CHAPTER 37.

An Act to amend the Conveyancing and Law of Property Act, 1881. [16th December 1911.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Discharge of incumbrances by the court.

1. On any application under section five 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 sixty-nine of that Act, required to be served on the purchaser or vendor.

Benefit of condition already broken to run with reversion.

2.—(1) Section ten of the Act of 1881 shall apply to the benefit of every condition of 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 commencement of this Act.

(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.

Powers (with a view to the grant of an authorised lease) for mortgagor and mortgagee in possession to accept surrenders of leases.

3.—(1) For the purpose only of enabling a lease, authorised under section eighteen of the Act of 1881, as varied by this section, or under any agreement made pursuant to section eighteen aforesaid, or by the mortgage deed (in this section referred to as an authorised 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 Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them, and, on a surrender of part only of the land or mines and minerals leased, 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 Act, power to accept from time to time any such surrender as aforesaid.

(3) On a surrender of part only of the land or mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorised 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 authorised lease) for the surrender is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, authorise a surrender to a mortgagor without the consent of the incumbrancers, or authorise 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 authorised lease is granted of the whole of the land or mines and minerals 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 mines and minerals 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 or mines and minerals 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 eighteen 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 commencement of this Act.

(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 exerciseable, as far as may be, as if they were conferred by this Act, 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 Act had not been passed.

(10) For the purposes of this section, and of subsection (1) of section eighteen 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 eighteen 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 exerciseable 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.

4.—(1) The power of sale conferred on a mortgagee by section nineteen of the Act of 1881 shall include the following powers as incident thereto (namely):—

(i) 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:

(ii) A power to sell the mortgaged property, or any part thereof, or any mines and minerals apart from the surface:—

(*a*) 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;

(*b*) 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, way-leaves, or rights of way, rights of water and drainage and other powers, easements, 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;

(*c*) With or without covenants by the purchaser to expend money on the land sold.

(2) Subsections (2) and (3) of section nineteen 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 commencement of this Act.

(4) For the purpose of exercising any power conferred by this section, an application under section forty-four of the Trustee Act, 1893, as amended by section three of the Trustee Act, 1894, shall not be required. 56 & 57 Vict. c. 53. 57 Vict. c. 10.

Amendments of section 21 of the Act of 1881.

5.—(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 authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised.

(2) Subsection (6) of section twenty-one of the Act of 1881 shall, as regards mortgages executed after the commencement of this Act, 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.

6.—(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 forty-four 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 exerciseable 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 commencement of this Act.

Power for court to bind interest of married woman.

7.—(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 commencement of this Act.

(3) Section thirty-nine of the Act of 1881 is hereby repealed.

Survivorship of trusts and powers.

8.—(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.

(5) This section does not apply to land of copyhold or customary tenure vested in the tenant on the court rolls on trust.

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

9.—(1) Where any property, vested in trustees by way of security, becomes, by virtue of the statutes of limitation, 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 the purposes of the Settled Land Acts, 1882 to 1890, 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 twenty-four of the Settled Land Act, 1882 (as amended by any subsequent enactment), and as if the land had been acquired by purchase as mentioned in that section.

45 & 46 Vict. c. 38. s. 24.

(5) This section applies to property the right of redemption whereof is discharged before as well as after the commencement of this Act.

As to dispositions on trust for sale.

10.—(1) Where a settlement within the meaning of section sixty-three 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) of this section applies only to settlements coming into operation after the commencement of this Act.

(3) Where land has, either before or after the commencement of this Act, 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) of this section applies to sales made before as well as after the commencement of this Act, but without prejudice to the order of any court restraining a sale.

Notice of restrictive covenants.

11.—(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 indorsed 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 indorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.

38 & 39 Vict. c. 87. 60 & 61 Vict. c. 65.

(3) This section does not apply to dispositions of land registered under the Land Transfer Acts, 1875 and 1897.

Power for proving executors to sell or transfer real estate.

12.—(1) Where probate is granted to one or some of several persons named as executors, power being reserved to the others or other to prove, the sale, transfer or disposition of real estate may, notwithstanding anything contained in subsection (2) of section two of the Land Transfer Act, 1897, be made by the proving executor or executors without the authority of the court and shall be as effectual as if all the persons named as executors had concurred therein.

(2) This section applies to probates granted before as well as after the commencement of this Act, but only as respects dispositions made after the commencement of this Act.

Notice of trusts on transfer of mortgage.

13.—(1) Where, on the transfer of a mortgage, the stamp duty, if payable according to the amount of the debt transferred,

would exceed the sum of ten shillings, a purchaser shall not, by reason only of the transfer bearing a ten-shilling stamp, whether adjudicated or not, be deemed to have or to have had notice of any trust, or that the transfer was made for effectuating the appointment of a new trustee.

(2) This section applies to transfers made before as well as after the commencement of this Act.

Amendment of section 42 of the Act of 1881.

14. The words "and being a woman is also unmarried" in subsection one of section forty-two of the Act of 1881 are hereby repealed.

Amendment of the Third Schedule to the Act of 1881.

15. 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.

Short title, commencement, and construction.

16.—(1) This Act may be cited as the Conveyancing Act, 1911.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and twelve.

(3) This Act and the Conveyancing Acts, 1881 to 1892, shall be construed together, and may be cited together as the Conveyancing Acts, 1881 to 1911.

44 & 45 Vict. c. 41.

(4) In this Act the Conveyancing and Law of Property Act, 1881, is referred to as the Act of 1881, and that Act may be cited as the Conveyancing Act, 1881.

CHAPTER 38.

An Act to amend the Money-lenders Act, 1900.

[16th December 1911.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Rights of bonâ fide holders for value, &c., under contracts with money-lenders.

1.—(1) Notwithstanding anything in section two of the Money-lenders Act, 1900—

(*a*) any agreement with, or security taken by, a money-lender shall be, and shall be deemed always to have been, valid in favour of any bonâ fide assignee or holder for value without notice of any defect due to the operation of that section, and of any person deriving title under him; and

(*b*) any payment or transfer of money or property made bonâ fide by any person, whether acting in a fiduciary