

*Hon. Mr. Mason*

PROPERTY LAW AMENDMENT (No. 2)

ANALYSIS

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A BILL INTITULED

AN ACT to Amend the Property Law Act, 1908.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.	1. This Act may be cited as the Property Law Amendment Act (No. 2), 1950, and shall come into force on the first day of January, nineteen hundred and fifty-one.	
Principal Act.	2. This Act is passed in amendment of the Property Law Act, 1908 (hereinafter referred to as the principal Act), and reference to a section or schedule by number is to the section or schedule bearing that number in the principal Act except where the contrary appears.	5
Existing rights saved.	3. Any alteration made in the law by this Act, whether by the repeal of an enactment or otherwise, shall not, unless otherwise expressly provided by this Act, affect—	10
	(a) Any right accrued, or obligation incurred, before the commencement of this Act under the law so altered; or	15
	(b) The validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered before the commencement of this Act.	20
Section 1 amended.	4. Section one is amended—	
Application to Land Transfer Act, 1915.	(a) By repealing subsection four and substituting— “(4) Except as hereinafter provided, this Act, so far as inconsistent with the Land Transfer Act, 1915, shall not apply to lands, whether freehold or leasehold, which are under the provisions of that Act”; and	25
	(b) By adding a subsection as follows:— “(5) Wherever any provision of this Act is expressed to apply to land under the provisions of or instruments under the Land Transfer Act, 1915, such provision shall not be deemed to apply exclusively to such land or instruments unless the contrary appears.”	30
Definitions.	5. Section two is amended—	35
	(a) By inserting the words “by deed” after the word “assurance” in the definition of “conveyance”;	
	(b) By adding to the definition of “executors” and “administrators” the words “and ‘executors’ includes executors by right of representation”;	40
	(c) By inserting the following definitions in places appropriate to alphabetical order—	

“ ‘ Deed ’, in relation to land under the provisions of the Land Transfer Act, 1915, includes an instrument having the effect of a deed under that Act:

5 “ ‘ Land under the provisions of the Land Transfer Act, 1915,’ or any equivalent expression, means estates or interests registered under that Act:

10 “ ‘ Mortgage ’, ‘ mortgagee ’, and ‘ mortgagor ’, in relation to land under the provisions of the Land Transfer Act, 1915, have the same meaning as in that Act:

15 “ ‘ Registered ’ or ‘ duly registered ’ means registered under the Land Transfer Act, 1915, where the land affected is under the provisions of that Act, and otherwise means registered under the Deeds Registration Act, 1908; and ‘ registration ’ has a corresponding meaning.”

20 **6.** New sections are inserted after section twenty-five as follows:—

New sections inserted.

25 “ 25A. (1) A contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise of property to trustees upon trust for a person whose interest is contingent or executory, shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator except so far as such income, or any part thereof, may be otherwise expressly disposed of.

Intermediate income of contingent or executory gifts.

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

40 “(3) This section applies only to wills and instruments coming into operation on or after the first day of January, nineteen hundred and fifty-one.

Receipts for  
income by  
married infants.

“ 25B. (1) A married infant shall have power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

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“(2) This section applies only to receipts given on or after the first day of January, nineteen hundred and fifty-one.”

Section 34  
amended.

7. Section thirty-four is amended by the addition of the following subsection:—

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“(2) This section does not apply to land under the provisions of the Land Transfer Act, 1915.”

Repeal.

8. Section forty-seven is repealed, and the following sections substituted:—

“ 47. This Part applies to land under the provisions of the Land Transfer Act, 1915.

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Application of  
Part IV to Land  
Transfer land.

“ 47A. (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.

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Benefits of  
covenants  
relating to land.

“(2) For the purposes of this section in connection with covenants restrictive of the user of land, ‘ successors in title ’ shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

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Burden of  
covenants  
relating to land.

“ 47B. (1) A covenant relating to any land of a covenantor or capable of being bound by him by covenant shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself and his successors in title, and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed.

