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## SCHEDULES.

### TWELFTH SCHEDULE

Section 128.

#### EFFECT OF ENFRANCHISEMENT.

(1) The following provisions shall, from and after the commencement of this Act, apply with respect to the enfranchised land:—

- (a) The land shall be freehold land and be free from liability for forfeiture for the conveyance or attempted conveyance of an estate of freehold in the land, or for alienation without licence, whether by way of sale, lease, mortgage or otherwise :
- (b) The tenant shall be free from the customary suits and services and from liability to do fealty :
- (c) In place of the lord's right to escheat the Crown or the Duchy of Lancaster or the Duke of Cornwall (as the case may require) may become entitled to the land as bona vacantia under the provisions of Part VIII. of this Act:
- (d) The land shall not be subject to the custom of borough English, or of gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench or tenancy by the curtesy, or to any other custom whatsoever, but shall be governed as to descent on death and intestacy or partial intestacy and devolution on death by the provisions of Parts VIII. and IX. of this Act:

Provided that nothing in this paragraph with respect to dower, freebench, or curtesy shall apply to any person married before the commencement of this Act, unless in the case of dower or freebench the husband dies after the commencement of this Act, and in the case of curtesy, the wife dies after such commencement ; but where a right to freebench has attached before the commencement of this Act which cannot be barred by a testamentary or other disposition made by the husband, then such right shall, unless released, remain in force in equity :

- (e) The land shall (subject to the provisions of Part I. of this Act and of this Schedule) be held under the same title as that under which it was held at the commencement of this Act, and shall not be subject to any estate, right, charge, or interest affecting the manor :
- (f) Every mortgage of the copyhold estate in the land shall become a mortgage of the land for a term of years absolute in accordance with the provisions of Part I. of this Act and accordingly :
  - (i) Where at the commencement of this Act a mortgage of the customary estate of inheritance in copyhold land effected by surrender, with or without admission, or by a covenant to surrender, is subsisting, then the mortgagee shall, by virtue of this Act, acquire a legal term of years absolute in the enfranchised land comprised in his mortgage subject to a proviso for cesser corresponding to the right of redemption subsisting under the mortgage ;

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- (ii) Where at the commencement of this Act the copyhold land has been surrendered to the use of a mortgagee, without notice of a previous covenant to surrender contained in another mortgage, that mortgagee shall not be deemed to be a subsequent incumbrancer as respects the last-mentioned mortgage.

In this paragraph the expression "surrender" includes any other disposition which, when entered on the court rolls, operated as a surrender to the use of any person.

- (2) The enfranchisement shall not, except as in this Act mentioned, affect the rights or interests of any person in the enfranchised land under a will, settlement, mortgage, or otherwise by purchase, but those rights and interests shall (subject to the provisions of Part I. of this Act) continue to attach upon the land enfranchised in the same way as nearly as may be as if the freehold had been comprised in the instrument or disposition under which that person claims, and accordingly the enfranchised land shall (save as expressly provided by this Act) be subject to the same or corresponding trusts, powers, executory limitations over, rights and equities (if any) and to the same or corresponding incumbrances and obligations as affected the land immediately before the commencement of this Act :

Provided that (in the case of manors in which at the commencement of this Act it was the practice for copyholders in fee to grant derivative interests to persons admitted as copyholders of the manor in respect of those interests) the provisions of this paragraph as to the attachment of such rights and interests as aforesaid shall apply only to the estate of the copyholder in fee, but the enfranchisement shall enure for the benefit of the persons entitled to such derivative interests in manner hereinafter provided.

- (3) Where the land is, at the commencement or by virtue of this Act, subject to any subsisting lease or demise, for a term of years absolute, the freehold into which the copyhold estate is converted shall be the reversion immediately expectant on the lease or demise, and the benefit of the rents and services reserved and made payable on, and the conditions in, or in respect, of, the lease or demise, shall be incident and annexed to the reversion, and the burden of the covenants or agreements, expressed or implied, on the part of the lessor and lessee respectively shall run with the reversion and with the land respectively, and the enfranchisement shall not affect any right of distress, entry, or action accruing in respect of the lease or demise, and any lease or demise, otherwise than for a term of years absolute, shall take effect in equity only :

Provided that (in the case of manors in which it was the practice for copyholders in fee to grant derivative interests to persons admitted as copyholders of the manor in respect of those interests) this paragraph shall apply only in respect of leases or demises taking effect out of the estate of the copyholder in fee.

