

ACT No. XX OF 1929.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 1st October, 1929.)

An Act further to amend the Transfer of Property Act, 1882, for certain purposes.

IV of 1882. WHEREAS it is expedient further to amend the Transfer of Property Act, 1882, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. (1) This Act may be called the Transfer of Property (Amendment) Act, 1929. Short title and commencement.

(2) It shall come into force on the first day of April, 1930.

2. In section 1 of the Transfer of Property Act, 1882 (hereinafter referred to as the said Act), for the figures "1877" the figures "1908" shall be substituted. Amendment of section 1, Act IV of 1882.

3. In section 2 of the said Act, the word "Hindu" and the words "or Buddhist" shall be omitted. Amendment of section 2, Act IV of 1882.

4. In section 3 of the said Act, for the last paragraph, containing the definition of "notice", the following shall be substituted, namely:— Amendment of section 3, Act IV of 1882.

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

Explanation 1.—Where any transaction relating to immoveable 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, if the instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act:

Provided

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Provided that—

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made XVI of 1908, thereunder,
- (2) the instrument 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.”

Amendment of section 4, Act IV of 1882.

5. In section 4 of the said Act, for the figures “ 1877 ” the figures “ 1908 ” shall be substituted.

Amendment of section 5, Act IV of 1882.

6. In section 5 of the said Act, after the words “ or to himself ” the words “ or to himself ” shall be inserted; and to the same section the following paragraph shall be added, namely:—

“ 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.”

Amendment of section 6, Act IV of 1882.

7. In section 6 of the said Act, after clause (d) the following clause shall be inserted, namely:—

“ (dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.”

8. For

8. For the second paragraph of section 11 of the said Act beginning with the words "Nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely:—

Amendment of section 11, Act IV of 1882

"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."

9. In section 15 of the said Act, for the words "as regards the whole class" the following words shall be substituted, namely:—

Amendment of section 15, Act IV of 1882.

"in regard to those persons only and not in regard to the whole class."

10. For sections 16, 17 and 18 of the said Act the following sections shall be substituted, namely:—

Substitution of new sections for sections 16, 17 and 18, Act IV of 1882.

"16. 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.

Transfer to take effect on failure of prior interest.

17. (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—

Direction for accumulation.

(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

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- (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.

Transfer in perpetuity for benefit of public.

18. 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."

Amendment of section 39, Act IV of 1882.

11. In section 39 of the said Act,—

- (a) the words "with the intention of defeating such right" shall be omitted, and for the words "of such intention" the word "thereof" shall be substituted; and
- (b) the *Illustration* shall be omitted.

Amendment of section 40, Act IV of 1882.

12. In section 40 of the said Act, for the words "of the latter property or to compel its enjoyment in a particular manner," the words "in a particular manner of the latter property" shall be substituted.

Amendment of section 43, Act IV of 1882.

13. In section 43 of the said Act, after the word "person" the words "fraudulently or" shall be inserted.

Amendment of section 52, Act IV of 1882.

14. (1) In section 52 of the said Act,—

- (a) for the words "active prosecution" the word "pendency" shall be substituted;
- (b) for the words "a contentious" the word "any" shall be substituted; and
- (c) after the words "suit or proceeding", where they occur for the first time, the words "which is not collusive and" shall be inserted.

(2) To the same section the following *Explanation* shall be added, namely:—

"*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

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."

15. For section 53 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 53, Act IV of 1882.

"53. (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.

Fraudulent transfer.

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.

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."

16. After section 53 of the said Act the following section shall be inserted, namely:—

Insertion of new section 53A in Act IV of 1882.

"53A. 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,

Part performance.

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

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

then, notwithstanding that the contract, though required to be registered, has not been registered, 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."

Amendment of section 55, Act IV of 1882.

17. In section 55 of the said Act,—

- (a) in sub-clause (a) of clause (1), after the word "property" the words "or in the seller's title thereto" shall be inserted;
- (b) in sub-clause (b) of clause (4), after the word "buyer", where it occurs for the second time, the words "any transferee without consideration or any transferee with notice of the non-payment," shall be inserted; and after the words "on such amount or part" the words "from the date on which possession has been delivered" shall be added; and
- (c) in sub-clause (b) of clause (6), the words "with notice of the payment" shall be omitted.

Substitution of new section for section 56, Act IV of 1882.

18. For section 56 of the said Act the following section shall be substituted, namely:—

Marshalling by subsequent purchaser.

