force for the time being relating to the leasing and occupying of Crown land.

(2) [cf. N. S. W. No. 55 of 1941, s. 35] A provision in a contract of tenancy, or in any other agreement made at the time the contract of tenancy is entered into, is unenforceable in so far as it purports to take away or limit the right of a tenant to compensation in respect of any improvement, unless the contract of tenancy or such other agreement -

- (a) specifies the particular improvement or improvements;
- (b) provides that, or to the effect that, the tenant is required to make such improvement or improvements; and
- (c) specifies what compensation (if any) shall be payable in respect thereof.

(3) The provisions of this Division are in addition to any other right, power or privilege of a tenant, whether arising by agreement or otherwise.

154. Interpretation. [cf. Qld. 5 Ed. 7, No. 11, s. 2; Eng. 46 & 47 Vic. c. 61, s. 61] In this Division, unless the context otherwise indicates, the following terms have the meanings respectively set against them, that is to say -

"compensation" - compensation payable under this Division, or compensation payable under any agreement which by this Division is deemed to be substituted for compensation under this Division;

"contract of tenancy" - a letting of a holding for a term, or for lives, or for lives and years, or from year to year, under a contract entered into at any time after the 1st day of January, 1905;

"determination of tenancy" - the cesser of a tenancy by effluxion of time or from any other cause;

"holding" - any parcel of agricultural land (which expression includes land suitable for dairying purposes) of an area of not less than five acres held by a tenant under a landlord;

"landlord" - the person for the time being entitled to possession of a holding, as the absolute owner thereof, subject to a contract of tenancy; the expression "absolute owner" means the owner or person capable of disposing by appointment or otherwise of the fee simple or whole interest in a holding, although the land or his interest therein is mortgaged or encumbered or charged;

"tenant" - the person in possession of a holding under a contract of tenancy.

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Division.

155. Tenant's property in fixtures. [cf. Eng. 11 & 12 Geo. 6, c. 63, s. 13; N. S. W. No. 55 of 1941, s. 21] (1) Subject to the provisions of this section -

- (a) any engine, machinery, fencing or other fixture affixed to a holding by the tenant thereof; and
- (b) any building (other than one in respect of which the tenant is entitled to compensation under this Act or otherwise) erected by him on the holding,

not being a fixture affixed or, as the case may be, a building erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, as the case may be, shall be removable by the tenant at any time during the continuance of the tenancy or before the expiration of two months from the termination of the tenancy, and shall remain his property so long as he may remove it by virtue of this subsection.

(2) The right conferred by the foregoing subsection shall not be exercisable in relation to a fixture or building unless the tenant -

- (a) has paid all rent owing by him and has performed or satisfied all his other obligations to the landlord in respect of the holding; and
- (b) has, at least one month before both the exercise of the right and the termination of the tenancy, given to the landlord notice in writing of his intention to remove the fixture or building.

(3) If, before the expiration of the notice aforesaid, the landlord gives to the tenant a counter-notice in writing electing to purchase a fixture or building comprised in the notice, subsection (1) of this section shall cease to apply to that fixture or building, but the landlord shall be liable to pay to the tenant the fair value thereof to an incoming tenant of the holding.

(4) In the removal of a fixture or building by virtue of subsection (1) of this section, the tenant shall not do to any other building or other part of the holding any avoidable damage, and immediately after the removal shall make good all damage so done that is occasioned by the removal.

(5) This section applies -

- (a) to a contract of tenancy entered into after the commencement of this Act;
- (b) subject to any agreement to the contrary contained in the contract of tenancy.

156. Tenant's right to compensation. [cf. Qld. 5 Ed. 7, No. 11, s. 4; Eng. 63 & 64 Vic. c. 50, s. 1; S.A. No. 521, s. 6] When a tenant makes on his holding any of the improvements mentioned in the first or second part of the Third Schedule to this Act, he shall be entitled, on quitting his holding at the determination of his tenancy, to obtain from the landlord compensation for such of those improvements as are not removed by him pursuant to section 155 or otherwise.

157. Intended improvements. [cf. Qld. 5 Ed. 7, No. 11, s. 4; Eng. 46 & 47 Vic. c. 61, s. 4; S.A. No. 521, ss. 7, 9, 10; Third Schedule] (1) Notwithstanding the provisions of the last preceding section, compensation shall not be payable in respect of any improvement mentioned in the first part of the Third Schedule to this Act, unless the tenant has, not more than three months nor less than two months before beginning to make such improvement, given to the landlord, or to his agent duly authorised in that behalf, notice in writing of his intention to make the improvement and of the manner in which he proposes to do the intended work.

(2) The landlord may within one month from the giving of such notice serve upon the tenant a dissent in writing to such intended improvement and require the matter in difference to be referred to arbitration, and thereupon a reference may be had in manner provided by this Division.

If the arbitrator is satisfied that any improvement specified in the tenant's notice will increase the value of the holding to an incoming tenant and will be a suitable and desirable improvement, he shall make an award accordingly, and the tenant shall be entitled to compensation for every improvement which he makes in accordance with such award.

If the arbitrator is satisfied that such improvement will not increase the value of the holding to an incoming tenant, and will be an unsuitable and undesirable improvement, the tenant shall not, if he executes such improvement, be entitled to any compensation in respect thereof.

(3) If no agreement is entered into as hereinafter provided within one month after such notice has been given, or if there is a reference to arbitration, then within one month after the award has been made the landlord may, unless the notice of the tenant is previously withdrawn, undertake to make the improvement himself, and may make the same accordingly in any reasonable and proper manner he thinks fit, and may charge the tenant interest at the rate of five dollars per centum per annum on the outlay incurred in making the improvement.

Such interest shall be payable and recoverable as rent in the same manner and at the same time as the rent in respect of the holding is payable and recoverable.

(4) In default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time, the tenant may make the improvement himself, and shall in that case be entitled to compensation in respect thereof.

158. Agreements, etc. [cf. Qld. 5 Ed. 7, No. 11, s. 6; Eng. 46 & 47 Vic. c. 61, s. 4] The landlord and tenant may at any time -

- (a) dispense (whether expressly, by conduct, or otherwise) with any notice required by this Division to be given by either party to the other;
- (b) subject to section 153(2), enter into an agreement between themselves as to the party by whom and the mode in which any improvement is to be made, or as to the amount and mode and time of payment of compensation or other moneys to be paid to the tenant or to the landlord under this Division.

Any compensation payable under such agreement shall be deemed to be substituted for compensation under this Division.

159. Arbitration. [cf. Qld. 5 Ed. 7, No. 11, s. 7; Fourth Schedule] (1) In the absence of an agreement between the parties, every matter or question arising under this Division shall be determined by arbitration in accordance with the provisions set out in the Fourth Schedule to this Act.

(2) An arbitration shall, unless the parties otherwise agree, be before a single arbitrator.

160. Notice of intended claim. [cf. Qld. 5 Ed. 7, No. 11, s. 8] A tenant shall not be entitled to compensation, unless two months at least before the determination of his tenancy he gives notice in writing to the landlord claiming compensation.

When a tenant gives such a notice, the landlord may, within one month thereafter, give a notice in writing to the tenant claiming any set off.

Every notice under this section shall state as far as reasonably may be the particulars and amount of the intended claim:

Provided that non-compliance by either party with any of the provisions of this section shall not deprive such party of any rights under this Division if the arbitrator is of opinion that there was reasonable excuse for such non-compliance.

161. Rules for ascertaining amount of compensation. [cf. Qld. 5 Ed. 7, No 11, s. 9; Eng. 63 & 64 Vic. c. 50, ss. 1, 2] (1) In ascertaining the amount of compensation payable to the tenant in respect of any improvements made by him, the arbitrator shall be guided by the following rules.

(2) The amount to be awarded shall be such sum as fairly represents the value of the improvements to an incoming tenant.

(3) There shall not be taken into account as part of such improvements what is justly due to the inherent capabilities of the soil.

(4) There shall be taken into account by way of set off against such improvements -

- (a) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant making the improvements;
- (b) any sum due to the landlord from the tenant for rent or otherwise;
- (c) compensation to the landlord by way of damages for any waste, or for any breach of covenant, contract, or agreement connected with the tenancy committed or permitted by the tenant, but the landlord shall not be entitled to have taken into account any waste or breach by the tenant in relation to a matter of husbandry or cultivation committed or permitted more than two years before the determination of the tenancy; and
- (d) any rates, taxes, or assessments due in respect of the holding to which the tenant is liable as between himself and the landlord.

162. Recovery of compensation. [cf. Qld. 5 Ed. 7, No. 11, s. 10; Eng. 46 & 47 Vic. c. 61, s. 24] Where any money agreed to be paid for compensation, costs, or otherwise is not paid within fourteen days after the time when it is agreed to be paid, it shall be recoverable upon an order made by a judge of a District Court as money ordered to be paid by a District Court in its ordinary jurisdiction is recoverable.

Where any money awarded to be paid for compensation, costs, or otherwise is not paid in accordance with such order, a copy of such award may be filed in the office of the registrar of the nearest District Court, and thereupon such order may be enforced in all respects as if it were judgment of such District Court for the amount due, together with the costs of and incidental to enforcing the same.

163. Landlord who is a trustee. [cf. Qld. 5 Ed. 7 No. 11, s. 11; Eng. 46 & 47 Vic. c. 61, s. 31] (1) Where the landlord is a person entitled to receive the rents and profits of any holding as a trustee or otherwise than for his own benefit, the amount due from such landlord in respect of compensation, costs, or otherwise shall not be recoverable personally against him, nor shall he be under any personal liability to pay such amount, but the same shall be a charge on and recoverable against the holding.

If such landlord has not paid to the tenant the amount due to him within fourteen days after the time when such amount was agreed or awarded to be paid, then the tenant shall be entitled to obtain from the court or a Judge thereof an order in favour of himself, his executors, administrators, and assigns charging the holding to the amount due to him together with all costs properly incurred in obtaining the charge.

(2) Such landlord shall, either before or after payment to the tenant of the amount due to him, be entitled to obtain from the Court or a Judge thereof an order charging the holding to the amount to be paid or paid, as the case may be, to the tenant, together with all costs properly incurred in obtaining the charge.

(3) Such Court or Judge may, by such order or by any subsequent order, give all directions necessary for securing full legal effect to any such charge, and every such order shall be obeyed.

164. Compensation to tenants, when mortgagee in possession. [cf. Qld. 5 Ed. 7, No. 11, s. 12; Eng. 53 & 54 Vic. c. 57, s. 2] (1) Where a tenant holds land under a contract of tenancy with the mortgagor, and such land is mortgaged at the time when such contract was made, or is subsequently mortgaged, and the mortgagee enters into possession of the holding, then the tenant shall, as against such mortgagee in possession, be entitled to any compensation which is or would be due to the tenant from the mortgagor.

(2) Before such mortgagee deprives the tenant of possession of the holding otherwise than in accordance with such contract, he shall give to the tenant six months' notice in writing of his intention so to deprive him.

(3) In ascertaining the amount of such compensation payable by the mortgagee the arbitrator shall have regard to the same rules as are herebefore provided for the ascertainment of compensation payable by a landlord, with this addition - that compensation shall be paid to the tenant for his crops, and for any expenditure upon the land which he has made in the expectation of holding the land for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being deprived of possession.

(4) Save as aforesaid, such compensation shall be determined and recovered in like manner as compensation under this Act, and for all such purposes the expression "landlord", wherever used in this Act, shall be deemed to include such mortgagee in possession.

165. Incoming tenant's claim for compensation reserved. [cf. Qld. 5 Ed. 7, No. 11, s. 13; Eng. 46 & 47 Vic. c. 61, s. 56] Where an incoming tenant has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation in respect of the whole or part of any improvement, such incoming tenant shall be entitled, on quitting the holding, to obtain compensation in respect of such improvement or part in like manner (if at all) as the outgoing tenant would have been entitled if he had remained tenant of the holding, and had quitted the holding at the time when the incoming tenant quits the same.

166. Change of tenancy not to affect right to compensation. [cf. Qld. 5 Ed. 7 No. 11, s. 14; Eng. 46 & 47 Vic. c. 61, s. 58] A tenant who has remained on his holding during a change or changes of tenancy shall not thereafter, on quitting his holding at the determination of a tenancy, be deprived of his right to compensation in respect of improvements by reason only that such improvements were made by him during a former tenancy or tenancies, and not during the tenancy at the determination of which he is quitting.

167. Power of entry. [cf. Qld. 5 Ed. 7, No. 11, s. 17; Eng. 63 & 64 Vic. c. 50 s. 5] The landlord of a holding, or any person authorised by him, may at all reasonable times enter on the holding, or any part of it, for the purpose of viewing the state of the holding.

PART IX - POWERS OF ATTORNEY

168. Application of Part. [cf. N.S.W. s. 158] (1) Except where otherwise provided the provisions of this Part apply only to powers of attorney created after the commencement of this Act.

(2) This Part shall extend to powers of attorney authorising, whether expressly or in general terms, dealings with land under the provisions of The Real Property Acts and with land under the provisions of the Land Act.

169. Execution of powers of attorney. [cf. Law Com No. 30, cl. 1] (1) An instrument creating a power of attorney shall be signed and sealed by, or by direction and in the presence of, the donor of the power.

(2) Subject to subsection (3) of this section such an instrument shall be deemed to be signed and sealed if it is executed by the donor in accordance with section 45 of this Act.

(4) This section is without prejudice to any requirement in or having effect under any other Act as to witnessing of instruments creating powers of attorney and does not affect the rules relating to the execution of instruments by bodies corporate.

170. Form and revocation of power of attorney. [cf. Law Com. No. 30, cl. 9]

(1) A general power of attorney in Form 15 of the First Schedule, or in a form to the like effect, shall operate to confer -

(a) on the donee of the power; or

(b) if there is more than one donee, on the donees acting jointly or acting jointly or severally, as the case may be,

authority to do on behalf of the donor anything which he can lawfully do by an attorney.

