

PROPERTY LAW.

ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"><li>1. Short Title, and commencement.</li><li>2. Interpretation.</li></ol> <p>I.—GENERAL RULES AFFECTING PROPERTY.</p> <ol style="list-style-type: none"><li>3. Fee to pass without words of limitation.</li><li>4. Freehold <i>in futuro</i> may be created.</li><li>5. Estate in chattel real may be created by deed.</li><li>6. When contingent remainders capable of taking effect.</li><li>7. Rule in Shelley's case.</li><li>8. Possibility upon a possibility.</li><li>9. Conveyance by husband to wife or wife to husband.</li><li>10. Declaration by tenants in common or joint tenants.</li><li>11. Person may convey property to himself jointly with others.</li><li>12. Executors or administrators to have powers of mortgagee.</li><li>13. Foreclosure prohibited.</li><li>14. No equitable mortgage by deposit of deeds.</li><li>15. Vendor's lien taken away.</li><li>16. Merger of reversion not to affect remedies.</li><li>17. "Equitable waste."</li><li>18. No merger by operation of law.</li><li>19. Suits for possession of land by mortgagors.</li><li>20. Release of part of land charged not to be an extinguishment of rent.</li><li>21. Restriction on effect of license to assign.</li><li>22. Married woman may assign reversionary interests.</li><li>23. Acknowledgment by married woman not necessary.</li><li>24. Husband's concurrence to wife's disposition of trust property not necessary.</li><li>25. Creation of easements. Easements in gross.</li><li>26. Alienation of property may be restricted in certain cases.</li><li>27. Disclaimer of powers.</li><li>28. Restriction on executory limitations.</li><li>29. Rights of purchaser as to execution.</li></ol> <p>II.—GENERAL RULES RELATING TO DEEDS.</p> <p><i>Deeds and their Effect.</i></p> <ol style="list-style-type: none"><li>30. Signature and attestation.</li><li>31. Sealing, delivery, &amp;c.</li></ol> | <ol style="list-style-type: none"><li>32. Receipt.</li><li>33. Payment of consideration-money.</li><li>34. Exercise of powers.</li></ol> <p><i>Certain Cases in which Deeds shall be necessary.</i></p> <ol style="list-style-type: none"><li>35. Cases in which deeds necessary.</li><li>36. Appointments to be by deed.</li><li>37. Disclaimer of land.</li></ol> <p><i>What may pass by Deed.</i></p> <ol style="list-style-type: none"><li>38. Rights of entry, &amp;c.</li><li>39. Assignment of debts and choses in action.</li></ol> <p><i>Operation of Deed.</i></p> <ol style="list-style-type: none"><li>40. Form of deed.</li><li>41. Absolute conveyance.</li><li>42. Conveyance subject to trust.</li><li>43. Uses abolished.</li><li>44. Certain forms of assurance abolished.</li><li>45. Estates by wrong.</li><li>46. Party not named may take benefit.</li><li>47. Construction of supplemental or annexed deed.</li><li>48. Covenants relating to land.</li><li>49. Effect of covenant with two or more jointly.</li></ol> <p>III.—COVENANTS AND POWERS.</p> <ol style="list-style-type: none"><li>50. Implied covenants may be negatived.</li><li>51. Where covenantor a married woman.</li><li>52. Benefit of implied covenants.</li></ol> <p>IV.—GENERAL WORDS IN CONVEYANCES OF LAND.</p> <ol style="list-style-type: none"><li>53. What a conveyance of land shall be deemed to include.</li></ol> <p>V.—CONTRACTS OF SALE.</p> <ol style="list-style-type: none"><li>54. Completion of contract after death.</li><li>55. Damages in case of inability to complete contract.</li></ol> <p>VI.—COVENANTS IMPLIED IN CONVEYANCES GENERALLY.</p> <ol style="list-style-type: none"><li>56. Covenants implied in conveyance by way of sale, &amp;c. Right to convey. Quiet enjoyment. Further assurance. Production of title-deeds.</li></ol> |
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57. Covenants implied in conveyance of property subject to mortgage.
58. Covenants implied in conveyance of term of years in land.
59. Covenants implied in conveyance by trustees, &c.

#### VII.—MORTGAGES.

##### *General Provisions.*

60. Form of mortgage.
61. Covenants, &c., implied in all mortgages.
62. Covenants implied in mortgage of term of years.
63. Indorsements on mortgages.
64. Equity of redemption. Notice of intention to redeem.
65. Mortgagor may require mortgagee to assign instead of reconveying.
66. Encumbrancers to have the like right.
67. Power for mortgagor to inspect title-deeds.
68. Restriction on consolidation of mortgages.
69. Colonial Treasurer may give discharge in certain cases.
70. Effect of advance on joint account, &c.

##### *Leasing by Mortgagee or Mortgagor.*

71. Leasing-powers of mortgagor and of mortgagee in possession.

##### *Mortgagee may appoint Receiver.*

72. Appointment, powers, remuneration, and duties of Receiver.

##### *Mortgagees may become Purchasers.*

73. Sale of mortgaged land by Public Trustee.
74. Mortgagor may redeem at mortgagee's valuation.
75. Mortgagee may become purchaser.
76. Protection of *bonâ fide* purchaser.
77. Fees payable on application.

##### *Action respecting Mortgage.*

78. Sale of mortgaged property in action for redemption.

#### VIII.—LEASES.

##### *General Provisions.*

79. Covenants by lessee.
80. Powers in lessor. To enter and view. To distrain. To re-enter and take possession.
81. Rent and benefit of lessee's covenants to run with reversion.
82. Obligation of lessor's covenants to run with reversion.
83. Apportionment of conditions on severance, &c.

##### *Forfeiture.*

84. Interpretation.
85. Restrictions on and relief against forfeiture of leases.
86. No fine for a license to assign.
87. Power of Court to protect under-lessees on forfeiture of superior leases.

#### IX.—MARRIAGE SETTLEMENTS.

88. Implied powers in tenants for life.
89. Powers of trustees of settlement.

#### X.—POWERS OF ATTORNEY.

90. Powers of attorney to continue in force until notice of death or revocation. All acts to be valid if done before receipt of any such notice. Declaration by attorney of non-receipt of notice to be proof of non-revocation.
91. Irrevocable power of attorney for value.
92. Power of attorney made irrevocable for fixed time.
93. Conveyance under power of attorney from person not in New Zealand.

#### XI.—CONVEYANCES BY TRUSTEES.

94. Conveyances, &c., by executors and administrators valid in certain cases.
95. When conveyances by executors, &c., to beneficiaries to be conclusive as to title.

#### XII.—PARTITION.

96. In action for partition Court may direct land to be sold. As to parties to actions for partition.
97. Authority for parties interested to bid.
98. Proceeds of sale, how applied.
99. Costs in partition suits.

#### XIII.—DEBTS CHARGED ON REAL ESTATE.

100. Devisee, &c., of real estate not to claim payment of mortgage out of personal assets. Rule of construction. Saving of right of mortgagee to recover his debt.

#### XIV.—RENT-CHARGES AND OTHER ANNUAL SUMS.

101. Recovery of annual sums charged on land.
102. Redemption of rent-charges.

#### XV.—MARRIED WOMEN.

103. Court may bind interest of married woman.
104. Power of attorney of married woman.

#### XVI.—MINORS.

##### *Management of Land during Minority.*

105. Sales and leases on behalf of minor.
106. Management of land, and receipt and application of income during minority.

##### *Settlements by Minors on Marriage.*

107. Sanction of Court to be obtained. Procedure. Minor dying under age. Application of section.

#### XVII.—DISENTAILING ASSURANCES.

108. Enrolment of disentailing assurances.

#### XVIII.—PURCHASERS: WHEN AFFECTED BY NOTICE.

109. Restriction on constructive notice.

#### XIX.—SERVICE OF NOTICES.

110. Regulations respecting notices.

#### XX.—ORDERS OF COURT.

111. Orders of Court conclusive.

*Property Law.*

XXI.—CONVEYANCING CHARGES. 112. Judges may fix scale of fees. How scale to be framed. Registrar to tax bills according to scale.  XXII.—VERIFICATION OF DEEDS, ETC. 113. Verification of instruments executed out of New Zealand.	114. Secondary evidence of instruments.  XXIII.—REPEALS. 115. Repeal of Acts. 116. Saving of provisions of Land Transfer Act. Schedules.
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A BILL INTITULED

AN ACT to consolidate, extend, and simplify the Law relating to Title.  
Property.

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

1. The Short Title of this Act is “The Property Law Act, 1904”; and it shall come into operation on the first day of January, one thousand nine hundred and *five*. Short Title, and commencement.

10 2. (1.) In this Act, if not inconsistent with the context,—  
“Bankruptcy” includes administration by the Court under  
“The Administration Act 1879 Amendment Act, 1888,”  
and any other act or proceeding in law having, under any  
Act for the time being in force, effects or results similar to  
15 those of bankruptcy; and “bankrupt” has a meaning  
corresponding with that of bankruptcy:  
“Conveyance,” unless a contrary intention appears, includes  
any deed of assignment, appointment, lease, settlement,  
or other assurance of any property; and “convey,” unless  
20 a contrary intention appears, has a meaning corresponding  
with that of conveyance: Interpretation.  
44 & 45 Vict., c. 41,  
s. 2 (xv)  
  
Ibid, s. 2 v)

- “ Court ” means the Supreme Court :
- “ Executors ” and “ administrators ” of a deceased person mean respectively the persons to whom probate of the will of such person, or letters of administration of his estate, has or have been granted by the proper Court : 5
- 44 & 45, Vict., c. 41,  
s. 2 (vii) “ Incumbrance ” includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien and a charge of a portion, annuity, or other capital or annual sum ; and “ incumbrancer ” has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof : 10
- Ibid, (iii) “ Income,” when used with reference to land, includes rents and profits :
- Ibid, (xiii) “ Instrument ” includes deed, will, award, and Act of Parliament : 15
- Ibid, (ii) “ Land ” includes all estates and interests, whether freehold or chattel, in real property :
- Ibid, (vi) “ Mortgage ” includes a charge on any property for securing money or money’s worth ; and “ mortgage-money ” means money or money’s worth secured by a mortgage : 20
- “ Mortgagee ” includes any person from time to time deriving title under the original mortgagee ; and “ mortgagee in possession ” means a mortgagee who in right of the mortgage has entered into and is in possession of the mortgaged property : 25
- “ Mortgagor ” includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right in the mortgaged property : 30
- “ Possession,” when used with reference to land, includes the receipt of income therefrom :
- Ibid, (i) “ Property ” includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest : 35
- Ibid, (viii) “ Purchaser ” includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person who for valuable consideration takes or deals for any property ; and “ purchase,” unless a contrary intention appears, has a meaning corresponding with that of purchaser ; but “ sale ” means only a sale properly so called : 40
- 1383, No. 29, s. 2 “ Registrar ” means the Registrar of the Supreme Court, 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 : 45
- 44 & 45 Vict., c. 41,  
s. 2 (ix) “ Rent ” includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise ; and “ fine ” includes premium or foregift, and any payment,

consideration, or benefit in the nature of a fine, premium, or foregift:

“ Will ” includes codicil.