- (4) An enfranchisement by virtue of this Act shall not deprive a tenant of any commonable right to which he is entitled in respect of the enfranchised land, but where any such right exists in respect of any land at the commencement of this Act it shall continue attached to the land notwithstanding that the land has become freehold.
- (5) An enfranchisement by virtue of this Act of any land (including any mines and minerals hereinafter mentioned) shall not affect any right of the lord or tenant in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries, whether in or under the enfranchised land or not, or any right of entry, right of way and search, or other easement or privilege of the lord or tenant in, on, through, over, or under any land, or any powers which in respect of property in the soil might but for the

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enfranchisement have been exercised for the purpose of enabling the lord or tenant, their or his agents, workmen, or assigns, more effectually to search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom, or the rights, franchises, royalties, or privileges of the lord in respect of any fairs, markets, rights of chase or warren, piscaries, or ether rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl:

Provided that the owner of the enfranchised land shall, notwithstanding any reservation of mines or minerals in this Act (but without prejudice to the rights to any mines or minerals, or the right to work or carry away the same), have full power to disturb or remove the soil so far as is necessary or convenient for the purpose of making roads or drains or erecting buildings or obtaining water on the land.

- (6) An enfranchisement by virtue of this Act shall not affect any liability subsisting at the commencement of this Act (whether arising by virtue of a court leet regulation or otherwise) for the construction maintenance cleansing or repair of any dykes, ditches, canals, sea or river walls, piles, bridges, levels, ways and other works required for the protection or general benefit of any land within a manor or for abating nuisances therein; and any person interested in enforcing the liability may apply to the court to ascertain or apportion the liability and to charge the same upon or against the land or any interest therein; and the court may make such order as it thinks fit; and the charge when made by the order shall, be deemed to be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888 (as amended by any subsequent enactment), and may be registered accordingly; and, in addition, the jurisdiction of any court leet, customary or other court, in reference to the matter is hereby transferred to the court.
- (7) A right preserved to the lord by virtue of this schedule shall not for the purposes of Part VI. of this Act be deemed to be a manorial incident unless it is otherwise agreed.
- (8) On the enfranchisement of any land by virtue of this Act—
  - (a) If there is a copyholder in fee (not being a mortgagee) the freehold estate in fee simple shall vest (subject as provided in this schedule) in that person;
  - (b) If there is no copyholder in fee, or a mortgagee has been admitted, the freehold estate in fee simple shall (subject as provided in this schedule) vest in the person who immediately before the commencement of this Act had the best right to be admitted as copyholder in fee, or would have had such right if a mortgagee had not been admitted, but such person shall (save as hereinafter provided) be personally liable to pay the fines and fees which would have been payable by him on admittance ; and if the last person who was admitted as copyholder in fee (not being a mortgagee) has died before the commencement of this Act (whether or not having disposed of the land by will), his personal representative shall be deemed to have had the best right to be admitted :
  - (c) In the case of manors in which it was the practice of copyholders in fee to grant derivative interests to persons who were admitted as copyholders of the manor in respect of those interests, the enfranchisement of the land, and vesting of the same in the copyholder in fee (not being a mortgagee) or other person entitled under this schedule shall enure for the benefit of every person having or entitled to acquire any customary estate or interest in the land, and every such person shall (without prejudice to the provisions of Part I. of this Act) become entitled to a legal estate (if the interest is capable of subsisting as a legal estate) or equitable interest in the enfranchised land corresponding

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to his former customary or other estate or interest, but subject to the manorial incidents affecting such estate or interest until the same are extinguished under Part VI. of this Act, and so that a mortgagee of the inheritance shall take only a term of years absolute :

