

New Zealand.



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1883, No. 29.

AN ACT to consolidate certain Enactments relating to Property, and Title.
to simplify the Law relating thereto. [8th September, 1883.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Property Law Consolidation Act, 1883," and it shall come into force on the first day of January, one thousand eight hundred and eighty-four. Short Title and commencement of Act.

PRELIMINARY.

2. In this Act, if not inconsistent with the context,—

"Land" means and includes any estate or interest in real property:

"Heir" extends to and includes any legal personal representative of any deceased person within the meaning of "The Administration Act, 1879:" Interpretation.

“Registrar” means the Registrar of the Supreme Court acting for the district constituted under “The Supreme Court Act, 1882,” in which any proceeding is taken or anything is done under this Act, and includes a Deputy-Registrar where there is no Registrar, or in any case where the Deputy may lawfully act for and on behalf of the Registrar :

“The Court” means the Supreme Court of New Zealand.

GENERAL RULES AFFECTING PROPERTY.

Fee to pass without words of limitation.

3. Where any land shall be conveyed to any person without any words of limitation, such conveyance shall be construed to pass the fee-simple or other whole estate or interest which the party conveying had power to dispose of.

Freehold *in futuro* may be created.

4. An estate of freehold, to take effect at a future time, may be created by any deed by which a present estate of freehold may be created.

Estate in chattel real may be created by deed.

5. Any estate or interest which can be created by will in any chattel real may also be created by deed.

When contingent remainder capable of taking effect.

6. A contingent remainder shall be capable of taking effect notwithstanding the destruction or determination or merger of the particular estate immediately preceding, and notwithstanding it may have been created expectant on the termination of a term of years.

Rule in Shelley's case.

7. Whenever any deed or will shall contain a limitation to any person for life, followed mediately or immediately by a limitation to the heirs or the heirs of the body of such person, the latter limitation shall not be deemed to coalesce with the former, but shall take effect as a contingent remainder.

No estate void because of possibility upon a possibility.

8. No estate shall be void on account of its being made to depend on a possibility upon a possibility.

Conveyance by husband to wife, or wife to husband.

9. Any real or personal property may be conveyed by a husband to his wife, or by a wife to her husband, either alone or together with any other persons.

Declaration may be made by tenants in common that they will be joint tenants.

10. Any two or more persons, in whom any real or personal property shall be vested as tenants in common, may by deed declare that they will be joint tenants thereof, and thereupon the same shall be vested in them as joint tenants.

Person may convey property to himself jointly with others. Executor of mortgagee may execute reconveyance.

11. A person may convey, assign, or transfer property to himself jointly with another or others.

12. The executor or administrator of a deceased mortgagee shall have power, upon payment of the moneys remaining due on account of the principal and interest of the mortgage debt, to convey by deed the property comprised in the mortgage, and such conveyance shall be as effectual as if the same had been made by the heir or devisee of the mortgagee, their heirs or assigns.

Person entitled to receive mortgage debts may sell and recover in certain cases.

13. Whenever any mortgagee or one or more of several mortgagees shall die, the persons for the time being legally entitled to receive the mortgage debt shall have the same powers to sell and convey and to reconvey the land mortgaged as if the whole legal and equitable interest in the said mortgage debt and the whole legal estate in the land mortgaged, and also the powers of sale which the mortgagee or mortgagees might have exercised if living, had been vested in such persons.

And every sale effected and every conveyance and reconveyance executed by such persons shall be as valid and have the same effect as if such legal and equitable interest and legal estate and powers had been respectively so vested.

14. A mortgagee shall not in any case be entitled to foreclose the equity of redemption.

Foreclosure prohibited.

15. No land shall be charged or affected, by way of equitable mortgage or otherwise, by reason of any deposit of title-deeds relating thereto, whether or not such deposit shall be accompanied by a written memorandum of the intent with which the same shall have been made.

No equitable mortgage by virtue of deposit of deeds.

16. No vendor of any land shall have any equitable lien thereon by reason of the non-payment of the purchase-money or any part of the purchase-money for the same.

Vendor's lien, by reason of non-payment of purchase-money, taken away.

17. Where the reversion of any land subject to a lease shall be merged in any remainder, or other reversion, or future estate, the person entitled to the estate into which such reversion shall have merged, and his heirs, executors, or administrators, shall have the same remedy for non-performance of the conditions or covenants expressed or implied in the lease as the person who would for the time being have been entitled to the mesne reversion which shall have been merged would have had.

Remedy for equitable waste.

18. No claim of a *cestui que* trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

Limitation no bar to express trusts.

19. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Tenant for life not to have right to commit equitable waste unless expressly permitted.

20. There shall not, after the commencement of this Act, be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

No merger by operation of law.

21. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Suits for possession of land by mortgagors.

