

## CONVEYANCING ACT.

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Act No. 6, 1919.

George V, An Act to amend and consolidate the law of property  
No. 6. and to simplify and improve the practice of conveyancing; and for such purposes to amend certain Acts relating thereto. [Assented to, 13th November, 1919.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title  
and com-  
mencement.

**1.** This Act may be cited as the "Conveyancing Act, 1919," and shall commence and come into operation on the first day of July, one thousand nine hundred and twenty.

Provided that any provisions for making rules or regulations hereunder or any general rule under Part XXIV shall come into operation on the passing of this Act, but the rules and regulations so made shall not come into force until the commencement of this Act.

Division of  
Act.

**2.** This Act is divided into Parts and Divisions as follows:—

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PART II.—GENERAL RULES AFFECTING PROPERTY—

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ss. 8-13.

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DEEDS— No. 6.

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PART

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PART XXIV.—SOLICITORS' REMUNERATION—

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DIVISION 3.—*Solicitor mortgagees*—ss. 213-214.

Repeal, First  
Schedule.

**3.** (1) The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All rules of court made under the authority of any Act or section hereby repealed and being in force at the commencement of this Act, shall so far as applicable, be deemed to have been made under the authority of this Act.

**4.**

**4.** Any alteration, by this Act, of the law, whether by the repeal of an enactment, or otherwise, shall not, unless otherwise expressly provided by this Act, affect—

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(a) any right accrued, or obligation incurred, before the commencement of this Act under the law so altered; or

Operation of  
Act.

Savingclause.

See 45 & 46

Vict., c. 39,

s. 13.

(b) 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

(c) any action, proceeding or thing then pending or uncompleted; every such action, proceeding and thing may be carried on and completed as if the enactment had not been repealed, or the law otherwise altered.

**5.** Where any instrument executed prior to the commencement of this Act is by any provision hereof rendered valid and effectual, and would, but for this Act, be or remain invalid or ineffectual, such instrument shall be deemed to be validated only where the person who is at the commencement of this Act in possession of the property affected by the instrument claims under such instrument and not adversely to it.

Restriction  
on validation  
of instru-  
ments.

See N.Z. Act,

1908, No. 152,

s. 121.

**6.** (1) Except as hereinafter provided, this Act, so far as inconsistent with the Real Property Act, 1900, shall not apply to lands, whether freehold or leasehold, which are under the provisions of that Act.

Application

to Real Pro-

perty Act,

1900, and

Crown Lands

Acts.

(2) Except as hereinafter provided this Act shall not be construed as affecting the provisions of the Crown Lands Consolidation Act, 1913, Closer Settlement Act, 1904, Closer Settlement Promotion Act, 1910, Western Lands Act of 1901, Mining Act, 1906, or any Act amending such Acts, or of any other Act dealing with Crown lands.

(3) Wherever any provision of this Act is expressed to apply to land under the provisions of or instruments under the Real Property Act, 1900, such provision shall not be deemed to apply exclusively to such land or instruments unless the contrary appears.

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## PART I.

## INTERPRETATION.

See 44 & 45  
Vic., c. 41,  
s. 2.  
45 & 46 Vic.,  
c. 39, s. 14 (4).

**7.** In the interpretation of this Act, and of any rules or regulations made thereunder, unless the context or subject matter otherwise indicates or requires—

“Administrator” means administrator within the meaning of the Wills, Probate and Administration Act, 1898, and includes the public trustee acting as collector under an order to collect.

“Bankruptcy” includes any act or proceeding in law having, under any Act heretofore or for the time being in force, effects or results similar to those of bankruptcy, and includes the winding-up of a company under the Companies Act, 1899; and “bankrupt” has a meaning corresponding with that of bankruptcy.

“Conveyance” includes any assignment, appointment, lease, settlement, or other assurance by deed of any property; and “convey” has a meaning corresponding with that of conveyance.

“Court” means the Supreme Court in its equitable jurisdiction.

“Deed” in relation to land under the provisions of the Real Property Act, 1900, includes an instrument having the effect of a deed under that Act.

“Executor” means the executor to whom probate has been granted, and includes an executor by right of representation.

“Income,” when used with reference to land, includes rents and profits.

“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 “incumbrancee” has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or satisfaction thereof.

“Instrument” includes deed, will, and Act of Parliament.

“Land”

“Land” includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein whether vested or contingent, freehold or leasehold, and whether at law or in equity. George V,  
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“Land under the provisions of the Real Property Act, 1900,” or any equivalent expression, means estates registered under that Act.

“Mortgage” includes a charge on any property for securing money or money’s worth; and “mortgage-money” means money or money’s worth secured by a mortgage.

“Mortgagee” includes any person from time to time deriving title to the mortgage under the original mortgagee; and “mortgagee in possession” means a mortgagee who in right of the mortgage has entered into and is in possession of the mortgaged property.

“Mortgagor” includes any person from time to time deriving title to the equity of redemption under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right in the mortgaged property.

“Mortgage,” “mortgagee,” and “mortgagor” in relation to land under the provisions of the Real Property Act, 1900, have the same meaning as in that Act.

“Order” includes decree and rule of court.

“Possession,” when used with reference to land, includes the receipt of income therefrom.

“Property” includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest.

“Purchaser” includes a lessee or mortgagee, or other person who for valuable consideration takes or deals for any property; and “purchase” has a meaning corresponding with that of purchaser; but “sale” means only a sale properly so called.

“Registered”

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“Registered” means registered in the appropriate register in the office of the Registrar-General.

“Rent” includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise; and “fine” includes premium or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift.

“Securities” include stocks, funds, and shares.

“Will” includes codicil.

## PART II.

### GENERAL RULES AFFECTING PROPERTY.

#### DIVISION 1.—*Rules of law upon certain points.*

Estates of  
persons  
deceased to  
be adminis-  
tered as in  
bankruptcy.  
38 & 39 Vic.,  
c. 77, s. 10.

**8.** In the administration by the Court of the assets of any person dying after the commencement of this Act, whose estate proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to—

- (a) the respective rights of secured and unsecured creditors; and
- (b) the debts and liabilities provable; and
- (c) the valuation of annuities and future or contingent liabilities respectively,

as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt. And all persons who, in any such case, would be entitled to prove for and receive dividends out of the estate of any such deceased person, may come in under the order for the administration of such estate,

estate, and may make such claims against the same, as they may be respectively entitled to by virtue of this Act. George V,  
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**9.** An estate for life without impeachment of waste shall not confer, or be deemed to have conferred, upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such estate. Equitable  
waste.  
36 & 37 Vic.,  
c. 66, s. 25,  
subsec. (3).

**10.** There shall not, after the commencement of this Act, be held or deemed to be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity, and this provision shall apply to any merger by operation of law only arising before or after the commencement of this Act. Merger.  
*Ibid.* subsec.  
(4).  
1901, No. 66,  
ss. 3, 4.

