

CHAPTER 366

THE REAL PROPERTY ACT

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SCHEDULE

REAL PROPERTY

(4th August, 1873.)

6/1873.
13/1887.
4/1945.
15/1961.

1. This Act may be cited as the Real Property Act. **Short title.**

2. In this Act— **Interpretation.**

"Judgment" includes registered decrees, orders of Courts of Equity and Bankruptcy, and other orders having the operation of Judgments;

"land" includes all tenements and hereditaments, and any part or share of, or estates or interest in, any tenements or hereditaments, of what tenure or kind soever.

PART I

GENERAL

3. Every deed shall be signed by the conveying party, and shall be attested by at least one witness, but no particular form of attestation shall be necessary. **Deed to be signed by conveying party.**

4. Indenting shall not be necessary. **Indenting.**

5. An acknowledgement of the receipt of the consideration money contained in the body of a deed shall be as valid and effectual in every respect as if the same had also been endorsed thereon. **Acknowledgement of receipt of consideration money.**

Partition, &c., of land.

6. No partition, or exchange, lease, assignment, or surrender of any land shall be valid unless the same shall be made by deed.

Disclaimer of land.

7. No disclaimer of any land shall be valid unless the same be made by deed, or by matter of record.

What may pass by deed.

8. Every chose in action, right of entry for conditions broken, contingent remainder, and any contingent or future estate, right or interest in any real or personal property may be conveyed or assigned by deed.

Livery of seisin unnecessary.

9. All lands within Antigua and Barbuda shall be deemed and taken to lie in grant, and a single deed, without livery of seisin, or prior lease heretofore or hereafter executed within Antigua and Barbuda, shall be valid and effectual to pass any land which might have been conveyed by lease and release.

Direct conveyance of land.

10. When any land shall be conveyed directly and immediately to any person or body corporate, the whole legal and equitable estate therein shall vest in such person or body corporate.

Conveyance of land in trust.

11. When any land shall be so conveyed to any person, or body corporate, to the use of, or in trust for any other person, the whole legal estate shall vest in the person, or body corporate to whom the same shall have been so conveyed, subject to a trust for the benefit of such other person.

Conveyance not to create estate by wrong, &c.

12. No conveyance shall create any estate by wrong, or work forfeiture.

Benefit as under deed poll.

13. Any person not named as a party in any deed may take an immediate benefit thereby as he might under a deed poll.

Power to executor of mortgagee.

14. An executor or administrator of a deceased mortgagee shall have power, on payment to him of the moneys due on account of the mortgage debt and interest, to convey by deed the property comprised in the mortgage as fully and effectually as the heirs or devisees of the mortgagee, or their heirs and assigns, might have done.

15. When any land shall be conveyed, transferred, or devised to two or more persons in their own right, such persons shall be deemed and taken to be tenants in common, unless expressly declared to be joint tenants: **Tenants in common.**

Provided that all land conveyed, transferred or devised to executors or trustees, as such, shall be held by them as joint tenants. **Joint tenants.**

16. A condition or covenant not to assign, or underlet, or do any act, without licence shall not be released or determined by such licence. **Condition or covenant not to assign, &c.**

17. No estate of fee tail shall be created, after the 4th day of August, 1873, by any deed, or by any will or other instrument, otherwise than by an express limitation to a person and the heirs of his body, or the heirs, male or female, of his body, as the case may be. **Estates tail.**

18. All the provisions (save and except the provisions contained in section 5) of an Act (contained in the Schedule) passed by the Governor and General Council and Assembly of the Leeward Islands, dated the 21st day of June, 1705, entitled, "An Act for the supplying the want of Fines and Recoveries in these Islands, and for making any deed or deeds duly executed and acknowledged before any of Her Majesty's Justices of the Court of Common Pleas in the Kingdom of England or Ireland, or any of these Islands, equivalent to a fine and recovery, or fines and recoveries, duly and regularly levied and suffered in any of Her Majesty's Courts of Record in Westminster", shall extend and apply to Antigua and Barbuda. **Fines and recoveries. Schedule.**