(2) A general or other power of attorney may, if that power is or becomes revocable, be revoked by instrument in Form 16 of the First Schedule, or in a form to the like effect, executed in like manner to the instrument creating the power.

171. Registration of powers and instruments revoking powers. [cf. N.S.W. s. 163] (1) An instrument creating a power of attorney may be registered.

(2) Any dealing with land purporting to take effect pursuant to the exercise of a power of attorney shall have no force or validity unless the instrument creating the power is registered; but upon registration any such disposition shall take effect as if the instrument creating the power had been registered before the instrument purporting to give effect to such dealing.

(3) An instrument revoking a power of attorney may be registered.

(4) Subject to any other Act, where an instrument creating a power of attorney has been registered, it shall not, unless a different intention appears from the instrument, cease to confer on the donee of the power any authority to deal with such land on behalf of the donor of the power until an instrument revoking that power has been registered.

172. Execution of instruments etc. by donee of power of attorney. [cf. Law Com. No. 30, cl. 6; Eng. s. 123] (1) The donee of a power of attorney may, if he thinks fit -

(a) execute any instrument with his own signature and, where sealing is required or employed, with his own seal; and

(b) do any other thing in his own name,

by the authority of the donor of the power; and any instrument executed or thing done in that manner shall be as effective as if executed or done by the donee with the signature and seal, or, as the case may be, in the name of, the donee of the power.

(2) An instrument to which subsection (3) or (4) of section 46 of this Act applies may be executed either as provided in those subsections or as provided in this section.

(3) This section applies to a power of attorney whether created before or after the commencement of this Act.

173. Powers of attorney given as security. [cf. Law Com. No. 30, cl. 4]

(1) Where a power of attorney is expressed to be irrevocable and is granted to secure -

(a) a proprietary interest of the donee of the power; or

(b) the performance of an obligation owed to the donee -

then, so long as the donee has that interest or the obligation remains undischarged, the power shall not be revoked -

(i) by the donor without the consent of the donee; or

(ii) by the death of incapacity or bankruptcy of the donor, or, if the donor is a body corporate, by its winding up or dissolution.

(2) A power of attorney given to secure a proprietary interest may be given to the person entitled to the interest and the persons deriving title under him to that interest, and those persons shall be duly constituted donees of the power for all purposes of the power but without prejudice to any right to appoint substitutes given by the power.

(3) The power of a registered proprietor under section 108 of The Real Property Acts to revoke a power of attorney in accordance with that section shall be subject to the provisions of this section.

174. Protection of donee and third persons where power of attorney is revoked. [cf. Law Com. No. 30, cl. 5; cf. Qld. Mercantile Acts, 1867 to 1896, s.2] (1) A donee of a power of attorney who acts in pursuance of the power at a time when it has been revoked shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) if at that time he did not know that the power had been revoked.

(2) Where a power of attorney has been revoked and a person, without knowledge of the revocation, deals with the donee of the power, the transaction between them shall, in favour of that person, be as valid as if the power had then been in existence.

(3) Where the power is expressed in the instrument creating it to be irrevocable and to be given by way of security then, unless the person dealing with the donee knows that it was not in fact given by way of security, he shall be entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the donee and shall accordingly be treated for the purposes of subsection (2) of this section as having knowledge of the revocation only if he knows that it has been revoked in that manner.

(4) Where the interest of a purchaser depends on whether a transaction between the donee of a power of attorney and another person was valid by virtue of subsection (2) of this section, it shall, subject to paragraph (a) of subsection (5) of this section, be conclusively presumed in favour of the purchaser that that person did not at the material time know of the revocation of the power if -

- (a) the transaction between that person and the donee was completed within twelve months of the date on which the power came into operation; or
- (b) that person makes a statutory declaration, before or within three months after the completion of the purchase, that he did not at the material time know of the revocation of the power.

(5) For the purpose of this section -

- (a) the donee of the power of attorney, and any person dealing with him, shall, in relation to any dealing with land purporting to take effect in pursuance of the exercise of a power of attorney registered in accordance with section 171, be deemed to have knowledge of revocation of that power from the time at which an instrument of revocation of the power is registered;
- (b) without prejudice to subsection (3) of this section, knowledge of the revocation of a power of attorney includes knowledge of the occurrence of any event (such as the death of the donor) which has the effect of revoking the power.

175. Proof of instruments creating powers. (1) The contents of an instrument creating a power of attorney may be proved by means of a copy which -

- (a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and
- (b) contains the following certificate or certificates signed by the donor of the power or by a solicitor or stock broker, that is to say -
 - (i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and
 - (ii) if the original consists of two or more pages, a certificate at the end of each page of the copy to the effect that it is a true and complete copy of the corresponding page of the original.

(2) Where a copy of an instrument creating a power of attorney has been made which complies with subsection (1) of this section, the contents of the instrument may also be proved by means of a copy of that copy if the further copy itself complies with that subsection, taking references in it to the original as references to the copy from which the further copy is made.

(3) In this section "stock broker" means a stock broker as defined in the Securities Industries Act, 1971.

(4) This section is in addition and without prejudice to section 122 of The Real Property Acts, and to any other method of proof authorised by law.

PART X - INCORPOREAL HEREDITAMENTS AND APPURTENANT RIGHTS

176. Prohibition upon creation of rent charges. (1) No rent charge shall be created after the commencement of this Act, and any rent charge so created shall be void and of no effect.

(2) Nothing in this section applies to the creation, in respect of registered land, of an encumbrance within the meaning of The Real Property Acts, 1861 to 1963.

177. Release of part of land subject to rent charge. [cf. N.S.W. s.18; Eng. s.70; Vic. s.70; Qld. D.R.E. Act, s.40] The release from a rent charge of part of the land charged therewith shall not extinguish the whole rent charge, but shall operate only to bar the right to recover any part of the rent charge out of the land released without prejudice nevertheless to the rights of all persons interested in the land remaining unreleased and not concurring in or confirming the release.

178. No presumption of right to access or use of light or air. [cf. N.S.W. s.179; Vic. ss.196,197; Qld. Ancient Lights Declaratory Act, 1906] From and after the 1st day of March, 1907, no right to the access or use of light or air to or for any building shall be deemed to exist, or to be capable of coming into existence, by reason only of the enjoyment of such access or use for any period or of any presumption of lost grant based upon such enjoyment.

179. Right to support of land and buildings. For the benefit of all interests in other land which may be adversely affected by any breach of this section, there shall be attached to any land an obligation not to do thereon anything which will withdraw support from any other land or from any building, structure, or erection which has been placed upon it.

180. Imposition of statutory rights of user in respect of land. (1) Where it is reasonably necessary in the interests of effective use in any reasonable manner of any land (herein referred to as "the dominant land") that such land, or the owner for the time being of such land, should in respect of any other land (herein referred to as "the servient land") have a statutory right of user in respect of that other land, the Court may, on the application of the owner of the dominant land but subject to the succeeding provisions of this section, impose upon the servient land, or upon the owner for the time being of such land, an obligation of user or an obligation to permit such user in accordance with that order.

(2) A statutory right of user imposed under subsection (1) of this section may take the form of an easement, licence or otherwise, and may be declared to be exercisable -

- (a) by such persons, their servants and agents, in such number, and in such manner and subject to such conditions; and
- (b) on one or more occasions; or
- (c) until a date certain; or
- (d) in perpetuity or for some fixed period -

as may be specified in the order.

(3) An order of the kind referred to in subsection (1) of this section shall not be made unless the Court is satisfied that -

- (a) it is consistent with the public interest that the dominant land should be used in the manner proposed; and
- (b) the owner of the servient land can be adequately recompensed in money for any loss or disadvantage which he may suffer from the imposition of the obligation; and either
- (c) the owner of the servient land has refused to agree to accept the imposition of such obligation and his refusal is in all the circumstances unreasonable; or

- (d) no person can be found who possesses the necessary capacity to agree to accept the imposition of such obligation.

(4) An order under this section (including an order under this subsection) -

- (a) shall, except in special circumstances, include provision for payment by the applicant to such person or persons as may be specified in the order of such amount by way of compensation or consideration as in the circumstances appears to the Court to be just;
- (b) may include such other terms and conditions as may be just;
- (c) shall, unless the Court otherwise orders, be registered as provided in this section;
- (d) may on the application of the owner of the servient tenement or of the dominant tenement be modified or extinguished by order of the Court where it is satisfied that -
 - (i) the statutory right of user, or some aspect of it, is no longer reasonably necessary in the interests of effective use of the dominant land; or
 - (ii) some material change in the circumstances has taken place since the order imposing the statutory right of user was made;
- (e) shall when registered as provided in this section be binding on all persons, whether of full age or capacity or not, then entitled or thereafter becoming entitled to the servient land or the dominant land, whether or not such persons are parties to proceedings or have been served with notice or not.

(5) Where by this section an order is required to be registered, then in the case of -

- (a) registered land, the Registrar shall make such amendments of and entries in the register book and elsewhere as may be necessary for giving effect to such order in respect of all deeds of grant, certificates of title, and other instruments affected thereby, if or when available;
- (b) other land, a memorandum of such order shall be indorsed in such manner and on such instruments of title and elsewhere as the Court may direct.

(6) In any proceedings under this section the Court shall not, except in special circumstances, make an order for costs against the servient owner.

(7) In this section -

- (a) "owner" includes any person interested whether presently, contingently or otherwise in land;
- (b) "statutory right of user" includes any right of, or in the nature of, a right of way over, or of access to, or of entry upon land, and any right to carry and place any utility upon, over, across, through, under or into land;
- (c) "utility" includes any electricity, gas, power, telephone, water, drainage, sewerage and other service pipes or lines, together with all facilities and structures reasonably incidental thereto.

181. Power to modify or extinguish easements and restrictive covenants.
[N.S.W. s.89; Eng. s.84; 17 & 18 Eliz.2, c.59, s.28; Vic. ss.84, 85] (1)
Where land is subject to an easement or to a restriction arising under
covenant or otherwise as to the user thereof, the court may from time to
time, on the application of any person interested in the land, by order
modify or wholly or partially extinguish the easement or restriction upon
being satisfied -

- (a) that by reason of change in the user of any land having the benefit of the easement or restriction, or in the character of the neighbourhood or other circumstances of the case which the court may deem material, the easement or restriction ought to be deemed obsolete; or
- (b) that the continued existence of the easement or restriction would impede some reasonable user of the land subject to the easement or restriction, or that the easement or restriction, in impeding that user, either -
 - (i) does not secure to persons entitled to the benefit of it any practical benefits of substantial value, utility, or advantage to them; or
 - (ii) is contrary to the public interest;

and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification;

- (c) that the persons of full age and capacity for the time being or from time to time entitled to the easement or to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the land to which the easement or the benefit of the restriction is annexed, have agreed to the easement or restriction being modified or wholly or partially extinguished, or by their acts or omissions may reasonably be considered to have abandoned the easement wholly or in part or waived the benefit of the restriction wholly or in part; or
- (d) that the proposed modification or extinguishment will not substantially injure the persons entitled to the easement, or to the benefit of the restriction.

(2) In determining whether a case is one falling within paragraph (a) or (b) of subsection (1) of this section, and in determining whether (in such case or otherwise) an easement or restriction ought to be extinguished or modified, the court shall take into account the town plan and any declared or ascertainable pattern of the local authority for the grant or refusal of consent, permission or approval to use any land or to erect or use any building or other structure in the relevant area, as well as the period at which and context in which the easement or restriction was created or imposed, and any other material circumstance.

(3) The power conferred by subsection (1) of this section to extinguish or modify an easement or restriction includes a power to add such further provisions restricting the user or the building on the land as appear to the court to be reasonable in view of the relaxation of the existing provisions, and as may be accepted by the applicant; and the court may accordingly refuse to modify an easement or restriction without such addition.

(4) An order extinguishing or modifying an easement or restriction under subsection (1) of this section may direct the applicant to pay to any person entitled to the benefit of the easement or restriction such sum by way of consideration as the court may think it just to award under one, but not both,

of the following heads, that is to say, either -

- (a) a sum to make up for any loss or disadvantage suffered by that person in consequence of the extinction or modification; or
- (b) a sum to make up for any effect which the restriction had, at the time when it was imposed, in reducing the consideration then received for the land affected by it.

(5) Where any proceedings by action or otherwise are instituted to enforce an easement or restriction, or to enforce any rights arising out of a breach of any restriction, any person against whom the proceedings are instituted may in such proceedings apply to the court for an order under this section; and such application shall, unless the court otherwise orders, operate to stay such proceedings until determination of the application made under this section.

(6) The court may in any proceedings under this section on the application of any person interested make an order declaring whether or not in any particular case any land is or would in any given event be affected by an easement or restriction, and the nature and extent thereof, and whether the same is or would in any given event be enforceable, and if so by whom.

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

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

(9) In the case of

- (a) registered land, the Registrar shall make such amendments of and entries in the register book and elsewhere as may be necessary for giving effect to such order in respect of all deeds of grant, certificates of title, and other instruments affected thereby, if or when available;
- (b) other land, a memorandum of such order shall be indorsed in such manner and on such instrument of title and elsewhere as the court may direct.

(10) In this section "court" means the Local Government Court constituted under the City of Brisbane Town Planning Act 1964-1970.

(11) The court may -

- (a) give such directions for the conduct of proceedings, and
- (b) make such orders in respect of costs of proceedings -

under this section as in its discretion it may think fit.

(12) Subject to this section, the powers and procedure of the court, the enforcement of any order made by the court, and any appeal therefrom, shall in all respects be regulated by the provisions of the District Courts Act 1967-1969 and the District Court Rules 1968 in relation to original proceedings in the civil jurisdiction of that Court.

