# THE LAW OF PROPERTY ACT, 1922.

By The Right Honourable T. F. Molony,
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[*Read March 2nd, 1923.*]

I propose to give you this afternoon a brief and very imperfect sketch of the changes made in the English Law of Real Property by the Law of Property Act, 1922. When I tell you that the Act traverses the whole field of real property law, contains 191 sections, 16 schedules, and occupies 311 pages of the public general statutes for the year, you will see how impossible it is for me, within the limits of this paper, to give anything like a full and accurate account of the many changes it makes in the law, and indeed I can only deal with the subject in the barest outline.

The Act of 1922 was a great achievement. It represented the labour of eminent real property lawyers for many years, including Sir Philip Gregory, Mr. Wolstenholme, Sir Arthur Underhill, and Sir Benjamin Cherry; the first two of whom did not survive to see the success of their labours.

The Bill was successfully piloted through the House of Lords by Lord Birkenhead and through the House of Commons by Sir Leslie Scott, and it would, probably, never have been carried if it were not for their indefatigable energy and enthusiastic support. The reason for this support was given by Lord Birkenhead in an interesting personal reminiscence, which he referred to in his speech in the House of Lords on the 22nd June, 1922:—

"It was exactly thirty-four years since a young man addressing himself for the first time to the state of the real property law, took out with him on a country walk to assist him in that purpose the work of the late Joshua Williams on Real Property. He (the Lord Chancellor) was that young man, and he conceived himself at that date as being far more intelligent than he did at this moment. He spent many hours on that book, and on his way home he surveyed the Statute of Uses and came to the conclusion that it was a barbarous, if necessary, invention of a number of scholastic legal pedants and scholiasts and had no contact of any kind with our modern life. He there and then formed to himself the resolution that if ever he attained to any high place in the legal hierarchy of this country he would end that statute."

There is no doubt that due to many historical and other causes, which it is unnecessary to discuss, the law of real property in these countries had become unnecessarily complicated and archaic.

In a valuable book on the Act lately published by Sir Arthur Underhill he traces these difficulties to six cardinal causes, and I may be permitted to quote his words, as they exhibit in a more clear and concise form than can be found elsewhere the problem which the reformers of real property law had to face, viz. :—

" (1) Three collateral systems of holding land have been evolved (viz., freehold, copyhold and leasehold), where there was originally one only, each system having its own law of descent, and its own method of conveyance.

(2) In the second place, mainly owing to the Statute of Uses, freehold land can be settled on persons in succession so as to vest a limited legal ownership *in rem* in each successive holder, whereas the legal ownership of chattels and of leaseholds and, to some extent, of copyholds, can only be an absolute ownership; so that, if you desire to settle them, you must vest that legal ownership in a trustee and make him undertake to hold it in trust for the successive beneficiaries. In consequence of this possibility of creating limited or partial legal estates in freehold land, it was often quite impossible before 1883 (when the great Settled Land Act of 1882 came into operation) to deal with freeholds by sale, mortgage, or lease, unless the owners of all these partial interests were in existence and *sui juris* and could be gathered together and persuaded to be unanimous, or unless the Court, since the middle of the last century, ordered a sale, which could only be done under exceptional circumstances and with considerable expense (under the Settled Estates Acts). It would, therefore, be quite possible, (if no investigation of the title were made by a purchaser or mortgagee) for a person in possession of land as life tenant only, to purport to sell it absolutely (or, as we lawyers say, " in fee simple ") to a purchaser, who might have his title unquestioned until the life tenant died (perhaps fifty years after), but would then find himself liable to ejectment.

(3) Courts of Equity have invented the doctrine that if a person buys or takes a mortgage or lease of property with notice that the vendor, mortgagor, or lessor is a trustee of it, he must investigate the trust, and satisfy himself that the trust instrument or some Statute authorises the transaction.

(4) With regard to all three tenures, concurrent ownership is allowed. This may consist of "joint tenancy" or "tenancy in

common." In the former, on the death of one joint tenant, his interest passes to the survivors. In tenancy in common, on the other hand, on the death of one of the co-owners, his share passes under his will or intestacy, and may thus become further divided. Not infrequently a house or two may thus become owned by thirty or forty persons in different undivided shares, with the result that it is impossible to deal with the property in any way without an expense action for partition or sale by the Chancery Division.

