

**JOINT/SELECT
COMMITTEE REPORT
LEGISLATIVE
ASSEMBLY**

1929

Transfer of Property (Amendment) Bill

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1929.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks
1.	The Public Safety Bill.	20.2.29.	
2.	The Workmen's Compensation (Amendment) Bill.	26.2.29.	
3.	The Indian Income-tax (Amendment) Bill (Sec. 2, 23, etc.)	26.2.29.	
4.	The Trade Disputes Bill.	16.3.29.	
5.	The Reservation of the Coastal Traffic of India Bill by Mr. S. N. Haji.	2.4.29.	
6.	The Transfer of Property (Amendment) Bill.	2.9.29.	
7.	The Transfer of Property (Amendment) Supplementary Bill.	2.9.29.	
8.	The Indian Income-tax (Provident Fund Relief) Bill.	16.9.29.	
9.	The Indian Patents and Designs (Amendment) Bill.	25.9.29.	

We, the undersigned members of the Select Committee to which the Bill further to amend the Transfer of Property Act, 1882, for certain purposes, was referred, have considered the Bill and the Papers Nos. I to V. papers noted in the margin and have the honour to submit this our Report, with the Bill as amended by us annexed hereto.

The history of this Bill is as follows. In 1921, an exhaustive examination of the case law bearing on the Transfer of Property Act, 1882, was made by Mr. (now Mr. Justice) Lal Gopal Mukherji. The results of the examination were thereafter in 1926 considered in the Legislative Department, and a Bill was prepared for the purpose of amending the Act in such a way as to clarify the numerous points upon which conflicting judicial decisions had been given; and in 1927 a Committee, consisting of the late Mr. S. R. Das, Law Member in the Executive Council of the Governor General, Sir B. L. Mitter, the present Law Member, Mr. D. F. Mulla and Mr. (now Mr. Justice) S. N. Sen, was appointed to consider generally the question of the amendment and in particular to examine the draft Bill. This Committee, whilst endorsing the departmental decision that the scope of the Bill should be limited to matters in regard to which there had been a conflict of judicial decisions or in regard to which such decisions had shown the Act to be defective, made certain additions and alterations in the Bill. The Bill, as finally settled by them, was introduced in the Legislative Assembly in September, 1927, and was circulated for opinion. The opinions were carefully considered by Mr. D. F. Mulla, at that time holding the office of the Law Member of the Governor General's Executive Council. The Bill which had been introduced in 1927 having lapsed, a fresh Bill substantially on the same lines was introduced in the Legislative Assembly in March, 1929. This Bill and the opinions have now been laid before us, together with a draft of certain amendments arising therefrom which we have been invited to consider.

It will, therefore, be apparent that the Bill has not only itself been founded upon an exhaustive examination of the defects which have been revealed during nearly half a century, but has also received the detailed scrutiny of lawyers and commercial and other bodies and associations throughout the country. On the whole, the opinions received show that the proposals formulated in the Bill have been generally approved. In view of these facts and of the fact that we ourselves are in agreement with all but one of the provisions embodied in the Bill which mark a radical departure from those embodied in the existing Act, we propose in this Report to confine ourselves almost entirely to the points upon which we consider that further amendment of the Bill is desirable. Of the provisions above-mentioned, the only one which we are not prepared to accept is that contained in clause 54 of the Bill as introduced, which sought to provide that a lease of immoveable property for a term exceeding one month

only must be made by a registered instrument. The consensus of opinion is opposed to that proposal, and we ourselves consider that it would lead to inconvenience and hardship out of proportion to the benefit to be expected from it. We now proceed to refer in detail to the amendments which we have made.

Clause 1.—We propose that the Act should come into force on the 1st day of April, 1930. Assuming that the Bill will be passed into law during the forthcoming Simla Session of the Assembly, we think it essential that a sufficient period should be allowed to elapse before it takes effect. A new edition of the Act embodying the extensive amendments made by the Bill will be necessary, and we think it most important that, when prepared, that edition should be translated and put into wide circulation. At the same time the period will enable Local Governments to make such arrangements and extensions as may be necessary to meet the increased volume of registration which may be expected, if the provisions of clause 16 (now clause 17) of the Bill become law.

