

CONVEYANCING AND LAW OF PROPERTY ACT, 1884.

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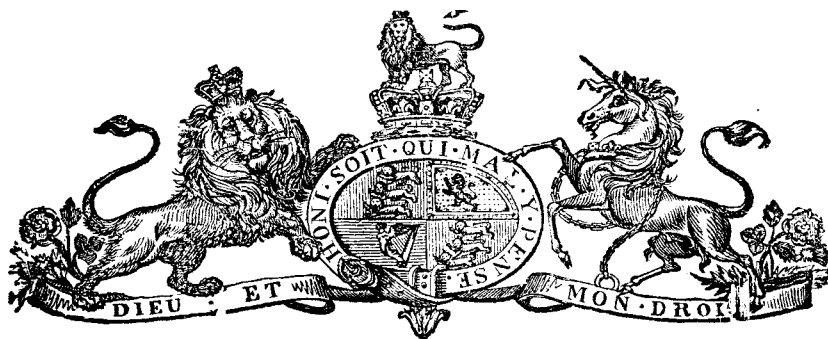
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T A S M A N I A.



1883.

ANNO QUADRAGESIMO-SEPTIMO

VICTORIÆ REGINÆ,

No. 19.

AN ACT for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes. A.D. 1883.
[29 October, 1883.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

I. PRELIMINARY.

1.—(1.) This Act may be cited as “The Conveyancing and Law of Short Title; Property Act, 1884.”

(2.) This Act shall commence and take effect from and immediately after the Thirty-first day of *December*, One thousand eight hundred and eighty-three. Commencement.

Conveyancing and Law of Property.

A.D. 1883.

Interpretation of
property, land,
&c.**2** In this Act—

i. Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property real or personal, and any debt, and anything in action, and any other right or interest :

ii. Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments corporeal or incorporeal, and houses and other buildings, also an undivided share in land :

iii. In relation to land, income includes rents and profits, and possession includes receipt of income :

iv. Timber, unless a contrary intention appears, includes all indigenous or foreign trees the wood of which is ordinarily used for building or manufacturing purposes, and the bark of such trees, but does not include brushwood, scrub, or underwood :

v. Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property ; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance :

vi. Mortgage includes any charge on any property for securing money or money's worth ; and mortgage money means money or money's worth, secured by a mortgage ; and 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 ; and mortgagee includes any person from time to time deriving title under the original mortgagee ; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property :

vii. Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum ; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof :

viii. Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person who, for valuable consideration, takes or deals for any property ; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser ; but sale means only a sale properly so called :

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 fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift :

x. Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings ; and a building lease is a lease for building purposes or purposes connected therewith :

xi. A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes :

xii. Will includes codicil :

xiii. Instrument includes deed, will, and Act of Parliament :

Conveyancing and Law of Property.

xiv. Securities include Government Debentures, Treasury Bills, and shares : A.D. 1883.

xv. Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy ; and bankrupt has a meaning corresponding with that of bankruptcy :

xvi. Writing includes print ; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing or in print, or partly in writing and partly in print :

xvii. Person includes a corporation :

xviii. The Supreme Court of *Tasmania* is referred to as the Court.

II. SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

3—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) A purchaser of any property shall not require the production, or any abstract or copy of any deed, will, or other document dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser ; nor shall he require any information, or make any requisition, objection, or inquiry with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced, or noticed ; and he shall assume, unless the contrary appears, that the recitals contained in the abstracted instruments of any deed, will, or other document forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by acknowledgment, enrolment, or otherwise.

(3.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted ; and on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(4.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted ; and on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(5.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, records, deeds, wills, probates, letters of administration, and other documents, not in the vendor's

SALES AND
OTHER TRANSACTIONS.*Contracts for
Sale.*

Application of
stated conditions
of sale to all
purchases.

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possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office, or other copies or abstracts of or extracts from any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(6.) On a sale of any property in lots, a purchaser of two or more lots held wholly or partly under the same title shall not have a right to more than one abstract of the common title, except at his own expense.

