

No. XI.

AN ORDINANCE for the Regulation of Building and Land Societies. [28th July, 1851.]

BUILDING AND
LAND SOCIETIES.

BE IT ENACTED by the Governor-in-Chief of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

1. It shall be lawful for any number of persons in New Zealand to form themselves into and establish Societies for the purpose of raising, by subscriptions to shares not exceeding the value of one hundred and fifty pounds for each share and such subscriptions not to exceed in the whole twenty shillings per month for each share, a stock or fund for the purpose of enabling any member of such Society to receive out of the same the amount or value of his share, to erect or purchase dwelling-houses or other real or leasehold estate, to be secured by way of mortgage to such Society until the amount or value of his share shall have been fully repaid to such Society, with interest and all fines and other payments incurred in respect thereof; and for the assurance from loss by fire of houses mortgaged to such Societies; and also for the several members of each Society from time to time to assemble together and make such rules and regulations for the government of the same as to the major part of the members so assembled shall seem meet, so as such rules shall not be repugnant to the express provisions of this Ordinance and to the general laws of the realm; and to impose reasonable fines and penalties upon any member who shall offend against any such rules, to be paid to and for the benefit of the Society as such rules shall direct, and also from time to time to alter and amend or repeal such rules and make new rules in lieu thereof: Provided that no member shall receive from the funds of the Society any interest or dividend by way of annual or other periodical profit upon any share, until the amount or value of such share shall have been realized, except on the withdrawal of such member according to the rules then in force.

Formation of Societies; members may receive shares in advance, execute mortgages to Societies, frame rules, impose fines, but not receive annual profits.

2. Any such Society may have and receive from any member thereof any sum of money, by way of bonus on any share, for the privilege of receiving the same in advance prior to its being realized, and also any interest for the share so received or any part thereof.

May receive bonus on shares advanced.

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May describe forms
of conveyance &c.

3. Any such Society may in its rules prescribe the form of conveyance mortgage transfer agreement bond or other instrument which may be necessary for carrying its purposes into execution, so as the same be set forth in a Schedule to be annexed to such rules.

Must in rules declare
all the purposes of
the Society.

4. Every such Society, before any of the rules thereof shall be confirmed as hereinafter directed, shall in such rules declare all the purposes for which the Society is intended to be established, and also the uses and purposes to which the money which shall from time to time be subscribed to or shall in any wise belong to such Society shall be applied, and in what shares and proportions and under what circumstances any member or other person shall become entitled to such money, provided the application thereof shall not be repugnant to the uses and purposes so to be declared as aforesaid; and the moneys so subscribed to or belonging to the Society shall not be misapplied by any officer or member intrusted therewith under such penalty as such rules may impose.

Rules to be submitted
to Revising Officer
and deposited with
the Clerk to the
Magistrates.

5. Two copies, fairly printed on parchment, of all rules made in pursuance of this Ordinance, signed by three members and countersigned by the Clerk or Secretary, (accompanied, in the case of any amendment of rules, with an affidavit of the Clerk or Secretary or other officer of the said Society that the provisions of this Ordinance have been duly complied with,) shall with all convenient speed be submitted to such Revising Officer as shall be appointed in that behalf by the Governor, for the purpose of ascertaining whether such rules or amendment thereof are calculated to carry into effect the intention of the parties framing the same, and are in conformity to law. And the said Revising Officer shall advise with the said Clerk or Secretary if required, and shall give a certificate on each of the said copies that the same are in conformity to law, or point out wherein the same are repugnant thereto. And the said Revising Officer for so advising and perusing such rules or amendment and giving such certificate as aforesaid, shall demand no further fee than five guineas. And one of such copies when so certified shall be returned to the Society, and the other shall be transmitted to the Clerk of the Magistrates for the district in which the Society is established, to be by him filed without fee or reward.

No fee on amendment
within three years.

6. Provided always that the said Revising Officer shall be entitled to no further fee in respect of any amendment of any rules upon which one fee has been already paid within the period of three years: Provided also that if any rules or amendments are sent to such officer, accompanied with an affidavit of being a copy of any rules or amendments of rules which shall have been already certified by him, the said officer shall certify and return the same as aforesaid without any fee.

