THE TRANSFER OF PROPERTY ACT, 1882

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THE TRANSFER OF PROPERTY ACT, 1882

ACT NO. 4 OF 1882

[17*th February,* 1882.]

An Act to amend the law relating to the Transfer of Property by act of Parties.

Preamble.—WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY

1. Short title.—This Act may be called the Transfer of Property Act, 1882.

Commencement.—It shall come into force on the first day of July, 1882.

Extent.—[1][It extends[2] in the first instance to the whole of India. except [3][the territories which, immediately before the 1st November, 1956, were comprised in Part B States or in the States of], Bombay, Punjab and Delhi.]

[4][But this Act or any part thereof may by [5]notification in the Official Gazette be extended to the whole or any part of [6][the said territories] by the State Government concerned.]

[7][And any State Government may [8]*** from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such State Government from all or any of the following provisions, namely:—

Sections 54, paragraphs 2 and 3, 59, 107 and 123.]

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1. Subs. by the A.O. 1950, for the third paragraph.
2. The application of this Act was barred in the Naga Hills District, including the Mokokchung Sub-division, the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasi and Jantia Hills and the Mikir hills Tract, by notification under s. 2 of the Assam Frontier Tracts Regulation, 1880 (Reg. 2 of 1880).
   Partially extended to Berar by Act 4 of 1941. Extended to Manipur by Act 68 of 1956; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I; to Goa, Daman and Diu by Reg. 11 of 1963, s. 3 and Sch.; to Lakshadweep by Reg. 8 of 1965, s. 3 and Sch., to Pondicherry by Act 26 of 1968, s. 3 and Sch.
   It has been amended to Bombay by Bombay Act 14 of 1939, 57 of 1959, in U.P. by U.P. Act 24 of 1954, 14 of 1970 and 57 of 1976.
   Extended to the Union territory of Jammu and Kashmir and Union territory of Ladakh by Act 34 of 2019, s. 95 and Fifth Schedule (w.e.f. 31-10-2019).
3. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part B States".
4. Subs. by the A.O. 1937, for the original paragraph.
5. The Act has been extended to—
   The Presidency of Bombay (except Scheduled Districts) w.e.f. 1-1-1893; to Mehwassi Estate by Born. Reg. 1 of 1949; and to former princely area w.e.f. 1-4-1951; now applicable to whole of Maharashtra;
   Gujarat (Saurashtra area) by Saurashtra Ordinance 25 of 1949, and to Kutch area w.e.f. 1-1-1950.
   Madhya Pradesh:
   Mysore, w.e.f. 1-4-1951;
   Rajasthan, w.e.f. 1-7-1952;
   the former State of Travancore-Cochin, w.e.f. 1-5-1952, now applicable to whole of Kerala.
   The provisions o(sections 54, 107 and 123 were extended to—
   Delhi, w.e.f. 30-5-1939. Section 129 was extended to certain areas of Delhi w.e.f. 16-11-1940 and to the remaining areas w.e.f. 1-12-1962. the remaining provisions were also extended to the Union territory of Delhi w.e.f. 1-12-1962;
   Himachal Pradesh, w.e.f. 7-12-1970:
   Punjab, w.e.f. 1-4-1955 and to former princely area w.e.f. 15-5-1957. (Section 59 was enforced in Haryana area, w.e.f. 5-8-1967).
   The Act has been declared in force in the Pargana of Manpur by the Manpur Law Regulation, 1926 (Reg. 2 of 1926), in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (Reg. 1 of 1929), and in the State of Sikkim on 1.9.1984 *vide* Notification No. S.O. 643(E), dated 24-8-1984, Gazette of India, Extraordinary, Pt. II, sec. 3(0.
   The Act has been repealed as to Government Grants by the Government Grants Act, 1895 (15 of 1895).
   The Act has been repealed or modified to the extent necessary to give effect to the provisions of Madras Act 3 of 1922, in the City of Madras *see* s. 13 of Madras Act 3 of 1922.
6. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "said States".
7. Subs. by Act 3 of 1885, s. 1, for the original paragraph.
8. The words "with the previous sanction of the Governor General in Council" omitted by Act 38 of 1920, s. 2 and the Schedule.

[1][Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, [2][1908 (16 of 1908)], under the power conferred by the first section of that Act or otherwise.]

2. Repeal of Acts. Saving of certain enactments, incidents, rights, liabilities, etc.— In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

(*a*) the provisions of any enactment not hereby expressly repealed:

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: or

(*d*) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction:

and nothing in the second chapter of this Act shall be deemed to affect any rule of [3]*** Muhammadan [4]*** law.

