

Land Law and Conveyancing Act

Principal Act

Act. No. 1895-05 1895-15 1895-16 1895-17 1896-12 1912-08	<i>Commencement</i>	9.10.1912
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Amending enactments	Relevant current provisions	Commencement date
Act. 1948-34 ss. 2, 6 1957-02 s. 5 1983-28 s. 42 1986-06 s. 42		3.4.1986

English sources:

Settled Land Act 1884 (47 & 48 Vict. c.18)
Settled Land Act 1890 (53 & 54 Vict. c. 69)
Conveyancing and Law of Property Act 1892 (55 & 56 Vict. c.13)
Voluntary Conveyances Act 1893 (56 & 57 Vict. c.21)
Mortgagees Legal Costs Act 1895 (58 & 59 Vict. c.25)
Conveyancing Act 1911 (1 & 2 Geo. 5 c.37)
Landlord and Tenant Act 1927 (17 & 18 Geo. 5 c.36)

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AN ACT MODIFYING THE APPLICATION OF CERTAIN ENGLISH ACTS RELATING TO LEASES, MORTGAGES AND SETTLED LAND AND THE PRACTICE OF CONVEYANCING AND OTHER MATTERS.

Short title.

1. This Act may be cited as the Land Law and Conveyancing Act.

PART I.
CONVEYANCING, ETC.

Competent court.

2. All proceedings under this Act shall be commenced in the Supreme Court and the word “court” shall be construed accordingly.

Interpretation of Part I.

- 3.(1) This Part and the Conveyancing Acts, 1881 and 1882, so far as the same are in force in Gibraltar, shall be construed together.

(2) The expression “the Act of 1881” used in this Part means the Conveyancing Act 1881.

Costs of waiver and forfeiture in case of bankruptcy or execution.

- 4.(1) 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 by writing under his hand, or from which the lessee is relieved, under the provisions of the Act of 1881, and of this Part.

(2) Section 14(6) of the Act of 1881, is to apply to a condition for forfeiture on bankruptcy of the lessee, or on taking in execution of the lessee’s interest only after the expiration of one year from the date of the bankruptcy or taking in execution, and provided the lessee’s interest be not sold within such one year, but in case the lessee's interest be sold within such one year, the said subsection (6) shall cease to be applicable thereto.

- (3) Subsection (2) of this section is not to apply to any lease of—

- (a) a house used or intended to be used as a public house or beershop;
- (b) a house let as a dwelling house, with the use of any furniture, books, works of art or other chattels not being in the nature of fixtures;

- (c) 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.

Provisions as to covenants not to assign, etc., without licence or consent.

5.(1) In all leases whether made before or after the 26th day of September, 1895, containing a covenant, condition or agreement against assigning, underletting, charging or parting with the possession of demised premises or any part thereof without licence or consent, such covenant, condition or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject—

- (a) to a proviso that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent;
- (b) 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 except as mentioned in paragraph (a).

(2) In all leases whether made before or after the 26th day of September, 1895, 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 a 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 landlord, 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 tenant 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 26th day of September, 1895, containing a covenant, condition or agreement against the alteration of the user of the demised premises, without licence or consent such covenant, condition or agreement shall, if the alteration does not involve any structural alteration of the premises, be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that no fine or sum of money in the nature of a fine, whether by way of increase of rent or otherwise, shall be payable for or in respect of such licence or consent; but this proviso does not preclude the right of the landlord 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.

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

Power of court to protect under-lessees on forfeiture of superior leases.

6. 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, 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 either in the lessor's action, if any, or in any action brought by such person for that purpose, make an order 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 rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case shall think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

Extension of definition of "lease", "under-lease" and "under-lessee".

7. In section 14 of the Act of 1881, and in this Part, "lease" shall also include an agreement for a lease where the lessee has become entitled to have his lease granted, and "under-lease" shall also include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted, and in this Part "under-lessee" shall include any person deriving title under or from an under-lessee.

Discharge of incumbrances by the court.

8. On any application under section 5 of the Act of 1881 the court may, if it thinks fit, as respects any purchaser or vendor, dispense with the service of any notice which is, by section 69 of that Act, required to be served on the purchaser or vendor.

