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[STATUTES REVISION COMMISSION.]

PROPERTY LAW CONSOLIDATION.

IN our general report of this year reference is made to the circumstances under which this Bill has been prepared.

It effects a consolidation of the principal enactments of the colony relating to property. Although these chiefly relate to real property, certain of them extend to personalty. The Conveyancing Ordinance (1842, No. 10) has now been in force forty years, and its provisions are well known in the colony. In its new shape the main advantage is that it is associated with other Acts relating to property, which will be convenient to those called upon to consult them, or whose interests may be affected. But the Acts now grouped together in this Bill may be regarded only as a step towards a more comprehensive measure, which may become necessary in a short time. So far as the practice of conveyancing is concerned, it may be assumed that in future most of the conveyancing business of the colony will be transacted under the Land Transfer Acts, and that the former law will only have a limited operation. In England the law of real property has been amended very considerably during the past few years, and in our general report allusion is made to certain enactments which had been under our consideration, but from which we were unable to recommend that adaptations should be made, chiefly because of the unsettled state of the law and the immediate prospect of further changes therein. Of these enactments may be mentioned 22 and 23 Vict., cap. 35 (Lord St. Leonard's Act), to "amend the Law of Property and to relieve Trustees;" 23 and 24 Vict., cap. 145 (Lord Cranworth's Act now repealed), to give "to Trustees, Mortgagees, and Others, certain Powers now commonly inserted in Settlements, Mortgages, and Wills;" "The Vendor and Purchaser Act, 1874," "The Real Property Limitation Act, 1874," "The Partition Act, 1876," "The Settled Estates Act, 1877," "The Conveyancing and Law of Property Act, 1881" (amended in 1882), and "The Settled Land Act, 1882."

The Imperial Acts in force in the colony affecting property were collected by us in the volume of such Acts published in 1881.

We now indicate the changes proposed by us. The title of the Conveyancing Ordinance had reference to *real* property, although in fact it also in some parts related to *personal* property. Certain of the provisions of this ordinance extend to both classes of property, and the title has therefore been enlarged.

Clause 1. It is proposed the Act should come into force on 1st January, 1884.

Clause 13. This clause reproduces the present law; but we may call attention to the fact that the Land Transfer Acts recognize the right of foreclosure. It seems to us this inconsistency should be remedied.

Clause 21 refers to the High Court of Justice—a change rendered necessary by the passing of the Judicature Acts.

Clauses 29 and 30. It may be worth consideration whether there should not be a clause stating that these provisions should extend to *all deeds*, whether relating to property or not. Decisions of the Supreme Court and Court of Appeal have established that deeds which do not transfer or relate to the transfer of property are not within the scope of the Conveyancing Ordinance (*McGregor v. Edwards*, 1, *Macassey*, 268; also *Rhodes v. Robinson* and *Wilkin*, 1, Court of Appeal, 133.)

Clauses 32, 39, 42, 43, and 44. In these the words shown in italics leave the law as it stood, but they have become necessary by the lapse of time since the original ordinance was passed.

Clause 51. In the original Act the words "Town Clerk" occur. Obviously this is too restricted, and we propose to insert the words appearing in italics.

Clause 52. We would suggest the insertion of the words in italics, and the omission of the words in brackets. Cases may occur where the nearest *resident* Registrar is not the Registrar of the district where the sale ought to take place. If our suggestion is adopted, it may be worth considering whether any validating provision is necessary.

Clause 64. "The Powers of Attorney Act, 1854," in its preamble, refers to difficulties which frequently arise as to titles to land, and the enactments proceed as shown in this clause. It would appear, therefore, that the Act only applies to *land* and contracts affecting land; but it seems to us its provisions might well be extended to all deeds, &c., *bonâ fide* executed by attorney. The existing law is shown in brackets, for which, we suggest, the words in italics might be substituted.

Clauses 71 to 78. The alteration of language shown in italics is rendered necessary by "The Supreme Court Act, 1882." We submit the words in brackets should be omitted.

Clause 79 is reprinted and rearranged as to the first clause. It had been adopted in the colony by "The English Acts Act, 1854."

Clause 85. The italic matter in this clause had been rendered necessary by the passing of "The Administration Act, 1879." As to the latter a new clause (86) is inserted saving its provisions, which only apply to cases arising since it came into operation.

Clause 87 has been modified a little. Changes have been introduced in the procedure in England by virtue of the Judicature Act, but these do not, of course, affect this colony.

Clause 99 is partly new. It purports to put on a more satisfactory basis the proofs of execution of instruments executed out of the colony. The new clause extends the enactment to instruments executed in foreign countries. It is conceived that the term "instrument" will include wills, deeds, or writings of any kind.

Clause 100 is the usual clause as to references to other Acts.

Clause 101 is the repealing clause, with a full saving of all things done and all interests and rights in existence.

A. J. JOHNSTON.

W. S. REID.

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*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,
26th July, 1883.*

[STATUTES REVISION COMMISSION.]

PROPERTY LAW CONSOLIDATION.

ANALYSIS.