3. Interpretation-clause.—In this Act, unless there is something repugnant in the subject or context,—

"immoveable property" does not include standing timber, growing crops or grass: "instrument", means a non-testamentary instrument:

[5]["attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary:]

"registered" means registered in [6][[7][any part of the territories] to which this Act extends] under the law[8] for the time being in force regulating the registration of documents:

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

[9]["actionable claim" means a claim to any debt, other than a debt secured by mortgage of

1. Added by Act 3 of 1885, s. 2 (w.e.f. 1-7-1882).
2. Subs. by Act 20 of 1929, s. 2, for "1877".
3. The word "Hindu" omitted by s. 3, *ibid.*
4. The words "or Buddhist" omitted by s. 3, *ibid.*
5. Ins. by Act 27 of 1926, s. 2, as amended by Act 10 of 1927, s. 2 and Sch. I.
6. Subs. by Act 3 of 1951, s. 3 and the Schedule, for "a Part A State or a Part C State" (w.e.f. 1-4-1951).
7. Subs. by the Adaptation of Laws (No. 2) Order 1956, for "any State".
8. *See* the Indian Registration Act, 1908 (16 of 1908).
9. Ins. by Act 2 of 1900, s. 2.

immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accuring, conditional or contingent:]

[1]["a person is said to have notice"] of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, [2][where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (*2*) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated]:

Provided that—

(*1*) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908) and the rules made thereunder,

(*2*) the instrument [3][or memorandum] has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(*3*) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—*A* person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.]

4. Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act.—The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872).

[4][And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, [5][1908 (16 of 1908)].]

1. Subs. by Act 20 of 1929, s. 4, for certain words.
2. Subs. by Act 5 of 1930, s. 2, for certain words.
3. Ins. by s. 2, *ibid.*
4. Added by Act 3 of 1885, s. 3.
5. Subs. by Act 20 of 1929, s. 5, for "1877".

CHAPTER II[1]

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

(*A*) *Transfer of Property, whether moveable or immoveable*

5. "Transfer of property" defined.—In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, [2][or to himself] and one or more other living persons; and "to transfer property" is to perform such act.

[3][In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(*b*) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

[4][(*dd*) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.]

(*e*) A mere right to sue [5]***cannot be transferred.

(*f*) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(*g*) Stipends allowed to military [6][,naval], [7][air-force] and civil pensioners of [8][Government] and political pensions cannot be transferred.

(*h*) No transfer can be made (*1*) in so far as it is opposed to the nature of the interest affected thereby, or (*2*) [9][for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (*3*) to a person legally disqualified to be transferee].

[10][(*i*) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.]

7. Persons competent to transfer.—Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

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1. Nothing in Chapter II is to be deemed to affect any rule of Muhammadan Law—*see* s. 2, *supra*
2. Ins. by Act 20 of 1929, s. 6.
3. Added by s. 6, *ibid*.
4. Ins. by s. 7, *ibid*.
5. The words "for compensation for a fraud or for harm illegally caused" omitted by Act 2 of 1900, s. 3.
6. Ins. by Act 35 of 1934, s. 2 and the Schedule.
7. Ins. by Act 10 of 1927, s. 2 and the First Schedule.
8. The word "Government" successively adapted by the A.O. 1937 and A.O. 1950 to read as above.
9. Subs. by Act 2 of 1900, s. 3, for "for an illegal purpose".
10. Added by Act 3 of 1885, s. 4.

8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. Oral transfer.—A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Condition restraining alienation.—Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created.—Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

[1][Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]

12. Condition making interest determinable on insolvency or attempted alienation.—Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Transfer for benefit of unborn person.—Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

1. Subs. by Act 20 of 1929, s. 8, for the second paragraph.

Illustration

A transfers property of which he is the owner to B in trust for A and his intended wife succesively for their lives, and, after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. Rule against perpetuity.—No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. Transfer to class some of whom come under sections 13 and 14.—If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14; such interest fails [1][in regard to those persons only and not in regard to the whole class].

[2][**16. Transfer to take effect on failure of prior interest.**—Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. Direction for accumulation.—(*1*) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

(*a*) the life of the transferor, or

(*b*) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(*2*) This section shall not affect any direction for accumulation for the purpose of—

(*i*) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(*ii*) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(*iii*) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

18. Transfer in perpetuity for benefit of public.—The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.]

19. Vested interest.—Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely-from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is

1. Subs. by Act 20 of 1929, s. 9, for "as regards the whole class".
2. Subs. by s. 10, *ibid*., for s. 16, 17 and 18.

directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. When unborn person acquires vested interest on transfer for his benefit.—Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Contingent interest.—Where**,** on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Transfer to members of a class who attain a particular age.—Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. Transfer contingent on happening of specified uncertain event.—Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

24. Transfer to such of certain persons as survive at some period not specified.—Where**,** on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B**.** At B's death the property passes to D.

25. Conditional transfer.—An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations

(*a*) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(*c*) A transfers Rs. 500 to B or condition that she shall murder C. The transfer is void.

(*d*) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Fulfilment of condition precedent.—Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations

(*a*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(*b*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.—Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations

(*a*) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(*b*) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. Ulterior transfer conditional on happening or not happening of specified event.—On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. Fulfilment of condition subsequent.—An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

30. Prior disposition not affected by invalidity of ulterior disposition.—If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration

A transfers a farm to B for her life, and, if she do not desert her husband to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.—Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations

(*a*) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(*b*) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. Such condition must not be invalid.—In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

33. Transfer conditional on performance of act, no time being specified for performance.—Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

34. Transfer conditional on performance of act, time being specified.—Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of

property is enjoyed by him, or as a condition on the non-fulfillment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election

35. Election when necessary.—Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge of waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representative may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Appointment

36. Apportionment of periodical payments determination of interest of person entitled.—In the absence of a contract or local usage to the contrary, all rents annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. Apportionment of benefit of obligation on severance.—When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the State Government by notification in the Official Gazette so directs.