(5) Restrictive covenants are also a great and increasing source of difficulty. In many cases they have proved a great blessing where a large area has been developed as a residential estate. But what would be a blessing in Mayfair or Belgravia may only too probably be ruinous in a manufacturing district; and people are so imitative that small builders have in numerous cases imposed silly restrictive covenants on purchasers, where they are wholly unsuited to the style of the neighbourhood. In such cases the houses are simply depreciated in value instead of being made more valuable.

(6) Lastly, a perpetual or temporary rent, or even a series of perpetual or temporary rents (the former very common in Lancashire and the latter everywhere), may be reserved out of the land, which, of course, adds to the complexity of the title. These rents, whether created by conveyances of the land in fee simple, or by leases and sub-leases, cause very great expense to railway companies and other bodies taking land compulsorily, because such bodies have to purchase *every interest in the land*, and, therefore, may have to buy out not only the owner in fee simple, but a ground lessee, a sub-lessee for a long term of years at an improved ground rent, a sub-sub-lessee at a higher rent, and perhaps an occupying tenant."

The first five of these complexities have, by the new Act, been so dealt with as to reduce the present chaos to some semblance of simplicity; but with regard to the sixth, for various reasons, nothing has, or indeed can be done. Lord Birkenhead has stated, through the popular medium of the *Daily Mail Year Book*, 1923, that the main characteristics of the Act may be summarized under twelve heads, namely:—

"(1) The reduction of tenures to freehold and leasehold for years.

(2) The restriction of legal (as opposed to equitable) estates to two, namely, the fee simple and leaseholds for years not depending on the dropping of a life.

(3) The automatic getting in of all outstanding legal estates and the vesting of the same in the persons entitled.

(4) The conferring on trustees who hold land on trust for sale and other persons who are in a fiduciary position, including trustees of charity land, the powers of a tenant for life under the Settled Land Acts in order that there may be no lack of powers to give effect to any reasonable transaction.

(5) The vesting of the entirety of land held in undivided shares in trustees on trust for sale with full power to postpone the sale, the beneficial interests being left to take effect in respect of the proceeds of sale and the rents and profits until sale; in this way all legal undivided shares in land are abolished, and in future are prohibited.

(6) The keeping of the trusts of the settlements off the title to land by requiring it to be conveyed to the tenant for life by one instrument in which Settled Land Act Trustees are nominated, the trusts being declared by a separate instrument.

(7) The relegation of mortgagees to their true position by giving them a charge on the land, instead of allowing them to usurp the fictitious character of landowners. Whether or not the mortgage operates to confer on the mortgagee a term of 3,000 years in the land, instead of the fee simple, still the mortgagee will have the same rights as if he had a long term in the land, and when he forecloses, acquires a title by possession, or sells, he will be able to acquire or dispose of the fee simple. Similarly in the case of leaseholds the mortgagee will take either a subterm or a charge and will be able to acquire or dispose of the head term.

(8) General amendments of the Settled Land Acts, the Conveyancing Acts and Trustee Acts for bringing those Acts up to date with a view to shortening documents and to abolishing unnecessary technicalities.

(9) Amendments of the system of registration of title under the Land Transfer Acts with a view to benefiting the land owners and others who are concerned with registered land, especially land in London.

(10) The alteration of the law of devolution on an intestacy so as to make the real and personal estate go together in the same way as the majority of the public would be advised to do if they made wills.

(11) The shortening of abstracts by keeping equitable interests off the title.

(12) The protection of equitable interests by requiring the purchase money to be paid either to a trust corporation or to at least two individual trustees or by means of the registration of a *lis pendens,* writ, order, deed of arrangement or land charge."

I will now say a few words with regard to each of the heads enumerated by Lord Birkenhead.