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| <p>Title.</p> <p style="text-align: center;">PRELIMINARY.</p> <p>1. Short Title and commencement of Act.
2. Interpretation.</p> <p style="text-align: center;">GENERAL RULES AFFECTING PROPERTY.</p> <p>3. Fee to pass without words of limitation.
4. Freehold <i>in futuro</i> may be created.
5. Estate in chattel real may be created by deed.
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7. Rule in Shelley's case.
8. No estate void because of possibility upon a possibility.
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10. Declaration may be made by tenants in common that they will be joint tenants.
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12. Executor of mortgagee may execute reconveyance.
13. Person entitled to receive mortgage debts may sell and recover in certain cases.
14. Foreclosure prohibited.
15. No equitable mortgage by virtue of deposit of deeds.
16. Vendor's lien, by reason of non-payment of purchase-money, taken away.
17. Remedy for equitable waste.
18. Limitation no bar to express trusts.
19. Tenant for life not to have right to commit equitable waste unless expressly permitted.
20. No merger by operation of law.
21. Suits for possession of land by mortgagors.
22. English rules of equity practice to apply as to enforcement of contracts.
23. Apportionment of rent charge.
24. Release of part of land charged not to be an extinguishment.</p> | <p>25. Restriction on effect of license to assign.
26. Assignment of lease by bankrupt or Sheriff.
27. Married woman may assign reversionary interests.
28. And may disclaim any estate.
29. Deeds to be acknowledged.</p> <p style="text-align: center;">DEEDS AND THEIR OPERATION.</p> <p style="text-align: center;">(1.) <i>What essential to a Deed.</i></p> <p>30. Signature and attestation.
31. Sealing, delivery, &c.
32. Receipt.
33. Deeds heretofore executed.
34. Execution of powers.</p> <p style="text-align: center;">(2.) <i>Certain Cases in which Deeds shall be necessary.</i></p> <p>35. Partition.
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39. Assignments of debt and choses in action.</p> <p style="text-align: center;">(4.) <i>Operation of Deed.</i></p> <p>40. Form of deed.
41. Absolute conveyance.
42. Conveyance subject to trust.
43. Springing use.
44. Forms abolished.
45. Estates by wrong.
46. Party not named.</p> <p style="text-align: center;">INCIDENTS OF DEEDS.</p> <p style="text-align: center;">(1.) <i>Covenants for Title.</i></p> <p>47. Implied covenants in conveyances. (1.) Right to convey. (2.) Quiet enjoyment. (3.) Further assurance.
48. By trustees and mortgagees.</p> |
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(2.) *Mortgages.*

49. Implied covenant by mortgagors. To pay principal and interest.
 50. Implied covenant by mortgagees. To reconvey.
 51. Power of mortgagees, their liens, &c. (1.) To sell. (2.) Receipts for purchase-money sufficient discharges. (3.) Purchaser relieved from inquiry as to circumstances of sale. (4.) Application of purchase-money. (5.) Application of surplus.

(3.) *Sales by Mortgagees.*

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 53. Mortgagee may sell by Registrar of Supreme Court.
 54. Registrar to arrange time and conditions of sale.
 55. Mortgagee may bid.
 56. Conveyance to mortgagee.
 57. Registrar to execute conveyance.
 58. Remuneration of Registrar.
 59. Sales not completed to be completed under this Act.
 60. Conveyances to be valid notwithstanding bankruptcy of mortgagor.

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 62. Powers in lessor. (1.) To enter and view. (2.) To destrain. (3.) Proviso for re-entry.

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63. Implied powers in tenants for life. To demise property for fixed terms.
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72. Power of Court to order sale instead of division.
 73. Sale on application of certain proportion of parties interested.
 74. As to purchase of share of party desiring sale.
 75. As to parties to suits for partition.
 76. Authority for parties interested to bid.
 77. Application of Trustee Act.

78. Application of proceeds of sale.
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Debts charged on Real Estate.

80. Heir or devisee of real estate not to claim payment of mortgage out of personal assets.
 81. Saving of right of mortgagee to recover his debt.
 82. In construing wills general directions for payment of debts out of personalty not to include mortgage debts unless such intention expressly implied.

MARRIED WOMEN AND INFANTS.—DOWER.

(1.) *Acknowledgments by Married Women.*

83. Judges of Supreme Court may appoint Commissioners for taking acknowledgments of deeds by married women.
 84. Powers and duties of Commissioners.
 85. Evidence of acknowledgment.
 86. Resident Magistrates to be Commissioners *ex officio*.

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

87. Infants may, with the approbation of the Court, make valid settlements or contracts for settlements of their real and personal estate upon marriage.
 88. In case infant die under age, appointment, &c., to be void.
 89. Sanction of the Court to be given upon petition.
 90. Not to apply to males under twenty or females under seventeen years of age.

(3.) *Dower.*

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

MISCELLANEOUS PROVISIONS.

(1.) *Conveyancing Charges.*

92. Judges to make rules for regulating charges.
 93. Scale of fees to be framed with regard to skill and labour employed.
 94. Registrar to tax bills according to the scale allowed.

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

95. Verification of instruments executed out of the colony. (1.) In the British dominions. (2.) In a foreign country.

(3.) *Repeals.*

96. References to repealed Acts to apply to this Act.
 97. Repeal of Acts and Ordinances.
 98. Saving of provisions of "The Administration Act, 1879."

SCHEDULES.

- First Schedule. Form of conveyance.
 Second Schedule. Acts repealed.

A BILL INTITLED

AN ACT to consolidate certain Enactments relating to Property, and to simplify the Law relating thereto.

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

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

Short Title and commencement of Act.

PRELIMINARY.