22. The rules of the High Court of Justice in England touching the operation and enforcement of contracts for the purchase of land shall be adopted and followed in all cases in the Supreme Court of this colony.

English rules of equity practice to apply as to enforcement of contracts.

23. Any rent-charge may be apportioned in like manner as any other rent.

Apportionment of rent-charge.

24. The release from a rent of any part of the land out of which it shall be payable shall not be a discharge of the residue of such land from the rent: Provided that, where the owner of the part which shall be released shall not be the owner of the residue of the land charged with the rent, the owner of such residue shall be entitled to

Release of part of land charged not to be an extinguishment.

the same contribution from the owner of the part released as he would have been entitled to if no release had been made.

Restriction on effect of license to assign.

25. A condition or covenant not to assign or underlet or do any other act without license shall not be released or determined by such license.

Assignment of lease by bankrupt or Sheriff.

26. The assignment of any lease by the assignees of a bankrupt or insolvent debtor, or by the Sheriff under an execution, shall not be a breach of any condition or covenant not to assign unless the contrary shall be therein expressly declared.

Married woman may assign reversionary interests.

27. A married woman may assign by deed any reversionary or other future interest in personal property as validly and effectually as she may dispose of the like interest in money to arise from the sale of land.

And may disclaim any estate.

28. A married woman may, by deed, disclaim any land.

Deeds to be acknowledged.

29. Every deed made by any married woman by virtue of this Act shall be acknowledged by her in the same manner as a deed by which she might dispose of land is required by law to be acknowledged.

DEEDS AND THEIR OPERATION.

(1.) *What essential to a Deed.*

Signature and attestation.

30. Every deed, whether or not affecting property, shall be signed by the party to be bound thereby, and shall also be attested by at least one witness, but no particular form of words shall be requisite for the attestation.

Sealing, delivery, &c.

31. Sealing shall not be necessary except when a deed is made by a corporation. Formal delivery and indenting shall not be necessary in any case.

Receipt.

32. An acknowledgment of the receipt of the consideration-money contained in the body of a deed shall be as valid and effectual in all respects as if the same had also been indorsed thereon.

Deeds heretofore executed.

33. Every deed executed before the passing hereof, attested in manner required or authorized by any enactment then or since in force, shall from the execution thereof be deemed as valid and effectual as if the same had been attested as prescribed in this Act.

Execution of powers.

34. Every deed executed as by this Act is required shall be a valid execution of a power of appointment by deed or writing (otherwise than by will), notwithstanding it may have been expressly required that such power should be executed with some additional or other form of execution or solemnity.

(2.) *Certain Cases in which Deeds shall be necessary.*

Cases in which deeds necessary.

35. No partition or exchange, lease, assignment, or surrender, otherwise than by operation of law, of any land shall be valid unless the same shall be made by deed, except a lease for a term not exceeding a tenancy for one year.

Implied year to year tenancy abolished.

Implied tenancy from year to year by payment of rent is hereby abolished.

Appointment. Exception.

36. No appointment to be made by deed or writing (otherwise than by will) in exercise of a power shall be valid, unless the same shall be executed as a deed is hereby required to be executed: Provided that no order or direction by a married woman to pay any money to which she may be entitled for her separate use shall be deemed an appointment within the meaning of this Act.

37. No disclaimer of any land shall be valid unless the same be made by deed or by matter of record. Disclaimer.

(3.) *What may pass by Deed.*

38. Every right of entry, contingent remainder, and every contingent or executory or future estate, right, or interest in real or personal property, may be conveyed or assigned by deed: Contingent interests, &c.

But no person shall be empowered by this Act to dispose of any expectancy which he may have as heir, or heir of the body, or as next of kin.

39. 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 or equitable chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal or equitable right to such debt or chose in action from the date of such notice, and all legal or equitable and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Assignments of debt and choses in action.

But, if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same; or he may, if he think fit, pay the same into the Court, under and in conformity with the provisions of the Acts for the relief of trustees.

(4.) *Operation of Deed.*

40. A deed, according to the form set forth in the First Schedule hereto, or to the effect thereof, without livery of seisin, enrolment, or a prior lease, shall be valid and effectual to pass any land which might have been conveyed by lease and release. Form of deed.

41. When any land shall be conveyed directly and immediately to any person or body corporate, the whole legal and equitable ownership of such land shall vest in such person or body corporate. Absolute conveyance.

42. When any land shall be so conveyed to any person or body corporate to the use of or in trust for any other person, the whole legal ownership of such estate or interest shall vest in the person or body corporate to whom the same shall be so immediately and directly conveyed, subject however to a trust for the benefit of such other person. Conveyance subject to trust.

43. Every limitation which at any time heretofore might have been made by way of shifting, springing, or executory use, may be made by direct conveyance, without the intervention of uses. Springing use.