**11.** A mortgagor entitled for the time being to the possession of any land as to which no notice of his intention to take possession, or to enter into the receipt of the rents and profits thereof, has been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person. Mortgagor.  
36 & 37 Vic.,  
c. 66, s. 25,  
subsec. (5).  
See 1898, No.  
17, s. 110.

**12.** Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor: Provided always that if the debtor, trustee, or other Assignments  
of debts and  
chooses in  
action.  
*Ibid.* subsec.  
(6).



George V, other person liable in respect of such debt or chose  
No. 6. in action has had notice that such assignment is  
disputed by the assignor or anyone claiming under him,  
or of any other opposing or conflicting claims to such  
debt or chose in action, he shall be entitled, if he thinks  
fit, to call upon the several persons making claim thereto  
to interplead concerning the same, or he may, if he thinks  
fit, pay the same into court under and in conformity  
with the provisions of the Acts for the relief of trustees.

Stipulations  
not of the  
essence of  
contracts.

36 & 37 Vic.,  
c. 66, s. 25,  
subsec. (7).

**13.** Stipulations in contracts, as to time or otherwise,  
which would not before the commencement of this Act  
have been deemed to be or to have become of the essence  
of such contracts in a court of equity, shall receive in all  
courts the same construction and effect as they would  
have heretofore received in such court.

#### DIVISION 2.—*Land.*

The immediate  
freehold of land  
to lie in grant as  
well as in livery.  
See 8 & 9 Vic.,  
c. 106, s. 2.

Creation of  
certain estate  
in chattels real.  
N.Z. Act, 1908,  
No. 152, s. 5.

When con-  
tingent  
remainders  
capable of  
taking effect.  
See 8 & 9  
Vic., c. 106,  
s. 8.

**14.** All land shall as regards the conveyance of the  
immediate freehold thereof be deemed to lie in grant as  
well as in livery.

**15.** Any estate or interest that can be created by will  
in any chattel real may also be created by deed.

**16.** (1) A contingent remainder existing at any time  
after the commencement of this Act shall be capable of  
taking effect notwithstanding the want of a particular  
estate of freehold to support it in the same manner as  
it would take effect if it were a contingent remainder of  
an equitable estate supported by an outstanding legal  
estate in fee simple.

(2) A contingent remainder or a contingent  
interest lying between two estates vested in the same  
person shall prevent the merger of those two estates.

Rule in  
Shelley's case  
excluded in  
certain cases.

**17.** Where in an instrument coming into operation  
after the commencement of this Act a remainder is  
limited mediately or immediately to the heirs or heirs  
of the body of a person to whom an estate for any life in  
the same premises is expressly given, the estate of such  
person shall be confined to an estate for the life mentioned  
with a remainder to his heirs or heirs of his body as  
purchasers.

**18.**

**18.** The release from a rent charge of part of the land charged therewith shall not extinguish the whole rent charge, but shall operate only to bar the right to recover any part of the rent charge out of the land released without prejudice nevertheless to the rights of all persons interested in the land remaining unreleased and not concurring in or confirming the release.

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Release of part  
of land from  
rent charge not  
to extinguish  
whole charge.  
1893, No. 17,  
s. 120.  
22 & 23 Vic.,  
c. 35, s. 10.

**19.** (1) In any instrument coming into operation after the commencement of this Act a limitation which, if this section had not passed, would have created an estate tail (legal or equitable) in any land in favour of any person shall be deemed to create an estate in fee simple (legal or equitable as the case may be) in such land in favour of such person to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail.

Limitations  
of estates tail  
to pass the  
fee simple.  
See Vict. Act  
No. 2,719,  
s. 62.

(2) (a) Where at the commencement of this Act any person is entitled to an estate tail (legal or equitable) and whether in possession, reversion, or remainder, in any land, such person, save as is hereinafter mentioned, shall be deemed to be entitled to an estate in fee simple (legal or equitable, as the case may be) in such land, to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail.

(b) Where any such person is an infant and such land for any estate or interest would pass to any other person in the event of the death of the infant under the age of twenty-one years and without issue, then in such case the infant shall be deemed to take an estate in fee simple with an executory limitation over of such estate or interest on the happening of such event in favour of such other person.

(c) This subsection shall not apply where such person is an insane person within the meaning of the Lunacy Act, 1898, or has been declared lunatic or insane by any court of competent jurisdiction in the British Dominions outside New South Wales.

(d) In this subsection the expression "estate tail" includes that estate in fee into which an estate tail is converted where the issue in tail are barred,  
but

**George V,** but persons claiming estates by way of remainder or  
**No. 6.** otherwise are not barred; also an estate in fee voidable or determinable by the entry of the issue in tail; but does not include the estate of a tenant in tail after possibility of issue extinct.

(3) This section applies to land under the provisions of the Real Property Act, 1900, and the Registrar-General is hereby authorised on the prescribed application to make all such entries in the register-book as may be necessary to give effect thereto.

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

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

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

Dower  
abolished.  
1906, No. 4,  
s. 2.

**21.** No widow shall become entitled, nor on or after the fifteenth day of December, one thousand eight hundred and ninety (being the day of the passing of the Probate Act of 1890), shall any widow be deemed to have become entitled to dower out of any land or out of any estate or interest in the same.

No assurance  
to have tortious  
operation.  
See 8 & 9 Vic.,  
c. 106, s. 4.

**22.** No assurance of any land hereafter made shall be deemed to have a tortious operation.

Dealings with  
land of undis-  
charged  
bankrupt.  
See 4 & 5  
Geo. V, c. 59,  
s. 47 (1).

**23.** (1) All transactions by a bankrupt with any bona fide purchaser in respect of any land acquired by the bankrupt after a sequestration order has been made, and whether with or without notice of the bankruptcy, shall, if completed before any intervention by the official assignee of the estate of the bankrupt, be valid against the official assignee, and any estate or interest in such land which by virtue of the Bankruptcy Act, 1898, or any Act relating to insolvency, is vested in the official assignee,

assignee, shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction. George V,  
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(2) This section shall apply to transactions with respect to land completed before the commencement of this Act in any case where there has not been any intervention by the official assignee before that date.

(3) The registration by the official assignee in the register of causes, writs, and orders affecting land established under this Act of a claim in the prescribed form, or in the case of lands under the provisions of the Real Property Act, 1900, the lodging of a caveat under that Act, shall be deemed to be a sufficient intervention.

### DIVISION 3.—*Property generally.*

**24.** A person may convey property for any estate or interest to himself, or to himself jointly with another or others. Person may convey property to himself jointly with others.  
See 44 & 45 Vic., c. 41, s. 50,  
1898, No. 17,  
s. 31.

**25.** (1) A body corporate shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual, and where a body corporate and an individual or two or more bodies corporate become entitled to any property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy they shall be entitled to the property as joint tenants: Power for corporations to hold property as joint tenants.  
62 & 63 Vic., c. 20, s. 1.