- 5 2. In this Act, if not inconsistent with the context,—
- "Land" means and includes any estate or interest in real property :
- "Registrar" means the Registrar of the Supreme Court acting for the district constituted under "The Supreme Court Act, 1882," in which any proceeding is taken or anything is done under this Act, and includes a Deputy-Registrar where there is no Registrar, or in any case where the Deputy may lawfully act for and on behalf of the Registrar :
- 10 "The Court" means the Supreme Court of New Zealand.
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Interpretation.
Ord., 1842, No. 10, s. 55.

1870, No. 6, s. 2.

GENERAL RULES AFFECTING PROPERTY.

3. Where any land shall be conveyed to any person without any words of limitation, such conveyance shall be construed to pass the fee-simple or other whole estate or interest which the party conveying had power to dispose of.
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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.
5. Any estate or interest which can be created by will in any chattel real may also be created by deed.
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6. A contingent remainder shall be capable of taking effect notwithstanding the destruction or determination or merger of the particular estate immediately preceding, and notwithstanding it may have been created expectant on the termination of a term of years.
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7. Whenever any deed or will shall contain a limitation to any person for life, followed mediately or immediately by a limitation to the heirs or the heirs of the body of such person, the latter limitation shall not be deemed to coalesce with the former, but shall take effect as a contingent remainder.
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8. No estate shall be void on account of its being made to depend on a possibility upon a possibility.
9. Any real or personal property may be conveyed by a husband to his wife, or by a wife to her husband, either alone or together with any other persons.
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10. Any two or more persons, in whom any real or personal property shall be vested as tenants in common, may by deed declare that they will be joint tenants thereof, and thereupon the same shall be vested in them as joint tenants.
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11. A person may convey, assign, or transfer property to himself jointly with another or others.
12. The executor or administrator of a deceased mortgagee shall have power, upon payment to him of the moneys remaining due on account of the principal and interest of the mortgage debt, to convey by deed the property comprised in the mortgage, and such conveyance shall be as effectual as if the same had been made by the heir or devisee of the mortgagee, their heirs or assigns.
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Fee to pass without words of limitation.
Ord., 1842, No. 10, s. 32.

Freehold *in futuro* may be created.
Ib., s. 33.

Estate in chattel real may be created by deed.
Ib., s. 34.

When contingent remainder capable of taking effect.
Ib., s. 35.

Rule in Shelley's case.
Ib., s. 36.

No estate void because of possibility upon a possibility.
Ib., s. 37.

Conveyance by husband to wife, or wife to husband.
Ib., s. 38.

Declaration may be made by tenants in common that they will be joint tenants.
Ib., s. 39.

Executor of mortgagee may execute reconveyance.
Ib., s. 40.

Person entitled to receive mortgage debts may sell and recover in certain cases.
1870, No. 30, s. 4.

Foreclosure prohibited.
Ord., 1842, No. 10, s. 41.

No equitable mortgage by virtue of deposit of deeds.
Ib., s. 42.

Vendor's lien, by reason of non-payment of purchase-money, taken away.
Ib., s. 43.

Remedy for equitable waste.
Ib., s. 44.

Limitation no bar to express trusts.
1882, No. 31, s. 3.

Tenant for life not to have right to commit equitable waste unless expressly permitted.
Ib., s. 4.

No merger by operation of law.
Ib., s. 5.

Suits for possession of land by mortgagors.
Ib., s. 6.

English rules of equity practice to apply as to enforcement of contracts.
Ord., 1844, No. 11, s. 3.

13. Whenever any mortgagee or one or more of several mortgagees shall die, the persons for the time being legally entitled to receive the mortgage debt shall have the same powers to sell and convey and to reconvey the land mortgaged as if the whole legal and equitable interest in the said mortgage debt and the whole legal estate in the land mortgaged, and also the powers of sale which the mortgagee or mortgagees might have exercised if living, had been vested in such persons. 5

And every sale effected and every conveyance and reconveyance executed by such persons shall be as valid and have the same effect as if such legal and equitable interest and legal estate and powers had been respectively so vested. 10

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

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

16. No vendor of any land shall have any equitable lien thereon by reason of the non-payment of the purchase-money or any part of the purchase-money for the same. 20

17. Where the reversion of any land subject to a lease shall be merged in any remainder, or other reversion, or future estate, the person entitled to the estate into which such reversion shall have merged, and his heirs, executors, or administrators, shall have the same remedy for non-performance of the conditions or covenants expressed or implied in the lease as the person who would for the time being have been entitled to the mesne reversion which shall have been merged would have had. 25

18. No claim of a *cestui que* trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations. 30

19. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate. 35

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

21. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person. 40 45

22. The rules of the *High Court of Justice* in England touching the operation and enforcement of contracts for the purchase of land shall be adopted and followed in all cases in the Supreme Court of this colony. 50

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

Apportionment of rent charge. Ord., 1842, No. 10, s. 45.

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

Release of part of land charged not to be an extinguishment. Ib., s. 46.

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

Restriction on effect of license to assign. Ib., s. 47.

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

Assignment of lease by bankrupt or Sheriff. b., s. 48.

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

Married woman may assign reversionary interests. Ib., s. 49.

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

And may disclaim any estate. Ib., s. 50.

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

Deeds to be acknowledged. Ib., s. 51.

DEEDS AND THEIR OPERATION.