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

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

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9. Section forty-eight is amended—
- (a) By inserting “ whether express, or implied under this or any other Act ” after the word “ covenant ”; and
- 5 (b) By repealing subsection two thereof.
10. (1) New sections are inserted after section forty-eight as follows:—
- “ 48A. (1) A covenant, whether express or implied under this or any other Act, or an agreement made by a person with himself and another or others, shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been made with the other or others.
- 15 “(2) This section applies to covenants or agreements made or implied before or after the commencement of this Act.
- “ 48B. Where a covenant is implied under this or any other Act, and more persons than one are covenantors, such covenant shall be deemed to bind the covenantors and any two or greater number of them jointly and each of them severally.”
- 20 (2) Section sixty-six of the principal Act and sections one hundred and sixty-six and one hundred and sixty-seven of the Land Transfer Act, 1915, are repealed.
- 25 11. Sections forty-nine, fifty, fifty-one, and fifty-two are amended by inserting “ or any other ” after the words “ implied under this ” and after the words “ by virtue of this ” wherever those words occur.
12. Section fifty-five is amended by adding a subsection as follows:—
- 30 “(4) This section does not apply to land under the provisions of the Land Transfer Act, 1915.”
13. A new section as follows is inserted immediately following the heading “ VII. Covenants Implied in Conveyances Generally ” and before section fifty-six—
- 35 “ 55A. This Part, with the exception of sections fifty-nine and sixty A, applies only to land other than land under the provisions of the Land Transfer Act, 1915.”
14. (1) Section fifty-six is amended by adding the following subsections:—
- 40 “(3) The costs of any further assurance or production of title deeds required by a mortgagee under the implied covenants in that behalf shall during the continuance of the mortgage be borne by the mortgagor.

Section 48 amended.

New sections inserted.

Covenants and agreements made by a person with himself and others.

Implied covenants to be joint and several.

Sections 49, 50, 51, and 52 amended.

Section 55 amended.

Application of Part VII.

Section 56 amended.

“(4) The covenant for quiet enjoyment shall not be implied against any mortgagor until default in payment of the principal moneys secured by the mortgage at the time fixed for the repayment thereof, or in payment of interest thereon, or until breach of any covenant by the mortgagor contained or implied in the mortgage; and until such default or breach it shall not be lawful for a mortgagee to enter into possession of the mortgaged land.” 5

(2) Subsections two and three of section sixty-four are repealed. 10

Root of Title.

**15.** Section sixty is amended by inserting, after the word “contract” where it secondly appears therein, the following words: “Thirty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless, earlier title than thirty years may be required in cases similar to those in which earlier title than sixty years might have heretofore been required”; and the words so inserted shall be preceded by the symbols “(1)” and the words in the section following the words so inserted shall be preceded by the symbol “(2)”. 15 20

New section inserted.

**16.** A new section is inserted after section sixty as follows:— 25

Contracts where certificate of title is provisional.

“60A. (1) In the completion of any contract for the sale of any property, and subject to any stipulation to the contrary in the contract, where the land sold is comprised in a limited certificate of title under the Land Transfer (Compulsory Registration of Titles) Act, 1924, issued prior to the making of the contract, the vendor shall at his own expense do such acts, prove such matters, and comply with such requisitions by the District Land Registrar as shall be necessary to cause such certificate to cease to be limited as to title, and the vendor shall pay the statutory fee payable on the issue of the first such limited certificate. 30 35

“(2) Nothing herein shall alter the law between vendor and purchaser relating to survey and plan of survey of the land.” 40

17. (1) A new section as follows is inserted after the heading "VIII. Mortgages: General Provisions", and immediately before section sixty-two—

Application of Part VIII.

5 "61A. This Part shall apply to mortgages of land under the Land Transfer Act, 1915, effected by memorandum of mortgage under that Act to the extent and subject as in the several sections of such Part provided."

10 (2) Section eight of the Land Transfer Amendment Act, 1939, is repealed.

15 18. Section sixty-four is amended by the addition of the words "and except also that the last three paragraphs thereof, being those paragraphs under the heading 'Covenants, Conditions, and Powers implied in Mortgages that are subject to a prior Mortgage', shall be implied only in mortgages subject to a prior mortgage or mortgages."

Section 64 amended.

19. (1) Section sixty-seven is amended—

Section 67 amended.

20 (a) By inserting in subsection two the words "for the purposes of paragraphs (a) and (b) of the preceding subsection" after the word "memorandum"; and

25 (b) By inserting, after subsection two, a new subsection as follows:—

30 "2A. Such memorandum for the purposes of paragraphs (b), (c), and (d) of subsection one hereof shall be in the corresponding form prescribed by section one hundred and four of the Land Transfer Act, 1915, and all the provisions of the last mentioned section shall apply to the said paragraphs (b), (c), and (d) as if set out at length herein."