PART XI - ENCROACHMENT AND MISTAKE

Division 1 - Encroachment of Buildings

182. Application of Division. The provisions of this Division apply notwithstanding the provisions of any other Act.

183. Definitions. [cf. Qld. 4 Eliz. 2, No. 18, s. 2] In this Division, unless the context or subject-matter otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say-

- "adjacent owner" - the owner of land over which an encroachment extends;
- "boundary" - the boundary line between contiguous parcels of land;
- "building" - a substantial building of a permanent character; the term includes a wall;
- "encroaching owner" - the owner of land contiguous to the boundary beyond which an encroachment extends;
- "owner" - any person entitled to an estate of freehold in possession -
 - (a) whether in fee simple or for life or otherwise;
 - (b) whether at law or in equity;
 - (c) whether absolutely or by way of mortgage, and includes a mortgagee under a registered mortgage of a freehold estate in possession in land under The Real Property Acts;
- "subject land" - that part of the land over which an encroachment extends.

184. Application for relief in respect of encroachments. [cf. Qld. 4 Eliz. 2, No. 18, s. 3] (1) Either an adjacent owner or an encroaching owner may apply to the Court for relief under this Act in respect of any encroachment.

(2) On the application the Court may make such order as it may deem just with respect to -

- (a) the payment of compensation to the adjacent owner;
- (b) the conveyance, transfer, or lease of the subject land to the encroaching owner, or the grant to him of any estate or interest therein or of any easement, right, or privilege in relation thereto;
- (c) the removal of the encroachment.

(3) The Court may grant or refuse the relief or any part thereof as it deems proper in the circumstances of the case, and in the exercise of this discretion may consider amongst other matters -

- (a) the fact that the application is made by the adjacent owner or by the encroaching owner, as the case may be;
- (b) the situation and value of the subject land, and the nature and extent of the encroachment;
- (c) the character of the encroaching building, and the purposes for which it may be used;
- (d) the loss and damage which has been or will be incurred by the adjacent owner;
- (e) the loss and damage which would be incurred by the encroaching owner if he were required to remove the encroachment;
- (f) the circumstances in which the encroachment was made.

(4) This section applies to encroachments made either before or after the commencement of this Act.

185. Compensation. [cf. Qld. 4 Eliz.2, No.18, s.4] (1) The minimum compensation to be paid to the adjacent owner in respect of any conveyance, transfer, lease, or grant as aforesaid to the encroaching owner shall, if the encroaching owner satisfies the Court that the encroachment was not intentional and did not arise from negligence, be the unimproved capital value of the subject land, and in any other case three times such unimproved capital value.

(2) In determining whether the compensation shall exceed the minimum, and if so by what amount, the Court shall have regard to -

- (a) the value, whether improved or unimproved, of the subject land to the adjacent owner;
- (b) the loss and damage which has been or will be incurred by the adjacent owner through the encroachment and through the orders proposed to be made in favour of the encroaching owner;
- (c) the circumstances in which the encroachment was made.

186. Charge on land. [cf. Qld. 4 Eliz.2, No.18, s.5] (1) The order for payment of compensation may be registered in the office of the Registrar in such manner as the Registrar determines and shall, except so far as the Court otherwise directs, upon registration operate as a charge upon the land of the encroaching owner, and shall have priority to any charge created by him or his predecessor in title.

(2) In this section the land of the encroaching owner means the parcel of land contiguous to the boundary beyond which the encroachment extends, or such part thereof as the Court may specify in the order.

187. Encroaching owner - compensation and conveyance. [cf. Qld. 4 Eliz.2, No.18, s.6] Wherever the Court sees fit, and in particular where the encroaching owner is not an owner beneficially entitled to the fee-simple free from encumbrances, the Court may determine -

- (a) by whom and in what proportions the compensation is to be paid in the first instance, and is to be borne ultimately;
- (b) to whom, for whose benefit and upon what limitations the conveyance, transfer, or lease of the subject land or grant as aforesaid in respect thereof is to be made.

188. Adjacent owner: compensation and conveyance. [cf. Qld. 4 Eliz.2, No.18, s.7] Wherever the Court sees fit, and in particular where the adjacent owner is not an owner beneficially entitled to the fee simple free from encumbrances, the Court may determine -

- (a) to whom, for whose benefit, and in what proportions the compensation is to be paid or applied; and
- (b) by whom the conveyance, transfer, or lease of the subject land or grant in respect thereof is to be made.

189. Vesting order. [cf. Qld. 4 Eliz.2, No.18, s.8] Wherever the Court may make or has made an order under this Division with respect to the subject land, the Court may make such vesting order as it may deem proper in lieu thereof or in addition thereto, or in default of compliance therewith.

190. Boundaries. [cf. Qld. 4 Eliz.2, No.18, s.9] (1) Where any question arises as to whether an existing building encroaches or a proposed building will encroach beyond the boundary, either of the owners of the

contiguous parcels of land may apply to the Court for the determination under this Division of the true boundary.

(2) On the application the Court may make such orders as it may deem proper for determining, marking, and recording the true boundary.

(3) This section applies to buildings erected either before or after the commencement of this Act.

191. Suit, action or other proceeding. [cf. Qld. 4 Eliz. 2, No. 18, s. 10]

(1) In any suit or proceeding before the Court, however originated, the Court may, if it sees fit, exercise any of the powers conferred by this Division, and may stay the suit or proceeding on such terms as it may deem proper.

(2) Where any action or proceeding is taken or is about to be taken at law by any person, and the Court is of opinion that the matter could more conveniently be dealt with by an application under this Division, the Court may grant an injunction, on such terms as it may deem proper, restraining the person from taking or continuing the action or proceedings at law.

(3) In any action at law a Judge may, if he is of opinion that the matter could more conveniently be dealt with by an application under this Division, stay the action or proceeding on such terms as he may deem proper.

192. Persons interested. [cf. Qld. 4 Eliz. 2, No. 18, s. 12] In any application under this Division the Court may require -

- (a) that notice of the application shall be given to any person interested;
- (b) that any person who is or appears to be interested shall be made a party to the application.

193. Costs. [cf. Qld. 4 Eliz. 2, No. 18, s. 13] In any application under this Division the Court may make such order as to payment of costs (to be taxed as between solicitor and client or otherwise), charges, and expenses as it may deem just in the circumstances and may take into consideration any offer of settlement made by either party.

Division 2 - Improvements under mistake of title

194. Application of Division. The provisions of this Division apply notwithstanding the provisions of any other Act.

195. Relief in case of improvements made by mistake. [cf. Ont. R. S. O. 1960, c. 66, s. 38] Where a person makes a lasting improvement on land owned by another in the genuine but mistaken belief that -

- (a) such land is his property; or
- (b) such land is the property of a person on whose behalf the improvement is made or intended to be made -

application may be made to the Court for relief under this Division.

196. Nature of relief. [cf. W. A. s. 123] (1) If in the opinion of the Court it is just and equitable that relief should be granted to the applicant or to any other person, the Court may if it thinks fit make any one or more of the following orders, that is to say -

- (a) vesting in any person or persons specified in the order the whole or any part of the land on which the improvement or any part thereof has been made either with or without any surrounding or contiguous or other land;

- (b) ordering that any person or persons specified in the order shall or may remove the improvement or any part thereof from the land or any part of it;
 - (c) ordering that any person or persons specified in the order pay compensation to any other person in respect of -
 - (i) any land or part thereof;
 - (ii) any improvement or part thereof;
 - (iii) any damage or diminution in value caused or likely to be caused by or to result from any improvement or order made under this Division;
 - (d) ordering that any person or persons specified in the order have or give possession of the land or improvement or part thereof for such period and upon such terms and conditions as the Court may specify.
- (2) An order under this Division, and any provision of the order, may -
- (a) include or be made upon and subject to such terms and conditions as the Court thinks fit, whether as to payment by any person of any sum or sums of money including costs (to be taxed as between solicitor and client or otherwise), or the execution by any person of any mortgage, lease, easement, contract or other instrument, or otherwise;
 - (b) declare that any estate or interest on the land or any part thereof on which the improvement has been made to be free of any mortgage, lease, easement or other incumbrance, or may vary, to such extent as may be necessary in the circumstances, any mortgage, lease, easement, contract, or other instrument affecting or relating to such land or any part thereof.

197. Right to apply or be served. [cf. W.A. s.123] (1) Application for relief under this Division may be made by -

- (a) any person who made or who is for the time being in possession of any improvement referred to in section 195;
 - (b) any person having any estate or interest in the land or any part thereof upon which such improvement has been made;
 - (c) any person claiming to be a party to or to be entitled to any benefit under any lease, easement, contract or other instrument relating to such land or improvement;
 - (d) the successor in title to any person upon whose land the improvement or any part thereof was intended to be made; and
 - (e) the local authority within whose area the land or improvement or any part thereof is situated.
- (2) In any application under this Division the Court may require -
- (a) that notice of the application be given to any of the persons referred to in subsection (1) of this section and to any other person who is or appears to be interested in or likely to be affected by an order made under this Division;
 - (b) that any such person be made a party to the application.

PART XII - EQUITABLE INTERESTS AND THINGS IN ACTION

198. Statutory assignments of things in action. [Qld. Judicature Act 1876, s. 5(6)] (1) Any absolute assignment by writing under the hand of the

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

- (a) the legal right to such debt or thing in action;
- (b) all legal and other remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor.

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

- (a) that the assignment is disputed by the assignor or any person claiming under him; or
- (b) of any other opposing or conflicting claims to such debt or thing in action,

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

199. Efficacy in equity of voluntary assignments. (1) A voluntary assignment of property shall in equity be effective and complete when, and as soon as, the assignor has done everything to be done by him that is necessary in order to transfer the property to the assignee -

- (a) notwithstanding that anything remains to be done in order to transfer to the assignee complete and perfect title to the property; and
- (b) provided that anything so remaining to be done is such as may thereafter be done by the assignee without intervention of or assistance from the assignor.

(2) This section is without prejudice to any other mode of disposing of property, but applies subject to the provisions of this and of any other Act.

PART XIII - POWERS OF APPOINTMENT

200. Application of Part. [cf. Eng. s. 160; Vic. s. 160, W.A. s. 98] This Part applies to powers created or arising either before or after the commencement of this Act.

201. Mode of exercise of powers. [cf. N.S.W. s. 41; Eng. s. 159; Vic. s. 159; W.A. s. 97; S.A. s. 58; cf. Qld. Succession Act, s. 66] (1) Where a power of appointment by an instrument other than a will is exercised by deed, executed and attested in accordance with this Act, or, in the case of an instrument under The Real Property Acts, in accordance with those Acts, such deed or instrument shall, so far as respects the execution and attestation thereof, be a valid exercise of the power, notwithstanding that by the instrument creating the power some additional or other form of execution or attestation or solemnity is required.

(2) This section does not operate to defeat any direction in the instrument creating the power that -

- (a) the consent of any particular person is to be necessary to a valid execution;
- (b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

(3) This section does not prevent the donee of a power from executing it in accordance with the power by writing, or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section does not apply.

(4) This section applies to the exercise after the commencement of this Act of any such power created by an instrument coming into operation before or after the commencement of this Act.

202. Validation of appointments where objects are excluded or take illusory shares. [cf. Eng. s.158; Vic. s.158; W.A. s.96; S.A. s.57a; N.S.W. s.29; Qld. Equity Act, ss.70, 71, 72] (1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that -

- (a) an unsubstantial, illusory, or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or
- (b) any object of the power is thereby altogether excluded,

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section does not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

(3) This section applies to appointments made before or after the commencement of this Act.

203. Protection of purchasers claiming under certain void appointments. [cf. Eng. s.157; Vic. s.157; W.A. s.95; N.S.W. s.29A] (1) An instrument purporting to exercise a power of appointment over property, which, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, shall not (save as hereinafter provided) be void on the ground of fraud on the power as against a purchaser in good faith:

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

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

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

(4) This section applies only to dealings effected after the commencement of this Act.

204. Disclaimer, etc. of powers. [Vic. ss.155, 156; W.A. ss.93, 94; S.A. s.57; Eng. ss.155, 156(1); N.S.W. s.28] (1) A person to whom any power, whether or not coupled with an interest, is given may by deed disclaim, release or contract not to exercise the power, and after such disclaimer, release or contract shall not be capable of exercising or joining in the exercise of the power.

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

(3) Where such power is exercisable by any instrument which may or is required to be registered under any Act, the power may be released or disclaimed by a memorandum in Form 17 of the First Schedule or to like effect, which may be registered.

(4) This section -

- (a) does not apply to a power coupled with a duty;
- (b) applies to a power created by an instrument coming into operation whether before or after the commencement of this Act.

XIV - PERPETUITIES AND ACCUMULATIONS

205. Interpretation. [cf. Vic. s.2; W.A. s.4; U.K. s.15; N.Z. s.2] (1) In this Part unless inconsistent with the context or subject-matter terms shall have the meanings assigned to them in section 4 of this Act save that -

"disposition" includes the conferring or exercise of a power of appointment or any other power or authority to dispose of an interest in or a right over property and any other disposition of an interest in or right over property; and references to the interest disposed of shall be construed accordingly;

"instrument" includes a will, and also includes an instrument, testamentary or otherwise, exercising a power of appointment whether general or special but does not include an Act of Parliament;

"power of appointment" includes any discretionary power to transfer or grant or create a beneficial interest in property without the furnishing of valuable consideration.

(2) For the purposes of this Part a disposition contained in a will shall be deemed to be made at the death of the testator.

(3) For the purposes of this Part a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case only one or some of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

206. Application. [cf. Vic. s.3; W.A. s.3; U.K. s.15; N.Z. s.4] (1) Save as otherwise provided in this Part, this Part shall apply only in relation to instruments taking effect after the commencement of this Act, and in the case of an instrument whereby a special power of appointment is exercised shall apply only where the instrument creating the power takes effect after that commencement: Provided that section 207 of this Act shall apply in all cases for construing the reference in this subsection to a special power of appointment.

Abbreviations used in references to other Acts in notes appearing at the beginning of sections 205-221 have the following meanings:- U.K. Perpetuities and Accumulations Act 1964 (United Kingdom); Vic. Perpetuities and Accumulations Act 1968 (Victoria); W.A. Law Reform (Property, Perpetuities, and Succession) Act 1962 (Western Australia); N.Z. Perpetuities Act 1964 (New Zealand).