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

30. Every deed, whether or not affecting property, shall be signed by the party to be bound thereby, and shall also be attested by at least one witness, whose place of abode and calling, business, or addition shall be stated on the deed; but no particular form of words shall be requisite for the attestation.

Signature and attestation. Ib., s. 1. 1860, No. 16, s. 4. 1874, No. 11, s. 4.

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

Sealing, delivery, &c. Ord., 1842, No. 10, ss. 2, 3.

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

Receipt. Ib., s. 4.

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

Deeds heretofore executed. 60, No. 16, s. 5.

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

Execution of powers. Ord., 1842, No. 10, s. 5.

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

35. No partition or exchange, lease, assignment, or surrender, otherwise than by operation of law, of any land shall be valid unless the same shall be made by deed.

Partition. Ib., s. 6.

Appointment.
Exception.
Ord., 1842, No. 10,
s. 7.

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

Disclaimer.
Ib., s. 8.

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

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

Contingent interests,
&c.
Ib., s. 9.

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

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

Assignments of debt
and choses in action.
1882, No. 31, s. 7.

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

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

(4.) *Operation of Deed.*

Form of deed.
Ord., 1842, No. 10,
s. 10.

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

Absolute conveyance.
Ib., s. 11.

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

Conveyance subject
to trust.
Ib., s. 12.

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

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conveyed, subject however to a trust for the benefit of such other person.

5 43. Every limitation which at any time heretofore might have been made by way of shifting, springing, or executory use, may be made by direct conveyance, without the intervention of uses. Springing use.
Ord., 1842, No. 10,
s. 12.

44. The legal estate in any land shall not pass by a covenant to stand seised, or by any contract for the sale and purchase of land, or by livery of seisin. Forms abolished.
Ib., s. 13.

10 45. No conveyance shall create any estate by wrong, or work a forfeiture, or have any other effect than a conveyance by lease and release would have had under any law or enactment at any time heretofore in force. Estates by wrong.
Ib., s. 14.

15 46. Any person not being named as a party to any deed may take an immediate benefit thereby in the same manner as he might under a deed-poll. Party not named.
Ib., s. 15.

INCIDENTS OF DEEDS.

(1.) Covenants for Title.

20 47. In every conveyance of land by way of sale, mortgage, marriage settlement, lease, and every other conveyance for valuable consideration, there shall be implied, excepting as against trustees or mortgagees, the following covenants by each conveying party severally for himself, his heirs, executors, and administrators, to the extent of the interest departed with by him, that is to say,— Implied covenants in
conveyances.
Ib., s. 16.

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

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

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

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

45 mortgaged property.

48. In every conveyance or reconveyance by trustees or mortgagees there shall be implied the following covenant by each trustee or mortgagee severally for himself, his heirs, executors, or administrators, that is to say,— By trustees and
mortgagees.
Ib., s. 23.

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

(2.) Mortgages.

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Implied covenant
by mortgagors.

Ord., 1842, No. 10,
s. 17.

To pay principal and
interest.

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

That he or they will pay the principal money and interest thereby secured after the rate and at the times therein 10 mentioned without any deduction whatever.

Implied covenant by
mortgagees.

To reconvey.

Ib., s. 18.

50. In every such conveyance as last mentioned there shall be implied an obligation on the part of the mortgagee, his heirs, executors, administrators, and assigns, upon payment of the principal and interest at the time and in the manner mentioned in the mortgage 15 deed, or at any time thereafter upon payment of the principal and interest then due (six clear months' notice of an intention to pay the same having been given), at the request, cost, and charges of the mortgagor, his heirs or assigns, to reconvey to him or them, or as he or they shall direct, the property comprised in the mortgage, free from 20 all incumbrances by the mortgagee, his heirs, executors, administrators, or assigns.

Power of mortgagees,
their liens, &c.

Ib., s. 19.

To sell.

51. In every such conveyance by way of mortgage there shall be implied the following power in the mortgagee, his executors, administrators or assigns, that is to say,— 25

(1.) In case default shall be made for the space of three months in payment of the principal money thereby secured, or any part thereof, the mortgagee, his executors, administrators, or assigns, shall cause a written demand of payment thereof to be served on the mortgagor, his heirs 30 or assigns, or left at his or their last or usual place of abode, or, if the mortgage be made by a corporate body, upon or with any person or officer on whom any notice or process of any kind may be legally served on behalf of such corporate body. 35

If default be made for the further space of three months from the service of such demand, the mortgagee, his executors, administrators, or assigns, may sell the property mortgaged, or any part thereof, and either altogether 40 or in lots, and either by public auction or private contract, or by both of such means, and subject to such conditions as he or they may think fit, with power to buy in and to resell the same, without being liable for any loss occasioned thereby, and may make and execute all such contracts and conveyances as he or they may judge necessary for carrying 45 into effect the powers hereby given, all which sales, contracts, and conveyances, and all matters and things hereby authorized, shall be as valid and effectual as if the mortgagor, his heirs or assigns, had made, done, or executed the same. 50

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- 5 (2.) The receipt or receipts in writing of the mortgagee, his heirs, executors, administrators, or assigns, shall be a sufficient discharge to any purchaser of any part of such mortgaged property for so much of his purchase-money as may be thereby expressed to be received. Receipts for purchase-money sufficient discharges.
- 10 (3.) No such purchaser or his representatives shall be answerable for the loss, misapplication, or non-application, or be obliged to see to the application of the purchase-money by him paid, nor shall he be concerned to inquire as to the fact of any such default or demand as aforesaid having been made. Purchaser relieved from inquiry as to circumstances of sale.
- 15 (4.) The moneys to arise from such sale as aforesaid shall be applied, first, in payment of the expenses attending any such sale or otherwise incurred in the execution of the power of sale hereby given; secondly, in repayment of the principal money and interest remaining due, together with any costs and expenses occasioned by the non-payment thereof. Application of purchase-money.
- (5.) The surplus (if any) shall be paid to the mortgagor, his heirs, executors, administrators, or assigns. Application of surplus.