(7.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(8.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(9.) This section applies only to sales made after the commencement of this Act.

(10.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

Completion of
contract after
death.

4—(1.) Where at the death of any person there is subsisting a contract enforceable against his personal representatives or devisee for the sale of the fee simple or other freehold interest devolving upon his personal representatives in any land, such personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death in any manner proper for giving effect to the contract.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition, or as next of kin of a testator or intestate.

(3.) This section applies only in cases of death after the commencement of this Act.

*Discharge of In-
cumbrances on
Sale.*

Provision by
Court for incum-
brances, and sale
freed therefrom.

Discharge of Incumbrances on Sale.

5—(1.) Where land subject to any incumbrance, whether 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 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 additional amount as the Court considers

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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. A.D. 1883.

(2.) Thereupon the Court may, if it thinks fit, and either after 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 money in Court.

(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.

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

*Notice.**Notice.*

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

Restriction on constructive notice.

(i.) 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

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has 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.

(2.) This Section shall not exempt a purchaser from any liability under, or 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 enacted.

(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 enacted.

(4.) This Section applies to purchases made either before or after the commencement of this Act ; save that, where an action or suit is pending at the commencement of this Act, the rights of the parties shall not be affected by this Section.

*General Words.**General Words.*

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

General words in conveyances of land or buildings.

(2.) A conveyance of land having houses or other buildings thereon shall be deemed to include, and shall by virtue of this Act operate to

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

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

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

(5.) This section applies only to conveyances made after the commencement of this Act.

Covenants for Title.

Covenants for title to be implied.

Covenants for Title.

8—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person, or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say :

On conveyance for value by beneficial owner.

(A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely) :

Right to convey.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or rightfully claiming, or to claim, by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys

Quiet enjoyment.

Conveyancing and Law of Property.

derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

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Freedom from
incumbrance.Further
assurance.

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On conveyance of
leaseholds for
value by bene-
ficial owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in no wise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance:

Validity of lease

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On mortgage by
beneficial owner.

That the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full

Right to convey.
Quiet enjoyment.

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Freedom from
incumbrance.

Further assurance.

On mortgage of
leaseholds by
beneficial owner.

Validity of lease.

Payment of rent
and performance
of covenants.

power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys, and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed, and is in full force, unforfeited, and unsurrendered, and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed, all the rents reserved by, and all the covenants, conditions, and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to

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whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims, and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them.

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(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely):

On settlement.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required.

For further assurance limited.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only (namely):

On conveyance by trustee or mortgagee.

That the person so conveying 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 the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

Against incumbrances.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction; and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition or under an order of the Court, or by

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direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) The benefit of a covenant implied as aforesaid shall be annexed and incident to and shall go with the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(6.) A covenant implied as aforesaid may be varied or extended by deed, and as so varied or extended shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(7.) This section applies only to conveyances made after the commencement of this Act.

*Execution of
Purchase Deed.*
Rights of purchaser as to execution.

Execution of Purchase Deed.

9—(1.) 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.

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

*Production and
Safe Custody of
Title Deeds.*
Acknowledgment of right to production and undertaking for safe custody of documents.

Production and Safe Custody of Title Deeds.

10—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorised in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the

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execution of any commission, or elsewhere in *Tasmania*, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

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(iii.) An obligation to deliver to the person entitled to request the same true copies, or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

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III. LEASES.

LEASES.

Rent and benefit
of lessees cove-
nants to run with
reversion.

11—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessees part to be observed or performed, and every condition of re-entry and other condition therein contained, 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 shall be capable of being 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.

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

Obligation of
lessors covenants
to run with
reversion.

12—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as 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, if and as 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.

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

Apportionment of
conditions on
severance, &c.

13—(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, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which 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 alone originally been comprised in the lease.

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

On sub-demise,
title to leasehold
reversion not to
be required.

14—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

Conveyancing and Law of Property.