Revising Officer
refusing to certify,
a Judge of the
Supreme Court may
allow rules.

7. In case the said Revising Officer shall refuse to certify any such rules, it shall be lawful for any such Society to submit the same to a Judge of the Supreme Court, together with the reasons assigned by the said officer in writing for such his refusal, whereupon such Judge may, if he think fit, confirm and allow such rules.

Rules to be entered
in a book for inspec-
tion of members.

8. No such Society shall have the benefit of this Ordinance unless all the rules for the management thereof shall be entered in a book to be kept for that purpose, which book shall be open at all reasonable times for the inspection of the members.

Rules to be binding.

9. All rules so certified and in force and entered in such book and deposited with the Clerk to the Magistrates as aforesaid, shall be binding on the members and officers of such Society, and on all other parties having interest therein, all of whom shall be deemed and taken to have full notice thereof by such entry and deposit. And such entry of the rules or the copy thereof so deposited, or a copy examined with
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the original and proved to be a true copy, shall be received as evidence of such rules in all cases; and no *certiorari* or other legal process shall be brought or allowed to remove any such rules into any of Her Majesty's Courts of Record, and every copy of the copy deposited with the Clerk of the Magistrates shall be made without fee or reward, except the actual expense of making such copy.

A proved copy to be evidence.

10. No rule certified by the said Revising Officer or allowed by a Judge of the Supreme Court shall be altered or repealed except at a general meeting of members, convened by public notice signed by the Secretary or Clerk of such Society in pursuance of a requisition for that purpose by seven or more members, which requisition and notice shall be publicly read at the two usual meetings of the Society to be held next before the general meeting for the purpose of such alteration or repeal: Provided always that if a Committee of members shall be nominated for that purpose at such general meeting, such Committee shall have the like power to make such alteration or repeal: Provided also that such alteration or repeal shall be made with the concurrence and approbation of three-fourths of the members present at such meeting, or by the like proportion of such Committee.

Alteration of rules.

11. Every Society shall in its rules specify the place at which it is intended to hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of any Committee or officers to be appointed for the management of its affairs: Provided always that the Society may alter its place of meeting upon giving one week's notice thereof in writing to the Clerk to the Magistrates for the district in which the Society is established, such notice to be signed by the Clerk or Secretary and also by three or more members, and provided that the new place of meeting shall be situate within the district in which the rules of the Society are deposited as aforesaid.

Must specify place of meeting.

12. Every such Society may, at any of its usual meetings, or by any Committee to be appointed for the management of its affairs, appoint a Steward, President, Warden, Treasurer or Trustee, and also such Clerks and other officers as shall be necessary to carry into execution the purposes of such Society, and may appoint others in the room of any who may vacate or die; and such Treasurer, Trustee, and every other person who shall be appointed to any office in any wise concerning the receipt management or expenditure of the Society's money shall, before he be admitted to take upon him the execution of any such office or trust (if required so to do by the rules of the Society), become bound in a bond according to the form prescribed in the Schedule A to this Ordinance annexed, with two sureties, for the faithful execution of such office or trust, and for rendering a true account according to the rules of the Society, and in all matters lawful to pay obedience to the same, in such penal sum of money as by the major part of the members present at any general meeting shall be thought expedient; and every such bond shall be given to the Clerk to the Magistrates where the Society shall be established without fee or reward; and in case of forfeiture it shall be lawful to sue upon such bond in the name of the Clerk to the Magistrates for the time being for the use of the Society, fully indemnifying and saving harmless such Clerk to the Magistrates from all costs and charges in respect of such suit.

Society may appoint officers who shall give bond.

13. Every such Society may from time to time appoint any number of its members to be a Committee for general purposes, the number thereof to be declared in its rules, and may delegate to such Committee any powers given by this Ordinance, such powers and their duration being first declared in the rules; and may also appoint Committees for particular purposes, the powers delegated to each Committee being

May appoint Committees.