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

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

**26.** (1) In the construction of any instrument coming into operation after the commencement of this Act a disposition of the beneficial interest in any property whether with or without the legal estate to or for two or more persons together beneficially shall be deemed to be made to or for them as tenants in common, and not as joint tenants. Construction of conveyance, &c., of any property beneficially to two or more persons together.

(2)

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(2) This section does not apply to persons who by the terms or by the tenour of the instrument are executors, administrators, trustees, or mortgagees, nor in any case where the instrument expressly provides that persons are to take as joint tenants or tenants by entireties.

Tenants in common of equitable estate acquiring the legal estate.

**27.** Where two or more persons entitled beneficially as tenants in common to an equitable estate in any property are or become entitled in their own right whether as joint tenants or tenants in common to the legal estate in such property equal to and co-extensive with such equitable estate both the legal and equitable estates shall be held by them as tenants in common unless such persons otherwise agree.

Release and disclaimer of powers.

See 44 & 45 Vic., c. 41, s. 52.

45 & 46 Vic., c. 39, s. 6.

**28.** (1) A person to whom is given any power (other than a power coupled with a duty), whether coupled with an interest or not, may by deed release or contract not to exercise the power.

(2) Any such person as aforesaid may by deed disclaim any such power, and after such disclaimer shall not be capable of exercising or joining in the exercise of the power.

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

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

(5) When any such power is exercisable by any instrument to be registered under the Real Property Act, 1900, the power may be released or disclaimed by a memorandum in the prescribed form which may be registered.

Appointments to be valid notwithstanding one or more objects excluded.

See 37 & 38 Vic., c. 37, ss. 1, 2.

**29.** (1) No appointment in exercise of any power to appoint any property amongst several objects shall be invalid on the ground that any object of the power has been altogether excluded, but every such appointment shall be valid and effectual notwithstanding that any one or more of the objects do not by such appointment or in default of appointment take a share or shares of the property. (2)

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

(3) This section applies to appointments made after the commencement of this Act in exercise of powers created before or after the commencement of this Act.

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

Purchase in good faith of reversion not to be set aside for under-value only.  
1898, No. 17, s. 30.  
31 & 32 Vic., c. 4.

**31.** (1) No person (in this section called a settlor) shall settle or dispose of any property so that the income thereof shall be wholly or partially accumulated—

Restriction on directions for accumulation of income.

(a) for any longer period than—

See 39 & 40 Geo. III, c. 98.

(i) the life of the settlor; or

(ii) twenty-one years from the death of the settlor; or

55 & 56 Vic., c. 58, s. 1.

(iii) the minority of any person who shall be living at the death of the settlor; or

(iv) the minority of any person who under the trusts of the instrument directing the accumulation, would for the time being, if of full age, be entitled to receive the income so directed to be accumulated.

(b) for the purchase of land only, for any longer period than that mentioned in sub-paragraph (iv) hereof.

(2) In every case where any accumulation is directed otherwise than as aforesaid, such direction shall be void, and the income so directed to be accumulated shall, so long as the same is directed to be accumulated contrary to the provisions of this section, go to such person as would have been entitled thereto if such accumulation had not been directed.

(3) Nothing in this section contained shall extend to—

(a) any provision for payment of debts of the settlor or any other person; or

(b)

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(b) any provision for raising portions for any child of the settlor, or any child of any person taking interest under the instrument directing the accumulation ; or

(c) any direction touching the produce of timber or wood upon any lands ;

but all such provisions and directions may be made and given as if this section had not passed.

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

(5) The Imperial Act thirty-nine and forty, George the Third, chapter ninety-eight (known as the Thellusson Act), is hereby repealed, so far as the same applies to New South Wales.

Vesting in  
executor or  
administrator  
de bonis non.

**32.** (1) Where, upon the death of an executor or administrator, administration of the estate remaining unadministered is granted, such estate shall, upon the grant, vest as from the death of such executor or administrator, in the person to whom the grant is made.

(2) Where in the case of a person dying on or after the fifteenth day of December, one thousand eight hundred and ninety (being the day of the passing of the Probate Act of 1890), administration of the estate remaining unadministered has been granted prior to the commencement of this Act, a conveyance by the person to whom the grant was made shall be deemed to be and to have been effectual to pass any legal estate in the property conveyed which was vested in the deceased executor or administrator at the time of his death.

Meaning of  
heir, next of  
kin, or  
statutory  
next of kin of  
any person.

**33.** (1) Where, under the terms of any instrument coming into operation after the commencement of this Act, any property vests in—

(a) the heir or heirs of any person ; or

(b) the next of kin of any person ; or

(c) the next of kin of any person to be determined in accordance with the Wills, Probate and Administration Act, 1898,

the property shall vest in the persons who on the death of such person intestate would be beneficially entitled to his real and personal estate under the said last-mentioned Act, and in the same shares :

Provided

Provided that the share of the husband or wife of such person shall be as follows :— George V,  
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- (a) Where there is issue surviving one-third of the property ; and
- (b) where there is no issue surviving one-half of the property.

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

**34.** (1) Where under the terms of any instrument coming into operation after the commencement of this Act any property vests in— Meaning of  
heir (male or  
female) or  
heir (male or  
female) of  
the body of  
any person.

- (a) the heir or heirs of the body of any person ; or
- (b) the heir or heirs male, or the heir or heirs male of the body of any person ; or
- (c) the heir or heirs female, or the heir or heirs female of the body of any person,

the property shall vest as follows :—

- In case (a) in the issue of such person as tenants in common *per stirpes* ;
- in case (b) in the sons and issue of sons of such person as tenants in common *per stirpes* ; and
- in case (c) in the daughters and the issue of daughters of such person as tenants in common *per stirpes*.

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

**35.** In all cases where two or more persons have died under circumstances rendering it uncertain which of them survived, the deaths shall for all purposes affecting the title to any property be presumed to have taken place in order of seniority, and the younger be deemed to have survived the elder. Presumption  
of survivor-  
ship.  
Sec 1898, No.  
17, s. 119.

**36.** (1) Where in an instrument coming into operation after the commencement of this Act the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is made to depend on the attainment by any person or class of Validation  
and variation  
of certain  
dispositions  
void for  
remoteness.



**George V.** of persons of an age exceeding twenty-one years, and  
**No. 6.** thereby the disposition in favour of that beneficiary or class, or any member thereof, or any gift over, remainder, executory limitation, or trust, arising on the whole or partial failure of the original disposition is, or, but for this section, would be rendered void for remoteness, the instrument shall take effect for the purposes of such disposition, gift over, remainder, executory limitation, or trust, as if the absolute vesting or ascertainment aforesaid had (without prejudice to any provision for earlier vesting or ascertainment) been made to depend on the person or class of persons attaining the age of twenty-one years, and that age shall be substituted for the age stated in the instrument.