PART II

LEASES

19. Where any licence to do any act which, without such licence, would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted or to be hereafter granted, shall, at any time after the passing of this Act, be given to any lessee or his assigns, every such licence, shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or **Restriction on effect of licence.**

to be made, or to the actual assignment, underlease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, underlease or other matter not specifically authorized or made punishable by such licence, in the same manner as if no such licence had been given; and the condition or right of re-entry shall be and remain in all respects as if such licence had not been given, except in respect to the particular matter authorized to be done.

Restricted operation of partial licences.

20. Where, in any lease heretofore granted or to be hereafter granted, there is or shall be a power or condition of re-entry on assigning or underletting, or doing any other specified act, without licence, and a licence, at any time after the passing of this Act, shall be given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, (as the case may be) over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interest or property not the subject of such licence.

Apportionment of conditions of re-entry.

21. Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him, as incident to his part

of the reversion, in respect of the apportioned rent or other reservation allotted or belonging to him.

22. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to, and shall go with, the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

Rent and benefit of lessee's covenants to run with reversion.

(2) This section applies only to leases made after the 31st day of December, 1887.

23. (1) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to, and shall go with, that reversionary estate or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Obligation of lessor's covenants to run with reversion.

(2) This section applies only to leases made after the 31st day of December, 1887.

24. (1) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease shall be apportioned, and shall remain

Apportionment of conditions on severance, &c.

annexed to the several parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) This section applies only to leases made after the 31st day of December, 1887.

Restrictions on,
and relief
against,
forfeitures of
leases.

25. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and, in case of relief, may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

(3) For the purposes of this section, a lease includes an original or derivative underlease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative underlessee, and the heirs, executors, administrators and assigns of a lessee, also a grantee under such grant as aforesaid, his heirs and assigns;

and a lessor includes an original or derivative underlessor, and the heirs, executors, administrators and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act or Ordinance.

(5) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6) This section does not extend—

(a) to a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest, or

(b) in case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter or inspect the mine or the workings thereof.

(7) This section shall not affect the law relating to re-entry, or forfeiture, or relief in case of non-payment of rent.

(8) This section applies to leases made either before or after the 31st day of December, 1887, and shall have effect notwithstanding any stipulation to the contrary.

PART III

RENT CHARGE

26. The release from a rent charge of part of the hereditaments charged therewith shall not extinguish the whole rent charge, but shall operate only to bar the right to recover any part of the rent charge out of the hereditaments released, without prejudice nevertheless to the rights of all

Release of part of land charged not to be an extinguishment.

persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.

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PART IV

JUDGMENTS

Release of part of land charged not to affect judgment.

27. The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice nevertheless to the rights of all persons interested in the hereditaments or property remaining unreleased, and not concurring in or confirming the release.

PART V

POWERS

Sale under power not to be avoided by mistaken payment to tenant for life.

28. Where under a power of sale a *bonâ fide* sale shall be made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life or any other party to the transaction shall, by mistake, be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, the High Court may, upon any action brought or application made in a summary way, as the case may require or permit, declare that, upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with such interest thereon as the Court shall direct, and the settlement of the said principal moneys and interest, under the direction of the Court, upon such parties as, in the opinion of the Court, shall be entitled thereto, the said sale ought to be established; and upon such payment and settlement being made accordingly, the Court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

29. Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid by a sale and absolute disposition by public auction or private contract, of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

Devisee in trust may raise money by sale, notwithstanding want of express power in the will.

30. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall, for the time being, be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

Power given by last section extended to survivors, devisees, &c.

31. If any testator who shall have created such a charge as is described in section 29 shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall, for the time being, be vested; but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Executors to have power of raising money when there is no sufficient devise.

Purchasers, &c., not bound to enquire as to power.

32. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections 29, 30 and 31, or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Sections 29, 30 and 31 not to affect certain sales, &c.

33. The provisions contained in sections 29, 30 and 31 shall not in any way prejudice or affect any sale or mortgage already made, or hereafter to be made, under or in pursuance of any will coming into operation before the passing of this Act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.

PART VI

TRUST AND MORTGAGE ESTATE ON DEATH

Devolution of trust and mortgage estates on death.

34. (1) Where an estate or interest of inheritance, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him. And, for the purposes of this section, the personal representatives, for the time being, of the deceased shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2) This section applies only in cases of death after the 31st day of December, 1887.

PART VII

ASSIGNMENT OF PERSONALTY

35. Any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person or other persons or coporation, by the like means as he might assign the same to another.

Assignment to self and others.

PART VIII

PURCHASERS

36. The *bonâ fide* payment to, and the receipt of, any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.

Purchaser not bound to see to the application of purchase money.

37. Any vendor or mortgagor of land, or of any chattels, real or personal, or choses in action conveyed or assigned to a purchaser, or the solicitor or agent of any such vendor or mortgagor, who shall, after the passing of this Act, conceal any settlement, deed, will, or other instrument material to the title, or any incumbrance, from the purchaser, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him. with intent in anv of such cases to defraud, shall be guilty of a misdemeanour, and shall be liable to suffer such punishment by fine, or by imprisonment for any time not exceeding two years, with or without hard labour, or by both, as the Court shall award. and shall also be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, for any loss sustained by them, or either or any of them, in consequence of the settlement. deed. will: or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree; and in estimating such damages, where the estate shall be recovered from such purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them, or either or any of them, in

Punishment of vendor, &c., for fraudulent concealment of deeds, &c., or falsifying pedigree.

improvements on the land; but no prosecution for any offence included in this section against any vendor or mortgagor, or any solicitor or agent, shall be commenced without the sanction of the Attorney-General; and no such sanction shall be given without such previous notice of the application for leave to prosecute the person intended to be prosecuted as the Attorney-General shall direct.

SCHEDULE

S. 18

An Act for the supplying the Want of Fines and Recoveries in these Islands, and for making any Deed or Deeds duly executed and acknowledged before any of Her Majesty's Justices of the Court of Common Pleas in the Kingdom of England or Ireland, or of any of these Islands, equivalent to a Fine and Recovery or Fines or Recoveries duly and regularly levied and suffered in any of Her Majesty's Courts of Record at Westminster.

(Dated this 21st day of June, 1705.)

Preamble.

Whereas fines with proclamations and common recoveries are becoming the common assurances of Your Majesty's Kingdom of England, at least such a necessary part thereof as without them the inheritance of femes coverts, or their right or title to dower, or any other estate of freehold, nor estates of tenants in tail general or special, or the reversion and reversions, remainder and remainders, thereupon depending, cannot be barred.

2. And whereas such fines cannot be duly levied in these Islands for want of proper offices, or common recoveries well suffered for want of set days for the return of writs, or for the appearance of the parties to such recoveries, the courts of law in these Islands usually holding but one day or two at the most; for remedying which mischief, and to the intent that the want of fines and recoveries in these Islands may be effectually supplied by making other conveyances, attended with particular circumstances hereinafter mentioned, equivalent thereunto:

