



# Land Clauses Consolidation Act 1845

## 1845 CHAPTER 18 8 and 9 Vict

### *Lands in mortgage*

And with respect to lands subject to mortgage, be it enacted as follows:

#### **108 Power to redeem mortgages.**

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

#### **109 Deposit of mortgage money on refusal to accept.**

If, in either of the cases aforesaid, upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it

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shall be lawful for the promoters of the undertaking [<sup>F1</sup>to pay into the [<sup>F2</sup>Senior Courts]] the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

#### Textual Amendments

- F1** Words substituted by [Administration of Justice Act 1965 \(c. 2\), S. 17, Sch. 1](#)
- F2** Words in Act (except s. 3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 9\(2\); S.I. 2009/1604, art. 2\(d\)](#)

#### Modifications etc. (not altering text)

- C1** Ss. 99, 100, 107, 109, 111, 113, 117 modified by [Judicature \(Northern Ireland\) Act 1978 \(c. 23, SIF 38\), s. 122\(1\), Sch. 5 Pt. II](#) (as amended (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 6; S.I. 2009/1604, art. 2\(d\)](#))

### 110 Sum to be paid when mortgage exceeds the value of the lands.

If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend; and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

### 111 Deposit of money when refused on tender.

If upon such payment or tender as aforesaid being made any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them [<sup>F3</sup>to pay into the [<sup>F2</sup>Senior Courts] the amount of such value or compensation and the making of payment to the mortgagee or into the [<sup>F2</sup>Senior Courts]] shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession

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thereof in case such mortgagee were himself entitled to such possession; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied [<sup>F3</sup>by payment to the mortgagee or into the [<sup>F2</sup>Senior Courts]] .

#### Textual Amendments

- F2** Words in Act (except s. 3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 9\(2\)](#); S.I. 2009/1604, art. 2(d)
- F3** Words substituted by [Administration of Justice Act 1965 \(c. 2\), S. 17, Sch. 1](#)

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### 112 Sum to be paid where part only of mortgaged lands taken.

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

### 113 Deposit of money when refused on tender.

If upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking [<sup>F4</sup>to pay into the [<sup>F2</sup>Senior Courts] the amount of such value or compensation; and the making of payment to the mortgagee or into the [<sup>F2</sup>Senior Courts]] shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they

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think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof, (as the case may be,) and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

#### Textual Amendments

- F2** Words in Act (except s. 3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 9\(2\)](#); S.I. 2009/1604, art. 2(d)
- F4** Words substituted by [Administration of Justice Act 1965 \(c. 2\), S. 17, Sch. 1](#)

#### Modifications etc. (not altering text)

- C3** Ss. 99, 100, 107, 109, 111, 113, 117 modified by [Judicature \(Northern Ireland\) Act 1978 \(c. 23, SIF 38\), s. 122\(1\), Sch. 5 Pt. II](#) (as amended (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 6](#); S.I. 2009/1604, art. 2(d))

### 114 Compensation to be made in certain cases if mortgage paid off before the stipulated time.

Provided always, that in any of the cases herein-before provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions herein-before contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expences as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs, in case of difference, to be taxed, and payment thereof enforced, in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-before provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision herein-before contained.

**Changes to legislation:**

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