

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council.

29th September, 1905.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE.]

House of Representatives, 6th October, 1905.

Hon. Mr. Pitt.

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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, Short Title.
1905”; and it shall come into operation on the first day of January,
one thousand nine hundred and *six*.

- 10 2. In this Act, if not inconsistent with the context,—
- “Bankruptcy” includes administration under “The Adminis- Interpretation.
tration Act 1879 Amendment Act, 1888,” and any other 44 & 45 Vict., c. 41
act or proceeding in law having, under any Act for the s. 2 (xv)
time being in force, effects or results similar to those of
15 bankruptcy; and “bankrupt” has a meaning correspond-
ing with that of bankruptcy:
- “Conveyance” includes any deed of assignment, appointment, Ibid, (v)
lease, settlement, or other assurance of any property; and
“convey” has a meaning corresponding with that of
20 conveyance:
- “Court” means the Supreme Court:
- “Executors” and “administrators” of a deceased person mean
respectively the persons to whom the right to administer
25 the estate of the deceased has been granted by the proper
Court, whether for general, special, or limited purposes:
- “Income,” when used with reference to land, includes rents Ibid (iii)
and profits:
- “Incumbrance” includes a mortgage in fee or for a less estate, Ibid, (vii)
and a trust for securing money, and a lien and a charge of
30 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:
- 35 “Instrument” includes deed, will, Proclamation taking land, Ibid, (xiii)
and Act of Parliament:
- “Land” includes all estates and interests, whether freehold of Ibid, (ii)
chattel, in real property:
- 40 “Mortgage” includes a charge on any property for securing Ibid, (vi)
money or money’s worth; and “mortgage-money” means
money or money’s worth secured by a mortgage:
- “Mortgagee” includes any person from time to time deriving
title under the original mortgagee; and “mortgagee in
45 possession” means a mortgagee who in right of the mort-
gage has entered into and is in possession of the mort-
gaged property:
- 50 “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:

	“ Possession,” when used with reference to land, includes the receipt of income therefrom :	
44 & 45 Vict., c. 41, s. 2 (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 :	5
Ibid, (viii)	“ Purchaser ” includes a lessee or mortgagee, or other person who for valuable consideration takes or deals for any property ; and “ purchase ” has a meaning corresponding with that of purchaser ; but “ sale ” means only a sale properly so called :	10
1883, 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 :	15
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 :	20
Ibid, (xii)	“ Will ” includes codicil.	

I.—GENERAL RULES AFFECTING PROPERTY.

Real Property.

Fee to pass without words of limitation. 1883, No. 29, s. 3	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.	25
Freehold <i>in futuro</i> may be created. Ibid, s. 4	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.	30
Estate in chattel real may be created by deed. Ibid, s. 5	5. Any estate or interest that can be created by will in any chattel real may also be created by deed.	
When contingent remainders capable of taking effect. Ibid, s. 6	6. (1.) A contingent remainder shall be capable of taking effect notwithstanding the destruction or determination by any means of the particular estate immediately preceding, and notwithstanding it may have been created expectant on the termination of a term of years. (2.) A contingent remainder or a contingent interest lying between two estates vested in the same person shall prevent the merger of those two estates.	35
Rule in Shelley's case. Ibid, s. 7	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.	40
Possibility upon a possibility. Ibid, s. 8	8. No estate shall be void on account of its being made to depend on a possibility upon a possibility.	45
Vendor's lien taken away. Ibid, s. 16	9. 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. 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
5 the instrument creating such estate.
11. 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.
12. The release from a rent of any part of the land out of which
10 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
15 owner of the part released as he would have been entitled to if no release had been made.
13. 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
20 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, and shall be assignable accordingly.
14. (1.) Where there is a person entitled to land for an estate in
25 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
30 that has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.
- (2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.
- 35 15. 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.
- 40 16. No tenancy from year to year shall be created or implied by payment of rent; 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.

"Equitable waste."
1883, No. 29, s. 19

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

Release of part of
land charged not to
be an extinguish-
ment of rent.
Ibid, s. 24

Easements in gross.

Restriction on
executory
limitations.
45 & 46 Vict., c. 39,
s. 10

Rights of purchaser
as to execution.
Ibid, s. 8

Tenancy from year
to year not to be
implied.
Monthly tenancy.
1885, No. 43, s. 6

45 *Real and Personal Property.*

17. 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.
18. Any two or more persons in whom any property is beneficially vested as tenants in common may by deed declare that they
50 will be joint tenants thereof, and thereupon the same shall vest in them as joint tenants.

Conveyance by
husband to wife or
wife to husband.
1883, No. 29, s. 9
Declaration by
tenants in common.
Ibid, s. 10

Person may convey property to himself jointly with others. 1883, No. 29, s. 11

Power for corporations to hold property as joint tenants.