20 (3.) Sales by Mortgagees.

25 **52.** In the construction of the next *eight* succeeding sections the term "mortgagee" shall extend to and include the executors, administrators, and assigns of the original mortgagee, and the term "mortgagor" shall extend to and include the heirs, executors, administrators, and assigns of the original mortgagor, unless there be something in the subject or context repugnant to such construction. Interpretation. 1860, No. 16, s. 2.

30 **53.** It shall be lawful for any present or future mortgagee, having a power of sale by auction, to apply to the Registrar *in whose district* [who shall be resident nearest to] the land to be sold *is situated*, to conduct the sale of the whole or any part of the land comprised in the mortgage. Mortgagee may sell by Registrar of Supreme Court. Ib., s. 6.

35 Every Registrar by whom any land has heretofore been sold shall be deemed to have been and to be the proper Registrar to effect such sale, although he was not resident nearest to the land sold. Registrar to arrange time and conditions of sale. Ib., s. 7.

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

40 **55.** The mortgagee may be a bidder at any such sale by auction conducted as aforesaid, and become the purchaser of the land or any part thereof. Mortgagee may bid. Ib., s. 8.

45 **56.** In the event of the mortgagee being declared the purchaser at any sale held under the authority of this Act, the Registrar who shall have conducted the sale, or the successor of such Registrar at the same place for the time being, shall, on demand by the mortgagee, execute a deed expressed to be made between such Registrar (describing him by his official description only) and the mortgagee, with or without the addition of any other parties, and shall contain a recital stating the fact of the sale under the aforesaid section of this Act. Conveyance to mortgagee. 1870, No. 30, s. 2.

50 **57.** Every such deed shall be executed by the Registrar by signing his personal name, with the addition of his official description, and thereupon the land therein expressed to be conveyed shall vest Registrar to execute conveyance. Ib.

in the mortgagee in the same manner as if made by the mortgagee to a purchaser at a sale made in exercise of the power of sale expressed or implied in the mortgage, and such mortgagee shall have the same estate and interest in such land as if he had purchased at such sale, and no rule of law or equity had existed preventing him from purchasing and taking a conveyance. 5

Remuneration of Registrar.
1860, No. 16, s. 10.

58. On any sale conducted by the Registrar he shall be entitled as remuneration for his trouble on completion of the purchase to a percentage on and to be paid out of the purchase-money, after the rate, where the purchase-money does not exceed two hundred pounds, 10 of one per centum, and, where the purchase-money exceeds that sum, one-quarter per centum on the remainder of the purchase-money, but in no case to exceed *ten* pounds.

Sales not completed to be completed under this Act.
1870, No. 30, s. 3.

59. Nothing in this Act shall prejudice or affect the title of mortgagees who have purchased and taken conveyances under any Act *hereby repealed*, nor of any person claiming or to claim under them, but, where any sale made under the provisions of any such repealed Act has not been completed by the execution of a proper conveyance, the conveyance may be made in the same manner and with the same effect as if this Act had been in force at the time of such sale being made. 15 20

Conveyances to be valid notwithstanding bankruptcy of mortgagor.
Ib., s. 5.

60. When any conveyance has heretofore been executed by the Registrar or Deputy-Registrar in the name and on behalf of the mortgagor, or in the name and on behalf of his assignee whether such assignee be such by deed or operation of law, the same shall be valid 25 and effectual, notwithstanding the mortgagor may have become bankrupt or insolvent prior to the date of such conveyance.

(4.) *Leases.*

Provisions in leases. Covenants by lessee.
Ord., 1842, No. 10, s. 20.

61. In every lease there shall be implied the following covenants by the lessee, for himself, his heirs, executors, administrators, and 30 assigns:—

To pay rent and taxes, &c.

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

To yield up in good repair.

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

Powers in lessor.
Ib., s. 21.

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

To enter and view.

(1.) That he or they may, by himself or themselves, or his or their 40 agents, at all reasonable times, enter upon the demised property and view the state of repair thereof, and may serve upon the lessee, his executors, administrators, or assigns, or leave at his or their last or usual place of abode, a notice in writing of any defect, requiring him or them, 45 within a reasonable time to be therein prescribed, to repair the same:

To distrain.

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

Proviso for re-entry.

(3.) That in case the rent or any part thereof shall be in arrear 50 for the space of six months, or in case the repairs required by such notice as aforesaid shall not have been completed

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within three months after the service or leaving thereof, he or they may re-enter upon the demised property and determine the estate of the lessee therein, but without releasing him from his liability in respect of the breach of any covenant therein expressed or implied.

(5.) *Marriage Settlements.*

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

Implied powers in tenants for life. Ord., 1842, No. 10, s. 22.