Illustrations

(*a*) A sells to B, C and D a house situated in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the Joint direction of B, C and D.

(*b*) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of Immovable property

38. Transfer by person authorised only under certain circumstances to transfer.—Where any person, authorised only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Transfer where third person is entitled to maintenance.—Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred [1]*** the right may be enforced against the transferee, if he has notice [2][thereof] or if the

1. The words "with the intention of defeating such right" omitted by Act 20 of 1929, s. 11.
2. Subs. by s. 11, *ibid*., for "of such intention".

transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

[1]* * * * *

40. Burden of obligation imposing restriction on use of land.—Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment[2] [in a particular manner of the latter property], or

or of obligation annexed to ownership but not amounting to interest or easement.—where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Transfer by ostensible owner.—Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be violable on the ground that the transferor was not authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Transfer by person having authority to revoke former transfer.—Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person [3][fraudulently or] erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z.C, not having rescinded the contract of sale, may require A to deliver Z to him .

44. Transfer by one co-owner.—Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's

1. The *Illustrations* omitted by Act 20 of 1929, s. 11.
2. Subs. by s. 12, *ibid.*, for "of the latter property or to compel its enjoyment in a particular manner".
3. Ins. by s. 13, *ibid.*

right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Joint transfer for consideration.—Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Transfer for consideration by persons having distinct interests.—Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustration

(*a*) A, owing a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza.

(*b*) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money. B and C to receive Rs. 4000.

47. Transfer by co-owners of share in common property.—Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proprotionately to the extent of such shares.

Illustration

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half-an-anna share from each of the shares of B and C.

48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Transferee's right under policy.—Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. Rent *bona fide* paid to holder under defective title.—No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. Improvements made by *bona fide* holders under defective titles.—When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted there from by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. Transfer of property pending suit relating thereto.—During the [1][pendency] in any Court having authority [2][[3][within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [4][the Central Government [5]***], of [6][any] suit or proceeding [7][which is not collusive and] in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[7][*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

[8][**53. Fraudulent transfer**.—(*1*) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(*2*) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

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1. Subs. by Act 20 of 1929, s.14, for "active prosecution".
2. Subs. by A.O. 1950, for "in the Provinces or established beyond the limits of the Provinces".
3. Subs. by Act 3 of 1951, s. 3 and the Schedule, for "within the limits of Part A States and Part C States" (w.e.f. 1-4-1951).
4. Subs. by A.O. 1937, for "the Governor General in Council".
5. The words "or the Crown Representative" Rep. by the A.O. 1948.
6. Subs. by Act 20 of 1929, s. 14, for "a contentious".
7. Ins. by s. 14, *ibid*
8. Subs. by s. 15, *ibid.*, for s. 53.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.]

[1] [**53A. Part performance**.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that [2]***, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]

CHAPTER III

OF SALES OF IMMOVEABLE PROPERTY

54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

STATE AMENDMENTS

Assam.

Amendment of section 54 of the Central Act 4 of 1882.—In Section 54 of the principal Act, in para 2, for the expression "by a registered instrument" the following expression shall be substituted, namely: —

"by an instrument registered in the State of Assam, notwithstanding anything contained in the India Registration Act, 1908 (Act 16 of 1908) to the contrary."

[*Vide* Assam Act 10 of 1976, s. 2.]

55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(*1*) The seller is bound—

(*a*) to disclose to the buyer any material defect in the property [3][or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

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1. Ins. by Act 20 of 1929, s. 16.
2. The words "the contract though required to be registered, has not been registered, or" omitted by Act 48 of 2001, s. 10 (w.e.f. 24-9-2001).
3. Ins. by Act 20 of 1929, s. 17.

(*b*) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(*c*) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(*d*) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(*e*) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(*f*) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(*g*) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(*2*) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(*3*) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (*a*) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (*b*) where the whole of such property is sold to different buyers the buyers' of the lot of greatest value is entitled to such documents. But in case (*a*) the seller, and in case (*b*) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(*4*) The seller is entitled—

(*a*) to the rents and profits of the property till the ownership thereof passes to the buyer;

(*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [1][any transferee without consideration or any transferee with notice of the non-payment,] for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part [1][from the date on which possession has been delivered].

(*5*) The buyer is bound—

(*a*) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

1. Ins. by Act 20 of 1929, s. 17.

(*b*) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person, as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(*c*) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(*d*) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(*6*) The buyer is entitled—

(*a*) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(*b*) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him [1]*** to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (*1*), clause (*a*), and paragraph (*5*), clause (*a*), is fraudulent.

[2] [**56. Marshalling by subsequent purchaser**.—If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or any other person who has for consideration acquired an interest in any of the properties.]

