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SCHEDULES.

SECOND SCHEDULE

Section 9.

PROVISIONS AS TO MORTGAGES.

Existing freehold mortgages to take effect by way of demise.

- 1 (1) All land vested in a first or only mortgagee for an estate in fee simple, whether legal or equitable, shall, from and after the commencement of this Act, vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.
- (2) All land vested in a second or subsequent mortgagee for an estate in fee simple (whether legal or equitable) shall, from and after the commencement of this Act, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee, without impeachment of waste, but subject to the term or terms vested in such first or other prior mortgagee and subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.
- (3) The estate in fee simple which, at the commencement of this Act, was vested in any such mortgagee shall, from and after such commencement, vest in the mortgagor or tenant for life of full age, statutory owner, trustee for sale, personal representative, or other person of full age who, if all money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged immediately after the commencement of this Act, would have been entitled to have the fee simple conveyed to him, but subject to any mortgage term created by this section or otherwise and to the money secured by any such mortgage or charge.
- (4) If a sub-mortgage (by conveyance of the fee simple) is subsisting at the commencement of this Act, the principal mortgagee shall take the principal term created by subsections (1) or (2) of this section (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so created, without impeachment of waste, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.
- (5) This section applies to land enfranchised by this Act as well as to land which was freehold before the commencement of this Act, and whether or not the land is registered under the Land Transfer Acts, or the mortgage is made by way of trust for sale or otherwise.
- (6) Any mortgage to which this section applies may, by a declaration in writing to that effect by the mortgagee, be converted into a charge by way of legal mortgage, in which case the mortgage term shall be extinguished in the inheritance and the mortgagee shall have the same protection, powers, and remedies (including the right

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to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage term had remained subsisting. The power conferred by this subsection may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.

- (7) Nothing in this section or in any such declaration shall affect the priority of any mortgagee or his right to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage.
- (8) This section does not apply unless a right of redemption is subsisting at the commencement of this Act.

Existing leasehold mortgages to take effect by sub-demise.

- 2 (1) All leasehold land vested in a first or only mortgagee by way of assignment of a term of years absolute shall, from and after the commencement of this Act, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage, less the last ten days thereof, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the term assigned.
- (2) All leasehold land vested in a second or subsequent mortgagee by way of assignment of a term of years absolute (whether legal or equitable) shall, from and after the commencement of this Act, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term assigned by the mortgage, but subject to the term or terms vested in such first or other prior mortgagee, and subject to a provision for cesser corresponding to the right of redemption which, at the commencement of this Act, was subsisting with respect to the term assigned by the mortgage.
- (3) The term of years absolute which was assigned by any such mortgage shall, from and after the commencement of this Act, vest in the mortgagor or tenant for life of full age, statutory owner, trustee for sale, personal representative, or other person of full age who, if all the money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged immediately after the commencement of this Act, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this section or otherwise and to the money secured by any such mortgage or charge.
- (4) If a sub-mortgage (by assignment of a term) is subsisting at the commencement of this Act, the principal mortgagee shall take the principal derivative term created by subsections (1) or (2) of this section or the derivative term created by his mortgage (as the case may require), and the sub-mortgagee shall take a derivative term less by one day than the term so vested in the principal mortgagee, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.
- (5) This section applies to perpetually renewable leaseholds, and to leaseholds for lives, which are by this Act converted into long terms, with the following variations, namely:—
 - (a) The term to be taken by a first or only mortgagee shall be ten days less than the term created by Part VII. of this Act:

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- (b) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term created by Part VII. of this Act:
 - (c) The term created by Part VII. of this Act shall, from and after the commencement of this Act, vest in the mortgagor or tenant for life of full age, statutory owner, trustee for sale, personal representative, or other person of full age who, if all the money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged immediately after the commencement of this Act, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative term created by this section or otherwise and to the money secured by any such mortgage or charge.
- (6) This section applies whether or not the leasehold land is registered under the Land Transfer Acts or the mortgage is made by way of trust for sale or otherwise.
- (7) Any mortgage to which this section applies may, by a declaration in writing to that effect by the mortgagee, be converted into a charge by way of legal mortgage, in which case the mortgage term shall be extinguished in the head term, and the mortgagee shall have the same protection, powers, and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage term had remained subsisting. The power conferred by this subsection may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.
- (8) Nothing in this section or in any such declaration shall affect the priority of any mortgagee or his right to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage, but this section does not apply unless a right of redemption is subsisting at the commencement of this Act.