62 & 63 Vict., c. 20

19. A person may convey property for any estate or interest to himself or to himself jointly with another or others.

20. (1.) A body corporate shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual, and where a body corporate and an individual or two or more bodies corporate become entitled to any property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy they shall be entitled to the property as joint tenants : 5

Provided that the acquisition and holding of property by a body corporate in joint tenancy shall be subject to the like conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty. 10

(2.) Where a body corporate is a joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant. 15

Married woman may assign reversionary interest. 1883, No. 29, s. 27

21. 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. 20

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

22. 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.

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

23. 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 administration, 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*. 25

Alienation of property may be restricted in certain cases.

24. (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. 30

(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. 40

(3.) Nothing in this section shall prevent any lawful restraint on alienation of property from being imposed by will or settlement. 45

(4.) The Court may in any case where it appears to be for the benefit of the person subject to any restraint on alienation either wholly or partly remove such restraint.

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

25. (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. 50

(2.) Any such person as aforesaid may by deed disclaim any such

power, and after such disclaimer shall not be capable of exercising or joining in the exercise of the power.

(3.) 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.

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

10

II.—GENERAL RULES RELATING TO DEEDS.

Deeds and their Effect.

26. (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.

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

(2.) Except where the party to be bound by a deed is a corporation, sealing shall not be necessary.

1883, No. 29, s. 31

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

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

(5.) Every deed, including a deed of appointment, executed before the commencement of this Act that is attested in the manner required or authorised by any enactment providing for the execution and attestation of deeds 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.

Ibid, s. 33

27. Any deed that may be lawfully made by a corporation (whether executed before or after the commencement of this Act),—

Deed by
corporation.
1903, No. 53, s. 150

(a.) To which the common or official seal of the corporation is affixed; or

(b.) Which is executed in the name of the corporation by any person who has been appointed its attorney, and has at the time of execution made a statutory declaration that he is the attorney of the corporation acting under a power of attorney specified by him, and that he has executed the deed under the powers thereby conferred, and that he has not at the time of making the declaration received any notice of the revocation of the power of attorney by the dissolution of the corporation or otherwise,—

shall be deemed to have been duly executed by the corporation, and shall bind the corporation; and all persons dealing in good faith without notice of any irregularity shall be entitled to presume the regular and proper execution of the deed, and to act accordingly.

Receipt.
1883, No. 29, s. 32

28. 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.

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

29. (1.) Where a solicitor produces an instrument having in the body thereof or indorsed thereupon a receipt for consideration-money or other consideration, the instrument being executed or the indorsed receipt being signed by the person entitled to give a receipt for that consideration, the 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 instrument or receipt. 5

(2.) This section applies where the instrument is executed or the receipt signed by trustees. 15

Appointments to
be valid
notwithstanding
one or more objects
excluded.
37 & 38 Vict., c. 37

30. (1.) An appointment in exercise of any power to appoint any property amongst several objects shall be valid and effectual, notwithstanding that any one or more of the objects do not by such appointment or in default of appointment take a share or shares of the property. 20

(2.) Provided that nothing in this section shall prejudice or affect any provision in any instrument creating any power which declares the amount of the share or shares from which no object of the power shall be excluded, or some one or more object or objects shall not be excluded. 25

Purchase in good
faith of reversion,
not to be set aside
for under-value
only.
31 & 32 Vict., c. 4,
s. 1

31. No purchase made in good faith and without fraud or unfair dealing of any reversionary interest in real or personal estate shall hereafter be opened or set aside merely on the ground of under-value.

N accumulation
for purchase of land
beyond minority.
55 & 56 Vict., c. 58

32. (1.) No person shall settle or dispose of any property so that the income thereof shall be wholly or partially accumulated for the purchase of land only for any longer period than during the minority or respective minorities of any person or persons who, under the trusts of the instrument directing such accumulation, would for the time being, if of full age, be entitled to receive the income so directed to be accumulated. 30 35

(2.) In this section "purchase" means only a purchase properly so called.

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

33. 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. 40

Certain Cases in which Deeds are necessary.

Partitions,
exchanges, &c.
Ibid, s. 35

34. No partition, exchange, lease, or assignment or surrender (otherwise than by operation of law) of any land shall be valid at law 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. 45

35. 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.
1883, No. 29, s. 36

5 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.

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

Disclaimers.
Ibid, s. 37

What may pass by Deed.

10 37. 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

15 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."

Operation of Deed.

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

Form of deed.
Ibid, s. 40

20 39. 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

25 40. 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 directly and immediately conveyed, subject, however, to a trust for the benefit of such other person.