(2) This section applies to an instrument coming into operation after the commencement of this Act and exercising a power of appointment notwithstanding that the instrument creating the power was executed before the commencement of this Act.

(3) This section applies notwithstanding that the absolute vesting or ascertainment is also made to depend on the marriage of any person, or on any other event which may occur before the age stated in the instrument is attained.

Extension of  
 s. 29 of Wills,  
 Probate and  
 Administra-  
 tion Act,  
 1898.

**37.** (1) The provisions of section twenty-nine of the Wills, Probate and Administration Act, 1898, shall extend to a child or other issue of the testator to whom any real or personal estate is devised or bequeathed as therein mentioned as a member of a class notwithstanding the reference in that section to the lapsing of the devise or bequest.

(2) This section applies only to the wills of persons dying after the commencement of this Act.

PART III.

George V,  
No. 6.

GENERAL RULES RELATING TO DEEDS.

DIVISION 1.—*Deeds and their effect.*

**38.** (1) Every deed, whether or not affecting property, shall be signed as well as sealed, and shall be attested by at least one witness not being a party to the deed; but no particular form of words shall be requisite for the attestation.

Signature and  
attestation.  
See N.Z. Act,  
1908, No. 152,  
s. 26.

(2) Indenting shall not be necessary in any case.

(3) Every instrument expressed to be an indenture or a deed, or to be sealed, which is signed and attested in accordance with this section, shall be deemed to be sealed.

(4) Every deed, executed and attested in accordance with this section may be proved in the same manner as a deed not required by law to be attested might have been proved heretofore.

(5) Nothing in this section contained shall affect—

- (a) the execution of deeds by corporations; or
- (b) the provisions of section eight, subsection two, of the Registration of Deeds Act, 1897; or
- (c) any deed executed prior to the commencement of this Act.

**39.** (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 indorsed on the deed.

Receipt in  
deed  
sufficient.  
44 & 45 Vic.,  
c. 41, s. 54.

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

**40.** (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  
indorsed  
evidence for  
subsequent  
purchaser.  
44 & 45 Vic.,  
c. 41, s. 55.

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

**41.**

**George V., No. 6.** **41.** (1) Where a power of appointment by an instrument other than a will is exercised by deed, executed and attested in accordance with this Act, or in the case of an instrument under the Real Property Act, 1900, in accordance with that Act, such deed or instrument shall, so far as respects the execution and attestation thereof, be a valid exercise of the power, notwithstanding that by the instrument creating the power some additional or other form of execution or attestation or solemnity is required.

Mode of exercise of powers.  
See 1898, No. 17, s. 35.  
22 & 23 Vic., c. 35, s. 12.

(2) This section applies to the exercise after the commencement of this Act of any such power created by an instrument coming into operation before or after the commencement of this Act.

**DIVISION 2.—***Certain cases in which deeds are necessary.*

**Partitions, exchanges, &c.** **42.** (1) No partition, exchange, lease, assignment, surrender in writing or other assurance of any land made after the commencement of this Act (except a lease not required by law to be in writing and a surrender of any such lease) shall be valid at law unless the same is made by deed.

See 8 & 9 Vic., c. 106, s. 3.

(2) This section shall not apply to land under the provisions of the Real Property Act, 1900.

**DIVISION 3.—***Operation of deed.*

**Form of deed, Second Schedule.** **43.** A deed according to the form in the Second Schedule hereto, or to the effect thereof, shall be effectual to pass any land for such estate as therein expressed.

**No use to result from absence of consideration.** **44.** (1) No use shall be held to result merely from the absence of consideration in a conveyance of land as to which no uses or trusts are therein declared.

**Limitations may be made by direct conveyance without uses.** (2) Every limitation which may be made by way of use operating under the Statute of Uses or this Act may be made by direct conveyance without the intervention of uses.

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

**45.** (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.

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No. 6.  
Grants of  
easements,  
&c., by way  
of use.  
44 & 45 Vic.,  
c. 41, s. 62.

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

**46.** In a conveyance executed after the commencement of this Act it shall not be necessary in order to convey land to use the word grant, but any words heretofore proper to convey land, and any other words indicating an intention to convey land, shall be sufficient.

In conveyance  
use of word  
grant unneces-  
sary. Words  
heretofore used  
or words show-  
ing intention to  
convey  
sufficient.  
See 44 & 45 Vic.,  
c. 41, s. 49.

**47.** (1) In a deed it shall be sufficient in the limitation of an estate in fee simple to use the words in fee or fee simple without the word heirs, or in the case of a corporation sole without the word successors, or to use the words in tail or in tail male or in tail female, without the words heirs of the body, or heirs male of the body, or heirs female of the body.

Words of  
limitation  
in fee.  
See *Ibid.*,  
s. 51.

(2) Where land is conveyed to or to the use of any person without words of limitation, such conveyance shall be construed to pass the fee simple or other the whole estate or interest the person conveying had power to dispose of by deed in such land unless a contrary intention appears by such conveyance.

of. 1898,  
No. 13, s. 24.  
N.Z. Act,  
1908.  
No. 153, s. 3.

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

**48.** Under a deed executed after the commencement of this Act, an immediate estate in any land and the benefit of a condition or covenant respecting any land may be taken although the taker thereof is not named a party to the deed, and such person may sue and shall be entitled to all rights and remedies in respect thereof as if he had been named as a party to the deed.

Person not  
named as a  
party to a  
deed may  
take benefit  
thereunder.  
See 8 and 9,  
Vic., c. 106,  
s. 5.

**George V., No. 6.** **49.** (1) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

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

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

**Rights of entry, &c.** **50.** (1) Every right of entry, contingent remainder, and every contingent or executory or future estate, right, or interest, or possibility coupled with an interest, in property, may be conveyed by deed.

See 8 & 9 Vic., c. 106, s. 6.

**See 32 Henry VIII, c. 9, ss. 2, 4.** (2) Any conveyance of a present right of entry in any land, other than a conveyance to the person in possession thereof, and any covenant or agreement for, or promise of a conveyance (other than as aforesaid) of the same shall be void as against the person in possession or those claiming under him unless the person conveying or covenanting, agreeing, or promising to convey, or the person through whom he claims has been in possession of the land within twelve months from the date of the conveyance, covenant, agreement or promise.

**Repeal.** (3) Sections two and four of the Imperial Act thirty-two, Henry the Eighth, chapter nine (known as The Bill of Bracery and Buying of Titles), are hereby repealed so far as the same apply to New South Wales.

60 and 61 Vic., c. 65, s. 11.

**Validation of certain acknowledgments taken before Deputy Registrar of Deeds.** **51.** Any acknowledgments heretofore or hereafter taken before a Deputy Registrar of Deeds shall be and be deemed to have been as valid and effectual for all intents and purposes as if the same had been taken before the Registrar-General.

PART IV.

George V,  
No. 6.

SALES AND OTHER TRANSACTIONS.