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

To demise property for fixed terms.

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

Powers of trustees of settlement. Ib.

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

To sell or exchange.

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

To purchase other lands with proceeds.

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

Interim investment of proceeds.

(6.) *Powers of Attorney.*

65. Whenever the person who may have executed or shall hereafter execute any power of attorney (whether such person were or be at the time within the colony or not) shall not have declared or shall not declare therein that such power shall continue in force only until his death or revocation thereof, then and in every such case such power

Powers of attorney to continue in force until notice of death or revocation received. 1854, No. 1, s. 1.

shall, so far as may concern all contracts entered into *bond fide*, and all *deeds or instruments of any kind made or signed* operate and continue in force until notice of his death or of the revocation of such power shall have been received by the attorney named therein.

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

1854, No. 10, s. 1.

66. Every act (within the scope of the powers and authority conferred upon the said attorney to such extent as aforesaid) heretofore or hereafter to be done or suffered by him after such death or revocation as aforesaid, and before notice thereof shall have been received, shall be as effectual in all respects as if such death or revocation had not happened or been made. 5

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

Ib., s. 2.

67. A solemn declaration made by any such attorney, under the provisions and by virtue of "The Justices of the Peace Act, 1882," to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise, shall, if made immediately before or after any such act as aforesaid, be taken to be conclusive proof of such non-revocation at the times thereof respectively. 10 15

(7.) General.

Implied covenants as against husband. Ord., 1842, No. 10, s. 24.

68. In every case where any of the covenants or powers *implied by virtue of this Act* would be implied by or in any woman if unmarried, the same shall be implied by or in her husband if she shall be married. 20

Remedy in cases of implied covenants. Ib., s. 25.

69. Every covenant which shall be implied by virtue of this Act shall have the same force and effect and be enforced in the same manner as if it had been set out at length in the deed wherein the same shall be implied. 25

Implications may be negatived. Ib., s. 26.

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

Power to re-enter not created by implication. Ib., s. 27.

71. Neither the word "grant" nor the word "exchange" shall have the effect of creating any warranty or right of re-entry. 30

PARTITION.

Power of Court to order sale instead of division. 1870, No. 6, s. 3.

72. In *an action* for partition, if it appears to the Court that, by reason of the nature of the property to which the *action* relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions. 35 40

Sale on application of certain proportion of parties interested. Ib., s. 4.

73. In *an action* for partition, if the party or parties interested, individually or collectively, to the extent of one moiety or upwards, in the property to which the *action* relates, request the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions. 45 50

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74. In an action for partition, if any party interested in the property to which the action relates requests the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property or some of them undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions ;
- And, in case of such undertaking being given, the Court may order a valuation of the share of the party requesting a sale, in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.
75. Any person may maintain such action against any one or more of the parties interested without serving the other or others (if any) of those parties, and it shall not be competent to any defendant in the action to object for want of parties ; and at the hearing of the cause the Court may direct such inquiries as to the nature of the property and the persons interested therein and other matters as it thinks necessary or proper, with a view to an order for partition or sale being made on further consideration :
- But all persons who, if this Act had not been passed, would have been necessary parties to the action, shall be served with notice of the decree or order on the hearing, and, after such notice, shall be bound by the proceedings as if they had been originally parties to the action, and shall be deemed parties to the action, and all such persons may have liberty to attend the proceedings, and any such person may, within a time limited by general orders, apply to the Court to add to the decree or order.
76. On any sale under the four last foregoing sections of this Act, the Court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale, on such terms as to non-payment of deposit, or as to setting-off or accounting for the purchase-money or any part thereof instead of paying the same, or as to any other matters, as to the Court seem reasonable.
77. Section forty-one of "The Trustee Act, 1883," shall extend and apply to cases where in actions for partition the Court directs a sale instead of a division of the property.
78. Sections twenty-two to twenty-four, both inclusive, of "The Leases and Sales of Settled Estates Act, 1865," shall extend and apply to money to be received on any sale effected under the authority of this Act.
79. In an action for partition the Court may make such order as it thinks just respecting costs up to the time of the hearing.

As to purchase of share of party desiring sale.
1870, No. 6, s. 5.

As to parties to suits for partition.
1882, No. 31, s. 14.

Authority for parties interested to bid.
1870, No. 6, s. 6.

Application of Trustee Act.
Ib., s. 7.

Application of proceeds of sale.
Ib., s. 8.

Costs in partition suits.
Ib., s. 9.

Debts charged on Real Estate.

80. When any person shall have died on or after the first day of October, one thousand eight hundred and fifty-five, or shall hereafter die seised of or entitled to any land which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not by his will or deed or other document have signified any contrary or other intention, the heir or devisee to whom such land shall descend or be

Heir or devisee of real estate not to claim payment of mortgage out of personal assets.
1855, No. 3.
17 & 18 Vict., c. 113.

devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person, but the land so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof. 5

Saving of right of mortgagee to recover his debt.
Ib.

81. Nothing in the *last-preceding* section contained shall affect or diminish any right of the mortgagee of such lands to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying as aforesaid or otherwise, nor shall affect the rights of any person claiming under or by virtue of any will, deed, or document made before the *first day of October, in the year last above mentioned.* 10 15

In construing wills general directions for payment of debts out of personalty not to include mortgage debts unless such intention expressly implied.
1870, No. 5, s. 3.
30 & 31 Vict., c. 69.