Clause 4.—In regard to *Explanation I* which it is proposed to add to the definition of 'notice' in section 3 of the Transfer of Property Act, 1882, (in this Report referred to as the principal Act), it has been pointed out that the provision that the registration of a document amounts to notice from the date on which it is registered, will cause difficulties in a case in which the document has not been registered at the place where the property is situate. This objection has some force. We have, therefore, added at the end of *Explanation I* the following words:—

“or if the instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1903, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 65 of that Act.”

Explanation III which provides that notice to an agent whilst acting in the course of business is notice to his principal has been properly criticised as being too general and vague. We have added provisions to the effect that the notice must be of a fact which is material to the course of the business in which the agent is engaged, and that the agent must not fraudulently have concealed the fact from his principal.

Clause 6.—We have amended section 5 to make it clear that a transfer can be made by a person to himself as for instance by a person making a settlement or trust in which he constitutes himself a trustee. An *Explanation* has also been added to the section to make it clear that the words 'living person' include corporations and other associations of persons.

Clause 10 (now clause 11).—We have thought it desirable to omit the *Illustration* to section 39 instead of amending it. Even as amended by the omission of the words "bona fide" the *Illustration* might have been misleading.

Clause 12 (now clause 13).—We approve of the alteration proposed to be made by the insertion of the words "fraudulently or". In regard to the amendment in sub-clause (b) of this clause in the Bill as introduced, we think that it will unnecessarily restrict the operation of the principle of 'the estate feeding the title'. A limitation of the right of a transferee to an interest which may accrue to his transferor up to the date of the decree in a suit instituted to enforce that right might work injustice, and we do not think that the decision in 18 Mad. 492 is sufficient justification for any amendment of the section in this respect.

Clause 13 (now clause 14).—In the *Explanation* which prescribed the period during which *lis pendens* is to operate, we have provided for the case of the discharge of a decree by the relinquishment by a decree holder of his decretal rights.

Clause 15 (now clause 16).—We entirely approve of the proposal to give statutory recognition to the principle of part performance and of the limits which the Bill prescribes for its application. We have, however, removed a slight ambiguity latent in the phrase 'rights arising under the contract' in the fourth paragraph.

Clause 16 (now clause 17).—Some of us are of opinion that registration in the case of sales of immoveable property of the value of less than one hundred rupees should not be made compulsory, and that the present provision in section 51 of the principal Act and in section 17 of the Indian Registration Act, 1908, should be retained. The proposal, however, involves a very important question of policy, which we think should be decided by the House itself.

Clause 19 (now clause 20).—We propose to insert in section 58 a definition of the mortgages referred to in section 59 as mortgages by deposit of title-deeds.

Clause 20 (now clause 21).—Our remarks on clause 16 (now clause 17) apply also to the question of making compulsory the registration of mortgages of immoveable property of the value of less than one hundred rupees. The amendment in the preceding clause involves the omission of the third paragraph in section 59 and a consequential amendment in the second paragraph.

Clause 22 (now clause 23).—As the old practice of passing 'orders absolute' in mortgage-suits has been abolished by the enactment of Order XXXIV in the First Schedule to the Code of Civil Procedure, 1908, we propose in sections 60, 67 and 67A of the principal Act to substitute the word 'decree' for the word 'order' wherever it occurs [as also in clauses 30 and 31 (now clauses 32 and 33)].

Clause 24.—We have added on the lines of sections 95 and 96 of the English Property Act two new sections—sections 60A and 60B—to define the obligation of a mortgagee, when so required, to transfer the mortgage-debt to a third person named by the mortgagor, and also to make it clear that a mortgagor has a right to inspect and take copies of the documents of title relating to the mortgaged property which are in the possession of the mortgagee.

Clause 24 (now clause 26).—In order to make section 62 comprehensive, we have on the lines of section 60 provided that the mortgagor has a right to require the mortgagee to deliver back the title deeds and other documents relating to the mortgaged property.

Clause 29 (now clause 31).—We have omitted clause (e) of sub-section (2) of section 65A which related to agricultural leases. In our opinion the power of a mortgagor to make leases of agricultural land should be governed by local laws and customs for which provision is made in clause (a).