**52.** This Part shall not apply to land under the provisions of the Real Property Act, 1900, except where otherwise provided.

Application of Part IV to land under Real Property Act, 1900.

DIVISION 1.—*General provisions.*

**53.** In the completion of any contract made after the commencement of this Act for the purchase of land and subject to any stipulation to the contrary in the contract—

Forty years substituted for sixty years as the root of title.

- (1) Forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years might heretofore have been required; and
- (2) The obligations and rights of vendor and purchaser shall be regulated as follows:—
  - (a) Recitals, statements, and descriptions of facts, matters, and parties contained in instruments or statutory declarations twenty years old at the date of the contract shall, unless and except so far as they are proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions; but no recital shall affect the period of commencement of title under the last preceding subsection.
  - (b) The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title where the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.
  - (c)

37 & 38 Vic., c. 78, s. 1.

Rules for regulating obligations and rights of vendors and purchasers. See 37 & 38 Vic., c. 78, s. 2.

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No. 6.

- (c) Such covenant for production as the purchaser can and does require and the vendor is able to procure shall be furnished at the purchaser's expense, but the vendor shall bear the expense of perusal and execution on behalf of and by himself.
- (d) Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.
- (e) Where the vendor does not retain any part of an estate to which any documents of title relate and such documents are the subject of any covenant to produce or of any right in any person to their production, he shall deposit such documents with the Registrar-General, and furnish the purchaser with an attested copy of the receipt therefor, and it shall be the duty of the purchaser's solicitor to require the same.

Application  
of stated  
conditions to  
all sales.

See 44 & 45  
Vic., c. 41,  
s. 3.

**54.** (1) 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 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 or otherwise.

(2) 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.

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No. 6.

(3) 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.

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

(5)



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(5) 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.

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

(7) 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.

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

(9) 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.

(10) Nothing in this or the last preceding section shall preclude a purchaser from raising any objection to the vendor's title before the time prescribed by law or stipulated for commencement of the title.

Right of  
purchaser to  
recover  
deposit, &c.

**55.** (1) In every case where specific performance of a contract would not be enforced against the purchaser by the Court by reason of a defect in the vendor's title, but the purchaser is not entitled to rescind the contract, the purchaser shall nevertheless be entitled to recover his deposit and any instalments of purchase money he has paid, and to be relieved from all liability under the contract whether at law or in equity, unless the contract discloses such defect and contains a stipulation precluding the purchaser from objecting thereto.

(2) If such undisclosed defect is one which is known or ought to have been known to the vendor at the date of the contract the purchaser shall in addition be entitled to recover his expenses of investigating the title.

(3) On the application of the purchaser the Court may order payment under this section and declare and enforce a lien in respect thereof on the property the subject of the contract.

(4)

(4) This section applies only to contracts made after the commencement of this Act and shall have effect notwithstanding any stipulation to the contrary.

(5) This section applies to land under the provisions of the Real Property Act, 1900.

**56.** (1) In any contract the vendor shall not be entitled to exercise any right to rescind the contract, whether given by the contract or otherwise, on the ground of any requisition or objection made by the purchaser unless and until he has given the purchaser reasonable notice of his intention to rescind so as to enable the purchaser to waive the requisition or objection.

No rescission by vendor on purchaser's objections, &c., until purchaser has reasonable opportunity to waive objections, &c.

(2) This section applies only to contracts made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

(3) This section applies to lands under the provisions of the Real Property Act, 1900.

**57.** (1) Under a contract for the purchase of land under the provisions of the Real Property Act, 1900, the purchaser shall be entitled at the cost of the vendor—

Conditions of sale of land under the provisions of the Real Property Act, 1900.

- (a) to receive from the vendor sufficient particulars of title to enable him to prepare the appropriate instrument to give effect to the contract; and
- (b) to receive from the vendor an abstract of any instrument forming part of the vendor's title, in respect of which a caveat is entered upon the register; and
- (c) to have the relevant certificate of title or other document of title lodged by the vendor at the office of the Registrar-General to enable the instrument to be registered; and
- (d) to have any objection to the registration of the instrument removed by the vendor: Provided that, as to any such objection which the purchaser ought to have raised on the particulars or abstract, or upon the investigation of the title, or which arises from his own act, default, or omission, he shall not be entitled to have the same removed except at his own cost.

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No. 6.

(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.

Notice of  
restrictive  
covenants.

1 & 2 Geo. V,  
c. 37, s. 11.

**58.** (1) Where land having a common title with other land is disposed of to a purchaser (other than a lessee or a mortgagee) who does not hold or obtain possession of the documents forming the common title, such purchaser, notwithstanding any stipulation to the contrary, may require that a memorandum giving notice of any provision contained in the disposition to him restrictive of user of, or giving rights over, any other land comprised in the common title shall where practicable, be indorsed on, or, where impracticable, be permanently annexed to some one document selected by the purchaser but retained in the possession or power of the person who makes the disposition, or to be deposited by him with the Registrar-General under section fifty-three, paragraph two, subparagraph (e), and being or forming part of the common title.

(2) The title of any person omitting to require an indorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.

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

**59.** (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.

Implied con-  
ditions in con-  
tracts for sale of  
land.  
Third Schedule.  
See Vict. Act,  
No. 2,719, s. 140.

**60.** (1) Every contract made after the commencement of this Act for the sale of land shall be deemed to be made subject to the conditions of sale set out in the Third Schedule to this Act, subject, nevertheless, to any other condition or provision contained in the contract expressly or by necessary implication modifying or excluding any of them.

(2) This section applies to land under the provisions of the Real Property Act, 1900.

**61.**

**61.** Every condition of sale, framed with the view of precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed before or after the commencement of this Act, and every contract, arrangement, or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence, or insufficiency, shall be void.

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No. 6.  
Conditions of  
sale and  
agreements as  
to stamp duty  
void.  
54 & 55 Vic.,  
c. 39, s. 117.

**62.** (1) Where, for the purpose of establishing the title to any property it is necessary to negative the identity of any person appearing in the title with any bankrupt, any intending or actual vendor, mortgagor, or lessor of the property or applicant to bring land under the provisions of the Real Property Act, 1900, or any resuming or constructing authority under any Act may give to the official assignee of the estate of the bankrupt as to whose identity a doubt arises a notice, accompanied by the prescribed fee, containing particulars of the property in question and of the person whose identity is in doubt, and a statement of his intention to sell, mortgage, or lease, or complete the sale, mortgage, or lease of the property, or to bring the same under the provisions of the Real Property Act, 1900, or to pay compensation in respect of the resumption of the same.

Mode of  
negating  
identity of  
bankrupts.

(2) If the official assignee does not within the prescribed time thereafter intervene by filing with the Registrar-General a memorandum in the prescribed form that he claims the property in respect of which the notice was given, he shall not be entitled at any future time to assert his title thereto against such vendor, mortgagor, lessor, applicant, or any person claiming under or through them, or to make any claim in respect thereof against the person so paying compensation.