Benefit of condition already broken to run with reversion.

9.(1) Section 10 of the Act of 1881 shall apply to the benefit of every condition or re-entry or forfeiture for a breach of any covenant or condition contained in a lease, so as to enable the same to be 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, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable, provided that he became so entitled as aforesaid after the 8th day of October, 1912.

(2) This section shall not render enforceable any condition of re-entry or other condition waived or released before the person became entitled as aforesaid.

Power for mortgagor and mortgagee in possession to accept surrenders of leases.

10.(1) For the purpose only of enabling a lease, authorized under section 18 of the Act of 1881, as varied by this section, or under any agreement made pursuant to section 18 aforesaid, or by the mortgage deed (in this section referred to as an authorized lease) to be granted, a mortgagor of land while in possession shall, in like manner as if the legal estate were vested in him and as against every incumbrancer, have, by virtue of this Part, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, and, on a surrender of part only of the land, the rent may be apportioned.

(2) For the same purpose, a mortgagee of land while in possession shall, in like manner, and as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Part, power to accept from time to time any such surrender as aforesaid.

(3) On a surrender of part only of the land leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorized lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease.

(4) Nothing in this section shall, where any consideration (except an agreement to accept an authorized lease) for the surrender is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, authorize a surrender to a mortgagor without the consent of the incumbrancers, or authorize a surrender to a second or subsequent incumbrancer without the consent of any prior incumbrancer.

(5) No surrender shall, by virtue of this section, be rendered valid unless—

- (a) an authorized lease is granted of the whole of the land comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender; and
- (b) the term certain or interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and
- (c) where the whole of the land originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which

would have been payable under the original lease if no partial surrender had been accepted.

(6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

(7) Subsections (13), (16) and (17) of section 18 of the Act of 1881 shall have effect as if they were re-enacted in this section and references to the commencement of that Act shall, for the purposes of this section, be read as references to the 9th day of October, 1912.

(8) Nothing in this section shall prevent the mortgage deed from reserving to or conferring on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Part, and with the like results, unless a contrary intention is expressed in the mortgage deed.

(9) Nothing in this section shall operate to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor, with the concurrence of all the incumbrancers, if this Part had not been passed.

(10) For the purposes of this section, and of subsection (1) of section 18 of the Act of 1881, the expression “mortgagor” does not include an incumbrancer deriving title under the original mortgagor.

(11) The powers of leasing and of accepting surrenders respectively conferred by section 18 of the Act of 1881, and this section, shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee, under that Act, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land.

Powers incident to estate or interest of mortgagees.

11.(1) The power of sale conferred on a mortgagee by section 19 of the Act of 1881 shall include the following powers as incident thereto, that is to say—

- (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 any other thing ;
- (b) a power to sell the mortgaged property or any part thereof—

- (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;
- (ii) with or without covenants by the purchaser to expend money on the land sold.

(2) Subsections (2) and (3) of section 19 of the Act of 1881 shall apply to the foregoing powers conferred by this section.

(3) This section applies only where the mortgage deed is executed after the 8th day of October, 1912.

Amendments of section 21 of the Act of 1881.

12.(1) Upon any sale made in professed exercise of the power conferred on mortgagees by the Act of 1881, a purchaser is not, and never has been, either before or on conveyance, concerned to see or inquire whether a case has arisen to authorize the sale, or due notice has been given or the power is otherwise properly and regularly exercised.

(2) Subsection (6) of section 21 of the Act of 1881 shall, as regards mortgages executed after the 8th day of October, 1912, be read as if the words “or of any power or provision contained in the mortgage deed” were added at the end thereof.

Remedies for recovery of annual sums charged on land.

13.(1) For removing doubts, it is hereby declared that the rule of law relating to perpetuities does not apply to any powers or remedies conferred by section 44 of the Act of 1881, 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 that section.

(2) The powers and remedies conferred by the last-mentioned section are exercisable whether the annual sum is created under a power contained in an instrument coming into operation before or after the commencement of the Act of 1881, and take effect unless the instrument creating the power or under which the annual sum is created otherwise directs.