(2) The Fifth Schedule is amended by omitting forms (2), (3), and (4).

35 20. Section sixty-eight is amended by adding the following subsection:—

Section 68 amended.

"(2) This section applies to land under the provisions of the Land Transfer Act, 1915."

40 21. Section seventy is amended by adding the following subsection:—

Section 70 amended.

"(7) This section applies to land under the provisions of the Land Transfer Act, 1915."

Section 71  
amended.

**22.** Section seventy-one is amended by—

(a) Omitting subsection one, and substituting the following—

“(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”; and

(b) Adding a subsection as follows:—

“(3) This section and the next succeeding section apply to mortgages under the Land Transfer Act, 1915.”

Section 73  
amended.

**23.** Section seventy-three is amended by adding a subsection as follows:—

“(2) This section applies to mortgages under the Land Transfer Act, 1915.”

Section 74  
amended.

**24.** Section seventy-four is amended by the addition of a subsection as follows:—

“(3) This section applies to mortgages under the Land Transfer Act, 1915.”

Section 75  
amended.

**25.** (1) Section seventy-five is amended by repealing subsections one and two thereof, and substituting subsections as follows:—

Repayment  
when mortgagee  
cannot be found,  
&c.

“(1) Where any person entitled to receive payment of any money secured by mortgage is out of the jurisdiction, cannot be found, or is unknown or is dead, or it is uncertain who is entitled, the Public Trustee, on tender to him of the mortgage debt, and on proof to his satisfaction that the amount tendered is the whole amount due under the mortgage, may receive the same in trust for the mortgagee or other person entitled thereto, and on receipt thereof shall sign a memorandum of discharge of the mortgage debt.

“(2) Such memorandum of discharge shall, in favour of a purchaser of the land, upon registration, operate as a discharge of the land from the mortgage debt and as a deed of conveyance in the same manner as a memorandum of discharge operates under subsection three of section sixty-seven;



“ Provided that 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  
5 over and above the amount so paid shall continue to be a specialty debt due under the mortgage.

“(2A) With the exception of subsection two hereof, this section shall apply to mortgages under the Land Transfer Act, 1915, and in the case of any such mort-  
10 gage upon production to the District Land Registrar of the memorandum of discharge hereinbefore mentioned—

“(a) He shall on payment of the prescribed fee make an entry in the register book dis-  
15 charging the mortgage, stating the day and hour on which such entry is made:

“(b) Such entry shall be a discharge of the land from the mortgage:

“ Provided that as between the mort-  
20 gagor 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 and payable over and above the amount so paid shall continue to be a specialty debt due  
25 under the mortgage:

“(c) The District Land Registrar shall endorse on the relevant certificate of title or other docu-  
30 ment of title, and also on the memorandum of mortgage, whenever those instruments are brought to him for the purpose, particulars of such entry.”

(2) Section one hundred and seventeen of the Land Transfer Act, 1915, is repealed.

26. Section seventy-six is amended by adding to sub-  
35 section two the words “subject, as to the lands under the provisions of the Land Transfer Act, 1915, to compliance with the provisions of that Act ”.

Section 76 amended.

27. Section seventy-eight is amended by inserting, after subsection one, a new subsection as follows:—

Section 78 amended.

40 “(1A) If the land is to be offered for sale in lots, the mortgagee shall state separately his estimate of value of each lot, and the right of redemption conferred on the

mortgagor by the next succeeding section applies, with the necessary modifications, to the several lots, but the right to call for an assignment of the mortgage to the appointee of the mortgagor does not apply except in the case of the redemption of all or the residue of the land comprised in the mortgage.” 5

Section 80  
amended.

**28.** Section eighty is amended—

- (a) By inserting in subsection two “ or, where the land is under the Land Transfer Act, 1915, a memorandum of transfer ” after the words “ conveyance of the land purchased ”: 10
- (b) By inserting in subsections three and four “ or memorandum ” after the word “ deed ” where it occurs in those subsections:
- (c) By inserting in subsection four “ and subject, as to lands under the provisions of the Land Transfer Act, 1915, to compliance with the provisions of that Act as to registration ” after the word “ Registrar ”: 15
- (d) By inserting in subsection five “ or transfer ” after the word “ conveyance ”: 20
- (e) By inserting after subsection five a new subsection as follows,—

“(5A) Every such memorandum of transfer may be registered under the Land Transfer Act, 1915, and thereupon the estate or interest of the mortgagor therein expressed to be transferred shall vest in the transferee freed and discharged from the liability on account of the mortgage under which such power of sale has been exercised, or any estate or interest except an estate or interest which has priority over the mortgage or which by reason of the consent of the mortgagee is binding on him; and the District Land Registrar may make in the register book any entry necessary to show that such liability, estate, or interest has been so determined.” 30 35

Section 81  
amended.