44 & 45 Vict., c. 41,  
s. (2) (xii)

### I.—GENERAL RULES AFFECTING PROPERTY.

- 5        3. Where land is conveyed to any person without words of limitation, such conveyance shall be construed to pass the fee-simple or other whole estate or interest the party conveying had power to dispose of. Fee to pass without words of limitation. 1883, No. 29, s. 3
- 10       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. Freehold *in futuro* may be created. *Ibid.*, s. 4
5. Any estate or interest that can be created by will in any chattel real may also be created by deed. Estate in chattel real may be created by deed. *Ibid.*, s. 5
- 15       6. (1.) 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. When contingent remainders capable of taking effect. *Ibid.*, s. 6
- (2.) A contingent remainder or a contingent estate lying between two estates vested in the same person shall prevent the merger of those two estates.
- 20       7. Where a deed or will contains 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. Rule in Shelley's case. *Ibid.*, s. 7
- 25       8. No estate shall be void on account of its being made to depend on a possibility upon a possibility. Possibility upon a possibility. *Ibid.*, s. 8
9. 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. Conveyance by husband to wife or wife to husband. *Ibid.*, s. 9
- 30       10. Any two or more persons in whom any property is vested as tenants in common or joint tenants may by deed declare that they will be joint tenants or tenants in common thereof, and thereupon the same shall vest in them as joint tenants or tenants in common as the case may be. Declaration by tenants in common or joint tenants. *Ibid.*, s. 10
- 35       11. A person may convey property to himself jointly with another or others. Person may convey property to himself jointly with others. *Ibid.*, s. 11
12. Executors or administrators of a deceased mortgagee shall have and be deemed to have had as from the coming into operation of “ The Administration Act, 1879,” all the powers conferred by the mortgage on the mortgagee, and may exercise the same as fully and effectually as the mortgagee if living could have done. Executors or administrators to have powers of mortgagee. *Cf.* 1895, No. 11, s. 6
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Foreclosure prohibited.  
1883, No. 29, s. 14

13. A mortgagee shall not in any case be entitled to foreclose the equity of redemption in any land or in any chattels assigned under "The Chattels Transfer Act, 1889."

No equitable mortgage by deposit of deeds.  
Ibid, s. 15

14. No land shall be charged or affected, by way of equitable mortgage or otherwise, by reason only of any deposit of title-deeds relating thereto, whether or not such deposit be accompanied by a written memorandum of the intent with which the same has been made. 5

Vendor's lien taken away  
Ibid, s. 16

15. 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. 10

Merger of reversion not to affect remedies.  
Ibid, s. 17

16. Where the reversion of land subject to a lease is merged in any remainder, or other reversion, or future estate, the person entitled to the estate into which such reversion has merged, and his 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 so merged would have had. 15

"Equitable waste."  
Ibid, s. 19

17. 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 expressly appears by the instrument creating such estate. 20

No merger by operation of law.  
Ibid, s. 20

18. There shall not 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. 25

Suits for possession of land by mortgagors.  
Ibid, s. 21

19. 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 has been given by the mortgagee of his intention to take possession or to enter into the receipt of the rents and profits thereof, 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. 30 35

Release of part of land charged not to be an extinguishment of rent.  
Ibid, s. 24

20. The release from a rent of any part of the land out of which it is payable shall not be a discharge of the residue of such land from the rent: Provided that, where the owner of the part released is not the owner of the residue of the land charged with the rent, the owner of such residue shall be entitled to the same contribution from the owner of the part released as he would have been entitled to if no release had been made. 40

Restriction on effect of license to assign.  
Ibid, s. 25

21. 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. 45

Married woman may assign reversionary interests.  
Ibid, s. 27

22. 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.

Acknowledgment by married woman not necessary.  
Cf. 1885, No. 43, s. 4

23. It shall not be necessary to the validity of any deed or instrument executed by a married woman, whether before or after the commencement of this Act, that such deed or instrument be acknowledged by her. 50

24. A married woman (whether married before or after the commencement of "The Married Women's Property Act, 1884") who is or has been since such commencement a trustee, executrix, or administratrix, shall have and be deemed to have had from such commencement power in that character to make every disposition of the property subject to the trust, executorship, or administratorship, without her husband's concurrence, as if she were a *feme sole*, and such married woman may in such character and in relation to the trust property sue and be sued alone without joining her husband, as if she were a *feme sole*.

Husband's concurrence to wife's disposition of trust property not necessary.

25. (1.) An easement over land shall be created by deed, and shall have no effect until the deed is registered.

Creation of easements.

(2.) An easement over land may be created without such easement being attached or appurtenant to other land, and such easement shall run with and bind the land over which it is created, and all persons claiming title to such land by, through, or under the person creating the easement; and the easement so created shall be to all intents and purposes an incorporeal hereditament.

Easements in gross.

26. (1.) It shall be lawful by will, or by a settlement made on marriage, to provide that any estate or interest in any property comprised in the will or settlement devised, bequeathed, settled, or given to any beneficiary, whether male or female, shall not during the life of such beneficiary be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

Alienation of property may be restricted in certain cases.

(2.) "Beneficiary" for the purposes of this section is limited to children or grandchildren of the testator, or, in the case of a settlement, of the husband and wife.

(3.) The Court may in any case where it appears to be for the benefit of the person so restrained either wholly or partly remove such restraint.

27. (1.) A person to whom is given any power, whether coupled with an interest or not, may by deed release, or contract not to exercise the power, or he may by deed disclaim the power, and, after such disclaimer, shall not be capable of exercising or joining in the exercise of the power.

Disclaimer of powers.  
44 & 45 Vic., c. 41, s. 52;  
45 & 46 Vic., c. 39, s. 6

(2.) On such disclaimer the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

28. (1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute, or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect if and as soon as there is living any issue that has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

Restriction on executory limitations.  
Ibid, s. 10

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Rights of purchaser  
as to execution.  
44 & 45 Vict., c. 41,  
s. 8

29. On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence or in that of his solicitor, as such, but shall be entitled to have at his own cost the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

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## II.—GENERAL RULES RELATING TO DEEDS.

### (1.) *Deeds and their Effect.*

Signature and  
attestation.  
1883, No. 29, s. 30;  
1885, No. 43, s. 7

30. (1.) 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, and, if the deed is executed in New Zealand, such witness shall add to his signature his place of abode and calling or description, but no particular form of words shall be requisite for the attestation.

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1883, No. 29, s. 31

(2.) Where the party to be bound by a deed is a corporation, such deed shall be under the seal of the corporation, if any, but otherwise sealing shall not be necessary.

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(3.) Formal delivery and indenting shall not be necessary in any case.

Ibid, s. 33

(4.) Every deed executed as required by this section shall be binding on the party purporting to be bound thereby.

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(5.) Every deed executed before the commencement of this Act that is attested in the manner required or authorised by any enactment in force at the time of such execution, or at any time subsequent thereto, shall be deemed to be and to have been as valid and effectual as if it had been attested as required by this section.

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Sealing, delivery,  
&c.  
Cf. 1885, No. 57,  
s. 166

31. Where a conveyance of land is hereafter made by a corporation, and purports to be executed by that corporation under its common seal or its official seal for use in New Zealand, or purports to be executed by an attorney of that corporation authorised to do so under such common or official seal, then such conveyance shall, in favour of persons *bonâ fide* and for valuable consideration deriving title by, through, or under the same, be conclusive proof that it was executed under proper authority, and is binding on the corporation.

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Receipt.  
1883, No. 29, s. 32

32. An acknowledgment of the receipt of the consideration 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.

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Payment of  
consideration-  
money.  
1885, No. 43, s. 5

33. Where a solicitor for a vendor or mortgagee produces a deed or instrument having in the body thereof or indorsed thereupon a receipt for consideration-money or other consideration, the deed or instrument being executed or the indorsed receipt being signed by the person entitled to give a receipt for that consideration, the deed or instrument shall be sufficient authority to the person liable to pay or give such consideration for his paying or giving the same to the solicitor, and it shall not be necessary for the solicitor to produce any separate or other direction or authority in that behalf from the person who executed or signed the deed, instrument, or receipt.

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Exercise of powers.  
1883, No. 29, s. 34

34. Where a power of appointment by deed or writing, otherwise than by will, is exercised by deed executed in the manner required by this Act, such deed shall be deemed to be a valid exercise of the power, notwithstanding that by the instrument creating the power some additional or other form of execution is required.

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*Certain Cases in which Deeds shall be 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 be made by deed, except a lease for a term not exceeding a tenancy for one year, which lease may be made either by writing or by parol; and if there be a tenancy and no agreement as to its duration, then such tenancy shall be deemed to be a tenancy determinable at the will of either of the parties by one month's notice in writing.

Cases in which  
deeds necessary.  
1883, No. 29, s. 35  
1885, No. 43, s. 6

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 be executed as a deed is hereby required to be executed:

Appointments to be  
by deed.  
1883, No. 29, s. 36

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 of land.  
Ibid, s. 37

*What may pass by Deed.*

38. Every right of entry, contingent remainder, and every contingent or executory or future estate, right, or interest in property, may be conveyed by deed:

Rights of entry, &c.  
Ibid, s. 38

Provided that no person shall be empowered by this Act to dispose of any expectancy he may have as next-of-kin, or under "The Administration Act, 1879."

39. (1.) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal or equitable chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities that would have been entitled to priority over the right of the assignee if this Act had not been 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.