"56. 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 of any other person who has for consideration acquired an interest in any of the properties."

19. In

19. In section 58 of the said Act,—

Amendment of
section 58, Act
IV of 1882.

(a) to clause (c) the following proviso shall be added, namely:—

“ 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 ”;

(b) in clause (d)—

(i) after the words “ Where the mortgagor delivers possession ” the words “ or expressly or by implication binds himself to deliver possession ” shall be inserted;

(ii) for the words “ and to appropriate them ”, the words “ or any part of such rents and profits and to appropriate the same ” shall be substituted; and

(iii) after the words “ or partly in lieu of interest ”, for the word “ and ” the word “ or ” shall be substituted; and

(c) after clause (e) the following clauses shall be added, namely:—

“ (f) Where a person in any of the following towns, namely, the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab, and in any other town which the Governor General in Council may, by notification in the Gazette of India, 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) 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.”

20. In section 59 of the said Act,—

Amendment of
section 59, Act
IV of 1882.

(a) after the words “ a mortgage ”, where they first occur, the words “ other than a mortgage by deposit of title-deeds ” shall be inserted; and

(b) the

- (b) the third paragraph beginning with the words "Nothing in this section" and ending with the words "a security thereon" shall be omitted.

Insertion of new section 59A in Act IV of 1882.

References to mortgagors and mortgagees to include persons deriving title from them.

21. After section 59 of the said Act the following section shall be inserted, namely:—

"59A. 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."

Amendment of section 60, Act IV of 1882.

22. In section 60 of the said Act,—

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "the mortgage-deed, if any, to the mortgagor" the following words shall be substituted, namely:—

"to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee";

(c) for the word "order" the word "decree" shall be substituted; and

(d) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

23. After section 60 of the said Act the following sections shall be inserted, namely:—

"60A. (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

Insertion of new sections 60A and 60B in Act IV of 1882.

Obligation to transfer to third party instead of retransferance to mortgagor.

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

60B. 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."

Right to inspection and production of documents.

24. For section 61 of the said Act and the *Illustration* thereto the following section shall be substituted, namely:—

Substitution of new section for section 61, Act IV of 1882.

"61. 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."

Right to redeem separately or simultaneously.

25. In section 62 of the said Act,—

Amendment of section 62, Act IV of 1882.

- (a) after the word "property", where it first occurs, the words "together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee" shall be inserted;
- (b) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage-money," shall be substituted; and
- (c) for the words "the principal money", where they occur for the second time, the words "the mortgage-money or the balance thereof" shall be substituted.

26. In section 63 of the said Act, for the words "at the same rate of interest" the words "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" shall be substituted.

Amendment of section 63, Act IV of 1882.

27. After section 63 of the said Act the following section shall be inserted, namely:—

Insertion of new section 63A in Act IV of 1882.

"63A. (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved,

Improvements to mortgaged property.

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."

Amendment of section 64, Act IV of 1882.

28. In section 64 of the said Act, the words " for a term of years " shall be omitted.

Amendment of section 65, Act IV of 1882.

29. In section 65 of the said Act,—

(a) in clause (d), the words " for a term of years " shall be omitted; and

(b) the words " Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage " shall be omitted.

insertion of new section 65A in Act IV of 1882.

Mortgagor's power to lease.

30. After section 65 of the said Act the following section shall be inserted, namely:—

" 65A. (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

(e) In the case of a lease of buildings, whether leased with 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."

31. In section 67 of the said Act,—

Amendment of section 67, Act IV of 1882.

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "an order", wherever they occur, the words "a decree" shall be substituted; and

(c) for clause (a) the following clause shall be substituted, namely:—

"(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 mortgage as such or a mortgage by conditional sale as such to institute a suit for sale; or"

32. After section 67 of the said Act the following section shall be inserted, namely:—

Insertion of new section 67A in Act IV of 1882.

"67A. 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."

Mortgagee when bound to bring one suit on several mortgages.

33. For section 68 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 68, Act IV of 1882.

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

Right to sue for mortgage-money.

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

(b) where,

- (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."

Amendment of
section 69, Act
IV of 1882.