Conveyance subject to trust.
Ibid, s. 42

30 41. 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.

Uses abolished.
Ibid, s. 43

42. 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.

Certain forms of assurance abolished.
Ibid, s. 44

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

Estates by wrong.
Ibid, s. 45

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

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

40 45. (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

Construction of supplemental or annexed deed.
44 & 45 Vict., c. 41, s. 53

made by way of indorsement on the previous deed, or contained a full recital thereof.

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

III.—ASSIGNMENTS OF CHOSSES IN ACTION.

5

Assignment of debts
and choses in
action.

1883, No. 29, s. 39

46. (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 10 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 15 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.

(2.) Where the debtor, trustee, or other person liable in respect of such debt or chose in action has had notice that such assign- 20 ment 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 25 Court, under and in conformity with the provisions of the Acts for the relief of trustees.

IV.—COVENANTS AND POWERS.

Covenants relating
to land.
44 & 45 Vict., c. 41,
s. 58.

47. (1.) A covenant relating to land, whether expressed or implied, shall be deemed to be made with the covenantee, his executors, 30 administrators, and assigns, and shall have effect accordingly.

(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

48. (1.) A covenant and a contract by deed, and a bond or obligation by deed, made with two or more jointly, to pay money, or 35 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, con- 40 tract, bond, or obligation.

(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 or implied after the commencement of this Act, and then only in so far as a contrary intention is not expressed in the deed containing the covenant or contract, or in the bond or obligation, and shall have effect subject to the provisions thereof.

49. 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 :

Implied covenants may be negatived. 1883, No. 29, ss. 69, 70
44 & 45 Vict., c. 41, s. 7 (7)

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.

50. 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"), and not against or in her husband.

Where covenantor a married woman.

51. The benefit of a covenant for title 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. Ibid, s. 7 (6)

52. In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

Construction of implied covenants. Ibid, s. 64

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

Power to re-enter not created by implication. 1883, No. 29, s. 71

V.—SALES BY TRUSTEES.

54. (1.) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to resell, without being answerable for any loss.

Power of trustee for sale to sell by auction, &c. 56 & 57 Vict., c. 53, s. 13

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and

shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

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VI.—GENERAL WORDS IN CONVEYANCES OF LAND.

What a conveyance of land shall be deemed to include. 44 & 45 Vict., c. 41, s. 6

55. (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 rights, easements, and appurtenances belonging to the land or therewith usually held or enjoyed.

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(2) 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.

(3.) 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.

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VII.—COVENANTS IMPLIED IN CONVEYANCES GENERALLY.

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

56. (1.) In every conveyance by way of sale, mortgage, marriage settlement, or lease, and in every other conveyance for valuable consideration, there shall be implied (except as provided by section sixty-one hereof) the following covenants by the person or each of the persons who conveys, so far as regards the estate or interest 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:—

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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 or interest purported to be conveyed, and that free and clear from all incumbrances other than such as are mentioned in the conveyance:

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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 purported to be conveyed, and all persons claiming

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under him, shall quietly enjoy the same without any disturbance by any person :

(c.) A covenant for further assurance, meaning thereby a covenant that the conveying party, his executors or administrators, and all other persons having or claiming any interest in the subject-matter of the conveyance will, at the cost of the person requiring the same, do and execute all such acts and conveyances for the better assuring of the estate or interest purported to be 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 :

Further assurance.
1883, No. 29, s. 47 (3)

(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, or as he or they may direct, within New Zealand all registered deeds and instruments or evidences of title in the possession of the conveying party, and relating to the land conveyed as well as to other land ; 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 safe, 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 for quiet enjoyment and for further assurance shall, except in the case of a mortgage, 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 conveyance by way of sale 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
incumbrance.
Cf. 1885, No. 57,
s. 81

(2.) 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

Covenants implied
in conveyance of
term of years in
land.

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:—

That the rent reserved by the lease under which the land is held, and the covenants and conditions expressed or implied in the lease, and to be performed and observed by the lessee, have been respectively paid, performed, and observed up to the date of the conveyance.

Auction sales.
Cf. 30 & 31 Vict., c. 48

59. The provisions of section fifty-nine of "The Sale of Goods Act, 1895," shall, *mutatis mutandis*, apply to sales by auction of every kind of property.

Application of stated conditions of sale to all purchases.

60. In the completion of any contract hereafter made for the sale of any property, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules:—

37 & 38 Vict., c. 78, s. 2, r. 2

(a.) Recitals, statements, and descriptions of facts, matters, and parties contained in instruments or statutory declarations twenty years old at the date of the contract shall, unless and except so far as they are proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Ibid, r. 3

(b.) The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title where the purchaser on the completion of the contract has an equitable right to the production of such documents.