Assignment of debts  
and choses in  
action.  
Ibid, s. 39

(2.) Where the debtor, trustee, or other person liable in respect of such debt or chose in action has had notice that such assignment is disputed by the assignor or any one claiming under him, or that there are 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.

*Operation of Deed.*

40. A deed, according to the form in the *First Schedule* hereto, or to the effect thereof, shall be valid and effectual to pass any land.

Form of deed.  
Ibid, s. 40

41. Where any land is conveyed directly and immediately to any person, the whole legal and equitable ownership of such land shall vest in such person.

Absolute  
conveyance.  
Ibid, s. 41

Conveyance subject to trust.  
1883, No. 29, s. 42

42. Where any land is so conveyed to any person in trust for any other person, the whole legal ownership of such land shall vest in the person to whom the same is so immediately and directly conveyed, subject, however, to a trust for the benefit of such other person.

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Uses abolished.  
Ibid, s. 43

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.

Certain forms of assurance abolished.  
Ibid, s. 44

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.

Estates by wrong.  
Ibid, s. 45

45. No conveyance shall create any estate by wrong, or work a forfeiture.

Party not named may take benefit.  
Ibid, s. 46

46. Any person may take an immediate benefit under a deed although not named as a party thereto.

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Construction of supplemental or annexed deed.  
Ibid, s. 53

47. (1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

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(2.) This section applies to deeds executed either before or after the commencement of this Act.

Covenants relating to land.  
Ibid, s. 58

48. (1.) A covenant relating to land, whether expressed or implied, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect accordingly.

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(2.) This section applies only to covenants made after the commencement of this Act.

Effect of covenant with two or more jointly.  
Ibid, s. 60

49. (1.) A covenant and contract by deed, and a bond or obligation by deed, made with two or more jointly, to pay money, or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall by virtue of this Act imply, an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person on whom devolves the right to sue on the covenant, contract, bond, or obligation.

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(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only to a covenant, contract, bond, or obligation made after the commencement of this Act, and then only in so far as a contrary intention is not expressed in such covenant, contract, bond, or obligation, and shall have effect subject to the provisions thereof.

40

### III.—COVENANTS AND POWERS.

Implied covenants may be negatived.  
1883, No. 29, s. 69  
44 & 45 Vict., c. 41,  
s. 7 (F7)

50. A covenant or power implied under this Act shall have the same force and effect, and may be enforced in the same manner, as if it had been set out at length in the deed wherein it is implied :

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Provided that any such covenant or power may be negatived, varied, or extended in the deed, or by a memorandum in writing indorsed thereon and executed as a deed is required to be executed by the parties to the deed intended to be bound thereby.

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51. Where a covenant or power is implied under this Act in a deed made after the commencement of this Act, and the implied covenantor, or the donee of the implied power, is a married woman, such covenant or power shall be implied against or in such married woman, whether she were married before or after the commencement of "The Married Women's Property Act, 1884."

Where covenantor a married woman.

52. The benefit of a covenant implied under this Act shall be annexed and incident to, and shall go with the estate and interest of the implied covenantee, and may be enforced by any person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

Benefit of implied covenants.  
44 & 45 Vict., c. 41,  
s. 7 (FG)

#### IV.—GENERAL WORDS IN CONVEYANCES OF LAND.

53. (1.) A conveyance of land made after the commencement of this Act shall be deemed to include, and shall operate to convey with the land, all buildings, erections, fixtures, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of, or as appurtenant to, the land or any part thereof.

What a conveyance of land shall be deemed to include.  
Ibid, s. 6 (1)

(2.) A conveyance of land having houses and other buildings thereon shall be deemed to include, and shall operate to convey with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever appertaining, or reputed to appertain, to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of the conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of, or appurtenant to, the land, houses, or other buildings conveyed, or any of them or any part thereof.

Ibid, s. 6 (2)

(3.) This section applies only in so far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms and provisions of the conveyance.

Ibid, s. 6 (4)

(4.) This section shall not be construed as giving to any person a better title to any property, right, or thing mentioned in this section than the title which the conveyance gives him to the land expressed to be conveyed, or as conveying to him any such property, right, or thing, further or otherwise than as the same could have been conveyed to him by the conveying parties,

Ibid, s. 6 (5)

## V.—CONTRACTS OF SALE.

Completion of  
contract after  
death.

44 & 45 Vict., c. 41  
s. 4

Damages in case of  
inability to complete  
contract.

54. Where at the death of any person there is subsisting a contract for the sale of the fee-simple or other freehold interest in any land, his executor or administrator may convey the land for all the estate and interest vested in the deceased person at his death in any manner proper for giving effect to the contract. 5

55. (1.) Where a person without fraud makes a contract for the sale, lease, exchange, partition, surrender, or other conveyance of any interest in land, and is incapable of making a good title thereto, then the person entitled to enforce such contract shall not be entitled to any other damages than the expenses he has incurred in investigating the title to the interest agreed to be conveyed, together with a return of any deposit or other moneys he has paid, and interest thereon at the rate of six pounds per centum per annum until payment. 10

(2.) This section applies only to a contract made after the commencement of this Act, and then only in so far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms and provisions of the contract. 15

## VI.—COVENANTS IMPLIED IN CONVEYANCES GENERALLY. 20

Covenants implied  
in conveyance by  
way of sale, &c.  
Cf. 1883, No. 29,  
s. 47

56. (1.) In every conveyance by way of sale, marriage settlement, or lease, and in every other conveyance for valuable consideration, not being by way of mortgage, there shall be implied (except as provided by section *fifty-nine* hereof) the following covenants by the person or each of the persons who conveys, as far as regards the subject-matter expressed to be conveyed by him, with the person to whom the conveyance is made, or with the persons jointly to whom the conveyance is made as joint tenants, or with each of the persons to whom the conveyance is made as tenants in common, that is to say:— 25

Right to convey.  
1883, No. 29, s. 47 (1)

(a.) A covenant for right to convey, meaning thereby a covenant that the 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 mentioned in the conveyance: 30

Quiet enjoyment.  
Ibid, s. 47 (2)

(b.) A covenant for quiet enjoyment, meaning thereby a covenant 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: 40

Further assurance.  
Ibid, s. 47 (3)

(c.) A covenant for further assurance, meaning thereby a covenant that the conveying party, his executors or administrators, will, at the cost of the party requiring the same, 45

do and execute all such acts and conveyances for the better assuring of the estate or interest thereby conveyed as may from time to time be reasonably required by the party to whom the same is conveyed or any person claiming under him :

(d.) A covenant for production of title-deeds, meaning thereby a covenant that the conveying party, his executors, administrators, or assigns, at the request and cost of the grantee, his executors, administrators, or assigns, will, unless prevented by fire or other inevitable accident, produce to him or them within New Zealand all registered deeds and instruments or evidences of title in the possession of the conveying party, and relating to the lands conveyed as well as to other lands ; and also that such conveying party, his executors, administrators, and assigns, will, unless prevented as aforesaid, keep the said deeds and instruments or evidences of title in the meantime whole and uncanceled. This covenant shall run with the land, so as to bind only the person for the time being entitled to the possession of the deeds, instruments, or evidences of title.

Production of  
title-deeds.  
1895, No. 11, s. 5

(2.) The covenants for right to convey and for quiet enjoyment shall be restricted to the acts, deeds, and defaults of the conveying party, and of all persons through whom he derives title otherwise than by purchase for value, and of all persons claiming or to claim through, under, or in trust for him, or through or under any persons through whom he derives title as aforesaid.

57. (1.) In every such conveyance of property subject to an incumbrance there shall be implied a covenant by the person to whom the property is conveyed with the person making the conveyance to pay the moneys or perform the obligations secured by the incumbrance, and to perform and observe the covenants and provisions of the incumbrance, and to keep harmless and indemnified the person making the conveyance in respect of such moneys, obligations, covenants, and provisions.

Covenants implied  
in conveyance of  
property subject to  
mortgage.  
Cf. 1885, No. 57,  
s. 81

(2.) This covenant shall run with and bind the land comprised in the conveyance, and all persons claiming title thereto by, through, or under the person to whom the property is conveyed.

(3.) This section applies only in so far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the provisions thereof.

58. In every conveyance of a term of years in land by way of sale or marriage settlement, and in every other conveyance of a term of years in land for valuable consideration, not being by way of mortgage, there shall be implied (except as provided by the *next succeeding* section) the following covenants by each conveying party, severally, for himself, his executors and administrators, to the extent of the interest parted with by him, but restricted to the acts, deeds, and defaults of such conveying party, and of all persons through whom he derives title otherwise than by purchase for value, and of all persons claiming through, under, or in trust for him, them, or any of them, that is to say,—

Covenants implied  
in conveyance of  
term of years in  
land.

That the rent reserved by the lease has been paid, and the covenants and conditions expressed or implied in the lease, and to be performed and observed by the lessee, have been performed and observed up to the date of the conveyance.

Covenants implied in conveyance by trustees, &c.  
44 & 45 Vict., c. 41,  
s. 7 (f)

59. Where any person conveys and is expressed to convey as trustee or mortgagee, or as executor or administrator of a deceased person, or as committee of a lunatic so found by inquisition, or as Public Trustee, when appointed or acting as committee of a lunatic's estate, or where any person conveys under an order of the Court, or in a fiduciary capacity, the covenants set out in sections *fifty-six* and *fifty-eight* hereof shall not be implied, except to the extent hereinafter mentioned, but there shall be implied the following covenants on the part of the person conveying, which covenants shall be deemed to extend to his own acts only, namely:—

(a.) That he has not executed or done, or knowingly suffered, or been party or privy to any deed or thing whereby or by means whereof the subject-matter of the conveyance or any part thereof is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof he is in any wise hindered from conveying the subject-matter of the conveyance or any part thereof in the manner in which it is expressed to be conveyed.

(b.) The covenant for production of title-deeds set out in section *fifty-six* hereof; but such covenant shall bind such conveying party so long only as he is entitled to the custody of such deeds or instruments, and shall not be deemed to create any personal liability for the acts or defaults of any other person into whose custody such deeds or instruments may come.

## VII.—MORTGAGES.

### *General Provisions.*

Form of mortgage.

60. (1.) Mortgages of land may be made in the form in the *Second* Schedule hereto, or by an ordinary conveyance by way of mortgage.

(2.) Every such mortgage shall be deemed to be a conveyance of land by way of mortgage within the meaning of this Act, and may be registered accordingly.