44. The legal estate in any land shall not pass by a covenant to stand seised, or by any contract for the sale and purchase of land, or by livery of seisin. Forms abolished.

Estates by wrong.

45. No conveyance shall create any estate by wrong, or work a forfeiture, or have any other effect than a conveyance by lease and release would have had under any law or enactment at any time heretofore in force.

Party not named.

46. Any person not being named as a party to any deed may take an immediate benefit thereby in the same manner as he might under a deed-poll.

INCIDENTS OF DEEDS.

(1.) *Covenants for Title.*

Implied covenants in conveyances.

47. In every conveyance of land by way of sale, mortgage, marriage settlement, lease, and every other conveyance for valuable consideration, there shall be implied, excepting as against trustees or mortgagees, the following covenants by each conveying party severally for himself, his heirs, executors, and administrators, to the extent of the interest departed with by him, that is to say,—

Right to convey.

(1.) That such conveying party hath good right and full power to convey and assure the estate and interest purported to be conveyed, and that free and clear from all incumbrances other than such as are therein mentioned :

Quiet enjoyment.

(2.) That the party to whom such estate or interest is conveyed shall quietly enjoy the same without any disturbance by any act whatsoever of such conveying party or any person claiming under him or by any rightful act of any other person :

Further assurance.

(3.) That such conveying party, his heirs, executors, or administrators, will, at the cost of the party requiring the same, do and execute all such acts and conveyances for the better assuring of the estate or interest thereby conveyed as by the party to whom the same is conveyed or any person claiming under him may from time to time be reasonably required.

The foregoing covenant for quiet enjoyment shall not be implied against any mortgagor, his heirs, executors, or administrators, until default in payment of the principal moneys secured by the mortgage, before which default it shall not be lawful for a mortgagee, his heirs, executors, administrators, or assigns, to enter into possession of the mortgaged property.

By trustees and mortgagees.

48. In every conveyance or reconveyance by trustees or mortgagees there shall be implied the following covenant by each trustee or mortgagee severally for himself, his heirs, executors, or administrators, that is to say,—

That he hath not done or executed or been privy to any act or deed by means whereof the property comprised within the trust or mortgage may have been charged or incumbered in any way whatsoever.

(2.) *Mortgages.*

Implied covenant by mortgagors.

49. In every conveyance of land by way of mortgage there shall be implied a covenant by the mortgagor, his heirs, executors, administrators, and assigns,—

To pay principal and interest.

That he or they will pay the principal money and interest thereby secured after the rate and at the times therein mentioned without any deduction whatever.

50. In every such conveyance as last mentioned there shall be implied an obligation on the part of the mortgagee, his heirs, executors, administrators, and assigns, upon payment of the principal and interest at the time and in the manner mentioned in the mortgage deed, or at any time thereafter upon payment of the principal and interest then due (six clear months' notice of an intention to pay the same having been given), at the request, cost, and charges of the mortgagor, his heirs or assigns, to return to him or them, or as he or they shall direct, the mortgage deed having indorsed thereon or annexed thereto a receipt in the form or to the effect following:—

Implied covenant by mortgagees.
To reconvey.

hereby acknowledge to have received all moneys intended to be secured by the within [*or above*] written deed.

Such receipt if given by a person shall be signed by such person and attested by at least one witness, and if given by a corporation, company, or society, shall be under their seal, or if such corporation, company, or society have no seal, then shall be signed in such manner as legal documents are authorized to be signed by them respectively, and may be registered.

Any such receipt indorsed or annexed as aforesaid shall vacate the mortgage, or further charge, or debt, and vest the estate and interest of the mortgagee of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any reconveyance.

51. In every such conveyance by way of mortgage there shall be implied the following power in the mortgagee, his executors, administrators or assigns, that is to say,—

Power of mortgagees, their liens, &c.

(1.) In case default shall be made for the space of three months in payment of the principal money thereby secured, or any part thereof, the mortgagee, his executors, administrators, or assigns, shall cause a written demand of payment thereof to be served on the mortgagor, his heirs or assigns, or left at his or their last or usual place of abode, or, if the mortgage be made by a corporate body, upon or with any person or officer on whom any notice or process of any kind may be legally served on behalf of such corporate body.

To sell.

If default be made for the further space of three months from the service of such demand, the mortgagee, his executors, administrators, or assigns, may sell the property mortgaged, or any part thereof, and either altogether or in lots, and either by public auction or private contract, or by both of such means, and subject to such conditions as he or they may think fit, with power to buy in and to resell the same, without being liable for any loss occasioned thereby, and may make and execute all such contracts and conveyances as he or they may judge necessary for carrying into effect the powers hereby given, all which sales, contracts, and conveyances, and all matters and things hereby authorized, shall be as valid and effectual as if the mortgagor, his heirs or assigns, had made, done, or executed the same.