Clause 32 (now clause 34).—As under clause 21 (now clause 22) unless otherwise expressly provided, the term 'mortgagor' will include persons claiming title from him, we have added a proviso to make it clear that such persons are not included in that term as used in clause (a) of sub-section (1) of section 68.

Instead of making it obligatory on a Court to stay a suit or proceeding brought for the enforcement of the personal remedy until the mortgagee has exhausted his remedies against the mortgaged property, we have, in sub-section (2) of section 68, preferred to leave it to the discretion of the Court to stay that suit or proceeding. We see no reason to require a registered instrument when the mortgagee is abandoning the security, as under the provisions of the Indian Registration Act it will have to be decided in each case whether a registered instrument is necessary or not. We have also made it clear that the mortgagee abandoning the security is bound to retransfer the mortgaged property to the mortgagor, if required to do so.

Clause 34 (now clause 36).—In clause (3) of sub-section (1) of section 69A we have made it clear that the liability of a mortgagor for the acts or defaults of a receiver is removed if such acts or defaults are due to the improper intervention of the mortgagee.

Clause 36 (now clause 38).—In the proviso in sub-clause (v) of section 72, we have inserted words to make it clear that a mortgagor is not liable for money spent by the mortgagee for the preservation of the mortgaged property or for support of the title unless he was called upon and has failed to take the necessary steps himself.

Clause 42 (now clause 44).—The words 'shares in' are inserted in the clause to make it clear that it applies to cases where property is owned by several owners, but has not been physically partitioned.

Clause 47 (now clause 49).—As the present law is not clear regarding the rights and liabilities of parties to a mortgage by the deposit of title deeds, we have inserted a new section (section 96) applying to such mortgages the provisions applicable to simple mortgages.

Clause 49 (now clause 51).—For the reasons given by the Special Committee in the last paragraph of their note to section 81 (clause 43), we have omitted the word 'valuable' which was used in conjunction with the word 'consideration'.

Clause 52 (now clause 54).—We do not consider that the words beginning with '*ad litem*' in the

concluding part of section 103 should be omitted as proposed in sub-clause (b) of this clause. In our opinion, those words are necessary, as the preceding part of the section applies to legal curators generally and is not confined to guardians *ad litem*. The reference to Chapter XXXI of the Code of Civil Procedure, 1882, has, however, been replaced by a reference to Order XXXII of the present Code.

Clause 54 (now clause 56).—As already stated, we do not approve of the amendment proposed to be made in section 107 making compulsorily registrable all leases except leases for periods not exceeding one month or leases from month to month. We, however, approve of the alteration which requires that a lease shall be executed by both the lessor and the lessee, and which in our opinion is a very salutary provision.

Clause 56 (now clause 58).—We approve of the principle of the amendment contained in sub-clause (d) of this clause. The conflict of decisions as to whether the mere institution of a suit constitutes an overt act on the part of the lessor for the purposes of this section requires to be set at rest. But instead of adding the words 'other than the institution of legal proceedings' after the words 'does some act' as is proposed in sub-clause (d), it is, in our opinion, preferable to remove any further doubt as to the nature of the act which

the lessor must do by requiring him to give notice in writing to the lessee of his intention to determine the lease.

Clause 57 (now clause 59).—In the new section—114A—which it is proposed to insert, we think it desirable to provide that the notice required to be given by the lessor should be in writing; and instead of prescribing an arbitrary period of thirty days within which the lessee is required to remedy the breach—a period which will undoubtedly be insufficient in many cases and may be excessive in others,—we prefer to follow the English Act and to require the remedy to be completed within a reasonable time.

Clause 62 (now clause 64).—The sections mentioned in this clause have been re-numbered in consequence of the insertion of two new clauses in the Bill and the date mentioned in the last part of the clause has been altered to conform to the amendment made in clause (1).

2. We have made a few alterations of a purely drafting nature to which we have not thought it necessary to refer in detail.

3. The Bill was published in English in the Gazette of India on the 9th March, 1929.

4. We think that the Bill has not been so altered by us as to require re-publication, and we recommend that it be passed as now amended.