Ibid, r. 4

(c.) Such covenants for production as the purchaser can and does require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself and any necessary parties other than the purchaser.

Ibid, r. 5

(d.) Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

44 & 45 Vict., c. 41, s. 3 (4), (5)

(e.) (i.) Where the land sold is held by lease (including under-lease) the purchaser shall, on production of the receipt for the last payment due for rent under such lease before the actual completion of the purchase, assume, unless the contrary appears, that all the covenants and provisions of such lease have been duly performed and observed up to the date of such actual completion, and also, if the land is held by underlease, that all rent due under and all the covenants and provisions of every superior lease have been duly paid, performed, and observed up to that date.

Ibid, s. 3 (8)

(ii.) This section applies only to titles and purchasers on sales properly so called.

61. (1.) Where any person conveys 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 paragraphs (a), (b), and (c) of section fifty-six and in section fifty-eight hereof shall not be implied, but there shall be implied the following covenant on the part of the person conveying, which covenant shall be deemed to extend to his own acts only, namely :—

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

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.

(2.) The covenant implied by this section shall be deemed to be implied in every memorandum of discharge indorsed on or annexed to a mortgage in the same manner as if such memorandum were a deed of conveyance by the mortgagee.

VIII.—MORTGAGES.

General Provisions.

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

Form of mortgage. 1901, No. 20, s. 3

(2.) Every mortgage in the said form shall be deemed to be a conveyance of land by way of mortgage, and may be registered accordingly.

63. 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.

No equitable mortgage by deposit of deeds. 1883, No. 29, s. 15

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

Covenants, &c., implied in all mortgages. 1901, No. 20, s. 3

(2.) The costs of any further assurance or production of title-deeds required by the mortgagee under the implied covenants in that behalf shall during the continuance of the mortgage be borne by the mortgagor.

(3.) 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. 5

Covenants implied in mortgage of term of years.

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

- (a.) That the rent reserved by the lease under which the mortgagor holds the land 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 10
- (b.) That the mortgagor will, during the continuance of the security, pay the rent reserved by the lease under which the land is held, 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 account of the non-payment of the said rent, or the breach or non-observance of the said covenants or conditions, or any of them. 15 20

Implied covenants.

66. Every covenant by this Act directed to be implied in a mortgage shall be implied on the part of each of the mortgagors (if more than one). 25

Indorsements on mortgages.

1901, No. 20, ss. 5-7

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

- (a.) The mortgage debt may be discharged; and
- (b.) The rate of interest may be increased or reduced; and 30
- (c.) The amount secured by the mortgage may be increased or reduced; and
- (d.) The term or currency of the mortgage may be shortened, extended, or renewed; and
- (e.) The interest of the mortgagee may be assigned— 35
- by a memorandum indorsed on or annexed to the mortgage, 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, or to the effect thereof, and shall operate as a deed, and may be registered. 40

(3.) Every such memorandum of discharge shall vacate the mortgage debt, and shall operate as a deed of reconveyance of the estate and interest of the mortgagee of and in the mortgaged property to the person for the time being entitled to the equity of redemption:

Provided that nothing herein shall prevent a mortgagee from executing a deed of reconveyance of the mortgaged property if he thinks fit and the mortgagor requires it. 45

(4.) Every such memorandum of assignment shall operate as a deed of assignment of the mortgage debt, and as a deed of conveyance of the estate and interest of the mortgagee of and in the mortgaged property, and shall vest the debt and estate and interest in the assignee, together with all the rights, powers, and remedies of the mortgagee expressed or implied in the mortgage. 50

68. Where the mortgagor has made default in payment of the principal sum at the expiry of the term of the mortgage, or of any period for which it has been renewed or extended, and the mortgagee has accepted interest on the said sum for any period (not being less than three months) after default has been so made, then, so long as the mortgagor performs and observes all covenants expressed or implied in the mortgage other than the covenant for payment of the principal sum, the mortgagee shall not call up and compel payment of the said sum without giving to the mortgagor three clear months' notice of his intention so to do.

Mortgagee accepting interest on overdue mortgage not to call up without notice.

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

Foreclosure prohibited. 1883, No. 29, s. 14 Equity of redemption.

70. (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 :

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.

3 & 4 Will. IV., c. 27, sec. 23

(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.

(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 in writing of his intention to redeem, or shall pay to the mortgagee three months' interest in lieu thereof :

Notice of intention to redeem.

Provided that this subsection shall not apply in any case where the mortgagee has entered into possession of the mortgaged land or any part thereof, or has taken any steps 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,—

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

(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 comprising both land and chattels.