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being reduced into writing and entered into a book by the Secretary or Clerk; and a majority of the members of any Committee shall at all times be necessary to concur in any act; and every Committee shall in all things delegated to it act for and in the name of the Society, and all acts and orders of such Committee under the powers delegated to it shall have the like force and effect as the acts and orders of the Society, at any general meeting thereof, could have had in pursuance of this Ordinance: Provided always that the transactions of every Committee shall be entered in a book belonging to the Society, and shall be at all times subject to the review, allowance or disallowance, and control of the Society, in such manner as the Society shall by its rules direct.

Treasurer or Trustees
to invest surplus
moneys.

14. The Treasurer or Trustee for the time being of any such Society is hereby authorized and required from time to time, with the consent of the Society to be testified in such manner as shall be directed by its rules, to lay out or invest such part of all sums of money at any time received by him for the beneficial purposes of the Society as the exigencies of the Society shall not call for the immediate application or expenditure of, either on real or Government securities, in the proper name of such Treasurer or Trustee; and from time to time, with such consent as aforesaid, to alter transfer and sell such securities; and all dividends and proceeds to arise from the moneys so laid out or invested shall be regularly brought to account by such Treasurer or Trustee, and shall be applied according to the rules of the Society.

To render accounts
and pay over
balances.

15. Every person who shall have or receive any money or effects belonging to any such Society, or shall in any manner be entrusted with the disposal management or custody thereof, or of any securities books papers or property of the Society, shall, or in the event of his death his executors shall, upon demand made or notice in writing given or left at the last or usual place of residence of such person or of such executors, in pursuance of any order of the Society or of any Committee to be appointed as aforesaid, immediately give his account to the Society or to such Committee thereof, to be examined and allowed or disallowed; and shall on the like demand or notice pay over all moneys remaining in his hands, and assign and deliver all securities and effects books papers and property taken or standing in his name as aforesaid or being in his hands or custody, to the Treasurer or Trustee for the time being, or to such other person as the Society or Committee shall appoint; and in case of any neglect or refusal to comply with such demand or notice, it shall be lawful for every such Society, in the name of some principal officer thereof, to exhibit a petition in the Supreme Court, which may proceed thereupon in a summary way, and make such order therein as to such Court shall seem just, which order shall be final and conclusive, and all assignments sales and transfers made in pursuance of such order shall be good and effectual in law to all intents and purposes whatsoever.

In absence of
Trustee, Supreme
Court may appoint
person to convey.

16. When any person seized or possessed of any land, Government securities, or other property, or any estate or interest therein, as a Trustee of any such Society, shall be out of the jurisdiction of or not amenable to the process of the Supreme Court, or shall be idiot, lunatic, or of unsound mind, or it shall be unknown or uncertain whether he be living or dead, or such person shall refuse to convey or otherwise assure such land property estate or interest, or to transfer or endorse such Government securities to the person duly nominated as Trustee of such Society in his stead, either alone or together with any continuing Trustee, as occasion shall require, it shall be lawful for a Judge of the said Court to appoint a person on behalf and in the name of the person seized or possessed as aforesaid, to convey surrender
release.

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release assign or otherwise assure the said land or property estate or interest, or indorse or transfer such Government securities, to such Trustee so duly nominated as aforesaid; and every such conveyance release surrender assignment or assurance indorsation or transfer shall be as valid and effectual to all intents and purposes as if the person being out of the jurisdiction of or not amenable to the process of the said Court, or not known to be alive, or having refused, or being idiot lunatic or of unsound mind, had been at the time of the execution thereof of sane mind memory and understanding, and had himself executed the same.

17. No fee or gratuity whatever shall be demanded or received by any officer or minister of such Court for anything done in such Court in pursuance of this Ordinance.

No fee for any proceeding in Court.