15—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(2.) This Section applies to leases made either before or after the commencement of this Act.

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Contract for lease not part of title to lease.

Forfeiture.

16—(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 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 in money, to the satisfaction of the lessor, for the breach.

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

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns, and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

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

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

- (i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased, or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or
- (ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to, or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

Forfeiture.

Restrictions on and relief against forfeiture of leases.

Conveyancing and Law of Property.

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(7.) The enactments described in Part I. of the First Schedule to this Act are hereby repealed.

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

(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.

MORTGAGES.**IV. MORTGAGES.**

Obligation on mortgagee to transfer instead of re-conveying.

17—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

(2.) The right conferred on the mortgagor by this Section shall belong to and be capable of being enforced by each encumbrancer, 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.

(3.) This section does not apply in the case of a mortgagee being or having been in possession.

(4.) 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.

Power for mortgagor to inspect title deeds.

18—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, 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 property in the custody or power of the mortgagee.

(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.

Restriction on consolidation of mortgages.

19—(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 which he seeks to redeem.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

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

*Leases.**Leases.*

Leasing powers of mortgagor and of mortgagee in possession.

20—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorised.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by

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virtue of this Act, power to make from time to time any such lease as aforesaid. A.D. 1883.

(3.) The leases which this section authorises are—

- (i.) An agricultural or occupation lease for any term not exceeding Twenty-one years; and
- (ii.) A building lease for any term not exceeding Ninety-nine years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than Twelve months after its date.

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

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding Thirty days.

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

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than Five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings, within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connection with building purposes.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first Five years, or any less part of the term.

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

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

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

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the

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mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

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

*Sale; Insurance;
Receiver; Timber.*
Powers incident
to estate or interest
of mortgagee.

Sale; Insurance; Receiver; Timber.

21—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i.) A power, when the mortgage money or any interest thereon has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

(ii.) A power at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

(iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof.

(iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees, not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding Twelve months from the making of the contract.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

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

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

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22 A mortgagee shall not exercise the power of sale conferred by this Act unless and until notice of his intention to sell the mortgaged property, in consequence of default having been made in payment of the mortgage money, or part thereof, or of any interest due thereon, as the case may be, has been served on the mortgagor, or one of several mortgagors, or has been published in one or more newspapers in *Tasmania* at least One calendar month before the date of such intended sale.

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Regulation of
exercise of power
of sale.

23—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage.

Conveyance,
receipt, &c., on
sale.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, owing under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

24—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage or arising thereunder; and a person paying or transferring the same to

Mortgagee's
receipts, dis-
charges, &c.

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the mortgagee shall not be concerned to enquire whether any money remains due under the mortgage.

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Amount and application of insurance money.

25—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i.) Where there is a declaration in the mortgage deed that no insurance is required:

(ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorised to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

Appointment, powers, remuneration, and duties of receiver.

26—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

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

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

(4.) A person paying money to the receiver shall not be concerned to enquire whether any case has happened to authorise the receiver to act.

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

Conveyancing and Law of Property.

(6.) The receiver shall be entitled to retain out of any money received by him for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose. A.D. 1883.

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

(8.) The receiver shall apply all money received by him as follows (namely):

- (i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and
- (ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (iii.) In payment of his commission and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Suit respecting Mortgage.

27—(1.) Any person entitled to redeem mortgaged property may have an order for sale instead of for redemption in a suit brought by him, either for redemption alone, or for sale alone, or for sale or redemption, in the alternative. *Suit respecting Mortgage.*
Sale of mortgaged property in suit for foreclosure, &c.

(2.) In any suit, whether for foreclosure or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the suit, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, 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 expenses of sale and to secure performance of the terms.

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

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

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

(6.) The enactment described in Part II. of the First Schedule to this Act is hereby repealed.

STATUTORY
MORTGAGE.Form of statutory
mortgage in
schedule.