1. *The reduction of tenures to freehold and leasehold for years.*

This reduction is carried out by abolishing copyhold and manorial incidents, and all customary tenures like gavelkind and borough English, giving rights of compensation to the lords of manors for the loss of their fines, forfeitures, and other manorial incidents. The provisions in reference to these matters will be found in part 5 of the Act, sections 132-137, and in part 6, sections 138-144, and the 12th schedule, but they are not of any importance in Ireland, where there are no copyholds—or at most only one. I make the exception of one copyhold, because when I was a law student and attended the lectures of Professor Bewley, afterwards Mr. Justice Bewley, he stated in one of his lectures on Feudal and English Law that there was one copyhold in Ireland, but I have never come across it in practice, and I have never heard of anybody who has.

2. *The restriction of legal as opposed to equitable estates to two, namely, the fee simple, and leaseholds for years not depending on the dropping of a life.*

The Act having converted all copyhold and customary estates into freehold, the next important thing that is done is to abolish all legal estates in freehold, except absolute fee simples, and estates for years. This is dealt with by section 1 (1), which provides that, after the commencement of the Act, the only estates, interests, or charges in or over land (including in the word "land" incorporeal hereditaments) which shall be capable of subsisting or of being conveyed or created at law, shall consist of :—

(*a*) An estate in fee simple absolute in possession.

(*b*) A term of years absolute.

(*c*) An easement right or privilege in or over land for an interest equivalent to a like estate or term.

(*d*) A like estate or term in mines and minerals, apart from the surface, or in the surface, apart from the mines and minerals.

(*e*) A rentcharge in possession issuing out of or charged on land, being either perpetual or for a term of years absolute.

(*f*) Land tax, tithe rent charge, and any other similar charge on land which is not created by an instrument.

(*g*) Rights of entry exerciseable over or in respect of a legal term of years, absolute, or annexed for any purpose to a legal rent charge.

All other estates, interests and charges in or over land are to be converted at once, by force of the statute, into equitable interests, and are, by section 28, preserved as such.

The Statute of Uses is repealed by s. 1 (7), and any provision in any statute or other instrument requiring land to be settled to uses is to take effect as a direction that the land shall be conveyed to the proper persons upon the requisite trusts. It is also provided that the provisions relating to legal estates are not to affect the Statutes of Limitation, nor the law as to the acquisition of easements by prescription (Sec. 31).

3. *The automatic getting in of all outstanding legal estates, and the vesting of the same in the persons entitled.*

This is provided for by s. 2 and Schedule 1, ss. (1) (2) and (3) of the Act, which provide that if there is any legal estate outstanding at the commencement of the Act, whether in a term of years or in the fee simple, it is to vest automatically in the person who would have been entitled, on payment of the cost of investigating the title, and of the conveyance, to call for a conveyance of it. Schedule 1, Section 8, however, provides that these provisions are not to operate :—

(*a*) To vest in a mortgagee of a term of years absolute any nominal leasehold reversion which is held in trust for him subject to redemption; or,

(*b*) To vest in a mortgagee any legal estate except a term of years absolute; or,

(*c*) To vest any legal estate in a person for an undivided share; or,

(*d*) To vest any legal estate in an infant; or,

(*e*) To affect prejudicially any priorities between mortgagees subsisting at the commencement of the Act; or,

(*f*) To render invalid any limitation or trust which would have been capable of taking effect as an equitable limitation or trust; or,

(*g*) To vest any legal estate in a purchaser or his representative without conveyance.

4. *The conferring on trustees who hold land on trust for sale, and other persons who are in a fiduciary position, including trustees of land, the powers of a tenant for life under the Settled Land Act, in order that there may be no lack of powers to give effect to any reasonable transaction.*

This is carried out by Section 4 of the 4th Schedule, which provides that trustees for sale (with or without a power to postpone the sale) shall, in relation to the land, or to manorial incidents, and to the proceeds of sale, have all the powers of a tenant for life, and of the trustees of a settlement under the Settled Land Acts, and also, in relation to the land, the powers of management conferred by Sub-sections (2) and (3) of s. 42 of the Conveyancing Act of 1881, and (subject to any express trust to the contrary) all capital money arising under the said powers shall (without prejudice to the rights and powers of a personal representative for purposes of administration) unless paid or applied for any purpose authorized by the Settled Land Acts, be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale. The same schedule also provides that where the consent of more than two persons is required, the consent of any two will suffice, and where the consent of any person not *sui juris* is required, it is to be dispensed with, but the trustees are, so far as practicable, to give effect to the wishes of beneficiaries who are *sui juris*.