(2) This Part shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

207. Powers of appointment. [cf. Vic. s.4; W.A. s.16; U.K. s.7; N.Z. s.5] For the purposes of the rule against perpetuities a power of appointment shall be treated as a special power unless -

- (a) in the instrument creating the power it is expressed to be exercisable by one person only; and
- (b) it could at all times during its currency when that person is of full age and capacity be exercised by him so as immediately to transfer to or otherwise vest in himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power:

Provided that for the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for remoteness the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

208. Power to specify perpetuity period. [cf. Vic. s.5; W.A. s.5; U.K. s.1; N.Z. s.6] (1) Save as in this Part otherwise provided where the instrument by which any disposition is made so provides the perpetuity period applicable to the disposition under the rule against perpetuities instead of being of any other duration shall be such number of years not exceeding eighty as is specified in the instrument as the perpetuity period applicable to the disposition.

(2) Subsection (1) of this section shall not have effect where the disposition is made in exercise of a special power of appointment but where a period is specified under that subsection in the instrument creating such a power the period shall apply in relation to any disposition under the power as it applies in relation to the power itself.

(3) If no period of years is specified in an instrument by which a disposition is made as the perpetuity period applicable to the disposition but a date certain is specified in the instrument as the date on which the disposition shall vest the instrument shall, for the purposes of this section, be deemed to specify as the perpetuity period applicable to the disposition a number of years equal to the number of years from the date of the taking effect of the instrument to the specified vesting date.

209. "Wait and see" rule. [cf. Vic. s.6; W.A. s.7; U.K. s.3; N.Z. s.8]

(1) Where apart from the provisions of this section and of section 212 of this Act a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time the disposition shall be treated until such time (if any) as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period as if the disposition were not subject to the rule against perpetuities; and its becoming so established shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(2) Where apart from the provisions of this section and of section 212 of this Act a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time the disposition shall be treated until such time (if any) as it becomes established that the power will not be exercisable within the perpetuity period as if the disposition were not subject to the rule against perpetuities.

(3) Where apart from the provisions of this section and of section 212 of this Act a disposition consisting of the conferring of any power, option or other right would be void on the ground that the right might be exercised at too remote a time the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not subject to the rule against perpetuities and subject to the said provisions shall be treated as void for remoteness only if and so far as the right is not fully exercised within that period.

(4) Nothing in this section makes any person a life in being for the purposes of ascertaining the perpetuity period unless the life of that person is one expressed or implied as relevant for this purpose by the terms of the disposition and would have been reckoned a life in being for such purpose if this section had not been enacted:

Provided however that in the case of a disposition to a class of persons or to one or more members of a class, any person living at the date of the disposition whose life is so expressed or implied as relevant for any member of the class may be reckoned a life in being in ascertaining the perpetuity period.

210. Power to apply to court for declaration as to validity. [cf. Vic. s. 7; W.A. s. 8; N.Z. s. 22] (1) A trustee of any property, or any person interested under or on the invalidity of, a disposition of property may at any time apply to the Court for a declaration as to the validity, in respect to the rule against perpetuities, of a disposition of that property.

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

211. Presumptions and evidence as to future parenthood. [cf Vic. s. 8; W.A. s. 6; U.K. s. 2; N.Z. s. 6] (1) Where in any proceedings there arises on the rule against perpetuities a question which turns on the capacity of a person to have a child at some future time, then -

- (a) it shall be presumed, subject to paragraph (b) of this subsection, that a male can have a child at the age of twelve years or over but not under that age and that a female can have a child at the age of twelve years or over but not under that age or over the age of fifty-five years; but
- (b) in the case of a living person evidence may be given to show that he or she will or will not be capable of having a child at the time in question.

(2) Where any such question is decided by treating a person as incapable of having a child at a particular time and he or she does so, the Court may make such order as it thinks fit for placing the persons interested in the property comprised in the disposition so far as may be just in the position they would have held if the question had not been so decided.

(3) Subject to subsection (2) of this section, where any such question is decided in relation to a disposition by treating a person as capable or incapable of having a child at a particular time then he or she shall be so treated for the purpose of any question which may arise on the rule against perpetuities in relation to the same disposition in any subsequent proceedings.

(4) In the foregoing provisions of this section references to having a child are references to begetting or giving birth to a child; but those provisions (except paragraph (b) of subsection (1) shall apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her capacity at that time to beget or give birth to a child.

212. Reduction of age and exclusion of class members to avoid remoteness. [cf. Vic. s.9; W.A. s.9; U.K. s.4; N.Z. s.9] (1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding twenty-one years and it is apparent at the time the disposition is made or becomes apparent at a subsequent time -

- (a) that the disposition would apart from this section be void for remoteness; but
- (b) that it would not be so void if the specified age had been twenty-one years,

the disposition shall be treated for all purposes as if instead of being limited by reference to the age in fact specified it had been limited by reference to the age nearest to that age which would if specified instead, have prevented the disposition from being so void.

(2) Where in the case of any disposition different ages exceeding twenty-one years are specified in relation to different persons -

- (a) the reference in paragraph (b) of subsection (1) of this section to the specified age shall be construed as a reference to all the specified ages; and
- (b) that subsection shall operate to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of any persons being potential members of a class or unborn persons who at birth would become members or potential members of the class prevents the preceding provisions of this section from operating to save a disposition from being void for remoteness those persons shall thenceforth be deemed for all the purposes of the disposition to be excluded from the class and the said provisions shall thereupon have effect accordingly.

(4) Where in the case of a disposition to which subsection (3) of this section does not apply it is apparent at the time the disposition is made or becomes apparent at a subsequent time that apart from this subsection the inclusion of any persons, being potential members of a class or unborn persons who at birth could become members or potential members of the class would cause the disposition to be treated as void for remoteness those persons shall unless their exclusion would exhaust the class thenceforth be deemed for all the purposes of the disposition to be excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 209 of this Act applies the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

213. Unborn husband or wife. [cf. Vic. s.10; W.A. s.12; N.Z. s.13; U.K. s.5] The widow or widower of a person who is a life in being for the purposes of the rule against perpetuities shall be deemed to be a life in being for the purpose of -

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

- (b) a disposition in favour of a charity which attains or of a person who attains or of a class the members of which attain according to the terms of the disposition a vested interest on or after the death of the survivor of the said person who is a life in being and that widow or widower, or on or after the death of that widow or widower or on or after the happening of any contingency during her or his lifetime.

214. Dependent dispositions. [cf. Vic. s. 11; W.A. s. 13; U.K. s. 6; N.Z. s. 14] A disposition shall not be treated as void for remoteness by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so void, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

215. Abolition of the rule against double possibilities. [cf. Eng. L.P.A. s. 161] (1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished.

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

216. Restrictions on the perpetuity rule. [cf. Vic. s. 13] (1) For removing doubts, it is hereby declared that the rule of law relating to perpetuities does not apply and shall be deemed never to have applied -

- (a) to any power to distrain on or to take possession of land or the income thereof given by way of indemnity against a rent, whether charged upon or payable in respect of any part of that land or not; or
- (b) to any rentcharge created only as an indemnity against another rentcharge, although the indemnity rentcharge may arise or become payable only on breach of a condition or stipulation; or
- (c) to any power, whether exercisable on breach of a condition or stipulation or not, to retain or withhold payment of any instalment of a rentcharge as an indemnity against another rentcharge; or
- (d) to any grant, exception or reservation of and right of entry on, or user of, the surface of land or of any easements, rights or privileges over or under land for the purpose of -
- (i) winning, working, inspecting, measuring, converting, manufacturing, carrying away and disposing of mines and minerals;
- (ii) inspecting, grubbing up, felling and carrying away timber and other trees, and the tops and lops thereof;
- (iii) executing repairs, alterations or additions to any adjoining land, or the buildings and erections thereon;
- (iv) constructing, laying down, altering, repairing, renewing, cleansing and maintaining sewers, watercourses, cesspools, gutters, drains, water-pipes, gas-pipes, electric wires or cables or other like works.

(2) This section shall apply to instruments coming into operation before or after the commencement of this Act.

(3) In this section "instrument" includes a statute creating a settlement.

217. Options. [cf. Vic. s. 15; W.A. s. 14; U.K. ss. 9, 10; N.Z. s. 17] (1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary (whether directly or indirectly) on the terms of a lease if -

- (a) the option is exercisable only by the lessee or his successors in title; and
- (b) it ceases to be exercisable at or before the expiration of one year following the determination of the lease.

This subsection shall apply in relation to an agreement for a lease as it applies in relation to a lease, and "lessee" shall be construed accordingly.

(2) An option to acquire an interest in land (not being an option to which subsection (1) of this section refers) or a right of pre-emption in respect of land, which according to its terms is or may be exercisable at a date more than twenty-one years from the date of its grant shall after the expiration of twenty-one years from the date of its grant be void and not exercisable by any person and no remedy shall lie in contract or otherwise for giving effect to it or making restitution for its lack of effect, but -

- (a) this subsection shall not apply to an option or right of pre-emption conferred by will; and
- (b) nothing in this subsection shall affect an option for renewal or right of pre-emption contained in a lease or an agreement for a lease.

218. Determinable interests. [cf. Vic. s. 16; W.A. s. 15; U.K. s. 12; N.Z. s. 18] (1) The rule against perpetuities shall apply -

- (a) to a possibility of reverter in land on the determination of a determinable fee simple; in which case if the fee simple does not determine within the perpetuity period it shall thereafter continue as a fee simple absolute;
- (b) to a possibility of a resulting trust on the determination of any other determinable interest in property; in which case if the first interest created by the trust does not determine within the perpetuity period the interest it creates shall thereafter continue as an absolute interest;
- (c) to a right of entry for condition broken the exercise of which may determine a fee simple subject to a condition subsequent and to an equivalent right in the case of property other than land; in which case if the right of entry or other right is not exercised within the perpetuity period the fee simple shall thereafter continue as an absolute interest and any such other interest in property shall thereafter continue free from the condition.

(2) This section shall apply whether or not the determinable or conditional disposition is charitable except that the rule against perpetuities shall not apply to a gift over from one charity to another.

(3) Where a disposition is subject to any provision that causes an interest to which paragraph (a) or paragraph (b) of subsection (1) of this section applies to be determinable, or to any condition subsequent giving rise on breach thereof to a right of re-entry or an equivalent right in the case of property other than land, or to any exception or reservation the disposition shall be treated for the purposes of this Act as including a separate disposition of any rights arising by virtue of the provision condition subsequent exception or reservation.

219. Trustee powers and superannuation funds. [cf. Vic. s. 17 and No. 6401 of 1958 (Victoria) s. 73, 61 Vic. No. 10, s. 59] (1) The rule of law known as the rule against perpetuities does not apply and shall be deemed never to have applied so as to remain void -

- (a) a trust or power to sell property, where a trust of the proceeds of sale is valid;
- (b) a trust or power to lease or exchange property, where the lease or exchange directed or authorised by the trust or power is ancillary to the carrying out of a valid trust;
- (c) any other power which is ancillary to the carrying out of a valid trust or the giving effect to a valid disposition of property;
- (d) a trust or fund established for the purpose of making provision by way of assistance, benefits, superannuation, allowances, gratuities or pensions for the directors, officers, servants or employees of any employer or the spouses, children, grandchildren, parents, dependants or legal personal representatives of any such directors, officers, servants or employees or for any persons duly selected or nominated for that purpose by any such directors, officers, servants or employees pursuant to the provisions of such trust or fund; or
- (e) a trust or fund established for the purpose of making provision by way of superannuation for persons (not being employees) engaged in any lawful profession, trade, occupation or calling or the spouses, children, grandchildren, parents, dependants or legal personal representatives of any of those persons or for any persons duly selected or nominated for that purpose pursuant to the provisions of the trust or fund;
- (f) any provision for the remuneration of trustees.

(2) This section does not -

- (a) render any trustee liable for any acts done prior to the commencement of this Act for which that trustee would not have been liable had this section not been enacted; or
- (b) enable any person to recover any money distributed or paid under any trust, if he could not have recovered that money had this section not been enacted.

(3) Section 59 of The Trustees and Executors Acts 1897 to 1964 is repealed.

220. Non-charitable purpose trusts. [cf. Vic s. 18; U.K. s. 15; N.Z. s. 20]

(1) Except as provided in subsection (2) of this section nothing in this Act shall affect the operation of the rule of law rendering non-charitable trusts and trusts for the benefit of corporations which are not charities void for remoteness in cases where the trust property may be applied for the purposes of the trusts after the end of the perpetuity period.

(2) If any such trust is not otherwise void the provisions of sections 208 and 209 of this Act shall apply to it and the property subject to the trust may be applied for the purposes of the trust during the perpetuity period but not thereafter.

221. Accumulation of income. [cf. Vic. s. 19; W.A. s. 17; U.K. ss. 13, 14; N.Z. s. 21] (1) Where property is settled or disposed of in such manner that the income thereof may be or is directed to be accumulated wholly or in part the power or direction to accumulate that income shall be valid if the disposition of the accumulated income is or may be valid but not otherwise.

(2) Nothing in this section shall affect the power of any person or persons to terminate an accumulation that is for his or her benefit and any jurisdiction or power of the Court to maintain or advance out of accumulations or any power of a trustee under the Trusts Act or under any other Act or law or under any instrument creating a trust or making a disposition.

PART XV - CORPORATIONS

222. Devolution of property of corporation sole. [cf. Eng. s.180(1); Vic. s.176] Where either before or after the commencement of this Act any property or interest therein is or has been vested in a corporation sole (including the Crown), the same shall, unless and until disposed of by the corporation, pass and devolve to and vest in and be deemed always to have passed and devolved to and vested in the successors from time to time of such corporation.

223. Vacancy in corporation. [cf. Eng. s.180(2); Vic. s.177] Where either before or after the commencement of this Act there is or has been a vacancy in the office of a corporation sole or in the office of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at the time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, such interest shall notwithstanding such vacancy vest and be deemed to have vested in the successor to such office on his appointment as a corporation sole, or in the corporation aggregate (as the case may be), but without prejudice to the right of such successor, or of the corporation aggregate after the appointment of its head officer, to disclaim that interest or charge.