V. STATUTORY MORTGAGE.

28—(1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the Second Schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely) :

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, by equal half-yearly payments, and will, after the stated day, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first payment of interest to be made at the end of six calendar months from the day on which the mortgage money shall have been advanced.

Secondly, a proviso to the effect following (namely) :

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

Forms of statutory
transfer of mort-
gage in schedule.

29—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the Second Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely) :

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee :

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also

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be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor, to the effect following (namely) : A.D. 1883.

That the covenantor will, on the day by the mortgage deed fixed for payment of the mortgage money, or on a day to be stated in the deed of transfer, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, by equal half-yearly payments, at the rate stated in the mortgage deed ; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C.) it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly ; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

30 In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them ; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him. Implied covenants, joint and several.

31 A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the Second Schedule to this Act, with such variations and additions, if any, as circumstances may require. Form of re-conveyance of statutory mortgage in schedule.

VI. TRUST AND MORTGAGE ESTATES ON DEATH.

32—(1.) Where an estate or interest of inheritance, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him ; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him ; and, for the purposes of this section, the personal representatives for the time being of the deceased shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

TRUST AND MORTGAGE ESTATES ON DEATH.

Devolution of trust and mortgage estates on death.

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39 Vict. No. 2.

(2.) Section Four of "The Vendor and Purchaser Act, 1875," is hereby repealed.

(3.) This section, including the repeal therein, applies only in cases of death after the commencement of this Act.

TRUSTEES AND
EXECUTORS.

Appointment of
new trustees,
vesting of trust
property, &c.

VII. TRUSTEES AND EXECUTORS.

33—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of *Tasmania* for more than Twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of *Tasmania*, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

Retirement of
trustee.

34—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired

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from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place. A.D. 1883.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

35—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part. Appointment of separate sets of trustees.

(2.) This Section applies to trusts created either before or after the commencement of this Act.

36—(1.) Every trustee appointed by the Court, or by any other Court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any creating the trust. Powers of new trustee appointed by Court.

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

37—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right. Vesting of trust property in new or continuing trustees.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in the office of the Registrar of Deeds, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

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Power for trustees
for sale to sell by
auction, &c.

38—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they 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 trustees think 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 re-sell, without being answerable for any loss.

(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.

Trustees' receipts.

39—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

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

Power for execu-
tors and trustees
to compound, &c.

40—(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

Powers to two or
more executors
or trustees.

41—(1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

Conveyancing and Law of Property.

42—(1.) Trustees having Trust money in their hands which it is their duty to invest at interest shall be at liberty, at their discretion, to invest the same.

- (i.) In any Debentures or Treasury Bills issued or to be issued by the Government of *Tasmania*; or
- (ii.) In any Debentures issued or to be issued under any Law now or hereafter to be passed, the interest upon which is or may be guaranteed by the Government of *Tasmania*; or
- (iii.) In any Debentures issued or to be issued by the Government of any of the Australian Colonies, or of the Colony of *New Zealand*; or
- (iv.) In stocks or funds of the British Government, or of which the interest is guaranteed by the British Government or by any Act of the Imperial Parliament; or
- (v.) On mortgage of real estate in *Tasmania*; or
- (vi.) On mortgage of leasehold estate in *Tasmania* held for terms of not less than Two hundred years; or
- (vii.) On fixed deposit at interest in any Bank in *Tasmania*.

(2.) Such Trustees shall also be at liberty, at their discretion, to call in any Trust Funds invested in any securities other than those mentioned in this Section, and to invest the same on any of such securities; and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature: Provided always, that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the Trust Fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

(3.) The power by this section conferred on Trustees to invest Trust money, and to vary investments for others of the same nature, shall be in addition to the power to invest Trust money (if any) given by the instrument creating the Trust.

(4.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the Trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

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

VIII. MARRIED WOMEN.

43—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by order, with her consent, bind her interest in any property.

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

44—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

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

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On what securities
Trust Funds may
be invested.

MARRIED
WOMEN.

Power for Court
to bind interest of
married woman.

Power of attorney
of married
woman.