Discharge of Incumbrances on Sale

57. Provision by Court for incumbrances and sale freed therefrom.—(*a*) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

(*1*) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the Central Government, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(*2*) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and an interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(*b*) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order,

1. The words "with notice of the payment" omitted by Act 20 of 1929, s. 17.
2. Subs. by s. 18, *ibid.*, for s. 56.

proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(*c*) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(*d*) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(*e*) In this section "Court" means (*1*) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (*2*) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (*3*) any other Court which the State Government may, from time to time, by notification in the Official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES

58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.—(*a*) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being arc called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(*b*) **Simple mortgage**.—Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(*c*) **Mortgage by conditional sale**.—Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

[1][Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]

(*d*) **Usufructuary mortgage**.—Where the mortgagor delivers possession [1][or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property [2][or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest [3][or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

1. Added by Act 20 of 1929, s. 19.
2. Subs. by s. 19, *ibid.*, for "and to appropriate them".
3. Subs. by s. 19, *ibid.*, for "and".

(*e*) **English mortgage.—**Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

[1][(*f*) **Mortgage by deposit of title-deeds.—**Where a person in any of the following towns, namely, the towns of Calcutta, Madras, [2][and Bombay], [3]*** and in any other town which the [4][State Government concerned] may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(*g*) **Anomalous mortgage.—**A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.]

59. Mortgage when to be by assurance.—Where the principal money secured is one hundred rupees or upwards, a mortgage [5][other than a mortgage by deposit of title-deeds] can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by [6][a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

[7]* * * *

[8][**59A. References to mortgagors and mortgagees to include persons deriving title from them.—**Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.]

Rights and Liabilities of Mortgagor

60. Right of mortgagor to redeem.—At any time after the principal money has become [9][due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver [10][to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by [11][decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

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1. Added by Act 20 of 1929, s. 19.
2. Subs. by A.O. 1948, for "Bombay and Karachi". The word "and" had been ins. by A.O. 1937.
3. The words "Rangoon, Moulmein, Bassein and Akyab" omitted by A.O. 1937.
4. The words "Governor General in Council" successively amended by A.O. 1937 and the A.O. 1950 to read as above.
5. Ins. by Act 20 of 1929, s. 20.
6. Subs. by Act 6 of 1904, s. 3, for "an instrument".
7. Third paragraph omitted by Act 20 of 1929, s. 20.
8. Ins. by s. 21, *ibid.*
9. Subs. by s. 22, *ibid.*, for "payable".
10. Subs. by s. 22, *ibid.*, for "the mortgage-deed, if any, to the mortgagor".
11. Subs. by Act 20 of 1929, s. 22, for "order".

Redemption of portion of mortgaged property.—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [1][only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgager.

[2]**[60A. Obligation to transfer to third party instead of re-transference to mortgagor**.—(*1*) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(*2*) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(*3*) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60B. Right to inspection and production of documents.—A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.]

[3][**61**. **Right to redeem separately or simultaneously**.—A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.]

62. Right of usufructuary mortgagor to recover possession.—In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property [4][together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],—

(*a*) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property.—when such money is paid:

(*b*) where the mortgagee is authorised to pay himself from such rents and profits [5][or any part thereof a part only of the mortgage-money],—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee [6][the mortgage-money or the balance thereof] or deposits it in Court as hereinafter provided.

63. Accession to mortgaged property.—Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

1. Ins. by Act 20 of 1929, s. 22.
2. S. 60A and 60B ins. by s. 23, *ibid.*
3. Subs. by s. 24, *ibid.*, for s. 61.
4. Ins. by s. 25, *ibid.*
5. Subs. by s. 25, *ibid.*, for "the interest of the principal money".
6. Subs. by s. 25, *ibid.*, for "the principal money".

Accession acquired in virtue of transferred ownership.—Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property; the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, [1][with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum].

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

[2] [**63A. Improvements to mortgaged property**.—(*1*) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (*2*), be liable to pay the cost thereof.

(*2*)Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to, pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.]

64. Renewal of mortgaged lease.—Where the mortgaged property is a lease [3]***, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

65. Implied contracts by mortgagor.—In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,—

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(*d*) and, where the mortgaged property is a lease [4]***, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and

1. Subs. by Act 20 of 1929, s. 26, for "at the same rate of interest".
2. Ins. by s. 27, *ibid*.
3. The words "for a term of years" omitted by s. 28, *ibid*.
4. The words "for a term of years" omitted by s. 29, *ibid*.

indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the a non-performance or non-observance of the said conditions and contracts;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

[1]* * * * *.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

[2][**65A. Mortgagor's power to lease**.—(*1*) Subject to the provisions of sub-section (*2*), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(*2*) (*a*) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(*b*) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(*c*) No such lease shall contain a covenant for renewal.

(*d*) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(*e*) In the case of a lease of buildings, whether leased it or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(*3*) The provisions of sub-section (*1*) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (*2*) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.]

66. Waste by mortgagor in possession.—A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee

67. Right to foreclosure or sale.—In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become [3][due] to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court [4][a decree] that the mortgagor shall be absolutely debarred of his right to redeem the property, or [4][a decree] that the property be sold.

A suit to obtain [4][a decree] that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

1. Certain words omitted by Act 20 of 1929, s. 29.
2. Ins. by s. 30, *ibid.*
3. Subs. by s. 31, *ibid.*, for "payable".
4. Subs. by s. 31, *ibid*., for "an order".

Nothing in this section shall be deemed—

[1][(*a*) to authorise any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or]

(*b*) to authorise a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(*c*) to authorise the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(*d*) to authorise a person interested in part only of the mortgage-money to-institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

[2][**67A. Mortgagee when bound to bring one suit on several mortgages.**—A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.]