(3) The Registrar-General shall in the prescribed manner enter such memorandum of intervention in the register of causes, writs, and orders affecting land.

(4) The official assignee may lodge with the Registrar-General a notice of withdrawal in the prescribed form of any such memorandum, and the Registrar-General shall thereupon vacate the entry thereof.

## DIVISION

George V, DIVISION 2.—*Production and safe custody of title deeds.*

No. 6.

Covenants to  
produce  
implied by  
Schedule of  
documents.

**63.** (1) In a deed to which there is a schedule of documents expressed to be covenanted to be produced by any party indicated as the covenantor to any party indicated as the covenantee, there shall be deemed to be included and there shall by virtue of this Act be implied a covenant by such covenantor with such covenantee that the covenantor, his executors, administrators, or assigns, or other the person for the time being in whose possession the documents mentioned in such schedule ought to be, at the request and cost of the covenantee, his executors, administrators, or assigns, will unless prevented by fire or other accident, produce within New South Wales as often as required to him or them or as he or they shall direct all documents mentioned in such schedule, and that the covenantor, his executors, administrators, or assigns, or such other person as aforesaid, will, unless prevented as aforesaid, keep the said documents safe, whole, and uncanceled, save so far as they shall be cancelled on the bringing under the provisions of the Real Property Act, 1900, of any of the land to which they relate.

(2) Such covenant shall bind the person in whose possession the documents the subject thereof should for the time being be: Provided, however, that if any person not being entitled to the possession of any document shall impliedly covenant to produce it, the liability under the covenant shall not extend beyond the covenantor, his executors, administrators, and assigns, but he and they shall be and remain subject to such liability.

44 & 45 Vic,  
c. 41, s. 9 (7).

(3) Any person claiming to be entitled to the benefit of a covenant implied as aforesaid 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.

(4)

(4) Any person claiming to be entitled to the benefit of such covenant 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.

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

**64.** A covenant or undertaking expressed or implied whether entered into before or after the commencement of this Act to produce any document relating to land, shall be satisfied by a deposit of the document permanently in the office of the Registrar-General, who shall give a receipt for and keep in his office a list of all documents so deposited, and shall, on payment of the prescribed fees, permit any person to search therein and to inspect and obtain copies of every such deed.

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No. 6.

41 & 45 Vic.,  
c. 41, s. 9(10).

Satisfaction  
of covenants  
to produce  
deeds.  
See 1898, No.  
17, s. 118.

### DIVISION 3.—*Sales by auction.*

**65.** (1) In the case of a sale of property by auction—

- (a) where the sale is not notified in the conditions of sale to be subject to a right to bid on behalf of the vendor, he shall not be entitled to bid himself or to employ any person to bid at the sale, nor shall the auctioneer be entitled to take any bid from the vendor or any such person; any sale contravening this rule may be treated as fraudulent by the purchaser;
- (b) a sale may be notified in the conditions of sale to be subject to a reserved or upset price, and a right to bid may also be therein expressly reserved by or on behalf of the vendor;
- (c) where a right to bid is expressly reserved, but not otherwise, the vendor or any one person on his behalf may bid at the auction.

(2) This section applies to land under the provisions of the Real Property Act, 1900.

### DIVISION

Auction sales.  
30 & 31 Vic.,  
c. 48, ss. 4-6.  
36 & 57 Vic.,  
c. 71, s. 58.

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No. 6.

DIVISION 4.—*Discharge of incumbrances on sale.*

Provision by  
court for in-  
cumbrances  
and sale freed  
therefrom.  
44 & 45 Vic.,  
c. 41, s. 5.

**66.** (1) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court or out of court, the Court may, 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 will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2) Thereupon the Court may, and either after or without any notice to the incumbrancee 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 on such terms as to the delivering up of deeds or other documents, or on such other terms as the Court thinks fit, 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.

(5) This section applies to land under the provisions of the Real Property Act, 1900, and in such case

case the Registrar-General shall upon payment of the prescribed fee make all necessary entries in the register-book for giving effect to the order.

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No. 6.

## PART V.

### GENERAL WORDS IN CONVEYANCES OF LAND.

**67.** (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, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever appertaining to the land or any part thereof, at the time of conveyance.

General  
words in  
conveyances  
of land or  
buildings.  
Sec 44 & 45  
Vic., c. 41,  
s. 6.

(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 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 to the land, houses, or other buildings conveyed, or any of them, or any part thereof, at the time of conveyance.

(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)



110                    **Conveyancing Act.**

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No. 6.                    (5) This section applies only to conveyances made after the commencement of this Act of land other than land under the provisions of the Real Property Act, 1900.

Provision for  
all the estate,  
&c.  
44 & 45 Vic.,  
c. 41, s. 63.                    **68.** (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.

(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.

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**PART VI.**

**COVENANTS AND POWERS.**

Application  
of Part VI  
to land under  
the Real Pro-  
perty Act.                    **69.** Division 1 of this Part shall apply, but Divisions 2 and 3 shall not apply to land under the provisions of the Real Property Act, 1900, except where otherwise provided.

**DIVISION 1.—General provisions.**

Covenants  
relating to  
land.  
See 44 & 45  
Vic., c. 41,  
s. 53.                    **70.** (1) A covenant relating to land, whether express, or implied under this or any other Act, shall be deemed to be made with the covenantee, his heirs, executors, administrators, and assigns, and shall have effect accordingly.

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

**71.**

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

George V,  
No. 6.  
Effect of  
covenant  
with two or  
more jointly.  
See 44 & 45  
Vic., c. 41,  
s. 60.

(2) 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.

(3) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

**72.** (1) A covenant, whether express, or implied under this or any other Act, or an agreement made by a person with himself and another or others shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been made with the other or others.

Covenants,  
&c., by a  
person with  
himself and  
another, or  
others.

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

**73.** (1) Where a covenant is implied under this or any other Act, and more persons than one are covenantors, such covenant shall be deemed to bind the covenantors and any two or greater number of them jointly and each of them severally.

Implied  
covenants to be  
joint and  
several.  
See 1900, No. 2,  
s. 80 (4).

(2) Section eighty, subsection four of the Real Property Act, 1900, is hereby repealed.

**74.** (1) A covenant or power implied under this or any other Act shall have the same force and effect, and may be enforced in the same manner, as if it had been set out at length in the deed wherein it is implied.

Implied  
covenants  
may be nega-  
tived, &c.  
See 44 & 45  
Vic., c. 41,  
s. 7 (7).

(2)

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N.Z. Act, 1908,  
No. 152, s. 49,  
1900, No. 25,  
s. 80.

(2) Any such covenant or power may, unless otherwise provided in this or such other Act, be negatived, varied, or extended by—

- (a) an express declaration in the deed wherein it is implied; or
- (b) another deed.

(3) Any such covenant or power so varied or extended shall, so 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 implied under the Act.