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IX. INFANTS.

INFANTS.

Sales and leases
on behalf of
infant owner.

Management of
land and receipt
and application of
income during
minority.

45 Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within "The Settled Estates Act, 1882."

46—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or, if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

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

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

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, with power to vary investments, and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

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- (i.) If the infant attains the age of twenty-one years, then in trust A.D. 1883.
for the infant ;
- (ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge ; but
- (iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail, or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement ; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate :

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

47—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

Application by trustees of income of property of infant for maintenance, &c.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise ; but so that the trustees may at any time, if they think fit, apply those accumulations or any part thereof as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

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RENTCHARGES
AND OTHER
ANNUAL SUMS.

Remedies for
recovery of
annual sums
charged on land.

X. RENTCHARGES AND OTHER ANNUAL SUMS.

48—(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 rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the 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, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(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.

(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 has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise for all or any part of the term of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

POWERS OF
ATTORNEY.

Execution under
power of attorney.

XI. POWERS OF ATTORNEY.

49—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the

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authority of the donor of the power ; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof. A. D. 1883.

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

50—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,— Effect of power of attorney, for value, made absolutely irrevocable.

- (i.) 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 of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power ; and
- (ii.) 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 of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened ; and
- (iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

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

51—(1.) If a power of attorney, 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,— Effect of power of attorney, for value or not, made irrevocable for fixed time.

- (i.) 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 of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power ; and
- (ii.) 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 of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened ; and
- (iii.) 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 of the power during that fixed time without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

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

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Payment by attorney under power without notice of death, &c. good.

52—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died, or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid: and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

Registration of original instruments creating powers of attorney.

53—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be registered in the Office of the Registrar of Deeds, as provided by the Act of the Parliament of *Tasmania* of the 24th *Victoria*, No. 3.

(2.) A copy of an instrument so registered may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(3.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the said office.

(4.) General Orders may be made for the purposes of this section, regulating the practice of the said office, and prescribing, with the concurrence of the Governor in Council, the fees to be taken therein.

(5.) This section applies to instruments creating powers of attorneys executed either before or after the commencement of this Act.

(6.) The enactment described in Part III. of the First Schedule to this Act is hereby repealed.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

Use of word grant unnecessary.

XII. CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

54—(1.) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this Act.

Conveyance by a person to himself, &c.

55—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

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

Words of limitation in tail.

56—(1.) In a deed it shall be sufficient, in the limitation of an estate in tail, to use the words in tail, without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires,

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without the words heirs male of the body, or heirs female of the body. **A.D. 1883.**

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

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

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

58—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being endorsed on the deed. **Receipt in deed sufficient.**

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

59—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon, shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof. **Receipt in deed or endorsed, evidence for subsequent purchaser.**

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

60—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt. **Receipt in deed or endorsed, authority for payment to solicitor.**

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

61 Deeds in the form of and using the expressions in the forms given in the Third Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient. **Sufficiency of forms in Third Schedule.**

62—(1.) A covenant relating to land shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed. **Covenants to bind executors, &c.**

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

63—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, shall operate in law to bind the real estate, as well as the executors and administrators and personal estate, of the person making the same. **Covenants to extend to real estate, &c.**

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- (2.) This section extends to a covenant implied by virtue of this Act.
- (3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.
- (4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Effect of covenant with two or more jointly.

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

- (2.) This section extends to a covenant implied by virtue of this Act.
- (3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.
- (4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Effect of advance on joint account, &c.

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

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

Grants of easements, &c. by way of use.

66—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

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

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67—(1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively, have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same. A.D. 1883.
Provision for all the estate, &c.

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

(3.) This section applies only to conveyances made after the commencement of this Act.

68 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.

XIII. POWERS.

POWERS.

69—(1.) A person to whom any power, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise the power. Powers simply collateral.

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

70—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power. Disclaimer of power by trustees.

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

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

XIV. EXECUTORY LIMITATIONS.

EXECUTORY LIMITATIONS.