(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

71. (1.) Where a mortgagor of land 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 (5) 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. 5

(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. 10

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

72. The like right to require a mortgagee to assign the mortgage debt to a third person shall belong to and may be enforced by each incumbrancer or by 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. 15

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

73. 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. 20

Restriction on consolidation of mortgages.
Ibid, s. 17

74. (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. 30

(2.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

Public Trustee may give discharge in certain cases.
1895, No. 11, s. 2

75. (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 Public Trustee, 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, and such memorandum of discharge shall operate as if the same had been signed by the mortgagee himself. 40

Ibid, s. 3

(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 Public Trustee to receive the mortgage debt and to sign such memorandum. 50

(3.) The production of the Public Trustee's receipt for the mortgage-moneys shall be sufficient authority to the person in possession of the instruments of title to the mortgaged property to deliver the same to the mortgagor.

5 (4.) A Judge may, in a summary way, order any person in possession of the instruments of title to the mortgaged property to deliver them to the mortgagor on production of the Public Trustee's receipt for the mortgage-moneys, and on payment of all proper charges, if any.

10 76. (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
 15 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
 20 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
 25 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, or their or his assigns, 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.
44 & 45 Vict., c. 41, s. 61

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

30 (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.

35 *Rights of Mortgagor in Possession.*

77. 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,
 40 may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Suits for possession of land by mortgagees.
1883, No. 29, s. 21

45 *Mortgagees may become Purchasers.*

78. (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 Regis-

Sale of mortgaged land by Registrar.
Cf. 1883, No. 29, s. 53

trar in whose district the land to be sold is situate, or, if that land be situate in more districts than one, then to the Registrar of any one of such districts, 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.

Cf. 1883, No. 29, s. 54

(2.) The Registrar 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.

Mortgagor may redeem at mortgagee's valuation.

79. 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, together with the expenses already incurred by the mortgagee in connection with the intended sale, and any moneys expended by him on or about the land subsequently to the time when he estimated the value thereof as aforesaid, and on such payment the mortgagee shall do the acts required by the *twelfth* clause of the *Third* Schedule hereto:

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.

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

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

Ibid., s. 56

(2.) In the event of the mortgagee being declared the purchaser, the Registrar shall, on demand by the mortgagee, execute a deed of conveyance of the land purchased expressed to be made between the Registrar (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. 57

(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.) Upon the execution of such deed by the Registrar the land 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.

1895, No. 11, s. 4

(5.) A conveyance in pursuance of any such sale may be made by the Registrar 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.

1883, No. 29, s. 59

(6.) Where any sale made under the provisions of any Act hereby repealed 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 such repealed Act had continued in force, and for the purpose only of completing such sale such repealed Act shall continue in force accordingly.

81. Any conveyance executed by the Registrar upon a sale made after the commencement of this Act shall, in favour of any person (other than a mortgagee purchasing under section *eighty* hereof, or any person appointed by him) claiming by, through, 5 or under such conveyance (including a person claiming under a conveyance to the mortgagee) 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 10 be made.

Protection of *bona fide* purchaser.

82. (1.) In respect of every application under section *seventy-eight* hereof there shall be paid to the Registrar by the mortgagee, in addition to the reasonable expenses of and incidental to the sale,— 15

Fees payable on application.

1883, No. 29, 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 one-eighth per centum where the purchase-money does not exceed two hundred pounds, and where the purchase-money exceeds that sum one-quarter per centum on the remainder of the purchase-money, but in no case exceeding twenty pounds.~~ 20

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

(2.) In any case where the land sold is sold subject to a mortgage, the moneys secured by the mortgage shall be deemed to be 25 "purchase-money" within the meaning of this section.

Action respecting Mortgage.

83. (1.) A person entitled to redeem any mortgaged property 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, 30 or for sale or redemption in the alternative.

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

(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 35 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 property 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 40 expenses of sale and to secure performance of the terms.

(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 45 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.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of 50 incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this Act.

IX.—LEASES.

General Provisions.

- Covenants by lessee.
1883, No. 29, s. 61
- To pay rent and taxes.
- To keep in repair.
- Powers in lessor.
Ibid, s. 62.
- To enter and view.
- To distrain.
- To re-enter and take possession.
- Merger of reversion not to affect remedies.
Ibid, s. 17
84. 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:—
- (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;
- (b.) That he or they will keep and yield up the demised premises in good and tenantable condition and repair, excepting depreciation from fair wear and tear, weather or natural causes without neglect of the lessee, damage by fire, earthquake, tempest, or inevitable accident.
85. In every lease of land there shall be implied the following powers in the lessor, his executors, administrators, or assigns:—
- (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 them, within a reasonable time to be therein prescribed, to repair the same in accordance with the covenant in that behalf contained or implied in his lease.
- (b.) That whenever the rent reserved is in arrear he or they may levy the same by distress.
- (c.) That whenever the rent or any part thereof, whether legally demanded or not, is in arrear for the space of one month, or whenever the lessee has failed to perform or observe any of the covenants, conditions, or stipulations contained or implied in the lease, and on the part of the lessee to be performed or observed, he or they may re-enter upon the demised premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee, his executors, administrators, or assigns, therein, but without releasing him or them from liability in respect of the breach or non-observance of any such covenant, condition, or stipulation.
86. 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 or non-observance 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.