Covenants, &c., implied in all mortgages.

61. (1.) In every mortgage of land made after the commencement of this Act there shall be implied the covenants, powers, and conditions set forth in the *Third* Schedule hereto, except in so far as the same are varied or negatived in the mortgage deed, or by writing indorsed thereon and signed by the mortgagor.

(2.) In every such mortgage there shall also be implied the covenants for right to convey, for quiet enjoyment, and for further assurance set forth in section *fifty-six* hereof, with this addition: that such covenants shall extend to the acts, deeds, and defaults of the mortgagor, and of all other persons, if any, having or claiming any estate or interest in the mortgaged property; and the costs of any further assurance required by the mortgagee shall during the continuance of the mortgage be borne by the mortgagor:

Provided that the covenant for quiet enjoyment shall not be implied against any mortgagor until default in payment of the principal moneys secured by the mortgage at the time fixed for the repayment thereof, or in payment of interest thereon, or until breach of any covenant by the mortgagor contained or implied in the mortgage, and until such default or breach it shall not be lawful for a mortgagee to enter into possession of the mortgaged land.

62. In every mortgage of a term of years in land there shall be implied the following covenants by the mortgagor :—

Covenants implied in mortgage of term of years.

- 10 (a.) That the rent reserved by the lease has been paid, and the covenants and conditions expressed or implied in the lease, and to be performed and observed by the lessee, have been performed and observed up to the date of the mortgage ; and
- 15 (b.) That the mortgagor will, during the continuance of the security, pay the rent reserved by the lease, and perform and observe the covenants and conditions expressed or implied in the lease, and to be performed and observed by the lessee, and will at all times keep the mortgagee indemnified against all actions, expenses, and claims on
- 20 account of the non-payment of the said rent, or the breach of the said covenants or conditions, or any of them.

63. (1.) In the case of every mortgage of land (whether made before or after the commencement of this Act),—

Indorsements on mortgages.

- 25 (a.) The mortgage debt may be discharged ; and
- (b.) The amount secured by the mortgage may be increased or reduced ; and
- (c.) The term or currency of the mortgage may be renewed or extended ; and
- 30 (d.) The interest of the mortgagee may be assigned—  
by a memorandum indorsed on or annexed to the mortgage deed, and executed as a deed is required to be executed.

(2.) Such memorandum may be in such one of the forms in the *Fourth* Schedule hereto as is applicable, and may be registered in

35 like manner as the original mortgage.

(3.) Every such memorandum of discharge shall vacate the mortgage debt, and shall without any reconveyance vest the estate and interest of the mortgagee of and in the mortgaged property in the person for the time being entitled to the equity of redemption :

40 Provided that nothing herein shall prevent a mortgagee from executing a reconveyance of the mortgaged property if he thinks fit and the mortgagor requires it ; but no mortgagee shall be compelled to execute any such reconveyance.

(4.) Every such memorandum of assignment shall, without any further conveyance or assignment, pass to the assignee the mortgage debt, together with the legal estate in the mortgaged property, and all the rights, powers, and remedies of the mortgagee expressed or implied in the mortgage deed.

50 64. (1.) A mortgagor is entitled to redeem the mortgaged land at any time before the same has been actually sold by the mortgagee under his power of sale, on payment of all moneys due and owing under the mortgage at the time of payment :

Equity of redemption.

3 & 4 Will. IV.,  
c. 27, sec. 28

Provided that where the mortgagee has entered into possession of the mortgaged land, or any part thereof, the mortgagor shall not be entitled to redeem such land or part thereof after the expiration of twenty years from the time when the mortgagee entered into possession of the same, unless an acknowledgment in writing of the title of the mortgagor, or of his right to redeem, has since that time been given to the mortgagor by the mortgagee, in which case the mortgagor shall be entitled to redeem at any time within twenty years from the date of such acknowledgment, or of the last of such acknowledgments, as the case may be. 5

(2.) A mortgagor is entitled to redeem the mortgaged land although the time for redemption appointed in the mortgage deed has not arrived; but in such case he shall pay to the mortgagee, in addition to any other moneys then due and owing under the mortgage, interest on the principal sum secured thereby for the unexpired portion of the term of the mortgage. 10

Notice of intention  
to redeem.

(3.) A mortgagor seeking to redeem after the expiry of the term of the mortgage, or of any further term for which it has been renewed or extended, shall give to the mortgagee three clear months' notice of his intention to redeem, or shall pay to the mortgagee three months' interest in lieu thereof: 20

Provided that this subsection shall not apply in any case where the mortgagee has entered into possession of the mortgaged land, or has taken proceedings to realise his security.

(4.) For the purposes of this section, "moneys due and owing under a mortgage" shall include all expenses reasonably incurred by the mortgagee,— 25

(a.) For the protection and preservation of the mortgaged land, or otherwise in accordance with the provisions of the mortgage deed; and 30

(b.) With a view to the realisation of his security: and in either case shall include interest on the sums so expended after the rate expressed in the mortgage deed.

(5.) This section extends to mortgages of chattels, and to mortgages comprising both land and chattels. 35

(6.) This section applies only to mortgages executed after the commencement of this Act.

Mortgagor may  
require mortgagee  
to assign instead of  
reconveying.

44 & 45 Vict., c. 41  
s. 15

65. (1.) Where a mortgagor is entitled to redeem, he may require the mortgagee instead of reconveying, and on the terms on which he would be bound to reconvey, to execute in the form numbered (4) in the *Fourth* Schedule hereto a memorandum of assignment of the mortgage debt to any person the mortgagor appoints; and the mortgagee shall be bound to assign the same accordingly. 40

(2.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary; but does not apply where the mortgagee is or has been in possession. 45

Incumbrancers to  
have the like right.  
45 & 46 Vict., c. 39,  
s. 12

66. The like right to require a mortgagee to assign the mortgage debt to a third person, together with a right to require the mortgagee to convey the mortgaged land to such third person, shall belong to and may be enforced by each incumbrancer or by 50



the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

5 67. A mortgagor, so long as his right to redeem subsists, shall, notwithstanding any stipulation to the contrary, be entitled from time to time at reasonable times, on his request and at his own costs, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged land in the custody or power of the mortgagee.

Power for mortgagor to inspect title-deeds. 44 & 45 Vict., c. 41, s. 16

15 68. (1.) A mortgagor seeking to redeem any one mortgage shall, by virtue of this Act, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage he seeks to redeem.

Restriction on consolidation of mortgages. Ibid., s. 17

20 (2.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act, and then only in so far as a contrary intention is not expressed in the mortgage deeds or one of them.

25 69. (1.) Where any mortgagee is absent from New Zealand, and, so far as the mortgagor is aware, there is no person in New Zealand authorised to give a discharge of the mortgage debt at or after the time appointed for the redemption of the mortgage, the Colonial Treasurer, on tender to him of the mortgage debt, and on proof to his satisfaction that the amount tendered is the whole amount due under the mortgage, may receive the same in trust for the mortgagee or other person entitled thereto, and on receipt thereof shall sign a memorandum of discharge of the mortgage debt in the form numbered (1) in the *Fourth* Schedule hereto.

Colonial Treasurer may give discharge in certain cases. 1895, No. 11, s. 2

30 (2.) Such memorandum of discharge when registered shall, for the protection of any person dealing with the mortgagor in good faith and for value, be conclusive proof of the happening of all conditions necessary to entitle the Colonial Treasurer to receive the mortgage debt and to sign such memorandum.

Ibid., s. 3

40 70. (1.) Where, in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one, out of money or as money belonging to them on a joint account, or where a mortgage, or such an obligation, or such a transfer is made to more persons than one jointly, and not in shares, the mortgage-money or other money or money's worth for the time being due to those persons on the mortgage or obligation shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to them on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the executors or administrators of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

Effect of advance on joint account, &c. Ibid., s. 61

(2.) Such survivors or survivor, or the executors or administrators of such last survivor, may exercise all powers conferred by the mortgage or obligation as fully and effectually as the mortgagees, if living, could have done.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act, and then only in so far as a contrary intention is not expressed in the mortgage, obligation, or transfer, and shall have effect subject to the terms and provisions thereof. 5

*Leasing by Mortgagee or Mortgagor.* 10

Leasing powers of mortgagor and of mortgagee in possession.  
44 & 45 Vict., c. 41, s. 18

71. (1.) A mortgagor of land, while in possession, may, as against every encumbrancer, from time to time lease the mortgaged land or any part thereof.

(2.) A mortgagee of land, while in possession, may, as against all prior encumbrancers, if any, and as against the mortgagor, from time to time lease the mortgaged land or any part thereof. 15

(3.) Every such lease shall be made to take effect in possession not later than twelve months after its date, and may be for any term not exceeding twenty-one years.

(4.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken. 20

(5.) Every such lease shall contain a covenant with the lessee for payment of the rent, and a condition of re-entry on the breach of any covenant on the lessee's part expressed or implied in the lease, or on the rent not being paid within a time therein specified not exceeding thirty days. 25

(6.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence. 30

(7.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more mortgagees than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with. 35

(8.) Where a lease is made by a mortgagor under this section, then a mortgagee, after his power of sale has arisen, may sue in his own name or in the name of the mortgagor on the lease, and may, subject to the rights of any prior incumbrancer, enforce and exercise all the covenants, powers, and provisions of the lease, expressed or implied, as fully and effectually as the mortgagor could have done. 40

(9.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease, if granted, would be binding. 45

(10.) This section applies only in so far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms and provisions of the mortgage deed or of any such writing.

(11.) Nothing in this Act shall prevent the mortgagor and mortgagee from reserving to or conferring on both or either of them, 50

by express provision in the mortgage deed, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, so far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(12.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term, or on any other conditions, than such as could have been granted or imposed by the mortgagor with the concurrence of all incumbrancers if this Act had not been passed.

(13.) This section applies only in the case of a mortgage made after the commencement of this Act; but the provisions thereof or any of them may, by agreement in writing made after the commencement of this Act between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act:

Provided that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(14.) The provisions of this section shall be construed to extend and apply, so far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

*Mortgagee may appoint Receiver.*

72. (1.) A mortgagee may at any time after he has become entitled to exercise the power of sale conferred by this Act, but not until then, by writing under his hand, appoint such person as he thinks fit to be Receiver of the income of the mortgaged land or of any part thereof.