(3) This section applies to powers and remedies conferred by or implied in an instrument executed before as well as after the 9th day of October, 1912.

Power for court to bind interest of married woman.

14.(1) Where a married woman is restrained from anticipation or from alienation in respect of any property or any interest in property belonging to her, or is by law unable to dispose of or bind such property or her interest therein, including a reversionary interest arising under her

marriage settlement, the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in such property.

(2) This section applies only to judgments or orders made after the 8th day of October, 1912.

(3) Section 39 of the Act of 1881 is hereby repealed in its application to Gibraltar.

Survivorship of trusts and powers.

15.(1) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, then, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee.

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

(3) This section applies only to trusts constituted after or created by instruments coming into operation after the commencement of the Act of 1881.

(4) In this section “personal representative” means an executor (original or by representation) or administrator, but does not include an executor who has renounced or has not proved.

Provisions respecting mortgaged property where the right of redemption is barred.

16.(1) Where any property, vested in trustees by way of security, becomes, by virtue of the imitation Act, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale, with power to postpone such sale for such a period as they may think proper.

(2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection shall operate without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

(3) This section shall not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.

(4) Where the mortgage money is capital money for purposes of the Settled Land Act, 1882, or of Part II, the trustees shall, if the tenant for life, or person having the powers of a tenant for life so requires, instead of selling any land forming the whole or part of such

property, make such conveyance or execute such declaration of trust of the same as may be required for giving effect to the directions contained in section 24 of the Settled Land Act, 1882 (as amended by any subsequent enactment in force in Gibraltar) and as if the land had been acquired by purchase as mentioned in that section.

(5) This section applies to property the right of redemption whereof is discharged before as well as after the 9th day of October, 1912.

As to dispositions on trust for sale.

17.(1) Where a settlement within the meaning of section 63 of the Settled Land Act, 1882, or other settlement of property as personal estate, contains a power to invest money in the purchase of land, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale, with power to postpone the sale; and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested in personal estate.

(2) Subsection (1) applies only to settlements coming into operation after the 8th day of October, 1912.

(3) Where land has, either before or after the 9th day of October, 1912, become subject to an express or implied trust for sale, such trust is, so far as regards the safety and protection of any purchaser thereunder, to be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale.

(4) Subsection (3) applies to sales made before as well as after the 9th day of October, 1912 but without prejudice to the order of any court restraining a sale.

Notice of restrictive covenants.

18.(1) Where land having a common title with other land is disposed of to a purchaser, other than a lessee or a mortgagee, who does not hold or obtain possession of the documents forming the common title, such purchaser, notwithstanding any stipulation to the contrary, may require that a memorandum giving notice of any provision contained in the disposition to him restrictive of user of, or giving rights over, any other land comprised in the common title, shall, where practicable, be endorsed, on, or, where impracticable, be permanently annexed to some one document selected by the purchaser but retained in the possession or power of the person who makes the disposition, and being or forming part of the common title.

(2) The title of any person omitting to require an endorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.

Further amendments of the Act of 1881 in Gibraltar.

19.(1) The words “and being a woman is also unmarried” in section 42(1) of the Act of 1881 are hereby repealed, in so far as they are applicable to Gibraltar.

(2) The words “or for giving effect to special arrangements” are hereby substituted for the words “or other matter” at the foot of Part I of the Third Schedule to the Act of 1881, in the application of that Act to Gibraltar.

Charges, etc., where mortgage is made with solicitor.

20. Any solicitor to whom, either alone or jointly with any other person, a mortgage is made, or the firm of which such solicitor is a member, shall be entitled to receive for all business transacted and acts done by such solicitor or firm in negotiating the loan, deducing and investigating the title to the property, and preparing and completing the mortgage, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business, and do such acts ; and such charges and remuneration shall accordingly be recoverable from the mortgagor.

Right of solicitor with whom mortgage is made to recover costs, etc.