Receipts for purchase-money sufficient discharges.

(2.) The receipt or receipts in writing of the mortgagee, his heirs, executors, administrators, or assigns, shall be a sufficient discharge to any purchaser of any part of such mortgaged property for so much of his purchase-money as may be thereby expressed to be received.

Purchaser relieved from inquiry as to circumstances of sale.

(3.) No such purchaser or his representatives shall be answerable for the loss, misapplication, or non-application, or be obliged to see to the application of the purchase-money by him paid, nor shall he be concerned to inquire as to the fact of any such default or demand as aforesaid having been made.

Application of purchase-money.

(4.) The moneys to arise from such sale as aforesaid shall be applied, first, in payment of the expenses attending any such sale or otherwise incurred in the execution of the power of sale hereby given; secondly, in repayment of the principal money and interest remaining due, together with any costs and expenses occasioned by the non-payment thereof.

Application of surplus.

(5.) The surplus (if any) shall be paid to the mortgagee, his heirs, executors, administrators, or assigns.

(3.) *Sales by Mortgagees.*

Interpretation.

52. In the construction of the next eight succeeding sections the term "mortgagee" shall extend to and include the executors, administrators, and assigns of the original mortgagee, and the term "mortgagor" shall extend to and include the heirs, executors, administrators, and assigns of the original mortgagor, unless there be something in the subject or context repugnant to such construction.

Mortgagee may sell by Registrar of Supreme Court.

53. It shall be lawful for any present or future mortgagee, having a power of sale by auction, to apply to the Registrar in whose district the land to be sold is situated to conduct the sale of the whole or any part of the land comprised in the mortgage.

Every Registrar by whom any land has heretofore been sold shall be deemed to have been and to be the proper Registrar to effect such sale, although he was not resident nearest to the land sold.

Registrar to arrange time and conditions of sale.

54. The said Registrar shall fix a convenient time (being within three months and not less than fourteen days of the application) and a convenient place for the sale, shall approve of proper conditions of sale, shall employ an auctioneer, and shall do all other necessary acts for effectuating the sale.

Mortgagee may bid.

55. The mortgagee may be a bidder at any such sale by auction conducted as aforesaid, and become the purchaser of the land or any part thereof.

Conveyance to mortgagee.

56. In the event of the mortgagee being declared the purchaser at any sale held under the authority of this Act, the Registrar who shall have conducted the sale, or the successor of such Registrar at the same place for the time being, shall, on demand by the mortgagee, execute a deed expressed to be made between such Registrar (describing him by his official description only) and the mortgagee, with or without the addition of any other parties, and shall contain a recital stating the fact of the sale under the aforesaid section of this Act.

Registrar to execute conveyance.

57. Every such deed shall be executed by the Registrar by signing his personal name, with the addition of his official description,

and thereupon the land therein expressed to be conveyed shall vest in the mortgagee in the same manner as if made by the mortgagee to a purchaser at a sale made in exercise of the power of sale expressed or implied in the mortgage, and such mortgagee shall have the same estate and interest in such land as if he had purchased at such sale, and no rule of law or equity had existed preventing him from purchasing and taking a conveyance.

58. On any sale conducted by the Registrar there shall be paid by the vendor a fee on completion of the purchase of a percentage on and to be paid out of the purchase-money, after the rate, where the purchase-money does not exceed two hundred pounds, of one per centum, and, where the purchase-money exceeds that sum, one-quarter per centum on the remainder of the purchase-money, but in no case to exceed twenty pounds. Such fees shall be paid to the Registrar, and form part of the Consolidated Fund.

Remuneration of Registrar.

59. Nothing in this Act shall prejudice or affect the title of mortgagees who have purchased and taken conveyances under any Act hereby repealed, nor of any person claiming or to claim under them, but, where any sale made under the provisions of any such repealed Act has not been completed by the execution of a proper conveyance, the conveyance may be made in the same manner and with the same effect as if this Act had been in force at the time of such sale being made.

Sales not completed to be completed under this Act.

60. When any conveyance has heretofore been executed by the Registrar or Deputy-Registrar in the name and on behalf of the mortgagor, or in the name and on behalf of his assignee whether such assignee be such by deed or operation of law, the same shall be valid and effectual, notwithstanding the mortgagor may have become bankrupt or insolvent prior to the date of such conveyance.

Conveyances to be valid notwithstanding bankruptcy of mortgagor.

(4.) *Leases.*

61. In every lease there shall be implied the following covenants by the lessee, for himself, his heirs, executors, administrators, and assigns:—

Provisions in leases. Covenants by lessee.

(1.) That he or they will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property during the continuance of the lease:

To pay rent and taxes, &c.

(2.) That he or they will keep and yield up the demised property in good and tenantable repair.

To yield up in good repair.

