



Law of Property Act 1925

1925 CHAPTER 20

PART IV

EQUITABLE INTERESTS AND THINGS IN ACTION.

130 Creation of entailed interests in real and personal property.

- (1) An interest in tail or in tail male or in tail female or in tail special (in this Act referred to as " an entailed interest ") may be created by way of trust in any property, real or personal, but only by the like expressions as those by which before the commencement of this Act a similar estate tail could have been created by deed (not being an executory instrument) in freehold land, and with the like results, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee, and accordingly all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property.

Personal estate so entailed (not being chattels settled as heirlooms) may be invested, applied, and otherwise dealt with as if the same were capital money or securities representing capital money arising under the Settled Land Act, 1925, from land settled on the like trusts.

- (2) Expressions contained in an instrument coming into operation after the commencement of this Act, which, in a will, or executory instrument coming into operation before such commencement, would have created an entailed interest in freehold land, but would not have been effectual for that purpose in a deed not being an executory instrument, shall (save as provided by the next succeeding section) operate in equity, in regard to property real or personal, to create absolute, fee simple or other interests corresponding to those which, if the property affected had been personal estate, would have been created therein by similar expressions before the commencement of this Act.
- (3) Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after the commencement of this Act, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting, land in which, either before or after the commencement of this Act an entailed interest

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has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate.

- (4) In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by this Act, an entailed interest (to the extent of the property affected) shall devolve as an equitable interest, from time to time, upon the persons who would have been successively entitled thereto as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, or as tenant by the curtesy, if the entailed interest had, before the commencement of this Act, been limited in respect of freehold land governed by the general law in force immediately before such commencement, and such law had remained unaffected.
- (5) Where personal chattels are settled without reference to settled land on trusts creating entailed interests therein, the trustees, with the consent of the usufructuary for the time being if of full age, may sell the chattels or any of them, and the net proceeds of any such sale shall be held in trust for and shall go to the same persons successively, in the same manner and for the same interests, as the chattels sold would have been held and gone if they had not been sold, and the income of investments representing such proceeds of sale shall be applied accordingly.
- (6) An entailed interest shall only be capable of being created by a settlement of real or personal property or the proceeds of sale thereof (including the will of a person dying after the commencement of this Act), or by an agreement for a settlement in which the trusts to affect the property are sufficiently declared.
- (7) In this Act where the context so admits " entailed interest" includes an estate tail (now made to take effect as an equitable interest) created before the commencement of this Act.

131 Abolition of the rule in Shelley's case.

Where by any instrument coming into operation after the commencement of this Act an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person in words which, but for this section would, under the rule of law known as the Rule in Shelley's case, have operated to give to that person an interest in fee simple or an entailed interest, such words shall operate in equity as words of purchase and not of limitation, and shall be construed and have effect accordingly, and in the case of an interest in any property expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person or persons shall take as would in the case of freehold land have answered that description under the general law in force before the commencement of this Act.

132 As to heirs taking by purchase.

- (1) A limitation of real or personal property in favour of the heir, either general or special, of a deceased person which, if limited in respect of freehold land before the commencement of this Act, would have conferred on the heir an estate in the land by purchase, shall operate to confer a corresponding equitable interest in the property on the person who would, if the general law in force immediately before such commencement had remained unaffected, have answered the description of the heir, either general or special, of the deceased in respect of his freehold land, either at the death of the deceased or at the time named in the limitation, as the case may require.

- (2) This section applies whether the deceased person dies before or after the commencement of this Act, but only applies to limitations or trusts created by an instrument coming into operation after such commencement.

133 Abolition of enrolment of disentailing assurances, &c.

- (1) Every assurance or instrument executed or made after the commencement of this Act which, under the provisions of sections forty-one, forty-six, fifty-eight, fifty-nine, seventy-one, and seventy-two of the Fines and Recoveries Act, 1833, or otherwise under that Act (as amended by this Act), would have been required to be enrolled in the Central Office in England, shall be as effectual for all purposes, without such enrolment, as if it had been duly enrolled within the time prescribed by the said Act for such enrolment.
- (2) In this section "assurance" includes a vesting order operating as a disentailing assurance, whether made for barring an estate tail or enlarging a base fee or otherwise.
- (3) This section applies to entailed interests authorised to be created by this Act as well as to estates tail created before the commencement of this Act.

134 Restriction on executory limitations.

- (1) Where there is a person entitled to—
- (a) an equitable interest in land for an estate in fee simple or for any less interest not being an entailed interest, or
 - (b) any interest in other property, not being an entailed interest,
- with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation over was to take effect.
- (2) This section applies where the executory limitation is contained in an instrument coming into operation after the thirty-first day of December, eighteen hundred and eighty-two, save that, as regards instruments coming into operation before the commencement of this Act, it only applies to limitations of land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life.

135 Equitable waste.

An equitable interest for life without impeachment of waste does not confer upon the tenant for life any right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such equitable interest.

136 Legal assignments of things in action.

- (1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual

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in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

- (a) the legal right to such debt or thing in action;
- (b) all legal and other remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor:

Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice—

- (a) that the assignment is disputed by the assignor or any person claiming under him; or
- (b) of any other opposing or conflicting claims to such debt or thing in action;

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act, 1925.

- (2) This section does not affect the provisions of the Policies of Assurance Act, 1867.

137 Dealings with life interests, reversions and other equitable interests.

- (1) The law applicable to dealings with equitable things in action which regulates the priority of competing interests therein, shall, as respects dealings with equitable interests in land, capital money, and securities representing capital money effected after the commencement of this Act, apply to and regulate the priority of competing interests therein.