21. Any solicitor to or in whom, either alone or jointly with any other person, any mortgage is made or is vested by transfer or transmission, or the firm of which such solicitor is a member, shall be entitled to receive and recover from the person on whose behalf the same is done, or to charge against the security, for all business transacted and acts done by such solicitor or firm subsequent and in relation to such mortgage or to the security thereby created or the property therein comprised, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to and had remained vested in a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts, and accordingly no such mortgage shall be redeemed except upon payment of such charges and remuneration.

Interpretation of sections 20 and 21.

22. In sections 20 and 21 “mortgage” includes any charge on any property for securing money or money's worth.

PART II
SETTLED LAND.

Interpretation of Part II.

23.(1) This Part and the Settled Land Act 1882, so far as the same is in force in Gibraltar, shall be construed together and the expressions used in this Part shall have the same meanings as those attached by that Act to similar expressions used therein.

(2) The expression “the Act of 1882” used in this Part means the Settled Land Act, 1882.

Notice may, as to a sale, exchange, partition or lease, be general.

24.(1) The notice required by section 45 of the Act of 1882 of intention to make a sale, exchange, partition or lease may be notice of a general intention in that behalf.

(2) The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, partitions or leases, effected, or in progress, or immediately intended.

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

As to consents of tenants for life.

25.(1) In the case of a settlement within the meaning of section 63 of the Act of 1882, any consent not required by the terms of the settlement is not by force of anything contained in that Act to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any of the trusts or powers created by the settlement.

(2) In the case of every other settlement, not within the meaning of section 63 of the Act of 1882, where two or more persons together constitute the tenant for life for the purposes of that Act, then, notwithstanding anything contained in section 56(2) of that Act, requiring the consent of all those persons, the consent of one only of those persons is by force of that section to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power conferred by the settlement exercisable for any purpose provided for in that Act.

(3) This section applies to dealings before, as well as after, the 26th day of September, 1895.

Instrument in consideration of marriage, etc., to be part of the settlement.

26.(1) Every instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement, is to be deemed one of the instruments creating the settlement, and not an instrument vesting in any person any right as assignee for value within the meaning or operation of section 50 of the Act of 1882.

(2) This section is to apply and have effect with respect to every disposition before as well as after the 26th day of September, 1895, unless inconsistent with the nature or terms of the disposition.

Powers given by section 63 of the Act of 1882 to be exercised only by leave of the court.

27. With respect to the powers conferred by section 63 of the Act of 1882, the following provisions are to have effect—

- (a) those powers are not to be exercised without the leave of the Supreme Court;
- (b) the Supreme Court may, by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given;
- (c) the Supreme Court may from time to time rescind, or vary, any order made under this section, or may make any new or further order;
- (d) so long as an order under this section is in force, neither the trustees of the settlement, nor any person other than a person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave is by the order given, to exercise a power conferred by the Act of 1882;
- (e) an order under this section may be registered and re-registered in the Supreme Court, as a *lis pendens*, against the trustees of the settlement named in the order, describing them in the register as “Trustees for the purposes of the Settled Land Act, 1882”;
- (f) any person dealing with the trustees from time to time, or with any other person acting under the trusts or powers of the settlement, is not to be affected by an order under this section, unless and until the order is duly registered, and when necessary re-registered, as a *lis pendens*;
- (g) an application to the Supreme Court under this section may be made by the tenant for life, or by the persons who together constitute the tenant for life, within the meaning of section 63 of the Act of 1882;
- (h) an application to rescind or vary an order, or to make any new or further order under this section, may be made also by the trustees of the settlement, or by any person beneficially interested under the settlement;
- (I) the person or persons to whom leave is given by an order under this section, shall be deemed the proper person or persons to exercise the powers conferred by section 63 of the Act of 1882, and shall have, and may exercise those powers accordingly;

- (j) this section is not to affect any dealing which has taken place before the 26th day of September, 1895, under any trust or power to which this section applies.

Creation of easements on exchange or partition.

28. On an exchange or partition any easement, right or privilege of any kind may be reserved, or may be granted, over or in relation to the settled land or any part thereof, or other land, or an easement, right or privilege of any kind may be given or taken in exchange, or on partition, for land or for any other easement, right or privilege of any kind.