62. And there shall be implied the following powers in the lessor, his heirs, executors, administrators, or assigns:—

Powers in lessor.

(1.) That he or they may, by himself or themselves, or his or their agents, at all reasonable times, enter upon the demised property and view the state of repair thereof, and may serve upon the lessee, his executors, administrators, or assigns, or leave at his or their last or usual place of abode, a notice in writing of any defect, requiring him or them, within a reasonable time to be therein prescribed, to repair the same:

To enter and view.

(2.) That whenever the rent reserved shall be in arrear for twenty-one days, he or they may levy the same by distress:

To distress.

Proviso for re-entry.

(3.) That in case the rent or any part thereof shall be in arrear for the space of six months, or in case the repairs required by such notice as aforesaid shall not have been completed within three months after the service or leaving thereof, he or they may re-enter upon the demised property and determine the estate of the lessee therein, but without releasing him from his liability in respect of the breach of any covenant therein expressed or implied.

(5.) *Marriage Settlements.*

Implied powers in tenants for life.

63. In every conveyance of land by way of marriage-settlement there shall be implied the following powers in every tenant for life in possession of the property, or of any undivided share thereof, or in his guardian, or in the committee of his estate, or, in case there shall be no tenant for life in possession, then in the trustees of the settlement, their executors, administrators, and assigns, that is to say,—

To demise property for fixed terms.

That he or they may demise or lease or concur in respect of such share in demising or leasing the property in settlement for any term not exceeding twenty-one years, to take effect in possession at a reasonable yearly rent, without taking any fine or premium for the making of such lease, and so that the lessee or lessees do execute a counterpart thereof.

Powers of trustees of settlement.

64. There shall also be implied in the trustees of the settlement, their executors, administrators, or assigns, at the request in writing of any tenant for life in possession, or his guardian or committee, or, if there be no such tenant for life, then at their own discretion, the following power, that is to say,—

To sell or exchange.

(1.) That they may dispose of the property in settlement or any part thereof either by way of sale or in exchange for other property of the like nature and tenure situated within the colony; or, where such property shall consist of an undivided share, may concur in a partition of the entirety of such property, and may give or take any money by way of equality of exchange or partition:

To purchase other lands with proceeds.

(2.) The moneys to arise from any such sale or be received for equality of exchange or partition shall, with all convenient speed, be laid out in the purchase of other property of like nature and tenure situate within this colony; and, moreover, any property so purchased or taken in exchange shall be settled in the same manner and subject to the same trusts, powers, and provisos as the property so sold or given in exchange:

Interim investment of proceeds.

(3.) Until the moneys received in consequence of such sale, exchange, or partition shall be laid out as aforesaid, the same shall be invested on Government or real security in this colony, and the interest thereof shall be paid to the persons entitled to the rents and profits of the property in settlement.

(6.) *Powers of Attorney.*

Powers of attorney to continue in force until notice of death or revocation received.

65. Whenever the person who may have executed or shall hereafter execute any power of attorney (whether such person were or be at the time within the colony or not) shall not have declared or shall

not declare therein that such power shall continue in force only until his death or revocation thereof, then and in every such case such power shall, so far as may concern all contracts entered into *bonâ fide*, and all deeds or instruments of any kind *bonâ fide* made or signed operate and continue in force until notice of his death or of the revocation of such power shall have been received by the attorney named therein.

66. Every act (within the scope of the powers and authority conferred upon the said attorney to such extent as aforesaid) heretofore or hereafter to be done or suffered by him after such death or revocation as aforesaid, and before notice thereof shall have been received, shall be as effectual in all respects as if such death or revocation had not happened or been made.

All acts done to be valid if done before receipt of any such notice.

67. A solemn declaration made by any such attorney, under the provisions and by virtue of "The Justices of the Peace Act, 1882," to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise, shall, if made immediately before or after any such act as aforesaid, be taken to be conclusive proof of such non-revocation at the times thereof respectively.

Declaration made by attorney of non-receipt of notice to be proof of non-revocation.

(7.) General.

68. In every case where any of the covenants or powers implied by virtue of this Act would be implied by or in any woman if unmarried, the same shall be implied by or in her husband if she shall be married.

Implied covenants as against husband.

69. Every covenant which shall be implied by virtue of this Act shall have the same force and effect and be enforced in the same manner as if it had been set out at length in the deed wherein the same shall be implied.

Remedy in cases of implied covenants.

70. Every covenant and power to be implied in any deed by virtue of this Act may be negatived or modified by express declaration in the deed or indorsed thereon.

Implications may be negatived.

71. Neither the word "grant" nor the word "exchange" shall have the effect of creating any warranty or right of re-entry.

Power to re-enter not created by implication.

PARTITION.

72. In an action for partition, if it appears to the Court that, by reason of the nature of the property to which the action relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

Power of Court to order sale instead of division.