18. If any person appointed to any office in any such Society, and being entrusted with the keeping of the accounts, or having in his hands or possession by virtue of his office any moneys or effects deeds or securities belonging to the Society or relating thereto, shall die, or become bankrupt or insolvent, or have any execution or attachment or other process issued or action raised against his lands or effects, or make any assignment thereof for the benefit of his creditors, his heirs executors administrators or assignees or other person having legal right, or the Sheriff or other officer executing such process, or the party using such action or execution, shall, within forty days after demand made in writing by the order of the Society, or of any Committee thereof, or the major part of them assembled at any meeting, deliver and pay over all moneys and other things belonging to the Society to such officer of the Society as shall be appointed for that purpose; and shall pay out of the estates assets or effects of such person all sums of money remaining due which such person may have received by virtue of his said office, before any other of his debts shall be paid or satisfied, or before the money directed to be levied by such process as aforesaid or which may be recovered or recoverable under such execution, and all such lands and effects shall be bound to the payment and discharge thereof accordingly.

Money of Society in hand of officer dying or insolvent to be first paid.

19. All property whatever, and all securities and evidences, and all rights or claims belonging to such Society, shall be vested in the Treasurer or Trustee for the time being, for the use and benefit of the Society; and after the death or removal of any Treasurer or Trustee, shall vest in the succeeding Treasurer or Trustee for the same estate and interest as the former Treasurer or Trustee had therein, and subject to the same trusts, without any assignment or conveyance whatever; and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, be deemed and taken to be the property of the person appointed to the office of Treasurer or Trustee of such Society for the time being, in his proper name, without further description; and such person shall and he is hereby authorized to bring or defend any action or prosecution, criminal as well as civil, in law or in equity, touching the property right or claim aforesaid of or belonging to the Society, provided such person shall have been thereunto duly authorized by the consent of the majority of members present at any meeting of the Society or Committee; and such person so appointed shall and may, in all cases concerning the property right or claim aforesaid, sue and be sued in his proper name as such Treasurer or Trustee without other description; and no such action or prosecution shall be discontinued or abate by the death of such person or his removal from the office of Treasurer or Trustee, but the same shall be proceeded in by the succeeding Treasurer or Trustee in the proper name of the person commencing the same, and such succeeding

Treasurer or Trustee may bring and defend action.

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Treasurer or Trustee shall pay or receive like costs as if the action had been commenced in his name, for the benefit of or to be reimbursed from the funds of the Society.

Members may be witnesses.

20. On the trial of any action or other proceeding respecting the property of any such Society, or in any proceeding before any Justice of the Peace, any member of such Society shall be a competent witness, and shall not be objected to on account of any interest he may have as such member in the result of such action or other proceeding.

Responsibility of Treasurer or Trustees.

21. The Treasurer or Trustee or any other officer of any such Society shall not be liable to make good any deficiency which may arise in the funds of such Society: Provided always that the said Treasurer, Trustee, and every other officer of any such Society shall be personally liable for all moneys actually received by them on account of or for the use of the said Society.

Payment to persons appearing to be next of kin valid.

22. Whenever the Trustees of any such Society at any time after the decease of any member shall have paid any sum of money to any person who shall at the time of such payment appear to such Trustees to be entitled to the effects of any deceased intestate member, the payment of such sum of money shall be valid and effectual with respect to any demand of any other person as next of kin or lawful representative of such member against the funds of such Society or against the Trustees thereof, but nevertheless such next of kin or representative shall have remedy for such money so paid as aforesaid against the person who shall have received the same.

Sums not exceeding £20, when members die intestate, may be paid without administration.

23. In case any member of any such Society shall die who shall be entitled to any sum not exceeding twenty pounds, it shall be lawful for the Trustees or Treasurer of such Society, if they shall be satisfied that no will was made and left by such deceased member, and that no letters of administration will be taken out of the goods of such member, to pay the same at any time after the decease of such member according to the rules of the Society; and in the event of there being no rules made in that behalf, then the said Trustees or Treasurer are hereby authorized to pay the same to the person or persons entitled to the effects of the deceased member, without administration.

Proceedings before Justices in cases of fraud.