[3][**68. Right to sue for mortgage-money**.—(*1*) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely:—

(*a*) where the mortgagor binds himself to repay the same;

(*b*) where by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

(*c*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(*d*) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

Provided that, in the case referred to in clause (*a*), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for, the mortgage-money.

(*2*) Where a suit is brought under clause (*a*) or clause (*b*) of sub-section (*1*), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property.]

69. Power of sale when valid.—[4][(*1*)] [5][[6]*** A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section, have power to sell or, concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, in the following cases and in no others, namely:—]

1. Subs. by Act 20 of 1929, s. 31, for clause (*a*).
2. Ins. by s. 32, *ibid.*
3. Subs. by s. 33, *ibid.*, for s. 68.
4. Section 69 re-numbered as sub-section (*1*) of that section by Act 20 of 1929, s. 34.
5. Subs. by s. 34, *ibid.*, for certain words.
6. The words and figures "Notwithstanding anything contained in the Trustees' and Mortgagees' Powers Act, 1866 (28 of 1866)" omitted by Act 48 of 1952, s. 3 and the Second Schedule.

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist [1][or a member of any other race, sect, tribe or class from time to time specified in this behalf by [2][the State Government], in the Official Gazette];

(*b*) where [3][a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and] the mortgagee is [4][the Government];

(*c*) where [3][a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and] the mortgaged property or any part thereof [5][was, on the date of the execution of the mortgage-deed], situate within the towns of Calcutta, Madras, Bombay, [6] *** [7] [or in any other town or area which the State Government may, by notification in the Official Gazette, specify in this behalf].

[8][(*2*)] [9]*** No such power shall be exercised unless and until—

[10][(*a*)] notice in writing requiring payment of the principal money has been served on the mortgagor, or, one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

[11][(*b*)] some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

[12][(*3*)] When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

[13][(*4*)] The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

[14][(*5*) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882.]

[15]* * * * *

1. Ins. by Act 3 of 1885, s. 5.
2. The words "the L.G., with the previous sanction of the G. G. in C." successively amended by A.O. 1937 and A.O. 1950 to read as above.
3. Ins. by Act 20 of 1929, s. 34.
4. The words "the Secretary of State for India in Council" successively amended by A.O. 1937 and A.O. 1950 to read as above.
5. Subs. by Act 20 of 1929, s. 34, for "is".
6. The word "Karachi" omitted by A.O. 1948.
7. The words "or Rangoon" have been successively amended by Acts 6 of 1904, 11 of 1915, 20 of 1929, the A.O. 1937 and the A.O. 1950 to read as above.
8. Second paragraph numbered as sub-section (*2*) by Act 20 of 1929, s. 34.
9. The word "'But" omitted by s. 34, *ibid.*
10. Clause (*1*) was lettered (*a*) by s. 34, *ibid.*
11. Clause (*2*) was lettered (*b*) by s. 34, *ibid.*
12. Third paragraph numbered as sub-section (*3*) by s. 34, *ibid.*
13. Fourth paragraph numbered as sub-section (*4*) by Act 20 of 1929, s. 34.
14. Subs. by s. 34, *ibid.*, for fifth paragraph.
15. The last paragraph of this section omitted by s. 34, *ibid.*

Verified by RealEstate

[1][**69A. Appointment of receiver**.—(*1*) A mortgagee having the right to exercise a power of sale under section 69 shall, subject to the provisions of sub-section (*2*), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

(*2*) Any person who has been named in the mortgage-deed and is willing and able to act as receiver may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees; failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a receiver, and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section.

(*3*) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee.

(*4*) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section.

(*5*) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

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

(*7*) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(*8*) Subject to the provisions of this act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely,—

(*i*) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;

(*ii*) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(*iii*) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;

(*iv*) in payment of the interest falling due under the mortgage;

1. Ins. by Act 20 of 1929, s. 35.

(*v*) in or towards discharge of the principal money, if so directed in writing by the mortgagee;

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

(*9*) The provisions of sub-section (*1*) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (*3*) to (*8*) inclusive may be varied or extended by the mortgage-deed, and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(*10*) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal. A copy of such application shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court may think fit.

The costs of every application under this sub-section shall be in the discretion of the Court.

(*11*) In this section, "the Court" means the Court which would have jurisdiction in a suit to enforce the mortgage.]

70. Accession to mortgaged property.—If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations

(*a*) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(*b*) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. Renewal of mortgaged lease.—When the mortgaged property is a lease [1]***, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. Rights of mortgagee in possession.—[2][A mortgagee] may spend such money as is necessary—

[3]* * * * *

(*b*) for [4][the preservation of the mortgaged property] from destruction, forfeiture or sale;

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and

(*e*) when the mortgaged property is a renewable lease-hold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum:

1. The words "for a term of years" omitted by Act 20 of 1929, s. 36.
2. Subs. by s. 37, *ibid.*, for certain words.
3. Clause (*a*) omitted by s. 37, *ibid.*
4. Subs. by s. 37, *ibid.*, for "its preservation".

[1][Provided that the expenditure of money by the mortgagee under clause (*b*) or clause (*c*) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.]