73. In an action for partition, if the party or parties interested, individually or collectively, to the extent of one moiety or upwards, in the property to which the action relates, request the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested,

Sale on application of certain proportion of parties interested.

the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

As to purchase of share of party desiring sale.

74. In an action for partition, if any party interested in the property to which the action relates requests the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property or some of them undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions;

And, in case of such undertaking being given, the Court may order a valuation of the share of the party requesting a sale, in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.

As to parties to suits for partition.

75. Any person may maintain such action against any one or more of the parties interested without serving the other or others (if any) of those parties, and it shall not be competent to any defendant in the action to object for want of parties; and at the hearing of the cause the Court may direct such inquiries as to the nature of the property and the persons interested therein and other matters as it thinks necessary or proper, with a view to an order for partition or sale being made on further consideration:

But all persons who, if this Act had not been passed, would have been necessary parties to the action, shall be served with notice of the decree or order on the hearing, and, after such notice, shall be bound by the proceedings as if they had been originally parties to the action, and shall be deemed parties to the action, and all such persons may have liberty to attend the proceedings, and any such person may, within a time limited by general orders, apply to the Court to add to the decree or order.

Authority for parties interested to bid.

76. On any sale under the four last foregoing sections of this Act, the Court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale, on such terms as to non-payment of deposit, or as to setting-off or accounting for the purchase-money or any part thereof instead of paying the same, or as to any other matters, as to the Court seem reasonable.

Application Trustee Act.

77. Section forty-one of "The Trustee Act, 1883," shall extend and apply to cases where in actions for partition the Court directs a sale instead of a division of the property.

Application of proceeds of sale.

78. Sections twenty-two to twenty-four, both inclusive, of "The Leases and Sales of Settled Estates Act, 1865," shall extend and apply to money to be received on any sale effected under the authority of this Act.

Costs in partition suits.

79. In an action for partition the Court may make such order as it thinks just respecting costs up to the time of the hearing.

Debts charged on Real Estate.

Heir or devisee of real estate not to claim payment of mortgage out of personal assets.

80. When any person shall have died on or after the first day of October, one thousand eight hundred and fifty-five, or shall hereafter die seised of or entitled to any land which shall at the time of his death be charged with the payment of any sum or sums

of money by way of mortgage, and such person shall not by his will or deed or other document have signified any contrary or other intention, the heir or devisee to whom such land shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person, but the land so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

81. Nothing in the last-preceding section contained shall affect or diminish any right of the mortgagee of such lands to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying as aforesaid or otherwise, nor shall affect the rights of any person claiming under or by virtue of any will, deed, or document made before the first day of October, in the year last above mentioned.

Saving of right of mortgagee to recover his debt.

82. In the construction of the will of any person who may die after the thirty-first day of December, one thousand eight hundred and seventy, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule established by the eightieth section of this Act, unless such contrary or other intention shall be further declared by words expressly, or by necessary implication, referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate.

In construing wills general directions for payment of debts out of personalty not to include mortgage debts unless such intention expressly implied.

MARRIED WOMEN AND INFANTS.—DOWER.

(1.) *Acknowledgments by Married Women.*

83. All the acts, powers, and duties with respect to the appointment of persons to be Commissioners for taking the acknowledgments by married women of deeds executed by them under the Act of the third and fourth years of the reign of King William IV., chapter seventy-four, to be done by or given to or imposed upon the Chief Justice of the Court of Common Pleas at Westminster, or by, to, or upon any Judge of the said Court may be done, exercised, and performed by any Judge of the Supreme Court.

Judges of Supreme Court may appoint Commissioners for taking acknowledgments of deeds by married women.

84. Every Commissioner appointed under the last preceding section of this Act may do, exercise, and perform all the acts, powers, and duties which may be done, exercised, and performed by a Commissioner appointed for a like purpose in England under the Act hereinbefore mentioned, subject, however, to the provisions of this Act.

Powers and duties of Commissioners.

85. Every deed, acknowledged by a married woman before a Judge or Commissioner for taking acknowledgments of married women, and certified by indorsement or writing thereon signed by such Judge or Commissioner to have been so acknowledged, and that the woman had been examined as to her knowledge of the contents of such deed, had consented thereto, and that she was of full age and understanding, shall be valid and effectual to pass her interest

Evidence of acknowledgment.

in the property thereby affected without any further certificate or affidavit.

The expression "Judge" or "Commissioner" in this section mentioned shall extend and apply to a Judge of any Court of judicature, and also to any Commissioner for taking the acknowledgments of married women in the United Kingdom of Great Britain and Ireland, or in any British colony, appointed by any Judge of the Supreme Court of this colony.

Resident Magistrates to be Commissioners *ex officio*.