71—(1. Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for a 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 who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect. Restriction on executory limitations.

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

XV. LONG TERMS.

LONG TERMS.

72—(1.) Where a residue unexpired of not less than Two hundred years of a term which, as originally created, was for not less than Three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, Enlargement of residue of long term into fee simple.

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or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(2.) Each of the following persons (namely):

- (i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;
- (ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;
- (iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact.

(7.) This section applies to and includes every such term as aforesaid subsisting at or after the commencement of this Act, whether having as the immediate reversion thereon the freehold or not; but not—

- (i.) Any term liable to be determined by re-entry for condition broken; or

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- (ii.) Any term created by sub-demise out of a superior term itself incapable of being enlarged into a fee simple. A.D. 1883.

XVI. ADOPTION OF ACT.

ADOPTION OF
ACT.

73—(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 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 connexion 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 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 his doing so.

Protection of
solicitor and
trustees adopting
Act.

(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 improper.

(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 shall also be protected in like manner.

XVII. MISCELLANEOUS.

MISCELLANEOUS.

74—(1.) Any notice required or authorised by this Act to be served shall be in writing.

Regulations
respecting notice.

(2.) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, 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.

(3.) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last known place of abode or business in *Tasmania* of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the Post Office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be

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delivered, or where such registered letter would not in the ordinary course be delivered at any particular time, then at the time at which the mail containing such letter would in the ordinary course of post arrive at the Post Office to which such mail is forwarded.

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

Short title of
8 Will. 4, No. 2.

75 The Act of Council of the eighth year of the reign of His late Majesty King *William* the Fourth intituled *An Act for the Abolition of extra-judicial and unnecessary Oaths*, shall, by virtue of this Act, have the short title of "The Statutory Declarations Act, 1837," and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

Act not to extend
to 25 Vict. No. 16.

76 The provisions in this Act contained shall not extend to any land held under the provisions of "The Real Property Act."

COURT ; PRO-
CEDURE ; OR-
DERS.

XVIII. COURT ; PROCEDURE ; ORDERS.

Regulations
respecting pay-
ments into Court
and applications.

77—(1.) All matters within the jurisdiction of the Court under this Act, shall, subject to the Acts regulating the Court, be within the Equitable jurisdiction of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall be by petition or by summons at Chambers.

(4.) On an application by a purchaser, notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor, notice shall be served in the first instance on the purchaser.

(6.) On any application, notice shall be served on such persons, if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.

21 Vict. No. 44.

(8.) General Orders for purposes of this Act shall be deemed General Orders within section One hundred and three of *The Equity Procedure Act*, and may be made accordingly.

Orders of Court
conclusive.

78—(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 of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

46 Vict. No. 7.

(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 Settled Estates Act, 1882," notwithstanding the exception in section Forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

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XIX. REPEALS.

A.D. 1883.

79—(1.) The enactments described in Part IV. of the First Schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, suit, proceeding, or thing then pending or uncompleted; and every such action, suit, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section Forty of "The Settled Estates Act, 1882," or any former Act repealed by that Act.

REPEALS.

Repeal of enactments in Part IV. of First Schedule; restriction on all repeals.

46 Vict. No. 7.

SCHEDULES.

THE FIRST SCHEDULE.

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning or as forming the end, of the portion comprised in the description or citation.

PART I.

24 Vict. No. 2 in part.	An Act to further amend the Law of Property and to relieve Trustees.. } in part; namely,— Sections four to nine.
26 Vict. No. 2 in part.	The Common Law Procedure Act, } in part; namely,— 1860 } Section two.

PART II.

21 Vict. No. 44 in part.	An Act to amend the practice and course of proceeding in Equity in the Supreme Court of <i>Tasmania</i> . } in part; namely,— Section ninety-one.
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PART III.

24 Vict. No. 3 in part	An Act to make valid Acts done } in part; namely,— under Powers of Attorney in cer- } tain cases } Section seven.
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PART IV.