Powers to complete predecessor's contract.

29. A tenant for life may make any conveyance which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which, if made by such predecessor, would have been valid as against his successors in title.

Provisions as to leases for twenty-one years.

30. A lease for a term not exceeding twenty-one years at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life—

- (a) without any notice of an intention to make the same having been given under section 45 of the Act of 1882; and
- (b) notwithstanding that there are no trustees of the settlement for the purposes of the Act of 1882; and
- (c) by any writing under hand only, containing an agreement instead of a covenant by the lessee for payment of rent, in cases where the term does not extend beyond three years from the date of the writing.

Power to reserve a rentcharge on a grant in fee simple.

31. Where, on a grant for building purposes by a tenant for life, the land is expressed to be conveyed in fee simple with or subject to a reservation thereof of a perpetual rent or rentcharge, the reservation shall operate to create a rentcharge in fee simple issuing out of the land conveyed, and having incidental thereto all powers and remedies for recovery thereof conferred by section 44 of the Conveyancing Act, 1881, and the rentcharge so created shall go and remain to the uses on the trusts and subject to the powers and provisions which, immediately before the conveyance, were subsisting with respect to the land out of which it is reserved.

Fine on a lease to be capital money.

32. A fine received on the grant of a lease under any power conferred by the Act of 1882 is to be deemed capital money arising under that Act.

Power to raise money by mortgage.

33. (1) Where money is required for the purpose of discharging an incumbrance on the settled land or part thereof, the tenant for life may raise the money so required, and also the amount properly required for payment of the costs of the transaction, on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or any part thereof, or otherwise, and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly.

(2) “Incumbrance” in this section does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.

Provision enabling dealings with tenant for life.

34. Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the limitations of the settlement, or an exchange is to be made with him of settled land for other land, or a partition is to be made with him of land an undivided share whereof is subject to the limitations of the settlement, the trustees of the settlement shall stand in the place of and represent the tenant for life, and shall, in addition to their powers as trustees, have all the powers of the tenant for life in reference to negotiating and completing the transaction.

Application of capital money.

35. Improvements authorized by the Act of 1882 shall include the following—

- (a) making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let;
- (b) erection of buildings in substitution for buildings taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof.

Capital money in court may be paid out to trustees.

36. All or any part of any capital money paid into the Supreme Court may, if the court thinks fit, be at any time paid out to the trustees of the settlement for the purposes of the Act of 1882 and of this Part.

Court may order payment for improvements executed.

37. The Supreme Court may, in any case where it appears proper, make an order directing or authorizing capital money to be applied in or towards payment for any improvement authorized by the Act of 1882 and this Part, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval as required by the Act of 1882, to the trustees of the settlement or to the court.

Trustees for the purposes of the Act of 1882.

38. Where there are for the time being no trustees of the settlement within the meaning and for the purposes of the Act of 1882, then the following persons shall, for the purposes of the Act of 1882 and of this Part, be trustees of the settlement namely—

- (a) the persons, if any, who are for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold, or with power of consent to or approval of the exercise of such a power of sale, or, if there be no such persons, then,
- (b) the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the land to be sold, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not.

PART III.

VOLUNTARY CONVEYANCES.

Voluntary conveyances.

39. Subject as hereinafter mentioned, no voluntary conveyance of any lands, tenements or hereditaments whether made before or after the 26th day of September, 1895, if in fact made bona fide and without any fraudulent intent, shall be deemed fraudulent or covenous within the meaning of the Act against covenous and fraudulent conveyances of 1584 by reason of any subsequent purchase for value, or be defeated under any of the provisions of the said Act by a conveyance made upon any such purchase, any rule of law notwithstanding.

Saving.

40. Section 39 does not apply in any case in which the author of a voluntary conveyance of any lands, tenements or hereditaments has subsequently, but before the 26th day of September, 1895, disposed of or dealt with the same lands, tenements or hereditaments to or in favour of a purchaser for value.

Interpretation of sections 23 and 24.

41. The expression “conveyance” in sections 39 and 40 includes every mode of disposition mentioned or referred to in the said Act.

42. (*Repealed.*)