87. 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.

Restriction on effect of license to assign. 1883, No. 29, s. 25

88. (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, as the case may require, of the land leased.

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

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

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

89. (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.

90. (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.

91. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his executors, administrators, or assigns shall be proved to have taken place after the commencement of this Act in any one particular instance, such actual waiver shall not be deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver shall specially relate, or to be a general waiver of any such covenant or condition, unless an intention to that effect shall appear.

Restriction on effect of waiver. 23 & 24 Vict., c. 38, s. 6.

Forfeiture.

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

Ibid, s. 5.

92. 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 : 5
- “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 : 10
- “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 : 15
- “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. 20

Restrictions on and relief against forfeiture of leases.
Ibid, s. 14 (1)

93. (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. 25 30

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

(2.) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, or has re-entered without action, 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. 35 40

Cf. 1882, No. 29,
c. 26

(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. 45

44 & 45 Vict.,
s. 41, s. 14 (4)

(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.

Ibid, s. 14 (5)

(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. 50

- (6.) This section applies to any right or option to purchase any land where the purchaser is in possession of that land.
- (7.) This section does not extend, —
- 5 (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)
- (9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary. Ibid, s. 14 (9)
- 15 94. (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
- 20 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.
- 25 (2.) Neither the assignment or the under-letting of any leasehold by the assignee of a bankrupt, or by the liquidator of a company, 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
- 30 the lease. 1883, No. 29, s. 26
- 35 95. 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
- 40 be entitled to require a lease to be granted to him for any longer
- 45 term than he had under his original under-lease. Power of Court to protect under-lessees on forfeiture of superior leases. 55 & 56 Vict., c. 13, s. 4

X.—MARRIAGE SETTLEMENTS.

96. 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

Implied powers in tenants for life. 1883, No. 29, s. 63

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, or within six months from the making of the lease, at a reasonable yearly rent, without taking any fine or premium for the making of such lease, and so that the lessee or lessees do execute a counterpart thereof.

Powers of trustees of settlement.
1883, No. 29, s. 39

97. (1.) There shall also be implied in the trustees of the settlement, 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 :—

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.

(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.

(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.

Marriage Settlements by Minors.

Sanction of Court to be obtained.
Ibid, s. 87

98. (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 a power of appointment, whether in possession, reversion, remainder, or expectancy.

(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.

Procedure.
Ibid, s. 89

(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.

(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.

(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
5 become absolutely void.

Minor dying under age.
1883, No. 29, s. 88

(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.

Application of section.
Ibid, s. 90

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

XI.—POWERS OF ATTORNEY.

99. (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
20 and continue in force until notice of such death or revocation has been received by the attorney named in the power.

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

(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
25 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.

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

(3.) A statutory declaration by any such attorney to the effect that he has not received any notice or information of the revocation
30 of such power of attorney by death or otherwise, shall, if made immediately before or if made after any such act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such act was done.

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

100. (1.) Where a power of attorney given for valuable consideration (whether executed in or out of New Zealand) is in
35 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

(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,
40 unsoundness of mind, or bankruptcy of the donor; and

(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,
45 or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor, had not been done or had not happened; and

(c.) Neither the donee of the power nor the purchaser shall at
50 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.

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

101. (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,— 5

(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 10

(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 15

(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. 20

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act. 25

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

102. 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. 30

XII.—CONVEYANCES BY EXECUTORS, ETC.

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

103. (1.) Where any person claims any property *bonâ fide* and for valuable consideration under any conveyance heretofore or hereafter made by an executor or administrator, whether made to him or to any person through whom he derives title, that conveyance shall, so far as concerns the person so claiming, or any person claiming under him, be and be deemed to have always been valid and effectual. 35

(2.) On any sale by an executor or administrator the vendor's receipt in writing shall be a sufficient discharge to the purchaser for the purchase-money thereby expressed to have been received, and neither the purchaser nor any person claiming under him shall be concerned to see to the application of the purchase-money, or to inquire whether the sale was irregular or improper. 40

XIII.—PARTITION.

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

104. (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. 45 50

(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.

(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.

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

(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 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:

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

(6.) On any sale under this 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-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.

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

(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 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, and the interest and dividends thereof shall be paid to the parties interested.