5. *The vesting of the entirety of land held in undivided shares in trustees on trust for sale, with full power to postpone the sale, the beneficial interest being left to take effect in respect of the proceeds of sale and the rents and profits until sale; in this way all legal undivided shares in land are abolished, and, in future, are prohibited.*

A great number of people, including Sir Arthur Underhill, are of opinion that tenancy in common, where it exists, is a far worse impediment to free trade in land than settlements are, and Sir Arthur Underhill himself gives instances, such as we are quite accustomed to in Ireland, of an equitable title split up into fifty or sixty undivided shares, most of them mortgaged, and some of them settled, and the elusive legal estate so hidden as to be almost beyond the wit of man to discover; and, in small estates, when an action is brought to clear the title, the costs of the necessary inquiries leave little to be divided between the unfortunate co-owners.

This problem is dealt with by section 10 and Schedule 3 of the Act. The 3rd Schedule, by s. 1, vests the land held by trustees in trust for sale, and repeals the Partition Acts. If there are no such trustees, the land is to vest in the Public Trustee, until trustees are appointed, upon the statutory trusts, but the Public Trustee is not to be entitled to any fees unless and until he is called upon to act. If, however, the entirety of the land is not vested in trustees, and is not settled land, but is vested absolutely and beneficially in not more than four persons, it is to vest in the Public Trustee upon the statutory trusts; but, as in the former case, he is not to act until requested to do so, and he can only act when requested to do so on behalf of persons interested in more than a moiety of the land.

For the future a devise or bequest of land to two or more persons as tenants in common is to operate in equity as a devise or bequest to the trustees of the Settlement, if there are any, and if not, to the personal representative of the testator, upon statutory trusts; and in future a tenancy in common in land is to be incapable of being created except under a settlement, or in the proceeds of the sale of the land, and any attempt to create a tenancy in common is to have the effect of vesting the land in the person to whom it is given, or, if they exceed four in number, in the four first named as joint tenants on the statutory trusts.

These provisions are somewhat complicated, but it is to be hoped that they will succeed in removing the difficulties which every conveyancer has at present to contend with in dealing with tenancies in common.

6. *The keeping of the trusts of settlements off the title to land, by requiring it to be conveyed to the tenant for life by one instrument, in which the Settled Land Act trustees are nominated, the trusts being declared by a separate instrument.*

This is provided for by s. 12 and Sch. 5 of the Act, which requires, for the future, that every settlement of land *inter vivos* shall be effected in the following way, and in no other way, namely, there shall be two deeds (one, in the Act referred to as "the vesting deed") shall be a conveyance of the land for the estate or interest the subject of the settlement, and shall appoint trustees for the purposes of the Settled Land Acts; and the other of which (in the Act referred to as "the trust deed") shall declare the trusts affecting the settled land, appoint trustees for the purposes of the Settled Land Acts, and shall bear any *ad valorem* stamp duty which may be payable in respect of the conveyance. By the vesting deed the settled land

shall be conveyed to the tenant for life, of full age, or statutory owner, to be held upon the trusts declared concerning the same by the trust deed, and the persons who are appointed as trustees of the vesting deed shall be the same persons as are trustees of the trust deed, and such persons are, in the Act, referred to as "the trustees of the settlement."

Section 8 of Schedule 5 provides that existing settlements and instruments which do not comply with the Act are to operate as trust deeds, and in that event Section 9 provides for the execution of a vesting deed to give effect to existing settlements and trust deeds *inter vivos*.

The object of these two deeds is to keep the trusts off the title, and s. 13 of the same schedule provides that a purchaser of a legal estate in settled land from a tenant for life, of full age, or statutory owner, shall not be bound, or entitled, to call for any information concerning the trust deed, or any *ad valorem* stamp duty thereon, and whether or not he shall have notice of its contents, he shall be bound, and entitled, if the last principal vesting instrument states that the land is held on trust, or appoints trustees thereof for the purposes of the Settled Land Acts, to assume that the person in whom the land is thereby vested is the tenant for life, and that the trustees thereby appointed are the properly constituted trustees of the settlement; and as regards the payment of the purchase money, the purchaser of a legal estate in settled land from a personal representative is entitled to act upon similar assumptions.