Appointment,  
powers, remuneration,  
and duties of  
Receiver.  
44 & 45, Vict.,  
c. 41, s. 24

(2.) The Receiver shall be deemed to be the agent of the mortgagor, and the mortgagor shall be solely responsible for the Receiver's acts or defaults, unless the mortgage deed provides otherwise.

(3.) The Receiver shall have power to demand and recover all the income of which he is appointed Receiver, by action, distress, or otherwise, in the name of the mortgagor or of the mortgagee, to the full extent of the estate or interest the mortgagor could dispose of, and to give receipts for the same accordingly.

(4.) A person paying money to the Receiver shall not be concerned to inquire whether any case has happened authorising the Receiver to act.

(5.) The Receiver may be removed, and a new Receiver may be appointed from time to time by the mortgagee by writing under his hand.

(6.) The Receiver shall be entitled to retain out of any money received by him for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as Receiver, a commission at such rate not exceeding five per centum on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court on application to a Judge thereof thinks fit to allow.

(7.) The Receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any property of an insurable nature comprised in the mortgage, whether affixed to the freehold or not.

(8.) The Receiver shall apply all money received by him as follows, namely:— 5

(a.) In discharge of all rents, taxes, rates, and outgoings whatsoever affecting the mortgaged land; and

(b.) In keeping down all annual sums or other payments and the interest on all principal sums having priority to the mortgage in right whereof he is Receiver; and 10

(c.) In payment of his commission and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; 15

(d.) In payment of the interest accruing due in respect of any principal money due under the mortgage; and

(e.) In payment of the residue (if any) to the person who, but for the possession of the Receiver, would have been entitled to receive the income of the mortgaged land. 20

(9.) The provisions of this section shall, *mutatis mutandis*, apply to mortgages of chattels, or to mortgages comprising both land and chattels.

*Mortgagees may become Purchasers.* 25

73. (1.) Any present or future mortgagee of land may, at any time after he has become entitled to exercise the power of sale contained or implied in his mortgage, apply in writing to the Public Trustee to conduct the sale of the whole or any part of the land comprised in the mortgage, and in such application shall state the value at which he estimates the land to be sold. 30

(2.) The Public Trustee shall fix a convenient time (being not more than three months and not less than one month from the date of the application) and a convenient place for the sale, give such notice of the sale by advertisement in some newspaper circulating in the neighbourhood as he deems sufficient, approve of proper conditions of sale, employ an auctioneer, and do all other necessary acts for carrying out the sale. 35

74. At any time before the sale the mortgagor may pay to the mortgagee either the value of the land, as estimated by the mortgagee, or the amount due and owing under the mortgage (whichever is the lesser sum), together with the expenses already incurred by the mortgagee in connection with the intended sale and incurred by him in connection with the land since the date of the valuation thereof, and the mortgagee's receipt for such payment shall vest his estate and interest in the land intended to be sold in the person for the time being entitled to the equity of redemption: 40 45

Provided that where the sum so paid is less than the amount owing under the mortgage, the balance may be recovered from the mortgagor under the covenant to repay expressed or implied in the mortgage. 50

Sale of mortgaged land by Public Trustee.  
Cf. 1888, No. 29, s. 53,

bid, s. 54

Mortgagor may redeem at mortgagee's valuation.

75. (1.) The mortgagee may be a bidder at such sale conducted as aforesaid, and become the purchaser of the land or any part thereof.

Mortgagee may become purchaser. 1883, No. 29, s. 55

(2.) In the event of the mortgagee being declared the purchaser, the Public Trustee shall, on demand by the mortgagee, execute a deed expressed to be made between the Public Trustee (describing him by his official description only) and the mortgagee, with or without the addition of any other parties, and containing a recital that such sale has been made under this section.

Ibid, s. 56

(3.) In such deed the consideration to be stated shall be not less than the value of the land as estimated by the mortgagee as aforesaid.

(4.) Every such deed shall be executed by the Public Trustee 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 it had been conveyed 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 the 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.

Ibid, s. 57

(5.) A conveyance in pursuance of any such sale may be made by the Public Trustee to any person whom the mortgagee in writing may appoint, instead of to the mortgagee, and shall have the same force and effect in favour of the person to whom it is made as it would have had if made to the mortgagee.

1895, No. 11, s. 4

(6.) Nothing in this Act shall prejudice or affect the title of mortgagees who have purchased and taken conveyances under any Act hereby repealed, or 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, except that the sale shall be completed by the Registrar of the Court who conducted the sale, or his successor in office.

1883, No. 29, s. 59

76. Any conveyance executed by the Public Trustee upon a sale made after the commencement of this Act shall, in favour of any person (other than a mortgagee purchasing under section seventy-five hereof) claiming by, through, or under such conveyance in good faith and for valuable consideration, be conclusive proof that all the provisions of this Act relating to the sale have been complied with, and that all things have happened and all times have elapsed to authorise such conveyance to be made.

Protection of bona fide purchaser.

77. In respect of every application under section seventy-three hereof there shall be paid to the Public Trustee by the mortgagee, in addition to the reasonable expenses of and incidental to the sale,—

Fees payable on application. Ibid, s. 58

(a.) Where the land is sold, a fee of five shillings for every one hundred pounds of the purchase-money, provided that in no case shall such fee be less than two pounds or more than twenty pounds; or

(b.) Where the land is withdrawn from sale, then a fee of two pounds.

*Action respecting Mortgage.*

Sale of mortgaged  
property in action  
for redemption.  
44 & 45 Vict., c. 41,  
s. 25

78. (1.) A person entitled to redeem any mortgaged land may have a judgment or order for sale, instead of redemption, in an action brought by him either for redemption alone or for sale alone, or for sale or redemption in the alternative. 5

(2.) In any action, whether for redemption or for sale, or for raising and payment in any manner of mortgage-money, the Court, on the request of the mortgagee or of any person interested either in the mortgage-money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage-money, may direct a sale of the mortgaged land on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms. 10 15

(3.) Where an action for sale is brought by a person interested in the right of redemption, the Court may, on the application of any defendant, direct the plaintiff to give security for costs, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them. 20

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers. 25

(5.) This section applies to actions brought either before or after the commencement of this Act, and extends to actions for redemption or sale of any mortgaged chattels.

## VIII.—LEASES.

*General Provisions.*

Covenants by lessee.  
Ibid, s. 61

79. In every lease of land there shall be implied the following covenants by the lessee, for himself, his executors, administrators, and assigns, with the lessor, his executors, administrators, and assigns:— 30

(a.) That he or they will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes payable in respect of the demised premises during the continuance of the lease: 35

(b.) That he or they will keep and yield up the demised premises in good and tenantable condition and repair. 40

Powers in lessor.  
Ibid, s. 62.

80. In every lease of land there shall be implied the following powers in the lessor, his executors, administrators, or assigns:— 40

To enter and view.

(a.) That he or they may, by himself or themselves, or his or their agents, at all reasonable times, enter upon the demised premises 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, or affix to some conspicuous part of the demised premises, a notice in writing of any defect, requiring him or 45

them, within a reasonable time to be therein prescribed, to repair the same :

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

To distrain.

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

To re-enter and take possession.

81. (1.) Rent reserved by a lease, and the benefit of every covenant or provision therein having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein, shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and may be recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part of the land.

Rent and benefit of lessee's covenants to run with reversion.

44 and 45 Vict., c. 41, s. 10.

(2.) This section applies only to leases made after the commencement of this Act.

82. (1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, in so far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise ; and in so far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Obligation of lessor's covenants to run with reversion.

Ibid, s. 11

(2.) This section applies only to leases made after the commencement of this Act.

83. (1.) Notwithstanding the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition in the lease, shall be apportioned and shall remain annexed to the several parts of the reversionary estate so severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land that has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had been the only land comprised in the lease.

Apportionment of conditions on severance, &c.

Ibid, s. 12

(2.) This section applies only to leases made after the commencement of this Act.

*Forfeiture.*

Interpretation.  
55 and 56 Vict.,  
c. 13, s. 14 (3).

Ibid, s. 5.

Restrictions on and  
relief against for-  
feiture of leases.  
55 & 56 Vict., c. 13,  
s. 14 (1)

44 and 45 Vict.,  
c. 41, s. 14 (2)

Cf. 1882, No. 29,  
s. 26

44 and 45 Vict.,  
c. 41, s. 14 (4)

Ibid, s. 14 (5)

84. For the purposes of the next three succeeding sections,—
- “Bankruptcy” does not include the voluntary winding-up of any solvent company :
- “Lease” includes an original or derivative under-lease, a grant securing a rent by condition, and an agreement for a lease where the lessee has become entitled to have his lease granted :
- “Lessee” includes an original or derivative under-lessee, a grantee under any such grant as aforesaid, a person entitled under an agreement as aforesaid, and the executors, administrators, and assigns of a lessee :
- “Lessor” includes an original or derivative under-lessor, a grantor as aforesaid, a person bound to grant a lease under an agreement as aforesaid, and the executors, administrators, and assigns of a lessor :
- “Under-lease” includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted :
- “Under-lessee” includes any person deriving title through or from an under-lessee.

85. (1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable by action or otherwise unless and until the lessor serves on or sends by registered letter to the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation therefor in money to the satisfaction of the lessor.

(2.) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, the lessee may in the lessor's action, if any, or in any action brought by himself or on motion apply to the Court for relief; and the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the circumstances of the case, may grant or refuse relief, as it thinks fit; and in case of relief may grant the same on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit.

(3.) Where any such relief as aforesaid is granted, the Court shall direct a minute or record thereof to be made on the lease or otherwise.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue so long as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for



which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section applies to any right or option to purchase any land where the purchaser is in possession of that land. 44 & 45 Vict., c. 41, s. 14 (6)

5 (7.) This section does not extend, —

(a.) To a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(b.) In the case of a lease of any premises licensed under "The Licensing Act, 1881," to a covenant not to do or omit any act or thing whereby the license may be lost or forfeited.