Mode of mortgaging freeholds.

- 3 (1) After the commencement of this Act, a legal mortgage of an estate in fee simple shall only be capable of being effected either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage, in which case the mortgagee shall have the same protection, powers, and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if a mortgage term for three thousand years without impeachment for waste had been thereby created in favour of the mortgagee.
- (2) Any purported conveyance of an estate in fee simple by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a demise of the land to the mortgagee for a term of years absolute, without impeachment for waste, but subject to cesser on redemption in manner following, namely :—
- (a) A first or only mortgagee shall take a term of three thousand years from the date of the mortgage :
 - (b) A second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other

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mortgagee whose security ranks immediately before that of such second or subsequent mortgagee:

And, in this subsection, any such purported conveyance as aforesaid includes an absolute conveyance with a deed of defeasance and any other assurance which (but for this subsection) would operate in effect to vest the fee simple in a mortgagee subject to redemption.

- (3) But where the mortgage includes fixtures or chattels personal the statutory power of sale and the rights to foreclose and take possession shall extend to the absolute or other interest therein affected by the charge.
- (4) This section applies whether or not the land is registered under the Land Transfer Acts or the mortgage is expressed to be made by way of trust for sale or otherwise ; and a first mortgagee shall have the same right to possession of documents as if his security included the fee simple.
- (5) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of an estate in fee simple shall be construed as a power to mortgage the same for a term of years absolute, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.
- (6) Nothing in this Act shall affect the rule of law that a legal term may be created to take effect in reversion expectant on a longer term.

Mode of mortgaging leaseholds.

- 4 (1) After the commencement of this Act, a legal mortgage of a term of years absolute shall only be capable of being effected either by a subdemise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage, in which case the mortgagee shall have the same protection, powers, and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if a subterm less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee. And where a licence to subdemise by way of mortgage is required, such licence shall not be unreasonably refused.
- (2) Any purported assignment of a term of years absolute by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a subdemise of the leasehold land to the mortgagee for a term of years absolute, but subject to cesser on redemption, in manner following, namely:—
 - (a) The term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned;
 - (b) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned :

And, in this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which (but for this subsection) would operate in effect to vest the term of the mortgagor in a mortgagee subject to redemption.

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- (3) But where the mortgage includes fixtures or chattels personal the statutory power of sale and the rights to foreclose and take possession shall extend to the absolute or other interest therein affected by the charge.
- (4) This section applies whether or not the land is registered under the Land Transfer Acts, or the mortgage is made by way of sub-mortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise, and a first mortgagee shall have the same right to possession of documents as if his security had been effected by assignment.
- (5) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the same by subdemise for a term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

Realisation of freehold mortgages.

- 5 (1) Where a mortgagee of a term of years absolute, limited out of an estate in fee simple or a chargee by way of legal mortgage affecting an estate in fee simple sells under his statutory or express power of sale, the conveyance by him (made after the commencement of this Act) shall operate to vest the fee simple in the land conveyed in the purchaser (subject to any mortgage term or charge by way of legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured), and thereupon the mortgage term (if any) and any subsequent mortgage term or charge by way of legal mortgage shall merge or be extinguished as respects the land conveyed ; and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.
- (2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple in him (subject to any mortgage term or charge by way of legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured), and thereupon the mortgage term (if any) shall thereby be enlarged into the fee simple, and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.
- (3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the provisions of section sixty-five of the Conveyancing Act, 1881, discharged from any mortgage term or charge by way of legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.
- (4) In the case of a sub-mortgage by subdemise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term (if any) created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid.
- (5) This section applies whether the mortgage was created before or after the commencement of this Act, but shall not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the

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mortgage (being a valid mortgage) and the restrictions imposed by this Act in regard to the effect and creation of mortgages were not in force, and all prior mortgages (if any) had been created by demise or by charge by way of legal mortgage.

Realisation of leasehold mortgages.