**29.** Section eighty-one is amended by inserting “ or memorandum of transfer ” after the word “ conveyance ” wherever that word appears therein. 40

30. Sections one hundred and ten, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen of the Land Transfer Act, 1915, are repealed.

Repeal.

5 31. A subsection is added to section eighty-three, as follows:—

Section 83 amended.

“(6) This section applies to mortgages under the Land Transfer Act, 1915.”

10 32. (1) New sections are inserted after section eighty-three as follows:—

New sections inserted.

“83A. (1) In the exercise by the mortgagee of a power of sale or lease contained or implied in any mortgage—

Mortgaged property may be sold or leased together at one price or rent.

15 “(a) The mortgaged premises, or any part thereof, may be sold or leased, together with any other land or property of whatsoever nature or tenure which is the subject of the mortgage or of any collateral security from the mortgagor to the mortgagee by one sale or

20 lease at one price or rent; and in such case—

“(b) The mortgagee shall fairly and equitably apportion all costs, expenses, purchase moneys, and rents between the properties

25 sold or leased.

“(2) A failure by the mortgagee to make such apportionment shall not affect the purchaser or lessee, nor the title to the property in his hands.

30 “(3) This section extends to any case in which the whole or any part of any land the subject of the sale or lease is under the provisions of the Land Transfer Act, 1915.

“(4) This section applies to sales and leases made on or after the first day of January, nineteen hundred

35 and fifty-one, under mortgages, whether made before or after that date.

40 “83B. (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

Mortgagee's receipts, discharges, &c.

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.

“(3) This section applies to mortgages and encumbrances under the Land Transfer Act, 1915.”

(2) Section one hundred and seven of the Land Transfer Act, 1915, is repealed.

Application of  
Part IX.

**33.** A new section as follows is inserted immediately after the heading “IX. Leases: General Provisions” and before section eighty-four—

“83c. This Part shall apply to land under the Land Transfer Act, 1915.”

Repeal.

**34.** (1) Section eighty-four is repealed, and the following substituted—

Covenants  
implied in  
leases.

“84. (1) In every lease of land there shall be implied the following covenants by the lessee, for himself, his executors, administrators, and assigns:—

“(a) That he 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, tempest, or earthquake so as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved, or a proportionate part thereof, according to the nature and extent of the damage, shall abate; and all or any remedies

for the recovery of the rent or 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, and in case of any dispute arising under this proviso the same shall be referred to arbitration under the provisions of the Arbitration Act, 1908:

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

“(2) This section applies to every memorandum of lease under the Land Transfer Act, 1915.”

(2) Section ninety-seven of the Land Transfer Act, 1915, is repealed.

35. (1) Section eighty-five is amended—

Section 85 amended.

(a) By inserting the words “ in New Zealand ” after the word “ abode ”; and

(b) By omitting the words “ one month ” in paragraph (c), and substituting “ six months ”.

(2) Section ninety-eight of the Land Transfer Act, 1915, is repealed.

36. After section ninety-six new sections are inserted as follows:—

New sections inserted.

“ 96A. (1) An easement expressed to be created by an instrument coming into operation on or after the first day of January, nineteen hundred and fifty-one, and a restriction arising under covenant or otherwise as to the user of any land the benefit of which is intended to be annexed to other land, contained in an instrument coming into operation on or after the date aforesaid, shall not be enforceable against a person interested in the land claimed to be subject to the easement or restriction, and not being a party to its creation unless the instrument clearly indicates—

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

“(a) The land to which the benefit of the easement or restriction is appurtenant;

“(b) The land which is subject to the burden of the easement or restriction;

“(c) The persons (if any) having the right to release, vary, or modify the easement or restriction, other than the persons having, in the absence of agreement to the contrary, the right by law to release, vary or modify the easement or restriction; and 5

“(d) The persons (if any) whose consent to a release, variation, or modification of the easement or restriction is stipulated for. 10