10 (8.) This section shall not affect the law relating to re-entry or forfeiture in case of non-payment of rent. Ibid, s. 14 (8)

15 86. (1.) In all leases containing a covenant, condition, or agreement that the lessee shall not, without the license or consent of the lessor, assign, under-let, part with the possession, or dispose of the demised premises or any part thereof, such covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such license or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such license or consent. No fine for a license to assign. 55 and 56 Vict., c. 13, s. 3

20 (2.) Neither the assignment of a lease, nor the under-letting of any leasehold, by the assignee of a bankrupt or by the Sheriff under an execution, nor the bequest of a leasehold, shall be deemed to be a breach of any such covenant, condition, or agreement, unless the contrary is expressly declared in the lease. 1883, No. 29, s. 26

30 87. Where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease, or any part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease, or any less term, the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in such property, upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise as the Court in the circumstances of each case shall think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original under-lease. Power of Court to protect under-lessees on forfeiture of superior leases. 55 and 56 Vict., c. 13, s. 4

#### IX.—MARRIAGE SETTLEMENTS.

45 88. In every conveyance of land by way of settlement on marriage 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, where there is no tenant for life in possession, then in the trustees of the settlement, that is to say:—

That he or they may lease, or concur in respect of such share in leasing, the land comprised in the 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. 5

Powers of trustees of settlement.  
1888, No. 29, s. 39

89. (1.) 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:— 10

That they may dispose of the land comprised in the settlement, or any part thereof, either by way of sale or in exchange for other land of the like nature and tenure in New Zealand; or, where an undivided share in any land is in settlement, may concur in a partition of such land, and may give or take any money by way of equality of exchange or partition: 15

(2.) The moneys to arise from any such sale or to be received for equality of exchange or partition shall, with all convenient speed, be laid out in the purchase of other land of like nature and tenure in New Zealand; and any land so purchased or taken in exchange shall be settled in the same manner and subject to the same trusts, powers, and provisos as the land so sold or given in exchange: 20

(3.) The moneys so arising or so received shall, until laid out as aforesaid, be invested in securities authorised by law for the investment of trust funds, and the interest thereof shall be paid to the persons entitled to the rents and profits of the land comprised in the settlement. 25

#### X.—POWERS OF ATTORNEY. 30

Powers of attorney to continue in force until notice of death or revocation.  
Ibid, s. 65

90. (1.) Where a power of attorney (whether executed in or out of New Zealand, and whether executed before or after the commencement of this Act) does not contain a declaration that such power shall continue in force only until the death of the person who executed the same or until other revocation thereof, such power shall, so far as concerns any contract entered into *bonâ fide*, and any deed or instrument *bonâ fide* made or signed thereunder, operate and continue in force until notice of such death or revocation has been received by the attorney named in the power. 35

All acts to be valid if done before receipt of any such notice.  
Ibid, s. 66

(2.) Every act within the scope of the powers and authority conferred upon the said attorney heretofore done or suffered, or hereafter to be done or suffered by him after such death or revocation as aforesaid, and before notice thereof has been received, shall be as effectual in all respects as if such death or revocation had not happened or been made. 40

Declaration by attorney of non-receipt of notice to be proof of non-revocation.  
Ibid, s. 67

(3.) A statutory declaration by any such attorney 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 45

immediately before or after any such act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such act was done.

91. (1.) Where a power of attorney given for valuable consideration (whether executed in or out of New Zealand) is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,—

Irrevocable power of attorney for value. 45 & 46 Vict., c. 39, s. 8

- 10 (a.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor; and
- 15 (b.) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor had not been done or had not happened; and
- 20 (c.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor without the concurrence of the donee, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

25 92. (1.) Where a power of attorney (whether executed in or out of New Zealand, and whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

Power of attorney made irrevocable for fixed time. 45 & 46 Vict., c. 39, s. 9

- 30 (a.) The power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor; and
- 35 (b.) Any act done within that fixed time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor had not been done or had not happened; and
- 40 (c.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice, either during or after that fixed time, of anything done by the donor during that fixed time without the concurrence of the donee, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor within that fixed time.
- 45

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

50 93. No person shall be entitled to object to the execution or proposed execution of a conveyance solely on the ground that such execution is under a power of attorney from a person not in New Zealand.

Conveyance under power of attorney from person not in New Zealand.

## XI.—CONVEYANCES BY TRUSTEES.

Conveyances, &c.,  
by executors and  
administrators  
valid in certain  
cases.  
1885, No. 43, s. 8

94. (1.) Every conveyance heretofore or hereafter made by any executor or administrator shall be, and shall be deemed to have been, so far as concerns a *bonâ fide* purchaser or any person claiming through him, as valid and effectual as if it had been made by the deceased person whose estate is or was vested in such executor or administrator. 5

(2.) The receipt in writing of the executor or administrator shall be a sufficient discharge to any purchaser for the purchase-money thereby expressed to have been received; and no such purchaser or his representative shall be concerned to see to the application of the purchase-money paid by him or to inquire whether the sale or conveyance by such executor or administrator was irregular or improper. 10

When conveyances  
by executors, &c., to  
beneficiaries to be  
conclusive as to  
title.

95. Where any person claiming to be entitled under a will or intestacy to the real estate or a share therein of any deceased person obtains from the executor or administrator a conveyance of such real estate or share therein, then such conveyance, if purporting to be made by the executor or administrator as such, shall, in favour of a person *bonâ fide* and for valuable consideration deriving title by, through, or under the same, be conclusive proof that all things have happened and that all times have elapsed to authorise the same to be made, and no such person shall be concerned to see or inquire as to any event having happened upon which the same might properly be made, or otherwise as to the propriety or regularity thereof; and, notwithstanding any impropriety or irregularity, such conveyance shall, as regards such person, be deemed to be valid and effectual. 15  
20  
25

## XII.—PARTITION.

In action for  
partition Court may  
direct land to  
be sold.  
1883, No. 29, s. 72-74

96. (1.) Where in an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates, request the Court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale accordingly. 30  
35

(2.) The Court may, if it thinks fit, on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the Court that, by reason of the nature of the land, or of the number of the parties interested, or presumptively interested, therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested. 40

(3.) The Court may also, if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, or some of them, undertake to purchase the share of the party requesting a sale; and, on such an undertaking being given, may direct a valuation of the share of the party requesting a sale. 45

(4.) On directing any such sale or valuation to be made, the Court may give also all necessary or proper consequential directions. 50

(5.) Any person may maintain such action against any one or more of the parties interested without serving the other or others, 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  
 5 direct such inquiries as to the nature of the land 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:

As to parties to actions for partition. 1883, No. 29, s. 75

Provided that all persons who, if this Act had not been passed,  
 10 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 originally been 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  
 15 person may, within a time limited by Rules of Court, apply to the Court to add to the decree or order.

97. On any sale under the last preceding section the Court may allow any of the parties interested in the land to bid at the sale, on such terms as the Court deems reasonable as to non-  
 20 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.

Authority for parties interested to bid. Ibid, s. 76

98. (1.) All money received under any such sale may, if the Court thinks fit, be paid to trustees appointed by the Court, and  
 25 applied, as the Court from time to time directs,—

Proceeds of sale, how applied. 1865, No. 3, ss. 22-24

(a.) In the discharge of any incumbrance affecting the land directed to be sold; and, subject thereto,

(b.) In payment of the residue to the parties interested.

(2.) Where the Court so directs, the trustees (if any) may in  
 30 their discretion apply the money in manner aforesaid; and where no such direction is given any party interested may petition the Court for an order that the money be so applied.

(3.) Until the money can be applied as aforesaid, it shall be from time to time invested in such securities as the Court may approve,  
 35 and the interest and dividends thereof shall be paid to the parties interested.

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

Costs in partition suits. 1883, No. 29, s. 79

### XIII.—DEBTS CHARGED ON REAL ESTATE.

100. (1.) Where a person dies seised of or entitled to any land  
 40 that is at the time of his death charged with the payment of any sum or sums of money by way of mortgage, and such person has not by his will or by deed or other document signified any contrary or other intention, the devisee or other person to or on whom such  
 45 land is devised or devolves 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, be primarily liable to the payment of all mortgage debts with which  
 50 the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

Devisee, &c., of real estate not to claim payment of mortgage out of personal assets. Ibid, s. 80

Rule of construction.  
1883, No. 29, s. 82

(2.) A general direction in a will that the debts or that all the debts of the testator be paid out of his personal estate shall not be deemed to signify an intention contrary to or other than the rule hereby established, but such intention must be further signified by words expressly or by necessary implication referring to all or some of the testator's debts charged by way of mortgage on any part of his real estate. 5

Saving of right of mortgagee to recover his debt.  
Ibid, s. 81

(3.) Nothing in this section 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 deceased or otherwise. 10

#### XIV.—RENT-CHARGES AND OTHER ANNUAL SUMS.

Recovery of annual sums charged on land.  
44 and 45 Vict.,  
c. 41, s. 44 (1)

101. (1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent-charge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to such annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, so far as those remedies might have been conferred by the instrument under which the annual sum is payable, but not further. 15

Ibid, s. 44 (2)

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid. 25

Ibid, s. 44 (3)

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand for such payment has been made, the person entitled to receive the annual sum may enter into possession of and hold the land charged, or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste. 30 35 40

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed convey the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution 45 50

of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised or of the income received under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only where the instrument under which the annual sum is payable comes into operation after the commencement of this Act, and then only in so far as a contrary intention is not expressed in such instrument, and shall have effect subject to the terms and provisions thereof.

102. (1.) Where there is a rent-charge or other annual sum issuing out of land (in this section referred to as "the rent") the Court shall at any time, on the petition of the owner of the land, or of any person interested therein, certify in writing under the seal of the Court the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee-simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Court.

(3.) On proof that payment or tender has been so made, the Court shall in like manner certify that the rent is redeemed under this Act; and such certificate shall be final and conclusive, and the lands shall be thereby absolutely freed and discharged from the rent.

(4.) This section does not apply to a rent reserved on a sale or lease, or to any sum or payment issuing out of land not being perpetual.

(5.) This section applies to rents payable at or created after the commencement of this Act.

44 and 45 Vict.,  
c. 41, s. 44 (6)

Redemption of  
rent-charges.

#### XV.—MARRIED WOMEN.

103. Notwithstanding that a married woman is restrained from anticipation, the Court may, where it appears to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

104. (1.) A married woman, whether married before or after the commencement of "The Married Women's Property Act, 1884," and whether a minor or not, may by deed appoint an attorney on her behalf for the purpose of executing any deed, or making any appointment otherwise than by will, or doing any other act she might herself execute or do if she were unmarried and of full age; and in every such case sections *ninety* to *ninety-three* hereof shall apply.