224. Transactions with corporation sole. [cf. Eng. s.180(3); Vic. s.178] Any contract or other transaction expressed or purporting to be made with a corporation sole, or any appointment of a corporation sole as trustee, at a time when there was a vacancy in the office and no administrator acting, shall on the vacancy being filled take effect and be deemed to have taken effect as if the vacancy had been filled before the contract, transaction or appointment was expressed to be made or was capable of taking effect, and on the appointment of a successor shall be capable of being enforced, accepted, disclaimed or renounced by him.

225. Corporation incapable of acting. [cf. Qld. Building Unit Titles Act 1965, s.23] (1) Where, by reason of the death of incapacity (whether before or after the commencement of this Act) of any one or more of the officers or members of a corporation or for any other reason, the corporation ceases to be capable of acting -

- (a) either generally or in respect of a particular transaction or transactions; and
- (b) either temporarily or for an indefinite or any lesser period -

the Court may, on the application of any officer or member of the corporation or the personal representative of such member or of any creditor or person having or appearing to have any claim against the corporation, appoint an administrator.

(2) The Court may in its discretion appoint any administrator for an indefinite period or for a fixed period or until the happening of any specified event and on such terms and conditions as to remuneration out of the assets of the corporation and otherwise as it thinks fit.

(3) Unless the Court otherwise directs, the administrator shall, to the exclusion of the corporation and any officer or member thereof, have authority to and may exercise all the powers of the corporation subject to such

terms and conditions (if any) as the Court sees fit to impose.

(4) Unless the Court otherwise directs, the administrator may delegate any of the powers exercisable by him.

(5) The Court may in its discretion on the application of the administrator or of any person referred to in subsection (1) hereof -

- (a) give to the administrator directions -
 - (i) as to the exercise of any of the powers exercisable by him, and
 - (ii) as to any question or matter arising in or with respect to the affairs of the corporation;
- (b) remove or replace the administrator.

(6) On any application under this section the Court may make such order for the payment of costs as it thinks fit.

(7) This section applies to any corporation, whether a corporation aggregate or corporation sole, constituted under or pursuant to -

- (a) The Religious Charitable and Educational Institutions Acts, 1861 to 1967;
- (b) the Companies Act 1961-1971; or
- (c) any other Act.

(8) Where an order is made under this section for the appointment, removal or replacement of an administrator in relation to a company constituted under the Companies Act 1961-1971, the order shall not take effect until the lodgment within seven days of the making of the order, or such longer period as the Court may allow, of an office copy of the order with the Registrar of Companies.

226. Corporate contracts and transactions not under seal. [cf. Eng. 8 & 9 Eliz. 2, c. 46] (1) Contracts and other transactions may be made or effected by any body corporate, wherever incorporated, as follows -

- (a) a contract or other transaction which if made or effected by or between individuals would by law be required to be in writing, signed by the party to be charged therewith or effecting the same, may be made by the corporation in writing signed by any person under its authority, express or implied; and
- (b) a contract or other transaction, which if made or effected by or between individuals would by law be valid although made by parol only, and not reduced to writing, may be made by parol by the corporation by any person acting under its authority, express or implied.

(2) A contract or other transaction made or effected in accordance with this section shall be effective in law, and shall bind the corporation and its or his successors and all other parties thereto.

(3) A contract or other transaction made or effected in accordance with this section may be varied or discharged in the same manner in which it is by this section authorised to be made or effected.

(4) Nothing in this section shall be taken to prevent a contract or other transaction from being made or effected under the seal of the corporation.

(5) This section -

- (a) applies to the making, effecting, variation or discharge of a contract or transaction after the commencement of this Act, whether the corporation gave its authority before or after the commencement of this Act;
- (b) does not apply to contracts made by any company incorporated under the Companies Act 1961-1971, or any repealed Act to like effect, or by any corporation incorporated under or pursuant to any other Act which expressly prescribes the manner and form in which contracts may be made or transactions effected by or on behalf of such corporation.

PART XVI - VOIDABLE DISPOSITIONS

227. Voluntary conveyances to defraud creditors voidable. [cf. Eng. s.172; N.S.W. s. 37A; Qld. Mercantile Act of 1867, ss.46, 50; 13 Eliz.1, c.5]

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

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

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

(4) In this section "disposition" includes a disposition made otherwise than by instrument in writing.

228. Voluntary disposition of land how far voidable as against purchasers. [cf. Eng. s.173; N.S.W. s. 37B; Qld. Mercantile Act of 1867, ss.48, 50]

(1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(2) For the purposes of this section, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made, if such subsequent conveyance is made after the commencement of this Act.

(3) In this section "disposition" includes a disposition made otherwise than by instrument in writing.

229. Acquisitions of reversions at an under value. [cf. Eng. s.174; N.S.W. s. 37C]

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

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

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

PART XVII - APPORTIONMENT

230. 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 or other body corporate 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;

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

231. Rents, &c., apportionable in respect of time. [cf. W.A. s.131; N.S.W. s.144; Eng. Apportionment Act 1870; Qld. D.R.E. Act 1867, s.39]

(1) All rents, annuities, and other periodical payments (other than dividends) 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, 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.

(4) Notwithstanding the provisions of subsection (3) of this section, 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 thereto entitled under this section by action or suit.

232. Exceptions and application. (1) Nothing in this Part renders apportionable any annual sums payable under policies of assurance of any description.

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

XVIII - UNREGISTERED LAND

Division 1 - Application of Part; Interpretation

233. Application and interpretation. (1) The provisions of this Part apply only to unregistered land and any estate or interest therein.

(2) [cf. 7 Vic. No.16, s.22] In this Part the term "instrument" includes not only conveyances and other deeds, but also all instruments in writing whatsoever, whereby real or leasehold estate is affected or is intended so to be, including:-

- (a) certificate under section 101 of this Act; and
- (b) a power of attorney registered under section 171 of this Act.

Division 2 - Sales and Conveyances

234. No conveyance to have tortious operation. [cf. W.A. s.40; N.S.W. s.22] No conveyance of any land made or purporting to be made after the commencement of this Act shall have a tortious operation.

235. Want of livery of seisin. [cf. 22 Vic. No.1, s.19] Livery of seisin shall not be deemed to have been necessary to give effect to any feoffment executed before the 3rd day of January, 1842, but every such feoffment shall be taken to have operated in the same manner as the same would have done in case there had been livery of seisin in the most valid form.

Provided that nothing in this section shall make any such feoffment operate as a tortious conveyance or shall prejudice or affect the title of any person now in possession of land the subject of any such feoffment and claimed adversely to the feoffee his heirs or assigns.

236. Statutory commencements of title. [cf. Eng. s.44; N.S.W. s.53]

(1) After the commencement of this Act thirty years shall be substituted for sixty years as the period of commencement of title which a purchaser of land may require; nevertheless earlier title than thirty years may be required in cases similar to those in which earlier title than sixty years might immediately before the commencement of this Act be required.

(2) Under a contract to grant or assign a term of years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign shall not be entitled to call for the title to the freehold.

(3) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(4) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(5) Where by reason of any of the three last preceding subsections, an intending lessee or assign is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not, where the contract is made after the commencement of this Act, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

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

(7) Where a lease whether made before or after the commencement of this Act, is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(8) This section, save where otherwise expressly provided, applies to contracts for sale whether made before or after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts

for sale, save that it applies only to contracts for exchange made after such commencement.

(9) This section applies only if and so far as a contrary intention is not expressed in the contract.

237. Other statutory conditions of sale. [cf. Eng. s.45; Vic. s.45; N.S.W. s.54] (1) A purchaser of any property shall not -

- (a) require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or
- (b) require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, agreed to be produced, or noticed;

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, enrolment, or otherwise:

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of -

- (i) any power of attorney under which any abstracted document is executed; or
- (ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or
- (iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

(2) Where land sold is held by lease (other than an under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(3) Where land is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(4) On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say -

- (a) the expenses of the production and inspection of all records, proceedings of courts, deeds, wills, probates, letters of administration, and other documents, not in the possession of the vendor or his mortgagee or trustee, and the expenses of all journeys incidental to such production or inspection; and
- (b) the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the possession of the vendor or his mortgagee or trustee, and all attested, stamped, office, or other copies or abstracts of, or extracts from, other documents aforesaid, not in the possession of the vendor or his mortgagee or trustee;

and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(5) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(6) Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

(7) The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

(8) Such acknowledgments of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

(9) A vendor shall be entitled to retain documents of title where -

- (a) he retains any part of the land to which the documents relate; or
- (b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.

(10) This section applies to contracts for sale made after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts for sale.

(11) This section shall apply subject to any stipulation or contrary intention expressed in the contract.

(12) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

238. General words implied in conveyances. [cf. Eng. s. 62; N. S. W. s. 67; Vic. s. 62] (1) A conveyance of land after the commencement of this Act shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, water-courses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

239. All estate clause implied. [cf. Eng. s. 63; Vic. s. 63; N. S. W. s. 68]

(1) Every conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

(3) This section applies to conveyances made after the commencement of this Act.

Division 3 - Registration of Deeds

240. Registration of instruments and wills. [cf. 7 Vic. No. 16, s. 10; N. S. W. No. 22 of 1897, s. 6] (1) After the commencement of this Act -

- (a) any agreement in writing, deed, conveyance or other instrument (except a lease for less than three years) affecting any estate in land; and
- (b) any will or devise affecting any estate in land -

may, in accordance with the provisions of this Division, be registered in the office of the Registrar.

(2) A reference in any Act or instrument to, or to registration of an instrument under, the Registration of Deeds Act 1843 or the Titles to Land Act 1858 shall be construed as a reference to this Division.

241. Mode of registration. [cf. 7 Vic. No.16, s.13; N.S.W. No.22 of 1897, s.7] (1) Registration in accordance with the provisions of this Division shall be effected by lodging in the office of the Registrar a full copy of the instrument signed by some one or more of the parties to the original instrument, or will, certified in accordance with this section.

(2) The copy referred to in subsection (1) of this section -

- (a) shall be legibly and neatly written or printed upon paper of such form, size and quality as the Registrar may from time to time direct;
- (b) shall be certified to be a true copy by the oath of a credible person, such oath to be taken before any of the persons referred to in section 115 of The Real Property Acts, to whom the original such instrument or will shall be produced at the time of certification.

242. Signature on behalf of dead or absent party. [cf. 7 Vic.No.16, s.12; N.S.W. No.22 of 1897, s.9] When any party to any instrument is dead or absent at the time when registration of the instrument is required -

- (a) the executor or administrator of that person; or
- (b) the attorney constituted under a power of attorney of the absent party; or
- (c) if the Registrar is satisfied that the signature of a party cannot for any other reason be obtained, the Registrar -

may, in place of a party referred to in the preceding section, sign the copy instrument, and such signature shall be valid to all intents and purposes as if such copy had been signed by the original party to the instrument.

243. Receipts by Registrar and indorsement. [cf. 7 Vic. No.16, s.14; N.S.W. No.22 of 1897, s.10] (1) Upon the lodging in the office of the Registrar of any such certified copy as aforesaid and the verification of the same, the Registrar or his deputy shall grant and sign a receipt for such copy, specifying the day and hour on which it was lodged, and the name and place of abode of the witnesses attesting or verifying the same, and the number of such verified copy according as the same shall be numbered in such office, and such receipt shall be indorsed upon the original instrument to which such certified copy relates, and shall also be entered on such certified copy.

(2) The time so indorsed shall be taken to be the time of registration of every such instrument of which the certified copy has been made as aforesaid.

(3) Every such certified copy so lodged in the said office shall be numbered successively according to the order of time in which the same has been lodged, and shall immediately be registered according to such number and order of time in a book or books to be provided and kept for such purpose in the said office, and every such book shall be open at all convenient times to the inspection of persons desirous of searching the same.

244. Mistakes in registration. [cf. 22 Vic. No.1, s.17; N.S.W. No.22 of 1897, s.13] No registration of any instrument under any Act now or heretofore in force for the registration of deeds or intended to be in pursuance of any such Act shall be defeated or made ineffectual by reason of any omission misdescription or error in any case where the identity of the instrument in evidence with the one alleged to have been registered is established and the substantial requirements of the Act have been complied with.

245. Deeds to take effect according to priority of registration. [cf. 7 Vic. No.16, s.11; N.S.W. No.22 of 1897, s.12] All deeds and other instruments (wills excepted) affecting land or any interest therein which shall be executed or made bona fide and for valuable consideration and which shall be duly registered in accordance with the provisions of this Division shall have and take priority not according to their respective dates but according to the priority of the registration thereof only.

246. Fraud of conveying party. [cf. 22 Vic. No.1, s.18; N.S.W. No.22 of 1897, s.18] No instrument hereafter executed and registered in accordance with the provisions of this Division shall lose any priority to which it would be entitled by virtue of such registration by reason only of bad faith in the conveying party if the party beneficially taking under such instrument acted bona fide and there was a valuable consideration for the same paid or given.

247. Covenants to produce deeds. [cf. 7 Vic. No.16, s.25] A covenant or undertaking whether now or hereafter entered into to produce to any purchaser lessee or mortgagee of land or his assigns any deed of or relating to such land shall be satisfied by a deposit of the deed permanently in the office of the Registrar who shall give a receipt for and keep in his office a list of all deeds so deposited and shall permit any person on payment of the proper fees to inspect and obtain copies of every such deed.

248. Certified copy to be admitted in evidence. [cf. 7 Vic. No.16, s.30]

(1) In all proceedings before any court of justice a copy of any instrument, will or copy thereof registered, deposited or lodged in accordance with the provisions of this Division shall, if such copy be signed by the Registrar and sealed with his seal, be received in evidence as prima facie proof of the instrument or will and of all matters contained or recited in or indorsed on the original instrument.

(2) In this section "copy" includes "photostatic copy".

Division 4 - Compulsory registration of title

249. Application of Division and interpretation. (1) The provisions of this Division apply, notwithstanding any of the provisions of Division 3 of this Part, to any application for registration of an instrument hereafter made by lodging the same in the office of the Registrar in accordance with the provisions of Division 3.