“(2) This section shall not prevent the enforcement by a person entitled to a reversion or remainder or other future estate or interest in any land of any contract against a person entitled to the estate or interest on which the reversion, remainder, or other future estate or interest is expectant. 15

“(3) This section applies to land under the provisions of the Land Transfer Act, 1915, and in respect thereof— 20

“(a) The District Land Registrar shall have and be deemed always to have had power to enter in the appropriate folium of the register book relating to the land subject to the burden of a restriction a notification of the restriction, and a notification of any instrument purporting to affect the operation of the restriction of which a note has been so entered, and when the restriction is released, varied, or modified to cancel or alter the notification thereof: 25 30

“(b) A notification in the register book of any such restriction shall not give the restriction any greater operation than it has under the instrument creating it: 35

“(c) Every such restriction notified on the appropriate folium of the register book shall be an incorporeal right within the meaning of section sixty-four of the Land Transfer Act, 1915. 40

“ (4) Subsection one of this section shall not apply to an easement acquired by or for the Crown, or by or for any public or local authority constituted by Act of Parliament, nor to any restriction affecting the user of  
5 land in relation to any such easement.

“ 96B. (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  
10 order modify or wholly or partially extinguish the easement or restriction upon being satisfied—

Power for Court to modify or extinguish easements and restrictive covenants.

“ (a) That by reason of change in the user of any land having the benefit of the easement or restriction, or in the character of the neighbourhood or other circumstances of the case  
15 which the Court may deem material, the easement or restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land subject to the easement or restriction without securing practical benefit to the persons entitled to the easement or to the benefit of the restriction, or would, unless  
20 modified, so impede such user; or

“ (b) That the persons of full age and capacity for the time being or from time to time entitled to the easement or to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the land to which the easement or the benefit of the restriction is annexed, have agreed to the easement or restriction being modified or wholly or partially extinguished, or by their acts or omissions may reasonably be considered to have abandoned the ease-  
25 ment wholly or in part; or

“ (c) That the proposed modification or extinguishment will not substantially injure the persons entitled to the benefit of the restriction.

“(2) 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. 5

“(3) The Court may on the application of any person interested make an order declaring whether or not in any particular case any land is affected by an easement or restriction and the nature and extent thereof, and whether the same is enforceable, and, if so, by whom. 10

“(4) Notice of any application made under this section shall, if the Court so directs, be given to the Council of the borough or county or to the Town Board of the town district in which the land is situated and to such other persons and in such manner whether by advertisement or otherwise, as the Court, either generally or in a particular instance, may order. 15

“(5) An order under this section shall, when registered as in this section provided, be binding on all persons, whether of full age or capacity or not, then entitled or thereafter becoming entitled to the easement, or interested in enforcing the restriction, and whether such persons are parties to the proceedings or have been served with notice or not. 20 25

“(6) This section applies to easements and restrictions existing at the commencement of this Act or coming into existence after such commencement.

“(7) This section applies to land under the provisions of the Land Transfer Act, 1915, and in such case the District Land Registrar may, of his own motion, and on the application of any person interested in the land shall make all necessary amendments and entries in the register book for giving effect to such order in respect of all grants, certificates of titles and other instruments affected thereby and the duplicates thereof, if and when available. 30 35

“(8) In the case of other land a memorandum of such order shall be endorsed on such of the instruments of title as the Court directs.” 40



**37.** A section as follows is inserted following the heading "XI. Powers of Attorney", and immediately preceding section one hundred:—

Application of Part XI.

**5** "99A. This Part shall extend to powers of attorney authorizing, whether expressly or in general terms, the execution of instruments under the Land Transfer Act, 1915."

**38.** A new section is inserted after section one hundred and seven as follows:—

New section inserted.

**10** "107A. Where any chattels belong to persons jointly or in undivided shares, the persons interested to the extent of a moiety or upwards may apply to the Court for an order for division of the chattels or of any of them, according to a valuation or otherwise, and the **15** Court may make such order and give any consequential directions as it thinks fit."

Division of chattels.

**39.** Section one hundred and eight is amended by omitting the word "public" in the definition of "dividends."

Section 108 amended.

**20** **40.** Section one hundred and ten is amended by adding the following subsections:—

Section 110 amended.

**25** "(6) The rule of law relating to perpetuities shall not apply to any powers or remedies conferred by this subsection, nor to the same or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section.