B. L. MITTER.
M. A. JINNAH.
AMAR NATH DUTT.
M. ANWAR-UL-AZIM.
M. SHAH NAWAZ.
V. V. JOGLAH.
M. S. ANEY.*

The 4th of June, 1929.

* The only point on which I wish to record my opinion separately is whether the words "Hindu, or Buddhist" in clause 3 should be omitted. I think that mere superfluity is not a very strong ground for their omission as their retention reaffirms a principle to which the Government stands committed.

M. S. ANEY.

The 4th June, 1929.

[AS AMENDED BY THE SELECT COMMITTEE.]

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

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

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

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

(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 words and figures "paragraphs 2 and 3", in both places where they occur, the word and figure "paragraph 2" shall be substituted, and for the figures "1877" the figures "1908" shall be substituted.

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

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

"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 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, 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.

Explanation I.—Any person acquiring any immovable 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."

5. In section 1 of the said Act, for the words and figures " paragraphs 2 and 3 " the word and figure " paragraph 2 " shall be substituted, and for the figures " 1877 " the figures " 1908 " shall be substituted.

6. In section 5 of the said Act, after the words " or to Amendment of section 5, Act IV of 1882. himself " the words " or to himself " shall be inserted; and to the same section the following Explanation shall be added, namely :—

" Explanation.—In this section, " living person " includes a company or association or body of individuals, whether incorporated or not."

7. In section 6 of the said Act, after clause (d), Amendment of section 6, Act IV of 1882. 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 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 :—

" 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 Amendment of section 15, Act IV of 1882. " as regards the whole class " the following words shall be substituted, namely :—

" 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 Substitution of new sections for sections 16, 17 and 18, Act IV of 1882. the following sections shall be substituted, namely :—

16. Where, by reason of any of the rules Transfer to take effect on failure of prior interest. 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. (1) Where the terms of a transfer of property direct that Direction for accumulation. 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. 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."

11. In section 39 of the said Act,—

Amendment of section 39, Act IV of 1882.

(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.

12. In section 40 of the said Act, for the words

Amendment of section 40, Act IV of 1882. "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.

13. In section 43 of the said Act, after the

Amendment of section 43, Act IV of 1882. word "person" the words "fraudulently or" shall be inserted.

* * * * *

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

Amendment of section 52, Act IV of 1882.

(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 pro-

ceeding 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."

15. For section 53 of the said Act the following

Substitution of new sec. section shall be substituted. namely:—
tion 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.

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

Insertion of new section ing section shall be inserted, namely:—
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,

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 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”.

17. In section 54 of the said Act,—

Amendment of section
54, Act IV of 1882.

- (a) the word “tangible.”, wherever it occurs, shall be omitted ;
- (b) for the words “ of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing,” the words “ or of any interest therein ” shall be substituted ; and
- (c) the words “ 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. ” shall be omitted.

18. In section 55 of the said Act,—

Amendment of section
55, Act IV of 1882.

- (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 “ or any person claiming under him 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.

19. For section 56 of the said Act the following

Substitution of new section shall be substitution for section 56, Act IV of 1882. ed. namely :—

56. If the owner of two or more properties Marshalling by subsec. 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.”

20. In section 58 of the said Act.—

Amendment of section
58, Act IV of 1882.

(a) in clause (a), the words and brackets “ (if any) ” shall be omitted ;

(b) 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 ” ;

(c) 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 ; and

(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

(d) after clause (c) 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 Akyub, 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 immovable 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.”

21. In section 59 of the said Act,—

Amendment of section
59, Act IV of 1882.

(a) the words “ Where the principal money secured is one hundred rupees or upwards,” shall be omitted ;

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

(c) the second paragraph beginning with the words “ Where the principal money ” and ending with the words “ by delivery of the property ” and the third paragraph beginning with the words “ Nothing in this section ” and ending with the words “ a security thereon ” shall be omitted.

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

“ 59A. Unless otherwise expressly provided,

References to mortgagors and mortgages to include persons deriving title from them. references in this Chapter to mortgagors and mortgages shall

be deemed to include references to persons deriving title from them respectively.”

23 In section 60 of the said Act,—

Amendment of section 60, Act IV of 1882.