(2) In this Division the expression "applicant for registration" means a person who lodges or (if that person is a solicitor or conveyancer or some person employed by a solicitor or conveyancer acting on behalf of another) on whose behalf, an instrument is lodged for registration under the provisions of Division 3 of this Part.

250. Bringing land under The Real Property Acts. Any applicant for registration after the commencement of this Act shall within three months after registration of an instrument in accordance with the provisions of Division 3 of this Part make and prosecute an application in accordance with the provisions of The Real Property Acts to bring under those Acts the land to which the instrument so registered relates.

(2) This section shall not apply to -

(a) any land in respect of which, at the time of such registration, there is in existence an application for bringing the land under The Real Property Acts;

- (b) any person from whom the Registrar is by reason of section 16 of The Real Property Acts precluded from receiving an application to bring land under those Acts, other than a person mentioned in paragraph (c) hereof; or
- (c) any person from whom the Registrar is by reason of section 16 of The Real Property Acts precluded from receiving an application to bring land under those Acts except with the consent of any other person, and the Registrar is satisfied that reasonable steps have been taken to obtain such consent but without success;
- (d) any person who is not competent under section 16 of The Real Property Acts to apply to bring such land under the Acts.

251. Limited effect of registration. (1) Registration in accordance with the provisions of Division 3 of this Part of any instrument executed whether before or after the commencement of this Act shall, subject to this section, be effective only for the period of twelve months next following the date of such registration.

(2) The Registrar may for good reason extend the period referred to in subsection (1) of this section for such one or more further periods of twelve months as he may think fit.

(3) Upon the expiration of the period of twelve months referred to in subsection (1) of this subsection and of such further period or periods (if any) as the Registrar may under subsection (2) of this section allow, registration in accordance with the provisions of Division 3 of this Part shall lapse and cease to be effective -

- (a) for the purpose of according priority to such registered instrument;
- (b) for the purpose at any time of constituting notice to any person of the execution or existence or registration of such instrument; and
- (c) for any other purpose of Division 3 of this Part.

(4) In any case in which, in the exercise of the powers conferred by this section, the Registrar extends the period during which a registered instrument shall have effect, he shall, in addition to any other indorsement required to be made by the provisions of this Part -

- (a) indorse upon the copy instrument referred to in section 243(1), and
- (b) enter in the book or books referred to in section 243(3) -

a memorial of such extension, including particulars of the day and hour on which it was granted and the day and hour on which such extension will expire.

(5) Unless the Registrar otherwise directs, an instrument which has, by virtue of subsection (3) of this section, lapsed and ceased to be effective shall not on any subsequent occasion be registered in accordance with the provisions of Division 3 of this Part.

(6) This section shall not apply to any application in respect of land referred to in subsection (2) of section 250, or to any application by a person referred to in that subsection, or to any application by any person who is not competent under section 16 of The Real Property Acts to apply to bring land under the provisions of those Acts.

(7) Any person aggrieved by a decision of the Registrar may within twenty-one days after such decision apply to a Judge for a direction that the Registrar reverse or modify his decision, and the Registrar shall thereafter act in accordance with the direction, if any, which may be given on such application.

252. Financial assistance. (1) Where the Registrar is satisfied that, by reason of financial or other circumstances, the making and prosecution of an application to bring land under the provisions of The Real Property Acts will cause hardship to an applicant for registration, the Registrar may by writing under his hand and seal certify that fact and may further certify that the whole or any specified proportion of the costs and expenses of bringing the land under the provisions of The Real Property Acts be paid out of the Assurance Fund constituted under sections 42 and 43 of those Acts.

(2) The Treasurer shall upon receipt of a certificate in accordance with subsection (1) of this section pay to the solicitor or conveyancer for the applicant for registration or, if the applicant for registration has no solicitor or conveyancer acting on his behalf, to the applicant for registration, the whole or such proportion of the costs and expenses as are certified by the Registrar to be the reasonable costs and expenses of bringing the land under the provisions of The Real Property Acts, and shall charge the same to the Assurance Fund.

PART XIX - MISCELLANEOUS

253. Protection of solicitors and others adopting this Act. [cf. Eng. s.182; N.S.W. s.176] (1) The powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed to be included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction, and a solicitor, counsel or conveyancer shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2) Nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3) Where the solicitor, counsel or conveyancer is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4) Where such persons are acting without a solicitor, counsel or conveyancer, they shall also be protected in like manner.

254. Restriction on constructive notice. [cf. N.S.W. s.164; Eng. s.199]

(1) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless -

- (a) it is within his own knowledge, or would have come to his knowledge, if such searches as to instruments registered or deposited under any Act, inquiries, and inspections had been made as ought reasonably to have been made by him; or

(b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel as such, or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or other agent as such, if such searches, inquiries, and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2) This section shall not exempt a purchaser from any liability under or any obligation to perform or observe any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately, and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Act, save that where an action is pending at the commencement of this Act the rights of the parties shall not be affected by this section.

255. Service of notices. [cf. W. A. s. 135; Eng. s. 196; N. S. W. s. 135]

(1) (a) A notice required or authorised by this Act to be served on any person or any notice served on any person under any instrument or agreement that relates to property may be served on that person -

- (i) by delivering the notice to him personally;
- (ii) by leaving it for him at his usual or last known place of abode, or, if he is in business as a principal, at his usual or last known place of business;
- (iii) by posting it to him as a letter addressed to him at his usual or last known place of abode, or, if he is in business as a principal, at his usual or last known place of business; or
- (v) in the case of a corporation by leaving it or by posting it as a letter addressed in either case to the corporation at its registered office or principal place of business in the State.

(b) A notice so posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post the notice would be delivered.

(2) (a) If the person is absent from the State, the notice may be delivered as provided in subsection (1) of this section to his agent in the State.

(b) If he is deceased, the notice may be so delivered to his personal representative.

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

(4) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any notice is to be delivered, or dispensing with the delivery thereof.

(5) This section does not apply to notices served in proceedings in the Court, nor where the person serving the notice prevents its receipt by the person on whom the notice is intended to be served.

(6) This section applies unless a contrary method of service of a notice is provided in the instrument or agreement, or by this Act.

256. Payments into and applications to Court. [cf. N.S.W. s. 171; Eng. s. 203] (1) Payment of money into court under the provisions of this or any other Act shall effectually exonerate therefrom the person making the payment.

(2) Every application to the Court shall be by summons at chambers, except where it is otherwise provided in this Act (expressly or by implication) or in regulations made under this Act.

(3) On an application by a purchaser, notice shall be served in the first instance on the vendor unless the Court dispenses with such service.

(4) On an application by a vendor, notice shall be served in the first instance on the purchaser unless the Court dispenses with such service.

(5) On any application, notice shall be served on such persons (if any) as the Court thinks fit.

(6) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.

257. Power to make regulations, etc. The Governor in Council may by notice published in the Gazette -

- (a) make regulations not inconsistent with this Act for the purpose of carrying out or giving effect to any of the provisions of this Act;
 - (b) make regulations prescribing the fees to be paid and taken for any matter or thing to be done under this Act;
 - (c) prescribe additional forms or omit vary or modify any form provided for use in connexion with this Act;
 - (d) make regulations reviving any Act or any Imperial Act or New South Wales Act or any provision of such Act which by virtue of this Act is repealed or ceases to apply.
-

THE FIRST SCHEDULE

Form 1

Application by tenant in tail for entry of title in fee simple

The Real Property Acts, 1861 to 1963
Property Law Act 197 , section 22

To the Registrar of Titles:

I, _____, being the registered proprietor for an estate in tail by virtue of Certificate of Title _____ Volume _____ Folio _____ in the lands therein described do hereby apply to you to note on such Certificate of Title that in pursuance of section 22 of the Property Law Act I am entitled to such land for an estate in fee simple and I hereby certify that this application is correct for the purposes of The Real Property Acts, 1861 to 1963.

DATED this _____ day of _____ 19 _____

Signed in my presence by the said _____ who is personally known to me.

Form 2

Notice of default under instalment contract

Property Law Act 197 , section 71

Take notice that you are in breach of a contract dated _____ for the sale of land described as _____ in that you defaulted in payment of the instalment(s) due and payable thereunder on the day(s) of _____ 19 _____ .

And further take notice that, unless within the period of 30 days of service of this notice, you pay or tender to [insert name of vendor or his agent] the sum of \$ _____, being the amount of the said instalment(s), the contract will be determined without further notice.

DATED this _____ day of _____ 19 _____

TO: [Insert name of purchaser]

SIGNED.....
Vendor [or Agent for the Vendor]

Memorandum of Variation of Mortgage

Form 3

Increase or reduction of interest rate

Property Law Act 197 , section 78

Mortgage No.

The rate of interest payable under the mortgage above referred to is hereby increased [or reduced] to _____ per centum per annum [subject to reduction to _____ per centum per annum within _____ days of the dates provided for payment of interest by such mortgage] and we hereby certify that this instrument is correct for the purpose of the Real Property Acts, 1861 to 1963 [or the Land Act 1962-1970, (or as the case may be)].

DATED this _____ day of _____ 19____

Signed.....

[Signature of attesting witness]

Signed.....(Mortgagor)

Signed.....(Mortgagee)

[NOTE: This instrument must be signed by all parties to be bound thereby, and be lodged in duplicate with the relative mortgage.]

.....
Form 4

Increase or reduction of mortgage debt

Property Law Act 197 , section 78

Mortgage No.

The principal sum intended to be secured by the mortgage above referred to is hereby increased [or reduced] to \$ _____, and we hereby certify that this instrument is correct for the purpose of the Real Property Acts, 1861 to 1963 [or the Land Act 1962-1970, (or as the case may be)].

DATED this _____ day of _____ 19____

Signed.....

[Signature of attesting witness]

Signed.....(Mortgagor)

Signed.....(Mortgagee)

[NOTE: This instrument must be signed by all parties to be bound thereby, and be lodged in duplicate with the relative mortgage.]
.....

Shortening, renewal, or extension of mortgage term

Property Law Act, 197 , section 78

Mortgage No.

The term or currency of the mortgage above referred to is hereby shortened [or extended] to the day of 19 , and we hereby certify that this instrument is correct for the purposes of the Real Property Acts, 1861 to 1963, [or the Land Act 1962-1970, [or as the case may be)].

DATED this day of 19

Signed.....
[Signature of attesting witness]

Signed.....(Mortgagor)

Signed.....(Mortgagee)

[NOTE: This instrument must be signed by all parties bound thereby, and be lodged in duplicate with the relative mortgage.]

Notice of exercise of power of sale

Property Law Act, 197 , section 83

Take notice that default has been made under mortgage *[registered no. D] in respect of land described as in that:-

* (a) principal in an amount of \$ [and interest in an amount of \$] then due and owing was not paid on the day of 19 ;

* (b) the provisions of clause of the mortgage [or of section of the Act, 19] have not been observed or performed

And further take notice that, unless within 30 days of service upon you of this notice the said default is remedied, the undermentioned mortgagee may proceed to sell the land and exercise all or any of the other powers conferred by the mortgage and by the Property Law Act 19 .

DATED this day of 19

TO: [Here insert name and address of mortgagor]

Signed.....
[To be signed by the mortgagee or his agent]

* Omit if inapplicable.

Notice of completion of sale
Property Law Act 197 , section 84

Take notice that property described as [here insert description] comprising the whole [or part] of the property the subject of mortgage no. dated was on the day of 19 sold by public auction [or private contract] to [here insert name of purchaser] of [here insert address of purchaser] for a price of \$ and that such sale was completed on the day of 19 .

DATED this day of 19

TO: [Here insert name and address of mortgagor]

Signed.....
[To be signed by the mortgagee or his agent]

[NOTE: This form may, if desired, include details of the manner in which the proceeds of sale have been disposed of, and of the balance (if any) remaining due and owing by the mortgagor to the mortgagee or payable by the mortgagee to the mortgagor.]

Form 8

Notice of appointment of receiver
Property Law Act 197 , section 90

.....[state name] of [state address], the mortgagee under instrument of mortgage dated , registered no. given by to , being entitled to appoint a receiver under the power conferred by the abovementioned Act, and having become entitled to exercise the power of sale conferred by that Act, hereby in exercise of the foregoing power appoints [state names] of [state residence and occupation], to be receiver of the rents, profits and income of [if the appointment is to be in respect of part of the rents, profits, and income only, the form should be altered accordingly and the part described], the property comprised in the mortgage the particulars of which are set out in the Schedule hereto.

The rate of commission which the receiver is entitled to retain is[here fill in rate not to exceed five] per centum on the gross amount of all money received by the receiver.

The receiver is hereby directed to insure and keep insured against loss or damage by fire any buildings, effects, or property of an insurable nature comprised in the mortgage, whether affixed to the freehold or not.

The said receiver accepts this appointment.

DATED this day of 19

Signed by [insert name of mortgagee] :

Signed by [insert name of receiver] :

The Schedule

[Insert particulars of mortgaged property]

[NOTE: This appointment must (except in the case of unregistered land) be registered before the person appointed may exercise the powers conferred by section .]

Notice to remedy breach of covenant
Property Law Act 197 , section 124

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.

DATED this _____ 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 124 of the Property Law Act 197 .]

Form 10

Notice to tenant
Property Law Act 197 , section 131

To [name of tenant]

I hereby give you notice to deliver up possession of the premises [identify the premises]

which you hold of me as tenant, on the _____ day of _____ next, or on the last day of the period of your tenancy next following the giving of this notice.

DATED this _____ day of _____ 19____

[Landlord]

Notice to landlord
Property Law Act 197 , section 131

To [name of landlord]

I hereby give you notice that I am giving up possession of the premises [identify the premises]

which I hold of you as tenant, on the day of next, or on the last day of the period of my tenancy next following the giving of this notice.