82. In the construction of the will of any person who may die after the thirty-first day of December, one thousand eight hundred and seventy, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule established by the *eighty-second* section of this Act, unless such contrary or other intention shall be further declared by words expressly, or by necessary implication, referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate. 20 25

MARRIED WOMEN AND INFANTS.—DOWER.

(1.) *Acknowledgments by Married Women.*

Judges of Supreme Court may appoint Commissioners for taking acknowledgments of deeds by married women.
1860, No. 16, s. 14, modified.

83. All the acts, powers, and duties with respect to the appointment of persons to be Commissioners for taking the acknowledgments by married women of deeds executed by them under the Act of the third and fourth years of the reign of King William IV., chapter seventy-four, to be done by or given to or imposed upon the Chief Justice of the Court of Common Pleas at Westminster, or by, to, or upon any Judge of the said Court may be done, exercised, and performed by any Judge of the Supreme Court. 30 35

Powers and duties of Commissioners.
Ib., s. 15.

84. Every Commissioner appointed under the last preceding section of this Act may do, exercise, and perform all the acts, powers, and duties which may be done, exercised, and performed by a Commissioner appointed for a like purpose in England *under the Act herein-before mentioned, subject however to the provisions of this Act.* 40

Evidence of acknowledgment.
1874, No. 11, s. 3.

85. Every deed, acknowledged by a married woman before a Judge or Commissioner for taking acknowledgments of married women, and certified by indorsement or writing thereon *dated and signed* by such Judge or Commissioner to have been so acknowledged, and that the woman had been examined as to her knowledge of the contents of such deed, had consented thereto, and that she was of full age and understanding, shall be valid and effectual to pass her interest in the property thereby affected without any further certificate or affidavit. 45

86:-

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

1877, No. 20, s. 2.

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

Resident Magistrates to be Commissioners *ex officio*.
 Ib.

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

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

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

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

1856, No. 6.
 18 & 19 Vict., c. 43, s. 1.

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

In case infant die under age, appointment, &c., to be void.
 Ib., s. 2.

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

Sanction of the Court to be given upon petition.
 Ib., s. 3.

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

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

Not to apply to males under twenty or females under seventeen years of age.
 Ib., s. 4 and s. 1.

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

(3.) *Dower.*

91. The provisions of the Act, passed in the third and
 45 fourth years of the reign of His late Majesty King William IV., intituled "*An Act for the Amendment of the Law relating to Dower,*" shall extend to the dower of any widows who shall have married previously to the second day of January, one thousand eight hundred and thirty-four.

Act 3 and 4 Wm. IV., c. 105, to extend to dower of women married before 2nd January, 1834.
 1854, No. 3, s. 1.

MISCELLANEOUS PROVISIONS.

(1.) *Conveyancing Charges.*

Judges to make rules for regulating charges.
1868, No. 28, s. 3.

92. The Judges of the Supreme Court or any three of them, of whom the Chief Justice shall be one, from time to time may make and vary, alter, or rescind general rules or orders, fixing scales of fees to be charged by solicitors in all or any matters of conveyancing business transacted by them. 5

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

93. Such scales may be so framed as to enable the Registrar to allow on taxation, within certain limits, fees and charges at a higher or lower rate, having regard not only to the length of any deed, contract, or other document in respect of which such fees or charges are made, but also to the skill and labour employed or required in the preparation or perusal thereof, and the responsibility incurred by the solicitor in the transaction. 10

Registrar to tax bills according to the scale allowed.
Ib., s. 4.

94. In the taxation of any bill of costs or fees for conveyancing business the Registrar shall be guided by the general rules and orders for the time being in force for that purpose, and, pending the issue of any such rules and orders, and subject to such rules and orders when issued, the Registrar shall have regard not only to the length of any deed, contract, or other document in respect of which any fees or charges are made, but also to the skill and labour employed or required in the preparation or perusal thereof, and the responsibility incurred by the solicitor in the transaction. 15 20

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

25

Verification of instruments executed out of the colony.

95. Every instrument of any kind whatsoever, which has been or hereafter may be duly signed and executed out of the Colony of New Zealand, shall, so far as the signing and execution thereof is concerned, be receivable in evidence in every Court of justice in the colony, and before any authority or person having by law or consent of parties authority to hear and receive evidence in the colony, if such signing and execution is verified by the witness thereto if only one, or by one of the witnesses thereto if more than one, in either of the following ways, that is to say,— 30

In the British dominions.

(1.) If such instrument is signed and executed in any part of the British dominions beyond the limits of the colony, then in accordance with the provisions in that behalf contained in the Act of the Imperial Parliament now known by the short title of "The Statutory Declarations Act, 1835," or in accordance with the provisions of any enactment in force, in any part of the British dominions where any such verification shall take place, respecting the verification of the signing and execution of instruments to be used abroad; 35 40

And the mention in the declaration or affidavit referring to such signing and execution, or in any certificate written at the foot or in continuation thereof or attached thereto, signed by a notary public, and under his seal of office, or signed by the Mayor, Provost, or other 45

Chief Magistrate of any corporate town with the seal of the Corporation attached, of the law under which any such declaration or affidavit is made, shall be sufficient proof of such law :

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

(3.) *Repeals.*

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

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

But this repeal shall not affect—

20 (1.) The past operation of any Act or Ordinance, or part of an
 Act or Ordinance, hereby repealed :

(2.) Any deed or instrument made or signed, or any proceeding
 taken or pending, or anything duly done or suffered, or
 any estate, right, title, interest, or benefit created, con-
 25 ferred, or acquired under or by virtue of any such Act or
 Ordinance :

(3.) Or any obligation or duty undertaken or imposed, or any
 forfeiture incurred, expressly or by implication, under or
 by virtue of any deed or instrument as aforesaid, or under
 any Act or Ordinance, or part of an Act or Ordinance,
 30 hereby repealed.