Benefit of  
implied  
covenants.  
44 & 45 Vic,  
c. 41, s. 7 (6).

**75.** The benefit of a covenant implied under this or any other Act 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.

Construction  
of implied  
covenants and  
provisions.  
*Ibid.* c. 41,  
s. 64.

**76.** In the construction of a covenant, or proviso, or other provision implied in a deed by virtue of this or any other 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.

No implied  
rights in  
certain cases.  
See 8 & 9 Vic.,  
c. 106, s. 4.

**77.** No exchange or partition of any land made by deed executed after the commencement of this Act shall imply any condition in law, and the word "give" or the word "grant" in a deed executed after the commencement of this Act shall not imply any covenant in respect of any lands.

#### DIVISION 2.—*Covenants for title.*

Covenants for  
title to be  
implied.  
See 44 & 45  
Vic., c. 41,  
s. 7.

**78.** (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

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) :—

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No. 6.

(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 :—

On convey-  
ance for value  
(other than a  
mortgage)  
by beneficial  
owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives

Right to  
convey.

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 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

Quiet enjoy-  
ment.

Freedom from  
incumbrance.

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No. 6.

Further  
assurance.

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 ;

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

On convey-  
ance of lease-  
holds for  
value by  
beneficial  
owner.

Validity of  
lease.

(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 :—

That, notwithstanding anything by the person who so conveys or any one through whom he derives title

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, unsundered, and in nowise 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 ;

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No. 6.

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

(C) In a deed 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 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

Right to  
convey.  
Quiet  
enjoyment.

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No. 6.**

Freedom  
from incum-  
brance.

Further  
assurance.

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.

On mortgage  
of leaseholds  
by beneficial  
owner.

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

Validity of  
lease.

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

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 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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No. 6.

Payment of  
rent and per-  
formance of  
covenants.

(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 settle-  
ment.

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

For further  
assurance  
limited.



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No. 6.

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.

On convey-  
ance by  
trustee or  
mortgagee,  
&c.  
See 44 & 45  
Vic., c. 41,  
s. 7.

(F) In any conveyance the following covenant by every person who conveys, and is expressed to convey, as trustee, or mortgagee, or as the executor or administrator of a deceased person, or as Master in Lunacy, or as committee or manager of the estate of any insane or incapable person within the meaning of the Lunacy Act of 1898, or under an order of the Court, which covenant shall be deemed to extend to his own acts only, namely:—

Against in-  
cumbrances

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.

This covenant shall be deemed to be implied in every memorandum of discharge indorsed on or annexed to a conveyance by way of mortgage in the same manner as if such memorandum were a deed of conveyance by the mortgagee.

On convey-  
ance by  
direction of  
beneficial  
owner.

(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.

Implied  
covenants in  
conveyance  
by husband  
and wife.

(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 by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of  
the

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.

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(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 the executor or administrator of a deceased person, or as Master in Lunacy, or as committee or manager of the estate of any insane or incapable person within the meaning of the Lunacy Act of 1898, or under an order of the Court, or by 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) In this section a conveyance does not include a demise by way of lease at a rent.

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

### DIVISION 3.—*Other covenants.*

#### *Sale subject to incumbrance.*

**79.** (1) In every conveyance by way of sale subject to an incumbrance, and whether the conveyance is executed by the purchaser or not, there shall be implied a covenant by the person to whom the property is conveyed with the person making the conveyance, to pay the moneys or perform the obligations secured by the incumbrance, and to perform and observe the covenants and provisions of the incumbrance, and to keep harmless and indemnified the person making the conveyance in respect of such moneys, obligations, covenants, and provisions.

Covenants implied on conveyance of property subject to incumbrance.  
See 1900, No. 25, s. 76.

(2) This section does not apply to sales made in pursuance of any writ of execution.

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

#### *Mortgages.*

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No. 6.

*Mortgages.*

Covenant  
implied in  
mortgage.  
See 1900,  
No. 25, s. 77.

**80.** (1) In every deed of mortgage there shall be implied against the mortgagor a covenant that he will keep all buildings or other improvements erected and made upon the land in as good and substantial repair as the same were in at the date of the mortgage, and that the mortgagee, his executors, administrators, and assigns, may at all convenient times, until such mortgage is redeemed, be at liberty, with or without surveyors or others, to enter into, and upon, such land to view and inspect the state of repair of such buildings and improvements.

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

(3) This section applies to every memorandum of mortgage under the Real Property Act, 1900, and section seventy-seven of that Act is hereby repealed.

Short forms of  
covenants by  
mortgagor.  
Fourth  
Schedule,  
Part I.  
See *Ibid.*  
s. 81.

**81.** (1) Whenever, in any deed of mortgage which is expressed to be made in pursuance of this Act, the mortgagor employs the form of words contained in the first column of Part One of the Fourth Schedule to this Act, and distinguished by a number therein, such form of words shall imply a covenant by the mortgagor for himself, his executors, administrators, and assigns, with the mortgagee, his executors, administrators, and assigns, in the terms contained in the second column of the said Schedule, and distinguished by the corresponding number.

(2) There may be introduced into, or annexed to, any form in the said first column any addition to, exception from, or qualification of the same; or any words in such column may be struck out or omitted; and a proviso which would give effect to the intention indicated by such addition, exception, qualification, striking out, or omission shall be taken to be added to the corresponding form in the second column.

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

**82.** Where on the face of any mortgage it appears that the short form of words contained in the first column of Part One of the Fourth Schedule to this Act and therein numbered one has been struck out, the covenant represented by such short form of words shall not be implied by section eighty of this Act.

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No. 6.  
Case in which  
covenant in  
s. 80 not  
implied.

**83.** (1) In any deed of mortgage, and in any memorandum of transfer of mortgage indorsed thereon or annexed thereto, and in any deed of transfer of mortgage where there are more mortgagees or more transferees than one, any implied covenant with them shall be deemed to be a covenant with them jointly, in equity as well as at law, 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,—  
with  
mortgagees.  
See 44 & 45  
Vic., c. 41,  
s. 28.

(2) This section applies to instruments under the Real Property Act, 1900.

### *Leases.*

**84.** (1) In every lease of land made after the commencement of this Act there shall be implied the following covenants by the lessee, for himself, his executors, administrators, and assigns, with the lessor, his executors, administrators, and assigns :—

Covenants by  
lessees.  
See 1900,  
No. 25, s. 78.

- (a) That he or they will pay the rent thereby reserved at the time therein mentioned :

To pay rent.  
Proviso for  
cesser of  
rent and  
arbitration.

Provided, however, that in case the demised premises or any part thereof shall at any time during the continuance of the lease be destroyed or damaged by fire, flood, lightning, storm, or tempest so as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved, or a proportionate part thereof, according to the nature and extent of the damage sustained shall abate, and all or any remedies for recovery of the rent or such proportionate part thereof shall be suspended until the demised premises shall

have

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have been rebuilt or made fit for the occupation and use of the lessee, and in case of any dispute arising under this proviso the same shall be referred to arbitration under the provisions of the Arbitration Act, 1902.