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be [2][added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent. per annum]. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorise the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorised to insure.

[3][**73. Right to proceeds of revenue sale or compensation on acquisition**.—(*1*) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(*2*) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force providing for the compulsory acquisition of immoveable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation.

(*3*) Such claims shall prevail against all other claims except those of prior encumbrances, and may be enforced notwithstanding that the principal money on the mortgage has not become due.]

74. [*Right of subsequent mortgagee to pay off prior mortgagee.*] *Rep. by the Transfer of Property (Amendment) Act,* 1929 (20 *of* 1929), *s*. 39.

75. [*Rights of mesne mortgagee against and subsequent mortgagees.*] *Rep. by s*. 39, *ibid*.

76. Liabilities of mortgagee in possession.—When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(*b*) he must use his best endeavours to collect the rents and profits thereof;

(*c*) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature [4][and all rent] accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(*d*) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*)and the interest on the principal money;

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

1. Ins. by Act 20 of 1929, s. 37.
2. Subs. by s. 37, *ibid.*, for certain words.
3. Subs. by s. 38, *ibid.*, for s. 73.
4. Ins. by s. 40, *ibid.*

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(*g*) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him a fair occupation-rent in respect thereof shall, after deducting the expenses [1][properly incurred for the management of the property and the collection of rents and profits and the other expenses] mentioned in clauses *(c)* and *(d)*, and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest [2]*** and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his [3]*** receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be [1][and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property].

Loss occasioned by his default.—If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

77. Receipts in lieu of interest.—Nothing in section 76, clauses (*b*), (*d*), (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority

78. Postponement of prior mortgagee.—Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79. Mortgage to secure uncertain amount when maximum is expressed.—If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

80. [*Tacking abolished.*] *Rep. by the Transfer of Property (Amendment) Act,* 1929 (20 *of* 1929), *s.* 41.

1. Ins. by Act 20 of 1929, s. 40.
2. The words "on the mortgage-money" omitted by s. 40, *ibid.*
3. The word "gross" omitted by s. 40, *ibid.*

Marshalling and Contribution

[1][**81. Marshalling securities**.—If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.]

82. Contribution to mortgage-debt.—[2][Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date.]

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the [3][subsequent] mortgagee.

Deposit in Court

83. Power to deposit in Court money due on mortgage.—At any time after the principal money [4][payable in respect of any mortgage has become due] and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.—The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by [5]law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and-on depositing in the same Court the mortgage-deed [6][and all documents in his possession or power relating to the mortgaged property], apply for and receive the money, and the mortgage-deed, [7][and all such other documents], so deposited shall be delivered to the mortgagor or such other person as aforesaid.

[7][Where the mortgagee is in possession of the mortgaged. property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.]

1. Subs. by Act 20 of 1929, s. 42, for s. 81.
2. Subs by s. 43, *ibid.*, for the first paragraph.
3. Subs. by s. 43, *ibid.*, for "second".
4. Subs. by s. 44, *ibid.*, for "has become payable".
5. *See* the Code of Civil Procedure, 1908 (5 of 1908), Sch. I, Order VI, rule 15.
6. Subs. by Act 20 of 1929, s. 44, for "if then in his possession or power".
7. Ins. by s. 44, *ibid.*

84. Cessation of interest.—When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or [1][in the case of a deposit, where no previous tender of such amount has been made] as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, [2][and the notice required by section 83 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal.]

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money [3][and such notice has not been given before the making of the tender or deposit, as the case may be].

[4]Suits for Foreclosure, Sale or Redemption

85.[*Parties to suits for foreclosure, sale and redemption.*] *Rep. by the Code of Civil Procedure,* 1908 (5 *of* 1908), s. 156 *and V Schedule.*

Foreclosure and Sale[4]

86. [*Decree of foreclosure suit*.] *Rep. by the Code of Civil Procedure,* 1908 (5 *of* 1908), *s.* 156 *and V Schedule.*

87. [*Procedure in case of payment of amount due*.] *Rep. by s.* 156 *and the fifth Schedule, ibid.*

88. [*Decree of sale*.] *Rep. by s.* 156 *and V Schedule, ibid.*

89. [*Procedure when defendant pay amount due*.] *Rep. by s.* 156 *and V Schedule, ibid.*

90. [*Recovery of balance due on mortgage*.] *Rep. by s.* 156 *and V Schedule, ibid.*

Redemption

[5][**91. Persons who may sue for redemption**.—Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:—

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(*b*) any surety for the payment of the mortgage-debt or any part thereof; or

(*c*) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.]