The effect of this is that, as regards existing settlements in England, before the Act comes into operation it will be necessary for the Settled Land Act trustees to execute an instrument vesting the settled land in the tenant for life, and therein to nominate themselves as trustees for the purposes of the Act. Until this is done a tenant for life cannot legally exercise the statutory powers.

*7. The relegation of mortgagees to their true position by giving them a charge on the land instead of allowing them to usurp a fictitious character of land owners.*

Section 9 of the Act provides that for the purpose of securing that the legal estate shall vest or remain vested in a mortgagor of land or in a purchaser from a mortgagee or other person who becomes entitled to the land, free from the right of redemption, all mortgages are to take effect or be created only by demise or sub-demise or by charge by way of legal mortgage but without prejudice to the right to create equitable charges by deposit of documents or otherwise. The machinery for

carrying out the intention of the Act is provided by the second Schedule. The provisions are of an elaborate character and require careful perusal, but the general effect may be stated to be that at the time the Act comes into operation all then existing first or only mortgages are to vest in the mortgagee for a term of 3,000 years subject to a proviso for cesser and discharge and the second and subsequent existing mortgagees are to vest in the mortgagee for a term of one day longer than the term vested in the mortgagee next above him with a like proviso or cesser, but that in all cases the legal fee simple vested in the mortgagee is to shift automatically to the mortgagor whether he is the absolute owner, tenant for life, personal representative or trustee. When, however, it becomes necessary to realise the security the mortgagor shall have power to convey the fee simple to a purchaser. Leasehold mortgages by assignment shall take effect by sub-demise. It is further provided that all mortgages, after the commencement of the Act, can only be created by a demise for a term of years absolute. There is an alternative form of mortgage introduced by Schedule 2, Section 31 and Section 41, namely:—A charge by way of legal mortgage, but as regards this form I share the opinion of Sir Arthur Underhill, who is not sure of either the reason for or the effect of it and cannot think that it will be much used in practice.

8. *General amendments of the Settled Land Acts, the Conveyancing Act and Trustee Acts for bringing those Acts up to date, with a view to shortening documents and to abolishing unnecessary technicalities.*

It is impossible to discuss these various amendments within the limits of the present paper. Secs. 35 to 71 of the Act are conversant with amendments to the Settled Land Act, Secs. 72 to 108 deal with amendments to the Conveyancing Act, and Secs. 109 to 127 deal with similar amendments to the Trustee Acts. It may, however, be not amiss to refer to a few of the more important amendments which are made by these various sections.

The powers of dealing with settled land are greatly enlarged. For example, settled land may now be sold:—

(*a*) Subject to any easement, right or privilege in relation to the land disposed of being reserved for the benefit of the settled land. (Section 36.)

(*b*) In consideration of an annual rent charge. (Section 39.)

(*c*) To a Company Incorporated by special Act of Parlia-

ment or by provisional order in consideration of fully paid up securities of any description of the Company. (Section 40.)

Water rights may be granted to public bodies for public purposes for a nominal consideration or gratuitously (Section 41), and the power to appropriate and lay out part of the settled land for streets, gardens and other open spaces conferred by Section 16 of the Settled Land Act, 1882, may be exercised after as well as on or in connection with a sale or grant for building purposes.

The powers of a tenant for life also are greatly enlarged. For example, he can grant a building lease for 999 years instead of 99 years and a mining lease for 100 years instead of 60, and any other lease for 60 instead of 21 years, and he has also power to grant an option (Section 44), compromise claims and release restrictions and vary leases and grant and apportion rents (Sec. 45). There is also a new power given by Section 46 whereby any transaction affecting or concerning the settled land or any part thereof or any other land not otherwise authorised by the Acts or by the Settlement, which, in the opinion of the Court, would be for the benefit of the settled land or any part thereof or the persons interested under the Settlement may, under an Order of the Court, be effected by a tenant for life, provided that the transaction can be validly effected by an absolute owner. (Section 46.)