86. Every Resident Magistrate shall, by virtue of his office, be a perpetual Commissioner for taking acknowledgments of married women without any other appointment.

(2.) *Settlements by Infants on Marriage.*

Infants may, with the approbation of the Court, make valid settlements or contracts for settlements of their real and personal estate upon marriage.

87. Every infant upon or in contemplation of his or her marriage, with the sanction of the Court, may make a valid and binding settlement or contract for a settlement of all or any part of his or her property or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy.

Every conveyance, appointment, and assignment of such real or personal estate, or contract to make a conveyance, appointment, or assignment thereof, executed by such infant, with the approbation of the Court, for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

In case infant die under age, appointment, &c., to be void.

88. In case any appointment under a power of appointment, or any disentailing assurance, shall have been executed by any infant tenant-in-tail under the last-preceding section and such infant shall afterwards die under age, such appointment or disentailing assurance shall thereupon become absolutely void.

Sanction of the Court to be given upon petition.

89. The sanction of the Court to any such settlement or contract for a settlement may be given upon petition presented by the infant or his or her guardian in a summary way, without the bringing of an action.

If there be no guardian the Court may require a guardian to be appointed or not, as it shall think fit; and the Court also may, if it shall think fit, require that any persons interested or appearing to be interested in the property should be served with notice of such petition.

Not to apply to males under twenty or females under seventeen years of age.

90. Nothing in the three last preceding sections of this Act contained shall apply to any male infant under the age of twenty years, or to any female infant under the age of seventeen years.

And the authority conferred by such sections shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

(3.) *Dower.*

Act 3 and 4 Wm. IV., c. 105, to extend to dower of women married before 2nd January, 1834.

91. The provisions of the Act, passed in the third and fourth years of the reign of His late Majesty King William IV., intituled "An Act for the Amendment of the Law relating to Dower," shall extend to the dower of any widows who shall have married

previously to the second day of January, one thousand eight hundred and thirty-four.

MISCELLANEOUS PROVISIONS.

(1.) *Conveyancing Charges.*

92. The Judges of the Supreme Court or any three of them, of whom the Chief Justice shall be one, from time to time may make and vary, alter, or rescind general rules or orders, fixing scales of fees to be charged by solicitors in all or any matters of conveyancing business transacted by them.

Judges to make rules for regulating charges.

93. Such scales may be so framed as to enable the Registrar to allow on taxation, within certain limits, fees and charges at a higher or lower rate, having regard not only to the length of any deed, contract, or other document in respect of which such fees or charges are made, but also to the skill and labour employed or required in the preparation or perusal thereof, and the responsibility incurred by the solicitor in the transaction.

Scale of fees to be framed with regard to skill and labour employed.

94. In the taxation of any bill of costs or fees for conveyancing business the Registrar shall be guided by the general rules and orders for the time being in force for that purpose, and, pending the issue of any such rules and orders, and subject to such rules and orders when issued, the Registrar shall have regard not only to the length of any deed, contract, or other document in respect of which any fees or charges are made, but also to the skill and labour employed or required in the preparation or perusal thereof, and the responsibility incurred by the solicitor in the transaction.

Registrar to tax bills according to the scale allowed.

(2.) *Verification of Deeds, &c.*

95. Every instrument of any kind whatsoever, which has been or hereafter may be duly signed, executed, or acknowledged out of the Colony of New Zealand, shall, so far as the signing, execution, or acknowledgment thereof is concerned, be receivable in evidence in every Court of justice in the colony, and before any authority or person having by law or consent of parties authority to hear and receive evidence in the colony, if such signing, execution, or acknowledgment is verified by the witness thereto if only one, or by one of the witnesses thereto if more than one, in either of the following ways, that is to say,—

Verification of instruments executed out of the colony.

- (1.) If such instrument is signed, executed, or acknowledged in any part of the British dominions beyond the limits of the colony, then in accordance with the provisions in that behalf contained in the Act of the Imperial Parliament now known by the short title of "The Statutory Declarations Act, 1835," or in accordance with the provisions of any enactment in force, in any part of the British dominions where any such verification shall take place, respecting the verification of the signing, execution, or acknowledgment of instruments to be used abroad;

In the British dominions.

And the mention in the declaration or affidavit referring to such signing, execution, or acknowledgment, or in any certificate written at the foot or in continuation thereof

or attached thereto, signed by a notary public, and under his seal of office, or signed by the Mayor, Provost, or other Chief Magistrate of any corporate town with the seal of the Corporation attached, of the law under which any such declaration or affidavit is made, shall be sufficient proof of such law :

In a foreign country.

(2.) If any such instrument shall be signed, executed, or acknowledged out of the British dominions, then by an affidavit or solemn declaration as may be lawful in such cases to be made according to the law of such foreign country, and certified by the British-Consul or Vice-Consul there under his seal of office.