- (d) Where at the commencement of this Act the copyhold land was subject to interests affecting or derived out of the fee simple which are under this Act capable of subsisting at law, but immediately after such commencement were not capable of being overreached by virtue of a subsisting trust for sale or a settlement, the persons entitled shall (subject to the terms of years absolute of prior mortgagees) take legal estates in the enfranchised land corresponding to their former equitable or other interests, but subject to the manorial incidents (if any) affecting such interests until the same are extinguished under Part VI. of this Act:
- (e) If at the commencement of this Act there is a person entitled to a perpetually renewable lease in the copyhold land (not being a mortgagee) the freehold estate in fee simple shall vest (subject as provided in this schedule) in that person as if he had been a copyholder in fee :

Provided that—

- (i) If a question arises as to who had the best right to be admitted as copyholder in fee, or has otherwise become entitled by virtue of this schedule to the freehold estate in fee simple, or to a derivative legal estate, the court, on the application of the lord of the manor or any person interested in the land, may declare who had the best right to be so admitted, or has become so entitled, or, in case the person who had the best right to be so admitted, or has become so entitled, cannot be found or ascertained, then on proof that such fines and fees as are made payable by this schedule have been paid or provision made for their payment, the court, on the like application, may make an order vesting the freehold estate in fee simple, or a derivative legal estate (subject to the reservation of any terms of years absolute required for giving effect to incumbrances) in such person as may be appointed by the court for the purpose (who shall, in the case of the fee simple, be deemed to have been admitted to the inheritance), but subject to the manorial incidents affecting the same until those incidents are extinguished under Part VI. of this Act, and the lord may be so appointed and in such case shall be deemed to have paid the fines and fees aforesaid; and
- (ii) Where at the commencement or by virtue of -this Act the copyhold land is settled land, the freehold estate in fee simple or derivative legal estate, as the case may be, shall (subject to the terms of years absolute of mortgagees having priority to the settlement) and without prejudice in equity to any incumbrance affecting any life estate or interest, vest in the tenant for life of full age or statutory owner (including a personal representative entitled to the settled land) upon such trusts and subject to such powers and provisions as may be necessary to give effect to the settlement, save that a fee simple conditional (whether legal or equitable) on the birth of issue shall take effect as and be converted into an equitable entailed interest (either general or special as the case may require), if the fee has not become absolute ; and

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- (iii) Where at the commencement of this Act the copyhold land or an equitable interest therein capable of subsisting as a legal estate was vested in an infant, the freehold estate in fee simple or derivative legal estate, as the case may be, shall (subject as aforesaid) vest in the personal representatives or trustees of the settlement, or other persons who, under Part I. of this Act, become entitled to the legal estate of the infant; and
- (iv) Where at the commencement of this Act the copyhold land was held in undivided shares, the entirety of the freehold estate in fee simple shall (subject to any terms of years absolute required for giving effect to mortgages affecting the entirety), vest in trustees for sale in accordance with the provisions of Part I. of this Act; and
- (v) Where at the commencement or by virtue of this Act the copyhold land was or is made subject to a trust for sale, the freehold estate in fee simple shall (subject to the terms of years absolute of mortgagees) vest in the trustees for sale in accordance with this Act; and
- (vi) Where under the provisions of this schedule the freehold estate in fee simple is (subject or not to any mortgage term), made to vest in any person who was not the copyholder in fee at the commencement of this Act, then such person shall be deemed to have been admitted tenant to the inheritance immediately before such commencement, and such person shall (save as hereinafter provided) be personally liable to pay the fines and fees which would have been payable by him on admittance ; and
- (vii) If two or more persons together constitute the person who, immediately before the commencement of this Act, had the best right to be admitted as aforesaid, or in whom the freehold estate in fee simple is made, by virtue of this schedule, to vest without having actually been admitted as copyholders in fee, they shall not be personally liable under the foregoing provisions to pay any greater fines and fees than would have been payable if one of them only had been admitted tenant to the inheritance; and
- (viii) If at the commencement of this Act there is a copyholder in fee (whether or not being a mortgagee) then notwithstanding that, by virtue of this Act, the freehold estate in fee simple is made to vest in some other person who has not been admitted to the inheritance, but is deemed to have been so admitted, no fines or fees shall be payable on that account; and
- (ix) No fines or fees shall be payable by reason only of the vesting, by virtue of this Act, of a term of years absolute perpetual rentcharge or other derivative legal estate in the person entitled thereto, although he may not have been admitted at the commencement of this Act.