DATED this day of 19

[Tenant]

.....
Form 12

Complaint for recovery of possession
Property Law Act 197 , section 143

Queensland
[Brisbane] to wit

The complaint of of , in the said State, made this day of , 19 , before the undersigned, one of Her Majesty's Justices of the Peace for the said State who says that , of , in the said State fails to quit and deliver up possession of [shortly describe land held over] situated at which was held of the said complainant [or, if the complainant is not the landlord, here state name and address of the landlord] under a tenancy [state nature of tenancy if practicable] which expired by effluxion of time [or was determined by notice to quit] on the day of , 19 , whereupon the said prays that I the said justice will proceed in the premises according to law.

Made before me the day and year first abovementioned at in the said State.

A.B., J.P.

.....

Summons for complaint
Property Law Act 197 , section 144

To _____ of _____, in the State of
Queensland.

Whereas the above complaint [or, if the summons is not on the complaint, a complaint] has this day been made before the undersigned, one of Her Majesty's Justices of the Peace for the said State [if the summons is not on the complaint here state shortly the matter of the complaint]:

You are hereby commanded, in Her Majesty's name, to appear at the Magistrates Court at _____, in the said State, on the _____ day of _____, 19____, at _____ o'clock in the _____ noon, to answer the said complaint and to show cause why a warrant to eject you from the said land should not be issued.

Given under my hand at _____, in the said State, this
day of _____, 19____.

A.B., J.P.

Indorsement on Summons

To the abovenamed defendant.

Take notice that unless not less than three days before the day on which you are required by this summons to appear you give written notice to the clerk of the Magistrates Court whereat you are now summoned to appear that you wish to appear and answer the complaint referred to in this summons, the said complaint may be heard and determined in your absence and evidence by affidavit on behalf of the complainant may be admitted.

Warrant for possession
Property Law Act 197 , section 146

Warrant to member of the Police Force to Take and Give Possession
To the Principal Police Officer at _____, in the State of
Queensland, and to all other members of the Police Force in the said State.

Whereas the Magistrates Court at _____, in the State of Queens-
land, in pursuance of the Property Law Act 197 and The Justices
Acts 1886 to 1968, did on this [the] _____ day of _____, 19____,
upon hearing the matter of a complaint made by A.B. [or C.D. the agent of
A.B.] against E.F. adjudge that the said A.B. is entitled to the possession
of [here describe the land as in the complaint] and also ordered that a
warrant should issue in accordance with the provisions of the said Act for
putting the said A.B. into possession of the said land within [as in Order]
clear days from the date hereof:

Now, therefore, I/we, the undersigned, being Her Majesty's justice
(justices) of the peace constituting the said Court [or, being the Clerk of the
said Court] do authorise and command you on any day within [as in Order]
clear days from the date hereof except on Sunday, [Christmas Day, Good
Friday and Anzac Day, or any of those days, to be added if necessary] between
the hours of nine in the forenoon and four in the afternoon to enter by force if
necessary and with or without the aid of [the landlord or agent of the landlord
as the case may be] or any other person or persons you deem necessary to
call to your assistance into and upon the said land and to eject therefrom the
said E.F. and all persons claiming under or through him together with his or
their goods and effects and to give possession of the same to the said A.B.
[or C.D. as such agent as aforesaid on behalf of the said A.B.]

Given under our hands (or my hand) this _____ day of _____,
19____.

J.P. [or Clerk of the Court, as the case may be]
J.P. [where court constituted by more justices than one]

Form 15

Form of general power of attorney
Property Law Act 197, section 170(1)

This general power of attorney is made this _____ day of _____
19 ____ by A.B. of _____ .

I appoint C.D. of _____ [or C.D. of _____ and E.F. of _____
jointly or jointly and severally] to be my attorney[s] in
accordance with section 170(1) of the Property Law Act 19 .

In witnessetc.

Form 16

Form of instrument revoking power of attorney
Property Law Act 197 , section 170(2)

Take notice that I hereby revoke as from the _____ day of _____
19 ____ the power of attorney dated the _____ day of _____
19 ____ whereby I appointed C.D. of _____ [or C.D. of _____
and E.F. of _____ jointly or jointly and severally] to be
my attorney[s] in accordance with section 170(1) of the Property Law Act
19 ____ .

In witness etc.

Form 17

Release or disclaimer of power
Property Law Act 197 , section 204

To: The Registrar of Titles [or as the case may be]

I, [insert names], of [insert address and description], being the
person entitled to exercise a power in respect of the land described as
[insert description] comprised in Certificate of Title Volume Folio
do hereby, in pursuance of the abovementioned section, release [or disclaim]
such power.

[If it is desired to limit the release or disclaimer to part only of the
land, proceed as follows:-]

so far as concerns that part of the land which is comprised in the
following description, viz.:-

And I hereby certify that this instrument is correct for the purposes
of The Real Property Acts, 1861 to 1963.

DATED this _____ day of _____ 19 ____

(Signature).....

Signed in my presence by
the said
who is personally known to me.

.....(Signature)

THE SECOND SCHEDULE

Short Forms of Covenants in Leases

Property Law Act 197 , section 109

Direction as to the forms in this Schedule

1. Parties who use any of the forms in the first column in this Schedule may substitute for the words "lessee" or "lessor", ~~any~~ name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.
2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.
3. Such parties may fill up the blank spaces left in the forms in the first column of this Schedule so employed by them with any words or figures and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.
4. Such parties may introduce into or annex to any form in the first column any addition to, exception from, or qualification of the same, or may strike out or omit any words of or from such column; and a proviso which would give effect to the intention indicated by such addition, exception, qualification, striking out, or omission shall be taken to be added to the corresponding form in the second column.
5. The covenants in the second column shall be taken to be made with and apply to the lessor or lessee or mortgagor or mortgagee as the case may be, his executors, administrators, and assigns, unless otherwise stated.

Leases

Column one.	Column two.
1. That the lessee covenants with the lessor to pay rent.	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with and promise to the said lessor that he the said lessee, his executors, administrators, or assigns, will, during the said term, pay unto the said lessor, his executors, administrators, or assigns the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever, other than any deduction which the lessee is by any Act of Parliament entitled to make.
2. Provided that in the event of damage by fire, lightning, flood, or tempest, rent shall abate until the premises are restored.	2. Provided that in case the demised premises, or any part thereof, shall at any time during the continuance of the lease be destroyed or damaged by fire, flood, lightning, storm, or tempest, so, in any such event as to render the same unfit for the occupation and use of the lessee, then, and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature and extent of the damage sustained shall abate, and all or any remedies for recovery of the rent or such proportionate part thereof shall be suspended until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee.

Column one.	Column two.
3. And to pay taxes, except for local improvements.	3. And also that the lessee will pay all taxes, rates, and assessments whatsoever, whether municipal, local government, parliamentary, or otherwise which are at any time during the term charged upon the demised premises, or upon the lessor, on account thereof, except taxes for local improvements or works assessed upon the property benefited thereby.
4. And to repair reasonable wear and tear and damage by fire, lightning, flood, and tempest only excepted.	4. And also that the lessee will, during the term, well and sufficiently repair, maintain, amend, and keep the demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the term shall be erected and made by the lessor, when, where, and so often as need shall be, reasonable wear and tear and damage by fire, lightning, flood, and tempest only excepted.
5. And to leave the premises in good repair (having regard to the condition thereof at the commencement of the lease), reasonable wear and tear and damage by fire, lightning, flood, and tempest only excepted.	5. And also that the lessee will at all times during the continuance of the said lease keep and at the expiration or sooner determination of the term, peaceably surrender and yield up unto the lessor the demised premises, with the appurtenances and all buildings, erections, and fixtures erected or made by the lessor thereon in good and substantial repair and condition, having regard to the condition thereof at the commencement of the lease, reasonable wear and tear and damage by fire, lightning, flood, and tempest only excepted.
6. And that the lessor may enter and view state of repair, and that the lessee will repair according to notice in writing, and that in default the lessor may repair.	6. That the lessor, his executors, administrators and assigns, may, by himself or themselves, or his or their agents, twice in every year during the term at a reasonable time of the day upon giving to the lessee two days previous notice, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee, his executors, administrators, or assigns, or leave at his or their last or usual place of abode in the State, or upon the demised premises, a notice in writing of any defect, requiring him or them, within a reasonable time, to repair same in accordance with any covenant expressed or implied in the lease, and that in default of his or their so doing it shall be lawful for the lessor, his executors, administrators, or assigns from time to time to enter and execute the required repairs.
7. And that the lessor may enter and carry out requirements of public authorities, and repair under the lease.	7. That the lessor, his executors, administrators and assigns, may, by himself or themselves, or his or their agents, at all reasonable times during the term, with workmen and others, and all necessary materials and appliances, enter upon the demised premises, or any part thereof, for the purpose of complying with the terms of any present or future legislation affecting

Column one.	Column two.
7. And that the lessor may enter and carry out requirements of public authorities, and repair under the lease - <u>continued</u> .	the said premises, and of any notices served upon the lessor or lessee by licensing, local, municipal, or other competent authority, involving the destruction of noxious weeds or animals, or the carrying out of any repairs, alterations, or works of a structural character, which the lessee may not be bound, or if bound may neglect to do, and also for the purpose of exercising the powers and authorities of the lessor under the lease; provided that such destruction, repairs, alterations, and works shall be carried out by the lessor without undue interference with the occupation and use of the demised premises by the lessee.
8. And to insure from fire in the joint names of the lessor and the lessee.	8. And also that the lessee will forthwith insure the demised premises to the full insurable value thereof in some insurance office approved by the lessor in the joint names of the lessor and the lessee, and keep the same so insured during the continuance of the lease, and will upon the request of the lessor show to him the receipt for the last premium paid for such insurance, and as often as the demised premises shall be destroyed or damaged by fire all and every the sum or sums of money which shall be recovered or received for or in respect of such insurance, shall be laid out and expended in building or repairing the demised premises or such parts thereof as shall be destroyed or damaged by fire as aforesaid.
9. And to paint outside every [] year.	9. And also that the lessee will, in every year during the continuance of the lease, paint all the outside woodwork and ironwork belonging to the demised premises now or usually painted with two coats of proper oil colours, in a workmanlike manner.
10. And to paint and paper inside every [] year.	10. And also that the lessee will, in every year, paint the inside wood, iron and other works now or usually painted, with two coats of proper oil colours, in a workmanlike manner, and also will repaper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour such parts of the demised premises as are now plastered.
11. And to fence.	11. And also that the lessee will, during the continuance of the lease, erect and put up on the boundaries of the demised land or upon such boundaries upon which no substantial fence now exists a good and substantial fence.
12. And to keep up fences.	12. And also will, from time to time, during the continuance of the lease, keep up the fences and walls of or belonging to the demised premises, and make anew any parts thereof that may require to be new-made in a good and husband-like manner and at proper seasons of the year.

Column one.	Column two.
13. And to cultivate.	13. And also that the lessee will at all times during the continuance of the lease cultivate, use, and manage all such parts of the land as are or shall be broken up or converted into tillage in a proper and husband-like manner, and will not impoverish or waste the same.
14. That the lessee will not cut timber.	14. And also that the lessee will not cut down, fell, injure, or destroy any growing or living timber or timber-like trees standing and being upon the demised land, without the consent in writing of the lessor.
15. That the lessee will not without consent use premises otherwise than as a private dwelling-house.	15. And also that the lessee or any sub-tenant will not convert, use, or occupy the demised premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the lessor.
16. And will not assign or sublet without leave; no fine to be taken.	16. And also that the lessee or any sub-tenant will not, during the continuance of the lease, assign, transfer, demise, sublet, or part with the possession or by any act or deed, procure the demised premises, or any part thereof, to be assigned, transferred, demised, sublet unto or put into the possession of any person or persons, without the consent in writing of the lessor, but such consent shall not be refused in the case of a proposed respectable and responsible assign, tenant or occupier: Provided further, that no fine or sum of money in the nature of a fine shall be payable for or in respect of such license or consent, but this proviso shall not preclude the right of the lessor to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such license or consent.
17. That the lessee will not carry on any offensive trade.	17. That the lessee or any sub-tenant will not at any time during the continuance of the lease use, exercise, or carry on, or permit or suffer to be used, exercised, or carried on in or upon the demised premises or any part thereof, any noxious, noisome, or offensive art, trade, business, occupation, or calling, and no act, matter, or thing whatsoever shall, at any time during the continuance of the lease, be done in or upon the said premises or any part thereof which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of any neighbouring premises.

Column one.	Column two.
18. That the lessee will carry on the business of a hotel-keeper and conduct the same in an orderly manner.	18. And also that the lessee, or the sub-tenant for the time being, will at all times during the continuance of the lease, use, exercise, and carry on, in and upon the demised premises, the trade or business of a licensed victualler or hotelkeeper, and keep open and use the buildings upon the demised land as and for a hotel, and manage and conduct such trade or business in a quiet and orderly manner, and will not do, commit, or permit, or suffer to be done or committed any act, matter, or thing whatsoever whereby or by means whereof any license shall or may be forfeited or become void or liable to be taken away, suppressed, or suspended in any manner howsoever; and will comply in all respects with the requirements of the Liquor Act for the time being in force.
19. And will apply for renewal of license.	19. And also that the lessee, or the sub-tenant for the time being, will from time to time, during the continuance of the lease at the proper times for that purpose, apply for and endeavour to obtain at his own expense all such licenses as are or may be necessary for carrying on the said trade or business of a licensed victualler or hotelkeeper in and upon the demised premises, and keeping the buildings open as and for a hotel.
20. And will facilitate the transfer of license.	20. And also that the lessee, or the sub-tenant for the time being, will at the expiration or other sooner determination of the lease sign and give such notice or notices, and allow such notice or notices of a renewal or transfer of any license as may be required by law to be affixed to the demised premises, to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf, and generally to do and perform all such further acts, matters, and things as shall be necessary to enable the lessor, or any person authorised by him, to obtain the renewal of any license or any new license, or the transfer of any license then existing and in force.
21. The said (lessor) covenants with the said (lessee) for quiet enjoyment.	21. And the lessor doth hereby covenant with the lessee that he paying the rent hereby reserved, and performing the covenants hereinbefore on his part contained, shall and may peaceably possess and enjoy the demised premises for the term hereby granted, without any interruption or disturbance from the lessor or any other person or persons lawfully claiming by, from, or under him.
22. And that the lessee may remove his fixtures.	22. And also that the lessee may at or prior to the expiration of the lease take, remove, and carry away from the demised premises all fixtures, fittings, plant, machinery, utensils,

Column one.	Column two.
22. And that the lessee may remove his fixtures - <u>continued.</u>	shelving, counters, safes, or other articles upon the demised premises in the nature of trade or tenants' fixtures brought upon the demised premises by the lessee, but the lessee shall in such removal do no damage to the demised premises, or shall forthwith make good any damage which he may occasion thereto.