"(7) This section shall not apply to land under the provisions of the Land Transfer Act, 1915."

**30** **41.** Section one hundred and fourteen is repealed, and the following section substituted:—

Repeal.

**35** "114. (1) In any instrument coming into operation on or after the first day of January, nineteen hundred and fifty-one, which, if this section had not been passed, would have created an estate tail (legal or equitable) in any land in favour of any person shall be deemed to create an estate in fee simple (legal or equitable, as the case may be) in such land in favour of such person to the exclusion of all estates limited to take effect after **40** the determination or in defeasance of any such estate tail.

Estates tail abolished.

"(2) (a) Where before the first day of January, nineteen hundred and fifty-one, any person is entitled to an estate tail (legal or equitable) and whether in

possession, reversion, or remainder, in any land, such person, save as hereinafter mentioned, shall be deemed to be entitled to an estate in fee simple (legal or equitable, as the case may be) in 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. 5

“(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 under the age of twenty-one years 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. 10 15

“(c) This subsection shall not apply where such person is a mentally defective person within the meaning of the Mental Defectives Act, 1911.

“(d) In this subsection the expression ‘estate tail’ includes that estate in fee into which an estate tail is converted where the issue in tail is barred, but the persons claiming estates by way of remainder are not barred; also an estate in fee voidable or determinable by the entry of the issue in tail; but does not include the estate of a tenant in tail after possibility of issue extinct. 20 25

“(3) This section applies to land under the provisions of the Land Transfer Act, 1915, and every District Land Registrar is hereby authorized to make all such entries in the register book as may be necessary to give effect thereto. 30

“(4) Section eighty-seven of the Land Transfer Act, 1915, is amended by inserting the words ‘or by way of executory limitation’ after the words ‘whether by remainder or in reversion’ in paragraph (d) of subsection one and after the words ‘reversion or remainder’ in subsection two.” 35

Repeal.

**42.** (1) Section one hundred and twenty-three is repealed, and the following sections substituted:—

Alienation to defraud creditors.

“123. (1) Save as provided by this section, every alienation of property with intent to defraud creditors shall be voidable at the instance of the person thereby prejudiced. 40

“(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 aliened to a purchaser in good faith not having, at the time of the alienation, notice of the intention to defraud creditors.

5 “123A. (1) Every instrument (other than a will) which operates, or on registration would operate, as a voluntary alienation of land, when voidable.

10 “(2) For the purposes of this section no such instrument shall, if registered before a subsequent purchase, be deemed to have been made with intent to defraud by reason only of that purchase, or that the instrument was not made for valuable consideration.”

15 (2) Subsection two of section forty of the Deeds Registration Act, 1908, is repealed.

43. The Fourth Schedule of the principal Act is amended as appears in the Schedule hereto. Fourth Schedule amended.

### SCHEDULE

Schedule.

THE following amendments are made in the Fourth Schedule to the principal Act:—

- (a) After paragraph (2) a new paragraph 2A is inserted, as follows:—  
 “2A. The mortgagor will during the continuance of the mortgage punctually pay all rates, taxes, and charges as and when the same become due in respect of the said land.”
- (b) In paragraph (4) thereof the words “or to pay the said rates, taxes, and charges” are inserted after the words “any premium receipt as aforesaid”, and also after the words “or to pay such premium”:
- (c) In paragraph (6) thereof the words “or in paying any of the said rates, taxes, and charges” are inserted after the words “or any insurance as aforesaid”:
- (d) In paragraph (7) thereof the words “and also that the mortgagee may exercise such other incidental powers in that behalf as are conferred upon mortgagees by law” are inserted after the words “as he may think proper”; and in the same paragraph the words “and in the third place in payment of the moneys owing under the subsequent registered mortgages (if any) in the order of their priority” are inserted immediately before the words “and will pay the surplus (if any) to the mortgagor”:

(e) The following heading and paragraphs are added:—

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

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

“ 15. That if the mortgagor makes default in the payment of any moneys secured by or in the performance or observance of any of the covenants and conditions contained or implied in any mortgage having priority to this present mortgage it shall be lawful for but not obligatory upon this present mortgagee to pay those moneys and perform and observe those covenants or conditions, and the provisions of the above paragraph (6) shall, with the necessary modifications, apply with respect to all moneys so paid and all expenses incurred in performing or observing the covenants or conditions of the prior mortgage.

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