[6][**92. Subrogation**.—Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

1. Ins. by Act 20 of 1929, s. 45.
2. Subs. by s. 45, *ibid.*, for "as the case may be".
3. Added by s. 45, *ibid.*
4. For the repealed provisions, as re-enacted, *see* (Act 5 of 1908), Sch. I, Order XXXIV.
5. Subs. by Act 20 of 1929, s. 46, for s. 91.
6. Ins. by s. 47, *ibid.* Original ss. 92 to 94 were rep. by Act 5 of 1908, s. 156 and the fifth Schedule.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. Prohibition of tacking.—No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

94. Rights of mesne mortgagee.—Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor.]

[1][**95. Right of redeeming co-mortgagor to expenses**.—Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

96. Mortgage by deposit of title-deeds.—The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds.]

[2]**97**. [*Application of proceeds.*] *Rep. by the Code of Civil Procedure,* 1908 (5 *of* 1908), *s.* 156 *and V Schedule.*

Anomalous Mortgages

98. Rights and liabilities of parties to anomalous mortgages.—In the case of [3][an anomalous mortgage] the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

99. [*Attachment of mortgaged property.*] *Rep. by the Code of Civil Procedure,* 1908 (5 *of* 1908), *s.* 156 *and V Schedule.*

Charges

100. Charges.—Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained [4][which apply to a simple mortgage shall, so far as may be, apply to such charge].

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, [5][and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge].

[6][**101. No merger in case of subsequent encumbrance.**—Any mortgagee of, or person having a charge upon, immoveable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no

1. Subs. by Act 20 of 1929, s. 48, for s. 95. Original s. 96 was rep. by Act 5 of 1908, s. 156 and Sch. V.
2. For the repealed provisions, as re-enacted, *see* (Act 5 of 1908), Sch. I, Order XXXIV, rules 12 and 13.
3. Subs. by Act 20 of 1929, s. 49, for certain words.
5. Subs. by Act 20 of 1929, s. 50, for certain words.
6. Added by s. 50, *ibid.*
7. Subs. by s. 51, *ibid.*, for s. 101.

such subsequent mortgagee or charge-holder shall be entitled to for close or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.]

Notice and Tender

102. Service or tender on or to agent.—Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

[1][Where no person or agent on whom such notice should be served can be found or is known] to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient:

[2][Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made.]

[3][Where no person or agent to whom such tender should be made can be found or is known] to the person desiring to make the tender, the latter person may deposit [4][in any Court in which a suit might be brought for redemption of the mortgaged property] the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Notice, etc., to or by person incompetent to contract.—Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served [5][on or by], or tender or deposit made, accepted or taken by, the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of [6][Order XXXII in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908)] shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

104. Power to make rules.—The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

CHAPTER V

OF LEASES OF IMMOVEABLE PROPERTY

105. Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

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1. Subs. by Act 20 of 1929, s. 52, for certain words.
2. Ins. by s. 52, *ibid.*
3. Subs. by Act 20 of 1929, s. 52, for certain words.
4. Subs. by s. 52, *ibid.*, for "in such Court as last aforesaid".
5. Ins. by s. 53, *ibid.*
6. Subs. by s. 53, *ibid.*, for "Chapter XXXI of the Code of Civil Procedure".

[1]**[106. Duration of certain leases in absence of written contract or local usage**.—(*1*) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(*2*) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (*1*) shall commence from the date of receipt of notice.

(*3*) A notice under sub-section (*1*) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(*4*) Every notice under sub-section (*1*) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]

107. Leases how made.—A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

[2][All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[3][Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

Provided that the State Government may, [4]*** from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]

108. Rights and liabilities of lessor and lessee.— In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

(A) Rights and liabilities of the lessor

(*a*) the lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

(*b*) the lessor is bound on the lessee's request to put him in possession of the property:

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested;

(B) Rights and Liabilities of the Lessee

(*d*) if during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(*e*) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and

1. Subs. by Act 3 of 2003, s. 2, for s. 106 (w.e.f. 31-12-2002).
2. Subs. by Act 6 of 1904, s. 5, for the Second paragraph.
3. Ins. by Act 20 of 1929, s. 55.
4. The words "with the previous sanction of the Governor General in Council" omitted by A. O. 1937.

permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

(*f*) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(*g*) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:

(*h*) the lessee may [1][even after the determination of the lease] remove, at any time [2][whilst he is in possession of the property leased but not afterwards], all things which he has attached to the earth: provided he leaves the property in the state in which he received it:

(*i*) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:

(*j*) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

nothing in this clause shall be deemed to authorise a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

(*k*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:

(*l*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(*m*) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell [1][or sell] timber, pull down or damage buildings [1][belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

1. Ins. by Act 20 of 1929, s. 56.
2. Subs. by s. 56, *ibid.*, for "during the continuance of the lease".

(*p*) he must not, without the lessor's consent, correct on the property any permanent structure, except for agricultural purposes:

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. Rights of lessor's transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. **Exclusion of day on which term commences**.—Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.—Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.—Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. Determination of lease.—A lease of immoveable property determines—

(*a*) by efflux of the time limited thereby:

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

(*c*) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(*e*) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

(*g*) by forfeiture; that is to say, (*1*) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter [1]***; or (*2*) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; [2][or (*3*) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such

1. The words "or the lease shall become void" omitted by Act 20 of 1929, s. 57.
2. Ins. by s. 57, *ibid*.

event]; and in [1][any of these cases] the lessor or his transferee [2][gives notice in writing to the lessee of] his intention to determine the lease:

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. Waiver of forfeiture.—A forfeiture under section 111, clause (*g*) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture; such acceptance is not a waiver.

113. Waiver of notice to quit.—A notice given under section 111, clause *(h)*, is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations

(*a*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Relief against forfeiture for non-payment of rent.—Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

[3][**114A. Relief against forfeiture in certain other cases**.—Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(*a*) specifying the particular breach complained of; and

(*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.]