24. For the more effectually preventing fraud on such Societies, if any person whatever shall fraudulently obtain possession of any moneys of such Society, or having in his possession any sum of money belonging to such Society shall fraudulently withhold the same, and for which offence no especial provision shall be made in the rules of the Society, it shall be lawful for any one Justice of the Peace residing within the district within which the Society is established, upon complaint made on oath by an officer of the Society appointed for that purpose, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons, and upon his appearance, or in default thereof upon proof on oath of the service of such summons, it shall be lawful for any two Justices residing within the district aforesaid to hear and determine the said complaint according to the rules of the Society, and upon conviction for such fraud the said Justices shall award double the amount of the money so fraudulently obtained or withheld, to be recovered in a summary way, and to be paid to the Treasurer of the Society, together with such costs as to such Justices shall seem meet: Provided nevertheless that nothing herein contained shall prevent the Society from proceeding by indictment or complaint against the party complained of, and provided also that no party shall be proceeded against by indictment or complaint if a previous conviction has been obtained under the provisions of this Ordinance.

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25. It shall not be lawful for any such Society, by any rule at any general meeting or otherwise, to dissolve or determine itself, so long as the intent or purposes declared by it or any of them remain to be carried into effect, without obtaining the votes of consent of five-sixths in value of the shares held by the then existing members, to be ascertained in manner hereinafter mentioned, and to be notified under their hands respectively; and for the purpose of ascertaining the votes of such five-sixths in value every member shall be entitled to one vote in respect of each share held by him which he shall not have received in advance. And in all cases of dissolution the intended distribution of the property of such Society shall be fairly and distinctly stated in the proposed plan of dissolution prior to such consent being given; and it shall not be lawful for the Society by any rule to direct any such distribution amongst its members other than for carrying into effect the general intents and purposes of the Society as declared by them and certified as aforesaid, but any such rules for the dissolution or determination of any such Society without such consent as aforesaid, or for the distribution of the property of such Society contrary to the rules which shall have been certified as aforesaid, shall be void and of none effect; and in the event of such distribution without such consent, the Trustee or other officer or person aiding or abetting therein shall be liable to the like penalties as are hereinbefore provided for in cases of fraud.

Dissolution of Society not lawful in certain circumstances.

26. Provision shall be made by one or more of the rules of every such Society, specifying whether a reference of every matter in dispute between the Society or any person acting under them, and any member thereof or person claiming on account of any member, shall be made to two or more Justices of the Peace for the district in which the Society may be established, or to arbitrators to be appointed in manner hereinafter directed.

Disputes to be settled by arbitration, or referred to Justices.

27. When the matter in dispute as aforesaid shall be referred to arbitration, certain arbitrators who shall not be beneficially interested in the funds of the Society shall be elected at the first meeting of the Society or General Committee thereof that shall be held after the deposit of its rules with the Clerk to the Magistrates as aforesaid, three of whom shall be chosen by ballot in each such case of dispute, the mode of ballot being determined by such rules: Provided always that the names of such arbitrators shall be duly entered in the book in which the rules are entered as aforesaid, and in case of the death or refusal or neglect of any of the said arbitrators to act, the Society or its General Committee shall at their next meeting elect new arbitrators as aforesaid to act in the place of the arbitrators so dying or refusing or neglecting to act; and whatever award shall be made by the said arbitrators or the major part of them, according to the true purport and meaning of such rules, shall be in the form to this Ordinance annexed, and shall be binding and conclusive on all parties, and shall not be removable into any Court of Law or restrainable by the injunction of any Court of Equity. And if either of the said parties in dispute shall refuse or neglect to conform to any such award, it shall be lawful for any one Justice of the Peace residing within the district within which the Society is established, upon proof of such award having been made and the refusal of the party to conform thereto, to summon the person against whom such complaint shall be made, to appear at a time and place to be named in such summons, and upon his appearance, or in default thereof upon proof upon oath of the service of such summons, any two Justices of the Peace may proceed to make such order thereupon as to them may seem just; and if any sum of money so awarded, together with such costs as to such Justices shall

Proceedings where disputes referred to arbitrators.

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shall seem meet, shall not be immediately paid, the same shall be recoverable in a summary way.

Proceedings where disputes referred to Justices.