THE THIRD SCHEDULE

Improvements by tenant

Property Law Act 197 , section 157

PART I

1. Drainage of land.
2. Erection or enlargement of buildings.
3. Making of fences.
4. Formation of silos.
5. Making of water meadows or works of irrigation.
6. Making of dams for the conservation of water, or wells.
7. Clearing of land.

PART II

8. Liming of land.
 9. Manuring of land with purchased artificial or other purchased manures.
 10. Laying down pasture with clover, grass, lucerne, sainfoin, or other seeds sown more than two years prior to the determination of the tenancy.
 11. Making of plantations of bananas or pineapples.
 12. Planting of sugar-cane.
 13. Planting of orchards with fruit trees permanently set out.
-

THE FOURTH SCHEDULE

Rules as to arbitration

Property Law Act 197 , section 159

PART I - Arbitration before a single arbitrator

Appointment of arbitrator

1. A person agreed upon between the parties, or in default of agreement nominated by the Secretary of the Department of Primary Industries, herein called the Minister, on the application in writing of either of the parties, shall be appointed arbitrator.
2. If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.
3. Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party.
4. Every appointment, notice, revocation, and consent under this Part of these rules must be in writing.

Time for award

5. The arbitrator shall make and sign his award within twenty-eight days of his appointment or within such longer period as the Minister may (whether the time for making the award has expired or not) direct.

Removal of arbitrator

6. Where an arbitrator has misconducted himself the Court or a Judge thereof may remove him.

Evidence

7. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator all samples, books, deeds, papers, accounts, writings, and documents, within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbitrator may require.
8. The arbitrator shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbitrator thinks fit, be examined on oath or affirmation.

Statement of case

9. The arbitrator may at any stage of the proceedings, and shall, if so directed by a judge of the Court (which direction may be given on the application of either party), state in the form of a special case for the opinion of that court any question of law arising in the course of the arbitration.

Award

10. The arbitrator shall on the application of either party specify the amount awarded in respect of any particular improvement or improvements, and the award shall fix a day not sooner than one month nor later than two months after the delivery of the award for the payment of the money awarded for compensation, costs, or otherwise, and shall be in such form as may be prescribed by the Minister.

11. The award to be made by the arbitrator shall be final and binding on the parties and the persons claiming under them respectively.

12. The arbitrator may correct in an award any clerical mistake or error arising from any accidental slip or omission.

13. When an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the Court or a Judge thereof may set the award aside.

Costs

14. The costs of and incidental to the arbitration and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof are to be paid, and the costs shall be subject to taxation by the proper officer of the Court on the application of either party.

15. The arbitrator shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

Forms

16. Any forms for proceedings in arbitrations under this Act which may be prescribed by the Minister shall, if used, be sufficient.

PART II - Arbitration before two arbitrators or an umpire

Appointment of arbitrators and umpire

1. If the parties agree in writing that there be not a single arbitrator, each of them shall appoint an arbitrator.

2. If before award an arbitrator dies or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the party appointing him shall appoint another arbitrator.

3. Notice of every appointment of an arbitrator by either party shall be given to the other party.

4. If for fourteen days after notice by one party to the other to appoint an arbitrator, or another arbitrator, the other party fails to do so, then, on the application of the party giving notice, the Minister shall appoint a person to be an arbitrator.

5. Where two arbitrators are appointed, then (subject to the provisions of these rules) they shall, before they enter on the arbitration, appoint an umpire.

6. If before award an umpire dies or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the arbitrators may appoint another umpire.

7. If for seven days after request from either party, the arbitrators fail to appoint an umpire, or another umpire, then, on the application of either party, the Minister shall appoint a person to be the umpire.

8. Neither party shall have power to revoke an appointment of an arbitrator without the consent of the other.

9. Every appointment, notice, request, revocation, and consent under this Part of these rules shall be in writing.

Time for an award

10. The arbitrators shall make and sign their award in writing within twenty-eight days after the appointment of the last appointed of them, or on or before any later day to which the arbitrators, by any writing signed by them, may enlarge the time for making the award, not being more than forty-nine days from the appointment of the last appointed of them.

11. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to either party or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the arbitration in lieu of the arbitrators.

12. The umpire shall make and sign his award within one month after the original or extended time appointed for making the award of the arbitrators has expired.

13. The time for making an award may from time to time be extended by the Minister, whether the time for making the award has expired or not.

Removal of arbitrator, evidence, statement of case,
award, costs, forms

14. The provisions of Part I of these rules as to the removal of an arbitrator, the evidence, the statement of a case, the award, costs, and forms shall apply to an arbitration in accordance with this Part as if the expression "arbitrator" whenever used in those provisions included two arbitrators or an umpire, as the case may require.

THE FIFTH SCHEDULE

Acts repealed

Property Law Act 197 , section 3

PART 1 - Imperial Acts

Year and Number	Short Title (if any) or Subject-matter	Extent of Repeal	
1266	51 Hen. 3, St. 4	Distress for rent	The whole
1267	52 Hen. 3, c. 23	Statute of Marlborough (waste)	The whole
1275	3 Edw. 1, c. 16	Distress for rent	The whole
1285	13 Edw. 1, St. 1, c. 1	De Donis Conditionalibus	The whole
1285	13 Edw. 1, St. 1, c. 2	Vexatious Replevins	The whole
1285	13 Edw. 1, St. 1, c. 22	Waste	The whole
1285	13 Edw. 1, St. 1, c. 37	Distress	The whole
1290	18 Edw. 1, St. 1	Quia Emptores	The whole
1324	17 Edw. 2, St. 1, c. 6	De Prerogativa Regis	The whole
1327	1 Edw. 3, St. 2, c. 12	Fines on Alienation	The whole
1327	1 Edw. 3, St. 2, c. 13	Tenants in Capite	The whole
1361	34 Edw. 3, c. 15	Confirmation of Grants	The whole
1361	34 Edw. 3, c. 16	Statute of Non-claim	The whole
1376	50 Edw. 3, c. 6	Fraudulent assurances	The whole
1483	1 Ric. 3, c. 7	Statute of Fines	The whole
1487	3 Hen. 7, c. 4	Deeds of gift of chattels	The whole
1487	4 Hen. 7, c. 24	Statute of Fines	The whole
1535	27 Hen. 8, c. 10	Statute of Uses	The whole
1539	31 Hen. 8, c. 1	Statute of Partition	The whole
1540	32 Hen. 8, c. 9	Pretenced Titles	The whole
1540	32 Hen. 8, c. 28	Validation of leases	The whole
1540	32 Hen. 8, c. 31	Recoveries	The whole
1540	32 Hen. 8, c. 32	Statute of Partition	The whole
1540	32 Hen. 8, c. 34	Grantees of Reversions	The whole
1540	32 Hen. 8, c. 36	Statute of Fines	The whole
1540	32 Hen. 8, c. 37	Executors to recover arrears of [rent	The whole
1554	1 & 2 Phill. & Mary, c. 12	Impounding of distress	The whole
1570	13 Eliz. 1, c. 5	Fraudulent conveyances	The whole
1572	14 Eliz. 1, c. 8	Recoveries	The whole
1585	27 Eliz. 1, c. 4	Fraudulent conveyances	The whole
1660	12 Car. 2, c. 24	Tenures Abolition Act	The whole
1665	17 Car. 2, c. 7	Distress for Rents	The whole
1666	18 & 19 Car. 2, c. 11	Cestui que Vie Act, 1666	The whole
1677	29 Car. 2, c. 3	Statute of Frauds, 1677	The whole
1689	2 Wm. & Mary, Sess. 1, c. 5	Distress for Rent Act, 1689	The whole
1705	4 & 5 Anne, c. 16 (or c. 3)	Administration of Justice Act	The whole
1707	6 Anne, c. 72 (or c. 18)	Cestui que Vie Act, 1707	The whole
1709	8 Anne, c. 18 (or c. 14)	Landlord and Tenant Act, 1709	The whole
1730	4 Geo. 2, c. 28	Landlord and Tenant Act, 1730	The whole
1737	11 Geo. 2, c. 19	Distress for Rent Act, 1737	The whole
1800	39 & 40 Geo. 3, c. 98	Accumulations Act, 1800	The whole
1814	54 Geo. 3, c. 145	Corruption of the Blood Act, 1814	The whole
1816	56 Geo. 3, c. 16	Receiver of Crown Rents Act	The whole
1817	57 Geo. 3, c. 93	Distress (Costs) Act, 1817	The whole
1820	1 Geo. 4, c. 87	Recovery of possession by landlords	The whole
1827	7 & 8 Geo. 4, c. 17	Distress (Costs) Act, 1827	The whole
1828	9 Geo. 4, c. 14	Statute of Frauds Amendment [Act, 1828	The whole

PART 2 - New South Wales Acts

1843	7 Vic. No. 16	Registration of Deeds Act, 1843	The whole
1847	11 Vic. No. 28	Leases Act 1847	The whole
1857	20 Vic. No. 27	Registration of Deeds Act, 1857	The whole
1858	22 Vic. No. 1	Titles to Land Act, 1858	The whole

Year and Number	Short Title (if any) or Subject-matter	Extent of Repeal	
<u>PART 3 - Queensland Acts</u>			
1861	25 Vic. No. 14	<u>The Real Property Acts, 1861 to 1963</u>	Sections 15A, 61, 61A, 69, 70, 71, 82, 90, 135, 136
1867	31 Vic. No. 16	<u>The Distress Replevin and Ejectment Act of 1867</u>	The whole
1867.	31 Vic. No. 17	<u>Common Law Practice Act 1867-1970</u>	Sections 6, 7, 9, 10
1867	31 Vic. No. 18	<u>The Equity Act of 1867</u>	Sections 63 to 68 (inclusive); sections 70 to 72 (inclusive)
1867	31 Vic. No. 22	<u>The Statute of Frauds and Limitations of 1867</u>	The whole
1867	31 Vic. No. 24	<u>The Succession Acts, 1867 to 1968</u>	Sections 24, 25, 26, 66
1867	31 Vic. No. 36	<u>The Mercantile Acts, 1867 to 1896</u>	Sections 1, 2, 46 to 50(inclusive)
1876	40 Vic. No. 6	<u>The Judicature Act of 1876</u>	Sections 5(2), 5(3), 5(4), 5(5), 5(6), 5(7)
1877	41 Vic. No. 18	<u>The Real Property Act of 1877</u>	Section 31
1891	55 Vic. No. 12	<u>The Escheat (Procedure and Amendment) Act of 1891</u>	The whole
1896	60 Vic. No. 6	<u>The Sale of Goods Act of 1896</u>	Section 7
1899	63 Vic. No. 6	<u>The Registration of Deeds Act of 1899</u>	The whole
1905	5 Edw. 7, No. 12	<u>The Agricultural Holdings Act of 1905</u>	The whole
1906	6 Edw. 7, No. 3	<u>The Ancient Lights Declaratory Act of 1906</u>	The whole
1909	9 Edw. 7, No. 12	<u>The Metropolitan Water Supply and Sewerage Acts, 1909 to 1962</u>	Section 100(3)
1911	2 Geo. 5, No. 18	<u>The Partition Act of 1911</u>	The whole
1913	4 Geo. 5, No. 5	<u>The Partition Act Amendment Act of 1913</u>	The whole
1931	22 Geo. 5, No. 28	<u>The Lessees' Relief Acts, 1931 to 1932</u>	The whole
1933	24 Geo. 5, No. 26	<u>The Contracts of Sale of Land Act of 1933</u>	The whole
1934	25 Geo. 5, No. 33	<u>The Law of Distress and Other Acts Amendment Act of 1934</u>	The whole
1936	1 Geo. 6, No. 1	<u>Local Government Act 1936-1970</u>	Section 27(9)
1952	1 Eliz. 2, No. 42	<u>The Law Reform (Joint Tortfeasors Contributory Negligence and Division of Chattels) Act of 1952</u>	Part IV
1955	4 Eliz. 2, No. 18	<u>The Encroachment of Buildings Act of 1955</u>	The whole
1962	No. 16 of 1962	<u>The Escheat Amendment Act of 1962</u>	The whole
1968		<u>District Court Rules, 1968</u>	Rules 169, 170
1970	No. 12 of 1970	<u>Termination of Tenancies Act, 1970</u>	The whole

An Act to Amend The Real Property Acts, 1861 to 1963 in certain particulars.

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:-

1. Short title and citation. (1) This Act may be cited as the Real Property Act 197 .

(2) The Real Property Acts, 1861 to 1963, are in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Real Property Act 1861-197 .

2. Amendment of Principal Act. The Principal Act is amended by omitting section 57 and inserting in its stead the following section:-

"57. Remedy when mortgagor or encumbrancer is in default. Power to sell. The mortgagee or encumbrancee shall have and may exercise the power to sell conferred by the Property Law Act 197 ."

3. Amendment of s. 20. Section 20 of the Principal Act is amended by omitting the word "forty" where it appears in the second line of the proviso in the second paragraph of section 20 and by substituting therefor the word "thirty".

4. Amendment of s. 68. Section 68 of the Principal Act is amended by inserting after the words "or by this Act" where they appear in the second paragraph of section 68 the words "or by the Property Law Act 197 ."

5. Application. This Act applies to a mortgagee or encumbrancee exercising power to sell whether the mortgage was made before or after the commencement of this Act.