- 6 (1) Where a mortgagee of a term of years absolute limited out of another term of years absolute or a chargee by way of legal mortgage affecting any such term sells under his statutory or express power of sale, the conveyance by him (made after the commencement of this Act) shall operate to convey not only the mortgage term, if any, but also (unless expressly excepted) the leasehold reversion affected by the mortgage to the purchaser (subject to any mortgage term or charge by way of legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured) and the mortgage term, if any, and any subsequent mortgage term or charge by way of legal mortgage shall, subject to any express provision to the contrary contained in the conveyance, merge in such leasehold reversion or be extinguished therein; and such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested. And where a licence to assign is required on a sale by a mortgagee, such licence shall not be unreasonably refused.
- (2) Where any such mortgagee or chargee by way of legal mortgage obtains an order for foreclosure absolute, the order shall (unless it otherwise provides) operate (without giving rise to a forfeiture for want of a licence to assign) to vest the leasehold reversion affected by the mortgage and any subsequent mortgage term in him, and thereupon the mortgage term and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall (subject to any express provision to the contrary contained in the order) merge in such leasehold reversion or be extinguished therein.
- (3) Where any such mortgagee or chargee by way of legal mortgage acquires a title under the Limitation Acts, he, or the persons deriving title under him, may by deed declare that the leasehold reversion affected by the mortgage and any subsequent mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and the same shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly, and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall (subject to any express provision to the contrary contained in the deed) merge in such leasehold reversion or be extinguished therein.
- (4) In the case of a sub-mortgage by subdemise of a term (less a nominal period) itself limited out of a leasehold reversion, the foregoing provisions of this section shall operate as if the derivative term created by the sub-mortgage had been limited out of the leasehold reversion and so as (subject as aforesaid) to merge the principal mortgage term therein as well as the derivative term created by the sub-mortgage.
- (5) This section shall take effect without prejudice to any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure, or title is made or acquired, and shall apply whether the mortgage is executed before or after the commencement of this Act, but shall not apply where the mortgage term does not comprise the whole of the land included in the leasehold reversion unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, or the rent is of no money value, or no

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rent is reserved, and unless the lessees covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected.

Realisation of equitable charges by the court.

- 7 (1) Where an order for sale is made by the court in reference to an equitable charge on land (not secured by a legal term of years absolute or by a charge by way of legal mortgage) the court may, in favour of a purchaser, make a vesting order conveying the land or creating a legal term of years absolute therein, or may appoint a person to convey the land or create a legal term of years absolute, as the case may require, in like manner as if the charge had been created by demise or subdemise or by a charge by way of legal mortgage pursuant to this Act, but without prejudice to any incumbrance having priority to the charge unless the incumbrancer consents to the sale.
- (2) This section applies to charges and liens made or arising before or after the commencement of this Act, but not to charges which have been over-ridden by reason of no land charge having been registered or otherwise, under the powers conferred by this Act before a *lis pendens* has been registered in respect of the proceedings.

Consolidation, tacking and further advances.

- 8 (1) Nothing in Part I of this Act shall, in reference to mortgages, affect any right of consolidation subsisting at the commencement of this Act or render inoperative a stipulation, in relation to any mortgage made before or after such commencement that section seventeen of the Conveyancing Act, 1881, shall not apply thereto.
- (2) Nothing in Part I of this Act shall affect any priority acquired before the commencement of this Act by tacking, or in respect of further advances made, without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.
- (3) After the commencement of this Act, the right of a prior mortgagee to make further advances to rank in priority to subsequent mortgages (whether legal or equitable) without an arrangement being made with the subsequent mortgagees, shall depend on whether he had notice of the subsequent mortgages at the time when the advance was made by him.
- (4) In reference to the making of further advances after the commencement of this Act a mortgagee shall not be deemed to have notice of an incumbrance merely by reason that it was registered as a land charge or in a local deeds registry, if it was not so registered at the date of the original advance or when the last search (if any) was made, which last happened, but in other respects the registration in a deeds registry shall operate as notice of the incumbrance as respects land within the jurisdiction of the local registry.
- (5) This section applies to mortgages of freehold and leasehold land made before or after the commencement of this Act, but not to charges registered under the Land Transfer Acts.

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As to taking possession and as to undivided shares and the ceasing of mortgage terms.

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- (1) Nothing in Part I. of this Act shall affect prejudicially the right of a mortgagee of land (whether or not his charge is secured by a legal term of years absolute) to take possession of the land, or to appoint a receiver of the income thereof.
 - (2) A mortgagee of an undivided share in land shall have the same power to sell his share in the proceeds of sale of the land and in the rents and profits thereof until sale, as, independently of Part I. of this Act, he would have had in regard to the share in the land ; and shall also have a right to require the trustees for sale in whom the land is vested to account to him for the income attributable to that share or to appoint a receiver to receive the same from such trustees corresponding to the right which, independently of Part I. of this Act, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share.
 - (3) Without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, after the money secured by the mortgage has been discharged, become a satisfied term and shall cease.