The amendments of the Conveyancing Acts are of still greater importance. Section 72 renders words of limitation unnecessary to pass the fee simple in freehold land to a purchaser or to use the word "successors" where the purchaser happens to be a corporation. It also provides that a person may convey or vest land to or in himself and also that two or more persons (whether or not being trustees or personal representatives) may convey and shall be deemed always to have been capable of conveying any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party. Acknowledgments by married women are abolished by Section 74 and the enrolment of disentailing assurances by Section 76. By Section 77 a tenant in tail has power to bequeath the entailed property by will in like manner as if after barring the entail he had been tenant in fee simple or absolute owner at his death. Under Section 85, a receipt endorsed on a mortgage for all money thereby secured, which states the name of the person, who pays

the money and is executed by the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money, shall operate as a surrender of the term or a re-conveyance. Under Section 87, contingent and future testamentary gifts are to carry the intermediate income, and power is given by Section 88 to trustees to apply the income of a minor where his interest is vested or contingent, for his maintenance and accumulate the surplus income during his minority.

There is a most important power given by Section 90 of the Act to discharge or modify restrictive covenants affecting freehold land when such discharge or modification becomes desirable by reason of changes in the character of the property or neighbourhood or other circumstances. The power of discharge (without prejudice, however, to the jurisdiction of the Court) is given to such one or more of the official arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, as may be selected by the Reference Committee under that Act. The Reference Committee in Ireland would not have much difficulty in making a selection, as we have appointed only one arbitrator. The amendments of the Trustee Acts, which are made in Sections 109 to 127, are of such a technical character that it is impossible to give an adequate summary without extending this paper to an undue length, but it may be stated that if there are more than four trustees of a settlement at the commencement of the Act no new trustees shall be appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four, and that in the case of settlements and dispositions on trust for a sale of land the number of trustees thereof shall not, where the settlement or disposition is made after the commencement of the Act, in any case exceed four, and where more than four persons are named as trustees the four first named shall alone be the trustees and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy. The powers of appointing new trustees are enlarged by Section 110 and the powers of making declarations and vesting orders are somewhat altered by Section 112-114, inclusive.

The joint powers of trustees are somewhat enlarged by Sections 120, 121 and 122, and Section 123 provides that where the management is vested is trustees any dealing with the property which cannot be effected by reason of the absence of any power for that purpose vested in the trustees may be carried out under an Order of the Court.

9. *Amendment of the system of registration of title under the Land Transfer Acts.*

I do not propose to deal with the sections referring to the Land Transfer Acts, as the Land Transfer Acts do not apply to this country, and some of the changes made by the Act have been already carried out in this country by our Local Registration of Title Act, 1891.

10. *The alteration of the law of devolution on an intestacy.*

This is one of the most important and far-reaching alterations made in the law by the Act. The code of intestacy has been completely altered. In the first place, Section 148 abolishes heirship, dower, curtesy, and escheat. Section 150, sub-sec. 3, repeals the existing Statutes of Distribution; Section 25 of the Statute of Frauds and the Intestates Estates Act, and under the new legislation the personal representative is to hold all real and personal estate upon trust to sell it with power to postpone the sale, and after payment of funeral and testamentary expenses, the proceeds are to be thus distributed. Section 151, 1 (i.) states :—

> If the intestate leaves a husband or wife with or without issue the surviving husband or wife shall take the personal chattels absolutely and in addition a charge on the residuary estate of the intestate of £1,000, free of death duties and costs with interest from the death at 5 per cent. per annum until paid. "Personal chattels" mean carriages, horses, motor cars (not used for business purposes), garden, live and dead stock, and effects, all articles of household or personal use or ornament, wines, liquors and consumable stores, but do not include any chattels acquired for business purposes or money or securities for money, subject to the charge the residuary estate shall be held.
>
> (*a*) If the intestate leaves no issue upon trust for the surviving husband or wife during his or her life.
>
> (*b*) If the intestate leaves issue upon trust as to one moiety for the surviving husband or wife during his or her life and subject to such life interest on the Statutory trusts for the issue of the intestate and as to the other moiety on the Statutory trusts for the issue of the intestate.