115. Effect of surrender and forfeiture on under-leases.—The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

1. Subs. by Act 20 of 1929, s. 57, for "either case".
2. Subs. by s. 57, *ibid.*, for "does some act showing".
3. Ins. by s. 58, *ibid.*

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations

(*a*) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b*) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. Exemption of leases for agricultural purposes.—None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the State Government [1]*** may by notification published in the Official Gazette, declare all or any of such provisions to be so applicable [2][in the case of all or any such leases], together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI
OF EXCHANGES

118. "Exchange" defined.—When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

[3][**119. Right of party deprived of thing received in exchange**.—If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.]

120. Rights and liabilities of parties.—Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

121. Exchange of money.—On an exchange of money, each party thereby warrants the genuineness of the money given by him.

1. The words "with the previous sanction of the Governor General in Council" omitted by Act 38 of 1920, s. 2 and I Schedule.
2. Ins. by Act 6 of 1904, s. 6.
3. Subs. by Act 20 of 1929, s. 59, for s. 119.

CHAPTER VII

OF GIFTS

122. "Gift" defined.—"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is till capable of giving,

If the donee dies before acceptance, the gift is void.

123. Transfer how effected.—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. Gift of existing and future property.—A gift comprising both existing and future property is void as to the latter.

125. Gift to several, of whom one does not accept.—A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations

(*a*) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants dies before A. B dies without descendants in A's lifetime. A may take back the field.

(*b*) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs.10,000, which continue to belong to A.

127. Onerous gifts.—Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person.—A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

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Illustrations

(*a*) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company, in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b*) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, given to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by his refusal forfeit the money.

128. Universal donee.—Subject to the provisions of section 127, where a gift consists of the donor's whole property, the done is personally liable for all the debts due by [1][and liabilities of] the donor at the time of the gift to the extent of the property comprised therein.

129. Saving of donations *mortis causa* and Muhammadan law.—Nothing in this Chapter related to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law [2]***.

[3][CHAPTER VIII

OF TRANSFERS OF ACTIONABLE CLAIMS

130. Transfer of actionable claim.—(*1*) The transfer of an actionable claim [4][whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, [5]*** shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(*2*) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance [6][or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938)].

Illustrations

(*i*) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(*ii*) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (*1*) of section 130 and to the provisions of section 132.

[7][**130A**. *Transfer of policy of marine insurance.*] *Rep. by the Marine Insurance Act,* 1963 (11 *of* 1963), *s.* 92 (w.*e.f.* 1-8-1963).

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1. Ins. by Act 20 of 1929, s. 60.
2. The words and figures "or, save as provided by s. 123, any rule of Hindu or Buddhist law" omitted by Act 20 of 1929, s. 61.
3. Subs. by Act 2 of 1900, s. 4, for the original Chapter VIII.
4. Ins. by Act 20 of 1929, s. 62.
5. The words and figures "and notwithstanding anything contained in section 123" ins. by Act 38 of 1925, s. 2, omitted by Act 20 of 1929, s. 62.
6. Added by Act 4 of 1938, s. 121 (w.e.f. 1-7-1939).
7. Ins. by Act 6 of 1944, s. 2.

131. Notice to be in writing, signed.—Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

132. Liability of transferee of actionable claim.—The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations

(*i*) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him; although C was unaware of it at the date of such transfer.

(*ii*) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133. Warranty of solvency of debtor.—Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Mortgaged debt.—Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery: secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

[1][**135. Assignment of rights under policy of insurance against fire.—**Every assignee by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.]

[2][**135A.** [*Assignment of rights under policy of marine insurance.*] *Rep. by the Marine Insurance Act,* 1963 (11 *of* 1963), *s.* 92 (*w.e.f.* 1-8-1963).

136. Incapacity of officers connected with Courts of Justice.—No Judge, legal practitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

137. Saving of negotiable instruments, etc.—Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression "mercantile document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.]

1. Subs. by Act 6 of 1944, s. 3, for s. 135.
2. Ins. by s. 4, *ibid.*

THE SCHEDULE

(*a*) STATUTES

Year and Chapter	Subject	Extent of repeal
27 Hen Year VIII, c. 10	Uses. . .	The whole.
13 Eliz., c. 5.. . .	Fraudulent conveyances	The whole.
27 Eliz., c. 4.. . .	Fraudulent conveyances	The whole.
4 Mm., and Mary, c. 16	Clandestine mortgages	The whole.

(*b*) ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Number and year	Subject	Extent of repeal
IX of 1842 ……	Lease and release .	The whole.
XXXI of 1854….	Modes of conveying land.	Section 17.
XI of 1855…	Mesne profits and improvements.	Section 1; in the title, the words "to mesne profits and", and in the preamble "to limit the liability for mesne profitand".
XXVII of 1866…..	Indian Trustee Act	Section 31.
IV *of* 1872…...	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875….	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876 …..	Oudh Laws Act	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877……	Specific Relief	In sections 35 and 36, the word "in writing".

(*c*) REGULATIONS

Number and year	Subject	Extent of repeal
Bengal Regulation I of 1798	Conditional sales	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts; Interest; Mortgagees in possession.	Section 15.

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