34. In section 69 of the said Act,—

- (a) the first paragraph beginning with the words "A power conferred by the mortgage-deed" and ending with the words "specify in this behalf" shall be numbered as sub-section (1);
- (b) in the sub-section so numbered,—
 - (i) for the words "A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following

cases

cases and in no others, namely:—” the following words shall be substituted, namely:—

“ Notwithstanding anything contained in the Trustees’ and Mortgagees’ Powers Act, 1866, 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:—”;

- XXVIII of 1876.
- (ii) in each of clauses (b) and (c), after the word “ where ” the words “ a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed, and ” shall be inserted; and
 - (iii) in clause (c), for the word “ is ” the words “ was, on the date of the execution of the mortgage-deed,” shall be substituted, and after the words “ any other town ” the words “ or area ” shall be inserted;
 - (c) the word “ But ” in the beginning of the second paragraph shall be omitted, and the said paragraph ending with the words “ after becoming due,” shall be numbered as sub-section (2), and clauses (1) and (2) of the said paragraph shall be lettered as (a) and (b), respectively;
 - (d) the third paragraph beginning with the words “ When a sale has been made ” and ending with the words “ exercising the power ” shall be numbered as sub-section (3);
 - (e) the fourth paragraph beginning with the words “ The money which is received ” and ending with the words “ of the sale thereof ” shall be numbered as sub-section (4);
 - (f) for the fifth paragraph beginning with the words “ Nothing in the former part ” and ending with the words “ comes into force ” the following sub-section shall be substituted, namely:—
“ (5) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882 ”; and

(g) the
13

(g) the last paragraph beginning with the words " The powers and provisions " and ending with the words " local official Gazette " shall be omitted.

Insertion of
new section
69A in Act IV
of 1882.
Appointment
of receiver.

35. After section 69 of the said Act the following section shall be inserted, namely:—

" 69A. (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

(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;
- (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

(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."

Amendment of section 71, Act IV of 1882.

36. In section 71 of the said Act, the words "for a term of years" shall be omitted.

Amendment of section 72, Act IV of 1882.

37. In section 72 of the said Act,—

- (a) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted;
- (b) clause (a) shall be omitted;
- (c) in clause (b), for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted;
- (d) after the words "nine per cent. per annum" the following proviso shall be inserted, namely:—

"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"; and

(e) for

(e) for the words " a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate " the following shall be substituted, namely:—

" 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."

38. For section 73 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 73, Act IV of 1882.

" 73. (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.

Right to proceeds of revenue sale or compensation on acquisition.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 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 encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due."

39. Section 74 and section 75 of the said Act shall be omitted.

Omission of sections 74 and 75, Act IV of 1882.

40. In section 76 of the said Act,—

Amendment of section 76, Act IV of 1882.

(a) in clause (c), after the words " charges of a public nature " the words " and all rent " shall be inserted;

(b) in clause (h), after the words " deducting the expenses " the words " properly incurred for the management of the property and the collection of rents and profits and the other expenses " shall be inserted

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inserted, and the words "on the mortgage-money" shall be omitted; and

- (c) in clause (i), the word "gross" shall be omitted, and after the words "as the case may be" the following shall be inserted, namely:—

"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."

41. Section 80 of the said Act shall be omitted.

42. For section 81 of the said Act the following section shall be substituted, namely:—

"81. 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."

43. In section 82 of the said Act,—

- (a) for the first paragraph beginning with the words "Where several properties," and ending with the words "date of the mortgage" the following shall be substituted, namely:—

"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"; and

- (b) in the third paragraph, for the word "second" the word "subsequent" shall be substituted.

44. In

Omission of section 80, Act IV of 1882.

Substitution of new section for section 81, Act IV of 1882.

Marshalling securities.

Amendment of section 82, Act IV of 1882.

44. In section 83 of the said Act,—

Amendment of
section 83, Act
IV of 1882.

- (a) for the words “has become payable” the words “payable in respect of any mortgage has become due” shall be substituted;
- (b) for the words “if then in his possession or power” the words “and all documents in his possession or power relating to the mortgaged property” shall be substituted;
- (c) after the word “mortgage-deed,” where it occurs for the second time, the words “and all such other documents” shall be inserted; and
- (d) the following paragraph shall be added after the words “such other person as aforesaid,” namely:—

“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 retransfer 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.”

45. In section 84 of the said Act,—

Amendment of
section 84, Act
IV of 1882.

- (a) after the words “from the date of the tender or” the words “in the case of a deposit, where no previous tender of such amount has been made,” shall be inserted;
- (b) for the words “as the case may be” the following shall be substituted, namely:—

“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”; and

(c) after

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- (c) after the words "tender of the mortgage-money" the words "and such notice has not been given before the making of the tender or deposit, as the case may be" shall be added.