(2.) This section applies only in so far as a contrary intention is not expressed in any instrument under which the married woman derives her rights, and shall have effect subject to the provisions of such instrument.

Court may bind  
interest of married  
woman.  
Ibid, s. 39

Power of attorney of  
married woman.  
Ibid, s. 40

## XVI.—MINORS.

*Management of Land during Minority.*

Sales and leases on behalf of minor. 44 and 45 Vict., c. 41, s. 41

105. Where a minor is in his own right seised of or entitled to land for an estate in fee-simple, or for any leasehold interest at a rent, the land shall be deemed to be a settled estate within the meaning of "The Leases and Sales of Settled Estates Act, 1865," and "The Settled Land Act, 1886." 5

Management of land, and receipt and application of income during minority. Ibid, s. 42

106. (1.) If and so long as any person who would but for this section be beneficially entitled to the possession of any land is a minor, and, being a woman, is also unmarried, the trustees appointed for this purpose by the settlement, if any, or, if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land or of part thereof, or with power to consent to or approve of the exercise of such power of sale, or, if there are no such trustees, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the minor, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply. 10 15 20

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course of sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses and other buildings and erections, and to continue the working of such mines, minerals, and quarries as have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the minor is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only and subject to the same restrictions on and subject to which the minor could, if of full age, cut the same. 25 30 35

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management of the land, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land. 40

Ibid, s. 42 (4)

(4.) The trustees may apply any income they deem proper, according to the minor's age, for his maintenance, education, or benefit, or pay thereout any money to his parent or guardian, to be applied for the same purposes. 45

Ibid, s. 42 (5)

(5.) The trustees shall invest the residue of the income in any securities in which they are authorised to invest trust money, with power to vary such investments; and shall accumulate the income of such investments in the way of compound interest, by from time 50



to time in like manner investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following, namely:—

- 5 (a.) If the minor attains the age of twenty-one years, then in trust for him; but 44 and 45 Vict., c. 41, s. s. 42 (5) (i.)
- (b.) If he dies while a minor, then, where he was under a settlement, tenant for life, or by purchase tenant in tail, or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the minor is tenant for an estate in fee-simple, absolute or determinable, then in trust for the persons who if such estate were personal estate would take such personal estate: Ibid, s. 42 (5) (iii.)
- 10
- 15 but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.
- (6.) Where the minor's estate or interest is an undivided share of land, the powers given by this section relative to the land may be exercised jointly with persons entitled to possession of, or having Ibid, 42, 6
- 20 power to deal with, the other undivided share or shares.
- (7.) This section applies only where the instrument under which the minor's interest arises comes into operation after the commencement of this Act, and then only in so far as a contrary intention is not expressed in that instrument, and shall have effect subject to the Ibid, s. 42 (8)
- 25 terms and provisions thereof.

#### *Settlements by Minors on Marriage.*

107. (1.) Every minor upon or in contemplation of his marriage may, with the sanction of the Court, make a valid and binding settlement or contract for a settlement of all or any part of his property, or property over which he has power of appointment, whether in possession, reversion, remainder, or expectancy. Sanction of Court to be obtained. 1883, No. 29, s. 87
- 30 (2.) Every conveyance, appointment, and assignment of such property, and every contract to make a conveyance, appointment, or assignment thereof, executed by such minor with the sanction of the Court for the purpose of giving effect to such settlement, shall be as valid and effectual as if the minor were of the full age of twenty-one years.
- 35 (3.) The sanction of the Court to any such settlement or contract for a settlement may be given on petition presented by the minor or his guardian in a summary way. Procedure Ibid, s. 89
- 40 (4.) Where there is no guardian the Court may require a guardian to be appointed, and may also require that any persons interested or appearing to be interested in the property be served with notice of such petition.
- 45 (5.) Where any appointment under a power of appointment, or any disentailing assurance, has been executed under this section by any minor as tenant in tail, and afterwards such minor dies under age, such appointment or disentailing assurance shall thereupon become absolutely void. Minor dying under age. Ibid, s. 88

Application of  
section.  
1883, No. 29, s. 90

(6.) Nothing in this section shall apply to any minor being a man under the age of twenty years, or to any minor being a woman under the age of seventeen years.

(7.) The authority conferred by this section shall not extend to powers of which it is expressly declared that they shall not be exercised by a minor. 5

#### XVII.—DISENTAILING ASSURANCES.

Enrolment of  
disentailing  
assurances.

108. (1.) Any assurance under the Act passed in the third and fourth years of the reign of William IV., now known as the Fines and Recoveries Act, required by that Act to be enrolled in the High Court of Chancery in England, shall, so far as such assurance relates to land in New Zealand, be enrolled within six months after the execution thereof by filing a certified copy thereof in the office of the Supreme Court for the judicial district wherein the land to which it relates is situate, or, if such land be situate in more than one district, then in any one of such offices. 10 15

(2.) This section shall apply to all assurances, whether made before or after the commencement of this Act.

(3.) All assurances heretofore enrolled in the office of the Court for any judicial district, or otherwise enrolled in accordance with the law in force at the time of such enrolment, shall be deemed to have been properly enrolled. 20

#### XVIII.—PURCHASERS: WHEN AFFECTED BY NOTICE.

Restriction on  
constructive notice.  
45 and 46 Vict.,  
c. 39, s. 3

109. (1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless— 25

- (a.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or
- (b.) It has in the transaction as to which a question of notice arises come to the knowledge of his counsel as such, or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent. 30 35

(2.) This section shall not exempt a purchaser from any liability under, or from any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been passed. 40

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been passed.

(4.) This section applies only to purchases made after the commencement of this Act, and shall not affect the provisions of section fifty-four of "The Deeds Registration Act, 1868." 45

## XIX.—SERVICE OF NOTICES.

110. (1.) Any notice required or authorised by this Act to be served shall be in writing, and shall be sufficiently served—

Regulations  
respecting notices  
44 and 45 Vict.,  
c. 41, s. 67

5 (a.) If left at the last known place of abode or business in New Zealand of the person to be served, or, where such person is a lessee or mortgagor, if affixed or left for him on the land or any house or building comprised in the lease or mortgage:

10 (b.) If sent by post in a registered letter addressed to the person to be served, by name, at his aforesaid place of abode or business, and if that letter is not in due course returned through the post-office undelivered; and such service shall be deemed to be made at the time when the registered letter would in the ordinary course be delivered.

15 (2.) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although addressed to the lessee or mortgagor by that designation only, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under  
20 disability, unborn, or unascertained.

(3.) This section does not apply to notices served in proceedings in the Court.

(4.) This section applies only if and so far as a contrary intention is not expressed in any instrument, and shall have effect subject  
25 to the provisions of such instrument.

## XX.—ORDERS OF COURT.

111. (1.) An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or want of any concurrence, consent, notice,  
30 or service, whether the purchaser has notice of any such want or not.

Orders of Court  
conclusive.  
44 and 45 Vict.,  
c. 41, s. 70

(2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of "The Leases and Sales of Settled Estates Act, 1865,"  
35 or "The Settled Land Act, 1882," notwithstanding any exceptions in either of those Acts.

(3.) This section extends to all orders made before the commencement of this Act that have not before the commencement of this Act been set aside or determined to be invalid on any ground,  
40 except any order as regards which there is pending at the commencement of this Act an action or other proceeding for having it set aside or determined to be invalid.

## XXI.—CONVEYANCING CHARGES.

112. (1.) The Judges of the Supreme Court or any three of them,  
45 of whom the Chief Justice shall be one, may from time to time fix scales of fees to be charged by solicitors in all or any matters of conveyancing business transacted by them.

Judges may fix  
scale of fees.  
1883, No. 29, s. 92

How scale to  
be framed.  
1883, No. 29, s. 93

(2.) 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 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. 5

Registrar to tax  
bills according to  
scale.  
Ibid, s. 94

(3.) In the taxation of any bill of costs, or fees for conveying business, the Registrar shall be guided by the Rules of Court for the time being in force for that purpose, and, subject thereto, the Registrar shall have regard not only to the length of any 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. 10

## XXII.—VERIFICATION OF DEEDS, ETC. 15

Verification of  
instruments  
executed out of  
New Zealand.  
Ibid, s. 95

113. (1.) Every instrument of any kind that has been or hereafter may be duly signed, executed, or acknowledged out of New Zealand shall, so far as regards the signing, execution, or acknowledgment thereof, be receivable in evidence in any Court of justice in New Zealand, and before any officer or person having by law or consent of parties authority to take evidence in New Zealand, if such signing, execution, or acknowledgment is verified by an affidavit, affirmation, or declaration made as required by section twenty-five of "The Evidence Act, 1904." 20

Secondary evidence  
of instruments.

114. After any instrument authorised to be registered under "The Deeds Registration Act, 1868," has been on the register for twenty years or more, then a copy of such instrument certified to be a true copy under the hand of a Registrar of Deeds shall be received by all Courts and persons as aforesaid as *prima facie* evidence of the contents of the instrument of which it purports to be a copy; and after such instrument has been on the register for thirty years or more a copy thereof, certified as aforesaid, shall be *prima facie* evidence that the instrument of which it purports to be a copy was validly signed, sealed, executed, and attested. 25 30

## XXIII.—REPEALS. 35

Repeal of Acts.  
Ibid, s. 97

115. The enactments mentioned in the *Fifth* Schedule hereto are hereby repealed.

But this repeal shall not affect—

(a.) 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 40

(b.) 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 part of an Act hereby repealed. 45

Saving of provisions  
of Land Transfer  
Act.  
Ibid, s. 98

116. This Act shall be read and construed so as not to conflict with the provisions of "The Land Transfer Act, 1885," as regards land under that Act. 50

## SCHEDULES.

Schedules.

## FIRST SCHEDULE.

## FORM OF CONVEYANCE IN FEE-SIMPLE.

Section 40.

THIS deed, made the \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine 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 unto the said C. D. all that piece of land [*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 specifying any variation in any of the above particulars since the date of the last conveyance.*]

[*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.,

[*Place of abode and description*]

## SECOND SCHEDULE.

## STATUTORY MORTGAGE UNDER "THE PROPERTY LAW ACT, 1904."

Section 60 (1).