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

SCHEDULES.

Schedules.

FIRST SCHEDULE.

First Schedule.

FORM OF CONVEYANCE IN FEE-SIMPLE.

Form of conveyance.
 Sec. 39.

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

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

[Special provisions, if any.]

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

A.B.

Signed by the above-named A.B. in the presence of—
E.F., of Queen Street, Auckland, Solicitor.

Second Schedule.
Acts repealed.
Sec. 101.

SECOND SCHEDULE.

ACTS AND ORDINANCES REPEALED.

Acts of the Imperial Parliament:

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

Ordinances of the Legislative Council of New Zealand.

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

Acts of the General Assembly.

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

Amendments made by Legislative Council in the Property-Law Consolidation Bill as introduced.

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Clause 11 inserted.

Clause 30. In line 1, after "deed," the words "whether or not affecting property" inserted; in line 2, the words "conveying parties" erased, and the words "party to be bound thereby" inserted in lieu thereof. In line 3, the word "or" erased before "business," and the words "or addition" inserted after the word "business."

Clause 31. In line 2, the word "Formal" inserted before the word "Delivery."

Clause 33. In line 2, the words "or since" inserted after the word "then."

Clause 35. In line 2, the words "otherwise than by operation of law" inserted.

Clause 38. In line 1, after "entry," the words "for condition broken" erased.

Clause 39. In lines 3, 9, and 10, the words "or equitable" inserted after the word "legal."

Clause 47. In line 3, the following inserted after "implied": "excepting as against trustees or mortgagees."

Clause 53. The following words added to the clause: "Every Registrar by whom any land has heretofore been sold shall be deemed to have been and to be the proper Registrar to effect such sale, although he was not resident nearest to the land sold."

Clause 54. In line 2, the following words inserted: "and not less than fourteen days."

Clause 58. In line 6, the words "of one per centum on two hundred pounds and" erased; in same line, the word "half" erased, and the word "quarter" inserted in lieu thereof; the words "but in no case to exceed ten pounds" added to the clause.

Clause 64. In subsection (3), line 3, the words "Government or" inserted after the word "on."

Clause 65. After "signed," in line 7, the following words erased: "[conveyances, leases, mortgages, and other dispositions of or relating to lands in the colony for valuable consideration only, and no further or otherwise]."

Clause 72. After "partition," in line 1, the following erased: "[where if this Act had not been passed a decree for partition might have been made then]."

Clause 73. Same amendment as in clause 72.

Clause 74. Same amendment as in clause 72.

Clause 75. After "persons," in line 1, the following erased: "[who if this Act had not been passed might have brought an action for partition]."

After clause 79 the following clauses erased:—

DEBTS.

(1.) *How Titles to Land sold for Payment of Debts completed in certain Cases.*

a. The provisions of the twelfth section of the Act of the Imperial Parliament passed in the first year of the reign of His Majesty King William the Fourth, intituled "An Act for consolidating and amending the Laws for facilitating the Payment of Debts

As to lands of deceased debtor vested otherwise than by devise in his heirs subject to an executory devise over to another person.

1854, No. 1.
11 & 12 Vict., c. 87.

out of Real Estate," shall extend to any case in which any lands of any deceased person shall by descent or otherwise than by devise be vested in the heir or co-heirs of such person, subject to an executory devise over in favour of a person or persons not existing or not ascertained.

Powers of Court to direct conveyance, &c.
Ib.

b. In any such case the Court may direct such heir or co-heirs, notwithstanding such heir or such co-heirs or any of them may be an infant or infants, to convey, release, assign, surrender, or otherwise assure the fee-simple or other the whole interest or interests so to be sold to the purchaser or purchasers, or in such manner as the said Court shall think proper.

Effect of such conveyance, &c.
Ib.

c. Every such conveyance, release, surrender, assignment, or other assurance shall be as effectual as if the heir or co-heirs who shall make and execute the same was or were seised or possessed of the fee-simple or other whole estate so to be sold, and, if an infant or infants, was or were of full age.

After clause 82, the following clauses erased:—

(3.) *Specialty and Simple-Contract Debts.*

Specialty and contract debts of deceased persons to stand in equal degree.
1870, No. 5., s. 2.
32 & 33 Vict., c. 46.

d. In the administration of the estate of every person who shall have died on or after the first day of January, one thousand eight hundred and seventy-one, and before "The Administration Act, 1879," came into force, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or a deed not under seal, or is otherwise made or constituted a specialty debt.

But all the creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any statute or other law to the contrary notwithstanding.

Nothing in this section contained shall prejudice or affect any lien, charge, or other security which any creditor may hold or be entitled to for the payment of his debt.

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

e. Nothing contained in this Act shall limit or otherwise affect any of the provisions of "The Administration Act, 1879."

Clause 98 added.