17 Vict. No. 18	An Act to facilitate the Conveyance of Real Property.
29 Vict. No. 14 in part.	An Act to give to Trustees, Mortgagees, and others certain powers now commonly inserted in Settlements, Mortgages, and Wills. } in part; namely,— Parts II. and III. (sections ten to twenty-nine.)

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THE SECOND SCHEDULE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the day of 1884 between A. of [§c.] of the one part and M. [§c.] of the other part WITNESSETH that in consideration of the sum of £ now paid to A. by M. of which sum A. hereby acknowledges the receipt A. as mortgagor and as beneficial owner hereby conveys to M. All that [§c.] To hold to and to the use of M. in fee simple for securing payment on the day of 1887 of the principal sum of £ as the mortgage money with interest thereon at the rate of [sic] per centum per annum.

In witness &c.

*• Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1885 between M. of [§c.] of the one part and T. of [§c.] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 1884 and made between [§c.] WITNESSETH that in consideration of the sum of £ now paid to M. by T. being the aggregate amount of £ mortgage money and of interest due in respect of the said mortgage of which sum M. hereby acknowledges the receipt M. as mortgagee hereby conveys and transfers to T. the benefit of the said mortgage.

In witness, &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1885 between A. of [§c.] of the first part B. of [§c.] of the second part and C. of [§c.] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1884 and made between [§c.] WITNESSETH that in consideration of the sum of £ now paid to A. by C. being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum A. hereby acknowledges the receipt A. as mortgagee with the concurrence of B. who joins herein as covenantor hereby conveys and transfers to C. the benefit of the said mortgage.

In witness, &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1885 between A. of [§c.] of the 1st part B. of [§c.] of the 2nd part and C. of [§c.] of the 3rd part supplemental to an indenture made by way of statutory mortgage dated the day of 1884 and made between [§c.] WHEREAS the principal sum of £ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS B. is seised in fee simple of the land comprised in the said mortgage subject to that mortgage NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ now paid to A. by C. of which sum A. hereby acknowledges the receipt and B. hereby acknowledges the payment and receipt as aforesaid* A. as mortgagee hereby conveys and transfers to C. the benefit of the said mortgage AND THIS INDENTURE ALSO WITNESSETH that for the same consideration A. as mortgagee and according to his estate and by direction of B. hereby conveys and B. as beneficial owner hereby

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conveys and confirms to *C* All that [*§c.*] To hold to and to the use of *C.* in fee simple for securing payment on the _____ day of _____ 1888 of† the sum of £ _____ as the mortgage money with interest thereon at the rate of [*six*] per centum per annum. A.D. 1888.

In witness, &c.

[*Or, in case of further advance, after aforesaid at* insert* and also in consideration of the further sum of £ _____ now paid by *C.* to *B.* of which sum *B.* hereby acknowledges the receipt, *and after* of at† insert the sums of £ _____ and £ _____ making together]

*† Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

PART III.

Deed of Statutory Re-conveyance of Mortgage.

THIS INDENTURE made by way of statutory re-conveyance of mortgage the _____ day of _____ 1887 between *C.* of [*§c.*] of the one part, and *B.* of [*§c.*] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the _____ day of _____ 1885 and made between [*§c.*] WITNESSETH that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest *C.* hereby acknowledges the receipt *C.* as mortgagee hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture To hold to and to the use of *B.* in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, &c.

*† Variations as noted above.

THE THIRD SCHEDULE.

SHORT FORMS OF DEEDS.