(ii.) Power is given to redeem the life estate by paying the capital value thereof to the tenant for life.

(iii.) If the intestate leaves issue but no husband or wife then the residuary estate shall be held on the Statutory trusts for the issue of the intestate.

(iv.) If the intestate leaves both parents but no issue then, subject to the trusts of a surviving husband or wife, the residuary estate shall belong to the father and mother in equal shares.

(v.) If the intestate leaves one parent only but no issue then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall belong to the surviving father or mother absolutely.

(vi.) If the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate and in the following order, namely :—

First—on the Statutory Trusts for the brothers and sisters of the whole blood.

Secondly—on the Statutory Trusts for the brothers and sisters of the half blood.

Thirdly—for the grand parents of the intestate.

Fourthly—on the Statutory Trusts for the uncles and aunts of the intestate of the whole blood.

Fifthly—for the Statutory Trusts for the uncles and aunts of the intestate of the half blood.

Sixthly—for the surviving husband or wife of the intestate absolutely.

The effect of these somewhat elaborate provisions is that relationship for the purpose of intestacy, both as to real and personal estate, ceases with the issue of uncles and aunts, and that more remote relations, such as third cousins, will get nothing in the future.

Where the intestate leaves a child or children the Statutory trusts are in trust for such of them living at the death of the intestate as shall attain twenty-one or marriage and the issue living at the intestate's death who shall attain twenty-one or marriage of any child of the intestate who may have predeceased him equally *per stirpes*, and there is a somewhat simi-

lar provision for the creation of Statutory trusts relating to the intestate's brothers and sisters and other classes of relatives. (Section 149.)

11. *The shortening of abstracts by keeping equitable interests off the title.*

Section 94 provides one of the ways by which abstracts of title will be shortened in the future by substituting 30 years for 40 years as the root of title, but the abstract will be shortened very much more by the provisions which render it unnecessary to disclose the equitable interests affecting the property.

Section 5 (1) of the Act provides that abstracts of title are not to include any instrument relating only to interests and powers which will be over-reached by a conveyance by the then owner of the legal estate, and by Section 5 (2) a Solicitor who delivers an abstract of title framed in accordance with the Act is, by Sub-section 2, relieved from any liability on account of an omission to include therein an instrument which under the section is deemed not necessary or proper to be included.

Section 7 (2) provides that a stipulation contained in any contract made after the commencement of the Act to the effect that the purchaser shall trace and get in an outstanding legal estate, shall be void. This, of course, is very important, as all outstanding legal estates are got in by force of the Act itself. (Section 2 and Schedule 1.)

Section 105 provides that when insured property is sold the purchaser is to have the benefit of the Policy, and Section 107 enables the Lord Chancellor to prescribe and publish forms of contract and conditions of sale, which may apply to correspondence contracts. In the 8th Schedule will be found epitome of abstracts of title under the new code, and in the 9th Schedule will be found some very useful forms of instruments which have been provided in accordance with and illustrate the provisions of the Act.

12. *The protection of equitable interests by requiring the purchase money to be paid either to a trust corporation or to at least two individual trustees or by means of the registration of a lis pendens, writ, order, deed of arrangement or land charge.*

Under Section 3 (1) of the 4th Schedule a purchaser of a legal estate from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale subject to a trust for sale (whether made to attach to such proceeds by virtue of this

Act or otherwise) or affecting the rents and profits of the land until sale whether or not these trusts are declared by the same instrument by which the trust for sale is declared, and Section 2 provides that the proceeds of sale or other capital money arising under disposition on trust for sale of land shall not, except where the trustee is a trust corporation, be paid to or applied by the direction of fewer than two persons as trustees, but the sub-section is not to affect the right of a sole representative, as such, to give valid receipts for or direct the application of the proceeds of sale or other capital money aforesaid nor, except where capital money arises on a transaction, render it necessary to have more than one trustee.

