Lands Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 19 8 and 9 Vict

Lands in mortgage

And with respect to lands subject to any security by real lien, wadset, heritable bond, redeemable bond of annuity, or other right in security, be it enacted as follows:

99 Power to redeem veritable securities.

It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of any holder of any security upon such lands the whole or part of which may be required for the purposes of the special Act, and that whether such promoters shall have previously purchased the right to such lands under burden of the security thereon or not, and whether the holder of such security be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such security or not, and whether such security affects such lands solely, or jointly with any other lands not required for the purposes of the special Act; and in order thereto the promoters of the undertaking may pay or tender to the holder of such security the principal and interest due on such security, together with his expences and charges, if any, and also six months additional interest, and thereupon such holder shall immediately convey his interest in the lands comprised in such security to the promoters of the undertaking, or as they shall direct; or the promoters of the undertaking may give notice in writing to such holder that they will pay off the principal and interest due on such security at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, of if the party entitled to the lands under burden of such security shall have given six months notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the holder of such security of the principal money thereon due, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his expences and charges, if any, such holder shall convey or discharge his interest in the lands comprised in such security, to the promoters of the undertaking, or as they shall direct.

100 Deposit of money on refusal to accept redemption.

If, in either of the cases aforesaid, upon such payment or tender any holder of such securities shall fail to convey or discharge his interest therein as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this Act in like cases, the principal and interest, together with the expences, if any, due on such security, and also, if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to expede an instrument under the hands of a notary public, duly stamped, and to register the same in the manner herein-before provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the holder of the security, if any such be made, all the **[**[F1]right**]** and interest of such holder, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such holder were himself entitled to such possession.

Textual Amendments

F1 Words in s. 100 substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), **sch. 12 para. 4(14)** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

101 Sum to be paid when security exceeds value of lands.

If any such lands subject to such security as aforesaid shall be of less value than the principal, interest, and expences secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the holder of such security and the party claiming or entitled to the lands under burden on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation, and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the holder of the security, in satisfaction of his claim, so far as the same will extend; and upon payment or tender thereof such holder shall, at the expence of the promoters of the undertaking, dispone and assign his debt, so far as paid, and his security, and all his interest in such lands, to the promoters of the undertaking, or as they shall direct, and thereupon the party claiming or entitled to the said lands under burden of the security shall cease to be interested in or have any right thereto, or to any part thereof.

102 Deposit of money when refused on tender.

If upon such payment or tender as aforesaid being made any holder of such security fail so to convey his interest therein, or to adduce a good title thereto to the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this Act in like cases; and every such payment or deposit shall be accepted by the holder of the security in satisfaction of his claim, so far as the same will extend, and shall be a full discharge of the lands from all money due thereon; and it shall be lawful for the promoters of the undertaking to expede an instrument under the hands of a notary public, duly stamped, and to register the same, in the manner herein-before provided in the case of the purchase

of lands by them; and thereupon such lands, as to all such right and interest as were then vested in the holder of the security, or any person in trust for him, or in the party claiming or entitled to the lands under burden of the security, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof; nevertheless all rights and remedies possessed by the holder of such security for recovering payment of his debt, or the residue thereof, (as the case may be,) or the interest thereof respectively, and all expences, shall remain in force as a claim against the grantor of such security, and against all other parties bound for the same, but not as a claim on the said lands, or against the promoters of the undertaking.

103 Sum to be paid where part only of lands under security taken.

If a part only of any such lands subject to any security as aforesaid be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the holder of the security shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to discharge the part so required, and if the promoters of the undertaking be unwilling to advance the debt on an assignment thereto, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the holder of the security and the party entitled to the land under burden of the security on the one part, and the promoters of the undertaking on the other; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the holder of the security, in satisfaction of his debt, so far as the same will extend, and thereupon such holder shall convey or discharge to them, or as they shall direct, all his interest in such lands the value whereof shall have been so paid, and the party claiming or entitled to the said lands under burden of the security shall cease to be interested in or have any right thereto or to any part thereof; and a memorandum of what shall have been so paid shall be endorsed on the deed or instrument creating such security, and shall be signed by the holder thereof; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expence, to the party entitled to the lands under burden of the security.

104 Deposit of money when refused on tender.

If upon payment or tender to any holder of such security of the amount of the value of compensation so agreed upon or determined such holder shall fail to convey or discharge to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this Act in the case of monies required to be deposited in such bank; and such payment or deposit shall be accepted by the holder of such security in satisfaction of his claim, so far as the same will extend, and shall be a full discharge of the portion of the lands so required from all money due thereon, and shall bar the claim of the party claiming or entitled to the said lands under burden of the security; and it shall be lawful for the promoters of the undertaking, if they think fit, to expede an instrument under the hands of a notary public, duly stamped, and to register the same, in the manner therein-before provided in the case of the purchase

of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such right and interest as were then vested in the holder of such security, or any person in trust for him, and in case such holder were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such holder shall have the same powers and remedies for recovering or compelling payment of his claim, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of the lands subject to such security, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such security.

105 If sums secured paid off before the stipulated time, promoters to pay expences incidental to reinvestment.

Provided always, that in any of the cases herein-before provided with respect to lands subject to securities, if in the deed or instrument creating the same a time shall have been limited within which the holder of the security shall not be obliged to receive payment of the principal money thereby secured, and under the provisions herein-before contained the holder of the security shall have been required to accept payment of his claim, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to the holders of the security, in addition to the sum which shall have been so paid off, all such expences as shall be incurred by him in respect of or which shall be incidental to the re-investment of the sum so paid off, such expences, in case of difference, to be taxed, and payment thereof enforced, in the manner herein provided with respect to the expences of conveyances.

106 Compensation in respect of loss of interest.

If the rate of interest secured by such deed be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, the holder of such security shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-before provided for, compensation in respect of the loss to be sustained by him by reason of his claim being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such holder, to possession of the lands under the provision herein-before contained.

Changes to legislation:
There are currently no known outstanding effects for the Lands Clauses Consolidation (Scotland) Act 1845, Cross Heading: Lands in mortgage.