I.—*Mortgage.*

THIS INDENTURE OF MORTGAGE made the _____ day of _____ 1884 between *A.* [*§c.*] of the one part and *B.* of [*§c.*] and *C.* of [*§c.*] of the other part WITNESSETH that in consideration of the sum of £ _____ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account of which sum *A.* hereby acknowledges the receipt *A.* hereby covenants with *B.* and *C.* to pay to them on the _____ day of _____ 1887 the sum of £ _____ with interest thereon in the meantime at the rate of [*six*] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to *B.* and *C.* interest thereon at the same rate by equal half-yearly payments on the _____ day of _____ and the _____ day of _____

AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as beneficial owner hereby conveys to *B.* and *C.* All that [*§c.*] To hold to and to the use of *B.* and *C.* in fee simple subject to the proviso for redemption following (namely) that if *A.* or any person claiming under him shall on the _____ day of _____ 1887 pay to *B.* and *C.* the sum of £ _____ and interest thereon at the rate aforesaid then *B.* and *C.* or the persons claiming under them will at the request and cost of *A.* or the persons claiming under him re-convey the premises to *A.* or the persons claiming under him And *A.* hereby covenants with *B.* as follows [*here add covenant as to fire insurance or other special covenant required.*]

In witness, &c.

II.—*Further charge.*

THIS INDENTURE made the _____ day of _____ 18 _____ between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the _____ day of _____ 18 _____ and made between the same parties for securing the sum of £ _____ and interest at [*six*] per centum per annum on property at [*§c.*] WITNESSETH that in consideration of the further sum of £ _____ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and

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further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of £ and the interest thereon herein-before covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness, &c.

III.—*Conveyance on Sale.*

THIS INDENTURE made the day of 1885 between *A.* of [*&c.*] of the 1st part *B.* of [*&c.*] and *C.* of [*&c.*] of the 2nd part and *M.* of [*&c.*] of the 3rd part WHEREAS by an indenture dated [*&c.*] and made between [*&c.*] the lands herein-after mentioned were conveyed by *A.* to *B.* and *C.* in fee simple by way of mortgage for securing £ and interest and by a supplemental indenture dated [*&c.*] and made between the same parties those lands were charged by *A.* with the payment to *B.* and *C.* of the further sum of £ and interest thereon AND WHEREAS a principal sum of £ remains due under the two before-mentioned indentures but all interest thereon has been paid as *B.* and *C.* hereby acknowledge NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ paid by the direction of *A.* to *B.* and *C.* and of the sum of £ paid to *A.* those two sums making together the total sum of £ paid by *M.* for the purchase of the fee simple of the lands hereinafter mentioned of which sum of £ *B.* and *C.* hereby acknowledge the receipt and of which total sum of £ *A.* hereby acknowledges the payment and receipt in manner before-mentioned *B.* and *C.* as mortgagees and by the direction of *A.* as beneficial owner hereby convey and *A.* as beneficial owner hereby conveys and confirms to *M.* All that [*&c.*] To hold to and to the use of *M.* in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures [*Add, if required, And A. hereby acknowledges the right of M. to production of the documents of title mentioned in the schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof.*]

In witness, &c.

[The Schedule above referred to
To contain list of documents retained by *A.*]

IV.—*Marriage Settlement.*

THIS INDENTURE made the day of 1884 between *John M.* of [*&c.*] of the 1st part *Jane S.* of [*&c.*] of the 2nd part and *X.* of [*&c.*] and *Y.* of [*&c.*] of the 3rd part WITNESSETH that in consideration of the intended marriage between *John M.* and *Jane S.* *John M.* as settlor hereby conveys to *X.* and *Y.* All that [*&c.*] To hold to *X.* and *Y.* in fee simple to the use of *John M.* in fee simple until the marriage and after the marriage to the use of *John M.* during his life without impeachment of waste with remainder after his death to the use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rentcharge of £ to commence from his death and to be paid by equal half-yearly payments the first thereof to be made at the end of Six calendar months from his death if she is then living or if not a proportional part to be paid at her death and subject to the before-mentioned rentcharge to the use of *X.* and *Y.* for a term of Five hundred years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder [*insert here, if thought desirable, to the use of the same first and other sons successively according to seniority in tail with remainder*] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple [*Insert trusts of term of 500 years for raising portions ; also, if required, power to charge jointure and portions on a future marriage ; also powers of sale, exchange, and partition and other powers and provisions, if and as desired.*]

In witness, &c.