I have hitherto dealt with the position of persons who are of full age and of full legal capacity. It is necessary, however, to say a word in reference to the estates of infants and lunatics which are specially dealt with by the 6th Schedule to the Act. This Schedule provides in Section 1 (i.) that where, at the commencement of the Act, a legal estate in land is vested in an infant beneficiary it shall, by virtue of the Act, vest in the trustees (if any) of the settlement upon such trusts as may be requisite for giving effect to the rights of the infant and other persons (if any) interested, but if there are no such trustees then pending their appointment the legal estate shall, by virtue of the Act, vest in the Public Trustee, but he is not to act in the trust unless he is requested in writing to act on behalf of the infant by his father, mother or testamentary or other guardian, and power is given to the father, mother and testamentary or other guardian to appoint new trustees in place of the Public Trustee. The schedule also provides, Section 4, that a conveyance of a legal estate in land to an infant for his own benefit shall operate only as an agreement for valuable consideration to execute a settlement by means of a vesting deed and trust deed in favour of the infant to appoint trustees of the settlement, and in the meantime to hold the land in trust for the infant.

The schedule also declares, Section 5, that the appointment of an infant as trustee shall be void, and by Section 6 that a married infant shall have power to give valid receipts for all income to which the infant may be entitled in like manner as if the infant were of full age.

The general principle underlying the provision in regard to infants is to provide that legal estates shall not be vested in them during infancy.

Clause 7 deals with conveyances on behalf of lunatics and defectives, and it seems to be little more than declaratory of the existing law, but Clause 8 is quite important, as it gives power to the Court to settle the beneficial interests of a lunatic

or defective and prescribes the principles upon which the Chancery Division is to act in making an Order directing such a settlement to be made.

I have now gone through the principal provisions of this extensive, far-reaching, and most important Statute, and while its provisions are very complicated and require a close and careful study, we can easily see what great improvements it effects and how beneficial will be its operation in the future. The framers have, however, recognised the difficulty of introducing an entirely new system into English law and have postponed the operation of the Act to the 1st January, 1925, within which time it is proposed to consolidate the different branches of the Statute Law affected, and it is also proposed that the Statute Law rendered obsolete but which is not expressly repealed by the Act shall be dealt with by a Statute Law Revision Act or by an Act specially prepared for the purpose in which consequential amendments can be made.

If any persons wish for further information on the subject they may refer to an article in the London *Times* on the 26th June, 1922; the report of Sir Leslie Scott's Land Transfer Committee, Official Memorandum (Cmd. 1287), presented to Parliament; the article by Lord Birkenhead in the *Daily Mail Year Book* for 1923; and the valuable lectures delivered by Sir Arthur Underhill in Lincoln's Inn last November at the request of the Council of Legal Education and which have now been republished in book form. [A Concise Explanation of Lord Birkenhead's Act by Sir Arthur Underhill: Butterworth, London, 1922.] Sir Arthur Underhill has summed up, in a few sentences, the benefits of the Act, and I cannot better conclude this paper than by reproducing them :—

"1. It simplifies by assimilating the law of real and personal estate so far as it is possible.

2. It makes all land saleable and manageable by providing that the legal estate shall be vested

(*a*) in an absolute owner, subject or not to mortgages,

(*b*) in some person or persons having the powers of a tenant for life under the Settled Land Acts, or

(*c*) in trustees for sale

and keep all equities except the excepted ones off the title.

3. It does away with the evils of tenancy in common at law while safeguarding the material interests of co-owners in equity.

4. It places the law of intestacy on a more just basis.

5. It gives enlarged powers to tenants for life—powers which are nearly always now inserted in well-drawn settlements and are, therefore, in no sense revolutionary.

6. It sweeps away all manner of technical pitfalls which never act beneficially and frequently cause the greatest hardship and disappointment.

7. The Conveyancer in investigating titles will only need to trace the legal estate."

I am, of course, aware of how difficult it is to deal with reforms of this kind in Ireland at the present time and under the present circumstances, but it is impossible that we should remain unaffected by the adoption of great and epoch-making reforms in the English law of real property.

The paper has not been written by me in any hope of reforms on the same lines being immediately carried out in this country but in the hope that some public interest will be aroused on a very important though somewhat technical subject, and that when the country settles down on that path of prosperity, which we all hope to see, there will be time and opportunity to engraft upon our law of property many of the reforms which have been carried out in England by the Act of 1922 and which, if adopted here, would, I am satisfied, be of great benefit to the community.