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

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

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

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

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

XIV.—DEBTS CHARGED ON REAL ESTATE.

Devisee, &c., of real estate not to claim payment of mortgage out of personal assets. 1883, No. 29, s. 80

107. (1.) Where a person dies seised of or entitled to any land 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 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 the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof. 5 10

Rule of construction. Ibid, s. 82 40 & 41 Vict., c 34

(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, or out of his residuary real and personal estate, or out of his residuary real 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 land. 15 20

Saving of right of mortgagee to recover his debt. 1883, No. 29, 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. 25

XV.—RENT-CHARGES AND OTHER ANNUAL SUMS.

Recovery of annual sums charged on land. 44 & 45 Vict., c. 41, s. 44

108. (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. 30 35

(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. 40

(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 45

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,
5 are fully paid; and such possession when taken shall be without impeachment of waste.

(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
10 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
15 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 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
20 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 commence-
25 ment 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.

Discharge of Incumbrances on Sale.

109. (1.) Where land subject to any incumbrance, whether
30 immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government
35 securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital-money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such
40 additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2.) Thereupon the Court may, if it thinks fit, and either after
45 or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance or vesting order proper for giving effect to the sale, and give directions for the retention and investment of the
50 money in Court.

Provision by Court for incumbrances, and sale freed therefrom.

44 & 45 Vict., c. 41, s. 5

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof. 5

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

XVI.—MARRIED WOMEN.

Court may bind interest of married woman.
44 & 45 Vict., c. 41, s. 39

110. 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. 10

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

111. 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, as if she were unmarried and of full age, 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. 15

XVII.—DISENTAILING ASSURANCES.

Enrolment of disentailing assurances.

112. (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. 20 25

(2.) This section shall apply to all assurances, whether made before or after the commencement of this Act. 30

(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.

XVIII.—PURCHASERS: WHEN AFFECTED BY NOTICE. 35

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

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

(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 40

(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. 45

(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.

(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.

10 (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."

XIX.—SERVICE OF NOTICES.

15 114. (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 & 45 Vict.,
c. 41, s. 67

(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:

20 (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.

25 (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 disability, unborn, or unascertained.

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

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

XX.—ORDERS OF COURT.

40 115. (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, or service, whether the purchaser has notice of any such want or not.

Orders of Court
conclusive.
Ibid, s. 70

45 (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," "The Settled Land Act, 1882," or "The Administration Act, 1879," notwithstanding any exceptions in any of those Acts.

50 (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, 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.

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

How scale to
be framed.
Ibid, s. 93

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

116. (1.) The Judges of the Supreme Court or any three of them, 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. 5

(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. 10

(3.) In the taxation of any bill of costs, or fees for conveyancing 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. 15

XXII.—VERIFICATION OF DEEDS, ETC. 20

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

117. (1.) Every instrument of any kind heretofore or hereafter duly executed out of New Zealand shall, so far as regards the execution thereof, be admissible 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 hear, receive, and examine evidence in New Zealand, if such execution be verified in any of the following ways, that is to say :— 25

(a.) Where the instrument is executed in any part of the British dominions other than New Zealand, then either—

(i.) In accordance with the provisions in that behalf of the Imperial Act now known by the Short Title of "The Statutory Declarations Act, 1835"; or 30

(ii.) In accordance with the law in force in that part of the British dominions where the verification takes place as to verifying the execution of instruments to be used abroad : 35

(b.) Where the instrument is executed in any foreign country, then if it purports to have been executed before a British Minister or Consul exercising his functions in that country, and to be sealed with his seal of office (if any), or if there be indorsed thereon or annexed thereto a declaration of the due execution thereof purporting to be made by an attesting witness thereto before any such Minister or Consul as aforesaid, and to be sealed as aforesaid. 40 45

(2.) It shall be presumed that any seal or signature impressed, affixed, appended, or subscribed on or to any document tendered in evidence under this section is genuine, and that the person appearing to have signed or attested any such document had in fact authority

to sign or attest the same, and that any such document was in fact made in accordance with the law under which it purports to have been made, unless the party objecting to the admission of the document proves the contrary.

5 (3.) In this section—

“Consul” includes a Consul-General, Consul, Vice-Consul, Acting-Consul, Proconsul, and Consular Agent:

“Minister” includes an Ambassador, Envoy, Minister, Chargé d’Affaires, and Secretary of Embassy or Legation.

10 118. After any instrument authorised to be registered under “The Deeds Registration Act, 1868,” or by any Act or Ordinance thereby repealed, 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
15 persons mentioned in subsection one of the last preceding section, 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 original
20 instrument was validly signed, sealed, executed, and attested, as purported to be in such copy.

Secondary evidence of instrument.