This subsection applies whether or not the money or securities are in court.

- (2)
 - (i) In the case of a dealing with an equitable interest in settled land, capital money or securities representing capital money, the persons to be served with notice of the dealing shall be the trustees of the settlement; and where the equitable interest is created by a derivative or subsidiary settlement, the persons to be served with notice shall be the trustees of that settlement.
 - (ii) In the case of a dealing with an equitable interest in the proceeds of sale of land or in the rents and profits until sale the persons to be served with notice shall, as heretofore, be the trustees for sale.
 - (iii) In any other case the person to be served with notice of a dealing with an equitable interest in land shall be the estate owner of the land affected.

The persons on whom notice is served pursuant to this subsection shall be affected thereby in the same manner as if they had been trustees of personal property out of which the equitable interest was created or arose.

This subsection does not apply where the money or securities are in court.

- (3) A notice, otherwise than in writing, given to, or received by, a trustee after the commencement of this Act as respects any dealing with an equitable interest in real or personal property, shall not affect the priority of competing claims of purchasers in that equitable interest.
- (4) Where, as respects any dealing with an equitable interest in real or personal property—
 - (a) the trustees are not persons to whom a valid notice of the dealing can be given; or
 - (b) there are no trustees to whom a notice can be given; or

- (c) for any other reason a valid notice cannot be served, or cannot be served without unreasonable cost or delay;
- a purchaser may at his own cost require that—
- (i) a memorandum of the dealing be endorsed, written on or permanently annexed to the instrument creating the trust;
 - (ii) the instrument be produced to him by the person having the possession or custody thereof to prove that a sufficient memorandum has been placed thereon or annexed thereto.

Such memorandum shall, as respects priorities, operate in like manner as if notice in writing of the dealing had been given to trustees duly qualified to receive the notice at the time when the memorandum is placed on or annexed to the instrument creating the trust.

- (5) Where the property affected is settled land, the memorandum shall be placed on or annexed to the trust instrument and not the vesting instrument.

Where the property affected is land held on trust for sale, the memorandum shall be placed on or annexed to the instrument whereby the equitable interest is created.

- (6) Where the trust is created by statute or by operation of law, or in any other case where there is no instrument whereby the trusts are declared, the instrument under which the equitable interest is acquired or which is evidence of the devolution thereof shall, for the purposes of this section, be deemed the instrument creating the trust.

In particular, where the trust arises by reason of an intestacy, the letters of administration or probate in force when the dealing was effected shall be deemed such instrument.

- (7) Nothing in this section affects any priority acquired before the commencement of this Act.
- (8) Where a notice in writing of a dealing with an equitable interest in real or personal property has been served on a trustee under this section, the trustees from time to time of the property- affected shall be entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof; and subject to the payment of costs, any person interested in the equitable interest may require production of the notice.
- (9) The liability of the estate owner of the legal estate affected to produce documents and furnish information to persons entitled to equitable interests therein shall correspond to the liability of a trustee for sale to produce documents and furnish information to persons entitled to equitable interests in the proceeds of sale of the land.
- (10) This section does not apply until a trust has been created, and in this section "dealing" includes a disposition by operation of law.

138 Power to nominate a trust corporation to receive notices.

- (1) By any settlement or other instrument creating a trust, a trust corporation may be nominated to whom notices of dealings affecting real or personal property may be given, whether or not under the foregoing section, and in default of such nomination the trustees (if any) of the instrument, or the court on the application of any person interested, may make the nomination.

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- (2) The person having the possession or custody of any instrument on which notices under that section may be endorsed shall cause the name of the trust corporation to whom notices may be given to be endorsed upon that instrument.
- (3) Notice given to any trust corporation whose name is so endorsed shall operate in the same way as a notice or endorsement under the foregoing section.
- (4) Where a trust corporation is acting for the purposes of this section a notice given to a trustee of the trust instrument of a dealing relating to the trust property shall forthwith be delivered or sent by post by the trustee to the trust corporation, and until received by the corporation shall not affect any priority.
- (5) A trust corporation shall not be nominated for the purposes of this section—
 - (a) unless that corporation consents to act; or
 - (b) where that corporation has any beneficial interest in or charge upon the trust property; or
 - (c) where a trust corporation is acting as the trustee or one of the trustees of the instrument creating the trust.
- (6) Where a trust corporation acting for the purposes of this section becomes entitled to any beneficial interest in or charge upon the trust property, another trust corporation shall be nominated in its place and all documents relating to notices affecting the trust shall be delivered to the corporation so nominated.
- (7) A trust corporation acting for the purposes of this section shall be bound to keep a separate register of notices of dealings in respect of each equitable interest and shall enter therein—
 - (a) the date of the notice;
 - (b) the name of the person giving the notice;
 - (c) short particulars of the equitable interest intended to be affected; and
 - (d) short particulars of the effect of the dealing if mentioned in the notice.
- (8) The trust corporation may, before making any entry in the register, require the applicant to pay a fee not exceeding the prescribed fee.
- (9) Subject to the payment of a fee not exceeding the prescribed fee, the trust corporation shall permit any person who would, if the corporation had been the trustee of the trust instrument, have been entitled to inspect notices served on the trustee, to inspect and take copies of the register and any notices held by the corporation.
- (10) Subject to the payment by the applicant of a fee not exceeding the prescribed fee, the trust corporation shall reply to all inquiries respecting notices received by the corporation in like manner and in the same circumstances as if the corporation had been the trustee of the trust instrument.
- (11) In this section " prescribed fee " means the fee prescribed by the Treasury, with the sanction of the Lord Chancellor, in cases where the Public Trustee acts as a trust corporation for the purposes of this section.