(3.) *Repeals.*

References to repealed Acts to apply to this Act:

96. Where in any Act or Ordinance now in force reference is made to any Act or Ordinance hereby repealed, such first-mentioned Act or Ordinance shall be construed and shall operate as if reference had been made therein to this Act instead of to such repealed Act or Ordinance.

Repeal of Acts and Ordinances.

97. The Acts, Ordinances, and parts of Acts enumerated in the Second Schedule hereto are hereby repealed.

But this repeal shall not affect—

- (1.) The past operation of any Act or Ordinance, or part of an Act or Ordinance, hereby repealed ;
- (2.) Any deed or instrument made, signed, or acknowledged, or any proceeding taken or pending, or anything duly done or suffered, or any estate, right, title, interest, or benefit created, conferred, or acquired under or by virtue of any such Act or Ordinance ;
- (3.) Or any obligation or duty undertaken or imposed, or any forfeiture incurred, expressly or by implication, under or by virtue of any deed or instrument as aforesaid, or under any Act or Ordinance, or part of an Act or Ordinance, hereby repealed.

Saving of provisions of "The Administration Act, 1879."

98. Nothing contained in this Act shall limit or otherwise affect any of the provisions of "The Administration Act, 1879," or "The Land Transfer Act, 1870," and any Acts amending the same.

Schedules.

SCHEDULES.

First Schedule.

FIRST SCHEDULE.

Form of conveyance.

FORM OF CONVEYANCE IN FEE-SIMPLE.

THIS deed, made the day of , one thousand eight hundred and , between A.B., of Auckland, in the Colony of New Zealand, merchant, of the one part, and C.D., of the same place, carpenter, of the other part [*Recitals, if any*]: (Now this deed) witnesseth that, in consideration of the sum of one hundred pounds paid by the said C.D. to the said A.B. (the receipt whereof is hereby acknowledged), the said A.B. doth hereby convey and assure unto the said C.D. and his heirs [*or unto the said C.D.*] all that piece of land (parcels) [*referring to the marks and numbers in the Surveyor-General's map or other official record map, and describing particularly the situation, boundaries, and measurements, and speci-*

fyng any variation in any of the above particulars since the date of the last conveyance], with all appurtenances thereto belonging.

[Special provisions, if any.]

In witness whereof the said A.B. hath hereunto subscribed his name.

A.B.

Signed by the above-named A.B. in the presence of—
E.F.

SECOND SCHEDULE.

ACTS AND ORDINANCES REPEALED.

Acts of the Imperial Parliament.

- 11 and 12 Vict., c. 87.—An Act to extend the Provisions of an Act passed in the First Year of His late Majesty King William the Fourth, intituled “An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate.”
- 17 and 18 Vict., c. 113.—An Act to amend the Law relating to the Administration of the Estates of Deceased Persons.
- 18 and 19 Vict., c. 43.—An Act to enable Infants, with the Approbation of the Court of Chancery, to make Binding Settlements of their Real and Personal Estate on Marriage.

Ordinances of the Legislative Council of New Zealand.

- 1842, Sess. II., No. 10.—An Ordinance to facilitate the Transfer of Real Property, and to simplify the Law relating thereto.
- 1844, Sess. III., No. 11.—An Ordinance to amend an Ordinance to facilitate the Transfer of Real Property, and to simplify the Law relating thereto.

Acts of the General Assembly.

- 1854, No. 1.—The English Acts Act, 1854. In part, namely, so much thereof as declares that the above-cited Act of the Imperial Parliament, 11 and 12 Vict., cap. 87, shall extend to this colony, and be applied therein in the administration of justice.
- 1854, No. 3.—The Dower Act, 1854.
- 1854, No. 10.—The Powers of Attorney Act, 1854.
- 1855, No. 3.—The English Acts Act, 1855. In part, namely, so much thereof as declares that the above-cited Act of the Imperial Parliament, 17 and 18 Vict., cap. 113, shall extend to the colony, and be applied therein in the administration of justice.
- 1856, No. 6.—The English Acts Act, 1856. So much thereof as remains unrepealed.
- 1860, No. 16.—The Conveyancing Ordinance Amendment Act, 1860.
- 1868, No. 28.—The Conveyancing Charges Act, 1868.
- 1870, No. 5.—The Deceased Persons' Estates Act, 1870.
- 1870, No. 6.—The Partition Act, 1870.
- 1870, No. 30.—The Sales by Mortgagees Act, 1870.
- 1874, No. 11.—The Conveyancing Ordinance Amendment Act, 1874.
- 1877, No. 20.—The Conveyancing Ordinance Amendment Act 1874 Amendment Act, 1877.
- 1882, No. 31.—The Law Amendment Act, 1882. In part, namely, sections three to seven, both inclusive, and section fourteen.

Second Schedule.

Acts repealed.