- (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) the words and brackets "(where the mortgage has been effected by a registered instrument)" shall be omitted ;
- (d) for the word "order" the word "decree" shall be substituted ; and
- (e) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

24. *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 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."

25. *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."

26. 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.

27. 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 in the mortgage-deed, at the rate of nine per cent. per annum" shall be substituted.

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

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

29. In section 64 of the said Act, the words
 Amendment of section " for a term of years "
 64, Act IV of 1882. shall be omitted.

30. In section 65 of the said Act,—
 Amendment of section
 65, Act IV of 1882.

(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 pay-
 ment of future rent, applies in the case
 of an usufructuary mortgage " shall
 be omitted.

31. After section 65 of the said Act the follow-
 Insertion of new section ing section shall be in-
 65A in Act IV of 1882. serted, namely :—

" 65A. (1) Subject to the provisions of sub-
 Mortgage's power to section (2), a
 lease. mortgagor, while
lawfully in pos-
 session 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 pro-
 mised 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 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 inten-
 tion 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 ex-
 tended, 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."

32. 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 mortgagee by conditional sale as such to institute a suit for sale; or”.

33. 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.”

34. 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:—

- (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."

35. In section 69 of the said Act,—

Amendment of section
69, Act IV of 1882.

- (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 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 ^{XXVIII} acting on his behalf, shall, subject to ^{of 1866.} 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:—";

- (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;

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

36. After section 69 of the said Act the following *Insertion of new section* section shall be inserted, *9A in Act IV of 1882.* namely:—

"69A. (1) A mortgagee having the right to *exercise a power*
Appointment of receiver. 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.

- (1) 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;
 - (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."

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

Amendment of section 71, Act IV of 1882.

38. In section 72 of the said Act,—

Amendment of section 72, Act IV of 1882.

- (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 "where no such rate as fixed" the words "in the mortgage-deed" shall be inserted;
- (e) 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

(j) 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 in the mortgage-deed, at the rate of nine per cent. per annum.*"

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

(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 immovable 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.*"

40. Section 74 and section 75 of the said Act shall be omitted.
Omission of sections 74 and 75, Act IV of 1882.

41. 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, 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."

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

Omission of section 80,
Act IV of 1882.

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

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

"81. If the owner of two or more properties mortgages them
Marshalling securities. 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."

44. In section 82 of the said Act.—

Amendment of section 82, Act IV of 1882.

(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.

45. 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 re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

46. 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 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.

47. For section 91 of the said Act the following

Substitution of new section shall be substituted, namely:—
for section 91, Act IV of 1882.

"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."

48. 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 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. 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."

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

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.

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."

50. 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.

51. 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 against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

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

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

"101. Any mortgagee of, or person having a charge upon, immovable property, or any transferee from such mortgagee or chargeholder, 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 chargeholder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto."

53. In section 102 of the said Act,—

Amendment of section 102, Act IV of 1882.

(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.

54. 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.

V of 1908.

55. In section 106 of the said Act, for the

Amendment of section
106, Act IV of 1882.

words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:—

"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".

56. In section 107 of the said Act, after the words

Amendment of section
107, Act IV of 1882.

"registered instrument," where they first occur, the words "and such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee" shall be inserted.

57. 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.

58. 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 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.

59. After section 114 of the said Act the following

Insertion of new section 114A in Act IV of 1882. ing section shall be inserted, namely:—

"114 A. 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."

60. For section 119 of the said Act the following

Substitution of new section for section 119, Act IV of 1882. 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 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."

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

Amendment of section 128, Act IV of 1882.

62. 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.

Amendment of Section 129, Act IV of 1882.

63. 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.

64. Nothing in any of the following provisions of this Act, namely, sections 2, 3, 4, 5, 9, 10, 15, 17, 19, 20, 21, clause (c) of section 23, section 28, section 31, clause (b) of section 32, sections 33, 34, 35, 36, 47, 53, 56, 58, 59, 60, 62 and 63 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.

GOVERNMENT OF INDIA.

LEGISLATIVE ASSEMBLY
DEPARTMENT.

Report of the Select Committee on the Bill
further to amend the Transfer of Pro-
perty Act, 1882 ; with the Bill, a
amended.