Substitution of new section for section 91, Act IV of 1882.

Persons who may sue for redemption.

46. For section 91 of the said Act the following section shall be substituted, namely:—

"91. 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."

Insertion of new sections 92, 93 and 94 in Act IV of 1882.
Subrogation.

47. After section 91 of the said Act the following sections shall be inserted, namely:—

"92. 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.

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. No

93. 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.

Prohibition of tacking.

94. 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."

Rights of mesne mortgagee.

48. For section 95 of the said Act the following sections shall be substituted, namely:—

Substitution of new sections for section 95, Act IV of 1882.

"95. 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.

Right of redeeming co-mortgagor to expenses.

96. 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."

Mortgage by deposit of title-deeds.

49. In section 98 of the said Act, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms", the words "an anomalous mortgage" shall be substituted.

Amendment of section 98, Act IV of 1882.

50. In section 100 of the said Act,—

Amendment of section 100, Act IV of 1882.

(a) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge," shall be substituted; and

(b) after the words "in the execution of his trust" the following words shall be added, namely:—

"and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced

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."

Substitution of new section for section 101, Act IV of 1882.

No merger in case of subsequent encumbrance.

51. For section 101 of the said Act the following section shall be substituted, namely:—

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

Amendment of section 102, Act IV of 1882.

52. In section 102 of the said Act,—

(a) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known" shall be substituted;

(b) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely:—

"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";

(c) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where no person or agent to whom such tender should be made can be found or is known" shall be substituted; and

(d) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

53. In

53. In section 103 of the said Act,—

Amendment of
section 103,
Act IV of 1882.

- (a) after the words "such notice may be served", the words "on or by" shall be inserted; and
(b) for the words and figures "Chapter XXXI of the Code of Civil Procedure" the words and figures "Order XXXII in the First Schedule to the Code of Civil Procedure, 1908," shall be substituted.

54. In section 106 of the said Act, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:—

Amendment of
section 106,
Act IV of 1882.

"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".

55. In section 107 of the said Act, after the words "by delivery of possession", where they first occur, the following paragraph shall be inserted, namely:—

Amendment of
section 107,
Act IV of 1882.

"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."

56. In section 108 of the said Act,—

Amendment of
section 108,
Act IV of 1882.

(a) in clause (h)—

(i) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and

(ii) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards," shall be substituted; and

(b) in clause (o), after the words "or fell" the words "or sell" shall be inserted, and after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

57. In clause (g) of section 111 of the said Act,—

Amendment of
section 111,
Act IV of 1882.

(a) the words "or the lease shall become void" shall be omitted;

(b) after the words "title in himself" the following shall be inserted, namely:—

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";

(c) for

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(c) for the words "either case" the words "any of these cases" shall be substituted; and

(d) for the words "does some act showing" the words "gives notice in writing to the lessee of" shall be substituted.

58. After section 114 of the said Act the following section shall be inserted, namely:—

"114A. 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."

59. For section 119 of the said Act the following section shall be substituted, namely:—

"119. 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."

60. In section 128 of the said Act, after the words "debts due by" the words "and liabilities of" shall be inserted.

61. In section 129 of the said Act, the words "or, save as provided by section 123, any rule of Hindu or Buddhist law" shall be omitted.

62. In

Insertion of new section 114A in Act IV of 1882.
Relief against forfeiture in certain other cases.

Substitution of new section for section 119, Act IV of 1882.
Right of party deprived of thing received in exchange.

Amendment of section 128, Act IV of 1882.

Amendment of section 129, Act IV of 1882.

62. In section 130 of the said Act,—

Amendment of
section 130,
Act IV of 1882.

- (a) after the words " The transfer of an actionable claim " the words " whether with or without consideration " shall be inserted; and
- (b) the words " and notwithstanding anything contained in section 123 " shall be omitted.

63. Nothing in any of the following provisions of this Act, namely, sections 3, 4, 9, 10, 15, 18, 19, 27, 30, clause (c) of section 31, sections 32, 33, 34, 35, 46, 52, 55, 57, 58, 59, 61 and 62 shall be deemed in any way to affect—

Saving clause.

- (a) the terms or incidents of any transfer of property made or effected before the first day of April, 1930,
- (b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,
- (c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or
- (d) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of April, 1930, in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.