119. Where any instrument executed prior to the passing of this Act is by any provision hereof rendered valid and effectual, and would but for the passing of this Act be or remain invalid or ineffectual,
25 such instrument shall be deemed to be validated only where the person claiming thereunder is at the time of the passing of this Act in possession of the property affected by the instrument, and shall not be validated if such validation would create a title adverse to the
30 possession of any such person.

Restriction on validation of instruments.

120. (1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in
35 law proper powers, covenants, provisions, stipulations, and words to be given by or to be contained in any such instrument, or to be adopted in connection with or applied to any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his
40 omitting in good faith in any such instrument, or in connection with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of
45 his doing so.

Protection solicitors and trustees adopting this Act. 44 & 45 Vict., c. 41, s. 66

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to any contract or transaction of any further or other powers, covenants, provisions, stipulations, or words is im-
50 proper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor they
55 shall also be protected in like manner.

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.

THIRD SCHEDULE.

Section 64 (1).

COVENANTS, CONDITIONS, AND POWERS IMPLIED IN MORTGAGES.

(1.) That the mortgagor will pay to the mortgagee 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 shall 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 performance or 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, with power to the mortgagee to buy in the said land or any part thereof at any sale by auction, or to rescind any contract for the sale thereof, and to resell the same without being answerable for any loss or diminution in price, and with power to execute assurances, give effectual receipts for the purchase-money, and do all such other acts and things for completing the sale as he may think proper: And that the mortgagee will apply the moneys arising from any such sale as aforesaid, in the first place, in payment of the costs and expenses incidental to the sale or otherwise incurred in respect of the mortgage, and, in the second place, in satisfaction of the principal, interest, and other moneys for the time being owing under the mortgage; and will pay the surplus (if any) to the mortgagor:

Provided that a purchaser at any such sale shall not be answerable for the loss, misapplication, or non-application of the purchase-money by him paid; nor shall he be obliged to see to the application thereof; nor shall he be concerned to inquire whether any default has been made as aforesaid, or whether any notice has been given or left as aforesaid, or otherwise as to the necessity, regularity, or propriety of the sale; nor shall he be affected by notice that no such default has been made or notice given or left as aforesaid, or that the sale is otherwise unnecessary, irregular, or improper.

(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," or any Act amending the same, 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

(13.) The expressions "mortgagor" and "mortgagee" in the above provisions shall, where such meaning is not inconsistent with the context, extend to and include the executors, administrators, and assigns of the mortgagor and mortgagee respectively.

FOURTH SCHEDULE.

Section 67.

(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.

Dated this day of , 19 .

Witness: E. F.,

C. D., Mortgagee.

[Place of abode and description].

(2.) INDORSEMENT OF INCREASE OR REDUCTION IN RATE OF INTEREST.

THE rate of interest payable under the within- [or above-] written [or annexed] mortgage is hereby increased [or reduced] to £ : : per annum.

Dated this day of , 19 .

Witness: E. F.,

A. B., Mortgagor.

[Place of abode and description].

Witness: G. H.,

C. D., Mortgagee.

[Place of abode and description].

(3.) 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.,

A. B., Mortgagor.

[Place of abode and description].

Witness: G. H.,

C. D., Mortgagee.

[Place of abode and description].

(4.) MEMORANDUM OF SHORTENING OR RENEWAL OR EXTENSION OF TERM OR CURRENCY OF MORTGAGE.

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

Dated this day of , 19 .

Witness: E. F.,

A. B., Mortgagor.

[Place of abode and description].

Witness: G. H.,

C. D., Mortgagee.

[Place of abode and description].

Section 71.

(5.) ASSIGNMENT OF MORTGAGE.

IN consideration of the sum of £ paid to me by C. D., of , the receipt whereof is hereby acknowledged [*Where mortgagor joins, add* "and with the concurrence of X. Y., the mortgagor named and described in the within- (*or above*-) written (*or annexed*) mortgage, who hereby admits that the principal sum of £ , with interest thereon from the day of , is now owing upon the security of the said mortgage"], I hereby assign unto the said C. D. all moneys secured by the within- [*or above*-] written [*or annexed*] [*or "by the said "*] mortgage, and all my rights, powers, and remedies thereunder, and all my estate and interest in the land [*or property*] therein described.

A. B., Assignor.

Witness: E. F.,

[*Place of abode and description*].

[Witness: G. H.,

[*Place of abode and description*].]

[X. Y., Mortgagor.]

Witness: K. L.,

[*Place of abode and description*].

Accepted. C. D., Assignee.

Section 121.

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": Sections 25 and 26.

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

1884, No. 10.—"The Married Women's Property Act, 1884": Section 27.

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."

1904, No. 12.—"The Law Amendment Act, 1904": Section 9.