28. When the matter in dispute as aforesaid shall be referred to the decision of Justices of the Peace, it shall be lawful for any one Justice, on complaint being made to him of any refusal or neglect to comply with the rules of the Society by any member or officer thereof, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons, and upon his appearance, or in default thereof upon proof on oath of the service of such summons, it shall be lawful for any two Justices to proceed to hear and determine the complaint according to the rules of the Society; and in case the said Justices shall adjudge any sum of money to be paid by the person against whom such complaint shall be made, and such sum of money shall not be immediately paid, then the same shall be recovered in a summary way.

Orders of Justices to be final.

29. Every sentence order and adjudication of any Justice under this Ordinance shall be final and conclusive to all intents and purposes, and shall not be subject to appeal, and shall not be removable into any Court of Law or restrainable by the injunction of any Court of Equity.

Annual statement of Society's funds to be made.

30. The rules of every such Society shall provide that the Treasurer, Trustees, Stewards, or other principal officers thereof shall, once in every year at least, prepare a general statement of the funds and effects of such Society, specifying in whose custody or possession the said funds or effects shall be then remaining, together with an account of all sums of money received and expended on account of the said Society since the publication of the preceding periodical statement; and every such periodical statement shall be attested by two or more members of the Society appointed Auditors for that purpose, and shall be countersigned by the Secretary or Clerk of the Society; and every member shall be entitled to receive a copy of such periodical statement.

Receipt indorsed of mortgage money to operate as re-conveyance.

31. It shall be lawful for the Trustees named in any mortgage made on behalf of such Trustees for the time being, to indorse upon any mortgage or further charge given by any member of such Society to the Trustees thereof for moneys advanced by the Society to any member, a receipt for all moneys intended to be secured by such mortgage or further charge, which shall be sufficient to vacate the same and vest the estate of and in the property comprised in such security in the person or persons for the time being entitled to the equity of redemption, without its being necessary for such Trustees to give any re-conveyance of the property so mortgaged, the form of which receipt shall be specified in a schedule to be annexed to the rules of the Society duly certified and deposited as aforesaid.

Mortgages not to be made invalid by members owning more than one share.

32. Any mortgage or other security given or executed in pursuance of this Ordinance shall not be affected or rendered invalid by any member or members of any such Society holding more than one share: Provided always that the number of shares held by any one such member shall not exceed five.

SCHEDULES.

SCHEDULE A.

Know all men by these presents that we, A.B., of _____, Treasurer [or Trustee, &c.,] of the _____ Society, established at _____, in the Colony of New Zealand, and C.D., of _____, and G.H., of _____ (as sureties on behalf of the said A.B.), are jointly and severally held and firmly bound to E.F., the present Clerk to the Magistrates for the district of _____, in the sum of _____, to be paid to the said E.F., as such Clerk to the _____ Magistrates,

Appropriation.

Magistrates, or his successor for the time being, or his certain attorney, for which payment to be well and truly made we jointly and severally bind ourselves and each of us by these presents, sealed with our seals.

Dated the day of , in the year of our Lord, one thousand eight hundred and .

WHEREAS the above bounden A.B. hath been duly appointed Treasurer [*or Trustee, &c.,*] of the Society established as aforesaid, and he, together with the above bounden C.D. and G.H., as his sureties, have entered into the above-written bond, subject to the condition hereinafter contained: Now therefore, the condition of the above-written bond is such that if the said A.B. shall and do justly and faithfully execute his office of Treasurer [*or Trustee, &c.,*] of the said Society, established as aforesaid, and shall and do render a just and true account of all moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books papers and property of or belonging to the said Society in his hands or custody to such person or persons as the said Society shall appoint, according to the rules of the said Society, together with the proper or legal receipts or vouchers for such payments, and likewise shall and do in all respects well and truly and faithfully perform and fulfil his office of Treasurer [*or Trustee, &c.,*] to the said Society, according to the rules thereof, then the above-written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

SCHEDULE B.

WE, the major part of the Arbitrators duly appointed by the Society established at , in the district of , do hereby award and order that A.B. [*specifying by name the party or officer or member of the Society*], do, on the day of , pay to C.D. [*specifying as before mentioned*] the sum of [*or stating the act or acts to be done as the case may be.*]

Dated this day of one thousand eight hundred and .

E.F.
G.H.