(a.) Mortgagor :

(b.) Estate :

(c.) Land : [*Area and particulars.*]

(d.) Mortgagee :

(e.) Principal sum :

(f.) Date of advance :

(g.) Rate of interest :

(h.) How payable :

(i.) How and when principal sum to be repaid :

And for the better securing to the said (d) \_\_\_\_\_ the payment of the said principal sum, interest, and other moneys, I [or we] hereby mortgage to the mortgagee all my [or our] estate and interest in the said land above described.

As witness my hand [or our hands], this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(j)

Mortgagor.

Signed by the said (k) \_\_\_\_\_ as mortgagor, in the presence of—

(l) A. B.,

[*Place of abode and description.*]

[NOTE.—This instrument may be registered under "The Deeds Registration Act, 1868."]

*Directions for filling up above Form.*

(a.) Here insert full name, residence, and occupation of mortgagor [or mortgagors], as thus : "A. B., of Wellington, farmer."

(b.) Here insert "freehold in fee-simple" or "leasehold," as the case may be.

(c.) Here give a full description, with plan, of the land mortgaged.

(d.) Here insert full name of mortgagee [or mortgagees].

(e.) Insert amount.

(f.) Fill in date.

(g.) State rate agreed upon. [*In mortgages to co-operative building societies and other societies where no interest is charged, this line may be struck out.*]

(h.) Here insert "yearly," "half-yearly," "quarterly," or otherwise, as the case may be.

(i.) Here insert date and mode of payment agreed upon.

(j.) Signature of mortgagor [or mortgagors].

(k.) Name of mortgagor [or mortgagors].

(l.) Signature of witness, stating place of abode and calling or description of witness.

Sec. 61 (1).

## THIRD SCHEDULE.

## COVENANTS, CONDITIONS, AND POWERS IMPLIED IN MORTGAGES.

(1.) That the mortgagor will pay the principal sum mentioned in the mortgage, with interest thereon, in accordance with the provisions of such mortgage.

(2.) That the mortgagor will forthwith insure, and, so long as any money remains owing on the security, will keep insured against loss or damage by fire, all buildings and erections for the time being situate on the land described in the mortgage; such insurance to be effected in the name of the mortgagee, and in some insurance office in New Zealand to be approved by the mortgagee, and to be for the full insurable value of such buildings and erections as aforesaid; And will deliver the policy or policies of such insurance, or cause the same to be delivered, to the mortgagee, who shall be entitled to the exclusive custody thereof; and will duly and punctually pay all premiums and sums of money necessary for the purpose of keeping every such insurance on foot; and will, not later than the forenoon of the day on which any premium falls due, deliver or cause to be delivered the receipt therefor to the mortgagee.

(3.) That the mortgagor will from time to time, so long as any money remains owing on the security, well and substantially repair, and keep in good and substantial repair and condition, all buildings or other improvements erected and made upon the said land: And that the mortgagee may at all reasonable times be at liberty, by himself, his agents or servants, to enter upon the said land to view and inspect the said buildings and improvements.

(4.) That if the mortgagor fails to insure or keep insured the said buildings and erections as aforesaid, or to deliver or cause to be delivered any premium receipt as aforesaid, or to repair the said buildings and improvements, or to keep them in good and substantial repair and condition as aforesaid, then and in any such case, and as often as the same shall happen, it shall be lawful for but not obligatory on the mortgagee, at the cost and expense in all things of the mortgagor, to insure the said buildings or any of them in such sum as aforesaid, or in any less sum, or to pay such premium, or to repair the said buildings and improvements and keep them in good and substantial repair and condition.

(5.) That in the event of the said buildings and erections or any of them being destroyed or damaged by fire, all moneys received by the mortgagee under any insurance in respect of such destruction or damage shall be applied, at his sole option, either in or towards rebuilding or repairing the buildings and erections so destroyed or damaged, or in or towards payment of the principal, interest, and other moneys for the time being covered by the security, notwithstanding that the same or any of them may not have accrued due under the terms of the mortgage:

Provided that if the mortgagee applies such moneys in or towards payment of the principal and other moneys as aforesaid the mortgagor shall have the right to pay off the whole amount remaining due under the mortgage at any time within two months after such application has been made.

(6.) That all moneys expended by the mortgagee in and about effecting or keeping on foot any insurance as aforesaid, or in repairing or keeping in repair any of the said buildings and improvements as aforesaid, or in lawfully exercising or enforcing any power, right, or remedy in the mortgage contained or implied in favour of the mortgagee, shall be payable to him by the mortgagor on demand, and until paid shall be charged on the said land, together with interest at the rate agreed upon in the mortgage, computed from the date or dates of such moneys being expended.

1883, No. 29, sec. 51

(7.) That where the mortgagor makes default for the space of two months in payment of the principal sum and interest, or any part thereof, or in the observance of any other covenant expressed or implied in the mortgage, and thereafter at least one month's notice in writing of his intention so to do has been given by the mortgagee to the mortgagor, or has been left upon the said land or at the mortgagor's usual or last known place of abode in New Zealand, the mortgagee may sell the said land, or any part thereof, either altogether or in lots, by public auction or by private contract, or partly by the one and partly by the other of such modes of sale, and subject to such conditions as to title or evidence of title, time or mode of payment of purchase-money, or otherwise as the mortgagee thinks fit, and may exercise such other incidental powers in that behalf as are conferred upon mortgagees by this Act.

(8.) That if and whenever the mortgagor makes default as mentioned in the last preceding covenant the mortgagee may call up and compel payment of all principal, interest, and other moneys for the time being owing under the mortgage, notwithstanding that the time or times therein appointed for the payment thereof respectively may not have arrived.

(9.) That the mortgagor will forthwith insure, and, so long as any moneys remain owing on the security, will keep insured, the mortgagee against any worker's charge on the said land obtaining priority over the mortgage under "The Workers' Compensation for Accidents Act, 1900," the policy or policies of such insurance to be taken out in the name of the mortgagee, and to be expressed to be an absolute indemnity of the mortgagee against such risk: And will, seven days at least before the same becomes due, pay all premiums and other moneys necessary for keeping such insurance on foot, and will forthwith deliver to the mortgagee the policy or policies of such insurance or insurances, and from time to time the receipt for every such premium.

(10.) That if the mortgagor fails to insure or keep insured the mortgagee against any worker's charge as aforesaid, it shall be lawful for but not obligatory on the mortgagee to pay all sums of money that may be requisite to effect such policy or policies as, in the opinion of the mortgagee, are necessary for the purpose of insuring the mortgagee against any worker's charge obtaining priority over the mortgage, and to pay all sums that may be necessary for the purpose of effecting such insurance, or paying the premium thereon or any renewal premium in respect thereof: And that the mortgagor will, whenever called upon to do so (but not at intervals of less than three months), supply a list of all wages paid by the mortgagor for work done on, about, or in any way relating to the said land.

(11.) That the mortgagor will forthwith, without any demand, pay to the mortgagee all sums of money expended by the mortgagee in paying and satisfying any such worker's charge as aforesaid, or in effecting such insurance, or in paying the said premium or renewal premiums thereon, with interest for the same respectively at the rate agreed on in the mortgage, computed from the time or respective times of the mortgagee's paying the same until repayment thereof, and that in the meantime such sums of money, with interest at the rate aforesaid, shall be added to the sum expressed to be secured by the mortgage.

(12.) That the mortgagee will, on payment by the mortgagor of all moneys due under the mortgage at the time and in the manner mentioned in the mortgage for payment of the principal sum, or at any time thereafter on payment of all moneys then due (three clear months' notice of the intention to pay the same having been given), return to the mortgagor the mortgage deed, having indorsed thereon or annexed thereto a memorandum of discharge in the form numbered (1) in the *Fourth* Schedule to this Act, together with all deeds and documents deposited with the mortgagee on account of the mortgage. 1883, No. 29, s. 50

#### FOURTH SCHEDULE.

##### (1.) DISCHARGE OF MORTGAGE DEBT.

I [or we] hereby acknowledge that I [or we] have received all moneys intended to be secured by the within- [or above-] written [or annexed] deed. Section 63.

Dated this            day of            , 19    .

Witness: E. F.,

[Place of abode and description].

C. D., Mortgagee.

##### (2.) INDORSEMENT OF INCREASE OR REDUCTION OF MORTGAGE DEBT.

THE principal sum intended to be secured by the within- [or above-] written [or annexed] mortgage is hereby increased [or reduced] to £            :            :

Dated this            day of            , 19    .

Witness: E. F.,

[Place of abode and description].

A. B., Mortgagor

Witness: G. H.,

[Place of abode and description].

C. D., Mortgagee.

## (3.) MEMORANDUM OF RENEWAL OR EXTENSION OF TERM OR CURRENCY OF MORTGAGE.

THE term or currency of the within- [or above-] written [or annexed] mortgage is hereby renewed or extended to the day of , 19 [or as the case may be].

Dated this day of , 19 .

A. B., Mortgagor.

Witness : E. F.,  
[Place of abode and description].

C. D., Mortgagee.

Witness : G. H.,  
[Place of abode and description].

## Section 65.

## (4.) ASSIGNMENT OF MORTGAGE.

IN consideration of the sum of £ paid to me by C. D., of , the receipt whereof is hereby acknowledged, I hereby assign unto the said C. D. all the rights, powers, title, and estate conferred on or vested in me by the within- [or above-] written [or annexed] mortgage.

Dated this day of , 19 .

A. B., Assignor.

Witness : E. F.,  
[Place of abode and description].

Witness : G. H.,  
[Place of abode and description].

Accepted. C. D., Assignee.

## Section 115.

## FIFTH SCHEDULE.

## (1.) IMPERIAL ACTS REPEALED.

27 Hen. VIII., cap. 10.—The Statute of Uses.

32 Hen. VIII., cap. 9.—“The Bill of Bracery and Buying of Titles” : In part—namely, section 2.

3 and 4 Will. IV., cap. 27.—“The Real Property Limitation Act, 1833” : Section 28.

3 and 4 Will. IV., cap. 105.—“The Dower Act, 1833.”

## (2.) ACTS OF THE GENERAL ASSEMBLY REPEALED.

1882, No. 29.—The Supreme Court Act, 1882 : in part—namely, sections 25 and 26.

1883, No. 29.—The Property Law Consolidation Act, 1883.

1885, No. 43.—The Property Law Consolidation Act 1883 Amendment Act, 1885.

1895, No. 11.—The Property Law Consolidation Act 1883 Amendment Act, 1895.

1901, No. 20.—The Mortgages of Land Act, 1901.