3. We Your Majesty's most dutiful and loyal subjects do pray Your most Excellent Majesty that it may be enacted, and be it and it is hereby enacted by the Commander-in Chief of these Your Majesty's Leeward Caribee Islands in America, the General Council and General Assembly of the said Islands now met at Nevis, and by the authority of the same, That a deed or deeds in due form of law made and executed by the husband and wife of the plantations, lands, and tenements, and other hereditaments of the wife, or of any plantation, lands, tenements, and hereditaments whereof the husband was solely and in his own right seised at any time during the coverture, or whereof the husband or husband and wife were seised in right of the wife, or the husband jointly with the wife, or by tenant in tail general or special, and by the party or parties, and each of them, from whom the interest passes, acknowledged before some of her Majesty's Justices of the Court of Common Pleas in the Kingdom of England or Ireland, or of any of Your Majesty's Leeward Caribee Islands wherein such plantation, lands, tenements, and hereditaments do lie, shall to all intents and purposes be as effectual and valid in the law to pass all the estate, right, title, interest and claim of the party or parties, and of each of them, to such deed or deeds in or to all or any the plantation or plantations, lands, tenements, or hereditaments, by such deed or deeds granted, conveyed or made over, or thereby intended to be granted, conveyed or made over, to the person or persons, bargainee or bargainees, grantee or grantees, in the said deed or deeds mentioned, their heirs and assigns for ever, to whom or to whose use any estate in such plantation or plantations, lands, tenements, or hereditaments, is by the said deed or deeds limited, bargained, sold, granted, or conveyed, according to the several limitations in the said deed or deeds contained, as if the party or parties to the said deed or deeds, from whom the interest moves, had levied a fine or fines with proclamations, or suffered a common recovery or recoveries of such plantation or plantations, lands, tenements, and other hereditaments in any of Their Majesty's Courts of Record at Westminster, and duly executed deeds leading the use of such fine or fines, or declaring the uses of such recovery or recoveries to be to such bargainee or bargainees, grantee or grantees, their heirs and assigns for ever, to whom or to whose use such plantation or plantations, lands, tenements, and other hereditaments are by the deed or deeds so to be executed and acknowledged as is above mentioned limited and conveyed, or that the same and every part thereof had been bargained, sold, conveyed, or

Deeds acknowledged by the parties from whom the interest passes before the Justices of the Common Pleas in England, &c., shall bar femes covert and tenants in tail, as fully as any fine and recovery.

set over by any the firmest deed or deeds, conveyance or conveyances, assurance or assurances of the law, that could be advised or devised by counsel learned in the law.

Every wife party to such deed to be of age, and examined apart whether she executes the same freely. Such examination to be indorsed on the back of the deed, and subscribed by the Judge,

4. Provided always, That the wife, who is party to any such deed or deeds, be of full age at the time of the execution thereof, and be privately and apart examined by the judge before whom such deed or deeds is acknowledged whether she do execute the same freely, voluntarily, and without fear, threats or compulsion of or by her husband used, which examination of the wife shall be indorsed together with the acknowledgement of the party or parties from whom the interest by the said deed or deeds pass; and such acknowledgements shall be subscribed by the judge before whom the acknowledgement of such deed or deeds is taken and by and before whom such wife is privately examined.

and enrolled at length, within six months, in the Secretary's office, if in one of the Islands.

5. (*) *And be it further enacted by the authority aforesaid, That all and every deed or deeds so executed and acknowledged as aforesaid shall be enrolled at length in the Secretary's or Register's office of that Island wherein the estate so granted or conveyed lies (if the said deed or deeds be executed and acknowledged in any of these Your Majesty's Leeward Caribee Islands) within six calendar months after the acknowledgement of such deed or deed; and in case the said deed or deeds shall be executed and acknowledged within either of your Majesty's Kingdoms of England or Ireland, that the same shall be enrolled at length in the High Court of Chancery of that kingdom wherein the same was executed and acknowledged within six calendar months after the acknowledgement thereof; and that the acknowledgement of such deed or deeds so subscribed by the Judge before whom the same was taken (as before is directed) shall be a sufficient proof of the due execution of the said deed or deeds; and the record, or an exemplification or attested copy of such deed or deeds, shall be admitted and allowed to be given in evidence upon any trial at law or hearing in equity where the original deed or deeds is or are mislaid and cannot be procured, any law, statute or usage to the contrary in any ways notwithstanding.*

The record to be admitted as evidence if the original is mislaid.