To keep in  
repair.

- (b) That he or they will, at all times during the continuance of the said lease, keep and, at the termination thereof, yield up the demised premises in good and tenantable repair, having regard to their condition at the commencement of the said lease, accidents and damage from fire, flood, lightning, storm and tempest, and reasonable wear and tear excepted.

(2) This section applies to every memorandum of lease under the Real Property Act, 1900, and section seventy-eight of that Act is hereby repealed.

Powers in  
lessor.  
See 1900,  
No. 25, s. 79.

**85.** (1) In every lease of land made after the commencement of this Act there shall be implied the following powers in the lessor, his executors, administrators, or assigns:—

To enter and  
view.

- (a) That he or they may, by himself or themselves, or his or their agents, twice in every year during the term at a reasonable time of the day upon giving to the lessee two days' previous notice, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee, his executors, administrators, or assigns, or leave at his or their last or usual place of abode in New South Wales, or upon the demised premises, a notice in writing of any defect, requiring him or them, within a reasonable time, to repair same in accordance with any covenant expressed or implied in the lease.

- (b) That in default of the lessee his executors administrators or assigns repairing any defect according to notice, he or they may from time to time enter the premises and execute the required repairs.

To enter and  
carry out  
requirements  
of public  
authority, and  
repair under  
the lease.

- (c) That he or they may, by himself or themselves, or his or their agents, at all reasonable times during the term, with workmen and others and  
all

all necessary materials and appliances, enter upon the demised premises or any part thereof, for the purpose of complying with the terms of any present or future legislation affecting the said premises, and of any notices served upon the lessor or lessee by the Board of Health, licensing, municipal, or other competent authority, involving the destruction of noxious weeds or animals, or the carrying out of any repairs, alterations, or works of a structural character, which the lessee may not be bound, or if bound, may neglect to do, and also for the purpose of exercising the powers and authorities of the lessor under the lease: Provided that such destruction, repairs, alterations, and works shall be carried out by the lessor without undue interference with the occupation and use of the demised premises by the lessee.

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- (d) That, in case the rent or any part thereof is in arrear for the space of one month (although no formal demand therefor has been made), or in case default is made in the fulfilment of any covenant, condition, or stipulation, whether expressed or implied in the lease, and on the part of the lessee to be performed or observed, and such default is continued for the space of two months, or in case the repairs required by such notice as aforesaid are not completed within the time therein specified, he or they may re-enter upon the demised premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee, his executors, administrators, or assigns, therein, but without releasing him or them from liability in respect of the breach or non-observance of any such covenant, condition, or stipulation.

To re-enter  
and take  
possession.

(2) This section applies to every memorandum of lease under the Real Property Act, 1900, and section seventy-nine of that Act is hereby repealed.

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No. 6.

Short forms  
of covenants  
by lessees.

Fourth  
Schedule,  
Part II.

See 1899,  
No. 18, s. 3.  
1900, No. 25,  
s. 81.

**86.** (1) Whenever in any lease which is expressed to be made in pursuance of this Act the lessee or the lessor employs the form of words contained in the first column of Part Two of the Fourth Schedule to this Act and distinguished by a number therein, such form of words shall imply a covenant by the lessee or the lessor for himself, his executors, administrators, and assigns, with the lessor or the lessee, his executors, administrators, and assigns, in the terms contained in the second column of the said Schedule, and distinguished by the corresponding number.

(2) There may be introduced into or annexed to any form in the first column any addition to, exception from, or qualification of the same; or any words in such column may be struck out or omitted; and a proviso which would give effect to the intention indicated by such addition, exception, qualification, striking out, or omission, shall be taken to be added to the corresponding form in the second column.

(3) This section applies only to leases made by deed executed after the commencement of this Act.

Cases in  
which  
covenants or  
powers in  
ss. 84 and 85  
not implied.

**87.** Where on the face of any lease it appears that any of the short forms of words contained in the first column of Part Two of the Fourth Schedule to this Act has been struck out, the covenant or proviso represented by such short form of words shall not be implied in the lease by sections eighty-four or eighty-five of this Act.

#### *Restrictive covenants.*

Power for the  
court to  
discharge or  
modify  
restrictive  
covenants  
affecting  
land.

**88.** (1) Where land is subject to any restriction arising under covenant or otherwise as to the user thereof or the building thereon, the Court may, from time to time, on the application of any person interested in the land, by order wholly or partially discharge or modify the restriction upon being satisfied—

- (a) that by reason of changes in the character of the property, or the neighbourhood, or other circumstances of the case which the Court may deem material, the restriction ought to  
be

be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land without securing practical benefits to other persons, or (as the case may be) would, unless modified, so impede such user; or

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No. 6.

- (b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee-simple, or any lesser estates or interests in the land to which the benefit of the restriction is annexed, have agreed to the same being discharged or modified, or by their acts or omissions may reasonably be considered to have waived the benefit of the restriction wholly or in part; or
- (c) that the proposed discharge or modification will not substantially injure the persons entitled to the benefit of the restriction.

(2) Where any proceedings by suit or otherwise are instituted to enforce a restrictive covenant affecting land, any person against whom the proceedings are instituted may in such proceedings apply to the Court for an order under this section.

(3) The Court may on the application of any person interested make an order declaring—

- (a) whether or not in any particular case any land is affected by a restriction imposed by any instrument; or
- (b) what upon the true construction of any instrument purporting to impose a restriction is the nature and extent of the restriction and whether the same is enforceable, and if so by whom.

(4) Notice of any application under this section shall, if the Court so directs, be given to the council of the municipality or shire in which the land is situated, and to such other persons and in such manner, whether by advertisement or otherwise, as the Court, either generally or in a particular instance, may order.

(5)



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(5) An order under this section shall, when registered as hereinafter provided, be binding on all persons, whether of full age or capacity or not, then interested or thereafter becoming interested in enforcing any restriction which is thereby discharged, modified, or dealt with, and whether such persons are parties to the proceedings or have been served with notice or not.

(6) This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter.

(7) An order under this section may be registered in the register of causes, writs, and orders affecting land; no such order shall bind or release any land unless and until it is registered.

(8) This section applies to land under the provisions of the Real Property Act, 1900, and in such case the Registrar-General shall, on the prescribed application, make all necessary amendments and entries in the register book for giving effect to such order in respect of all certificates of title specified therein.

(9) In the case of other land a memorandum of such order shall be indorsed on such of the instruments of title as the Court may direct.

Purchasers  
not affected  
by restrictive  
covenants  
unless certain  
conditions  
satisfied.

**89.** (1) No purchaser of any land shall be affected by any covenant restrictive of the use of the land contained in any instrument coming into operation after the commencement of this Act unless the instrument containing such covenant clearly defines—

- (a) the land to which the benefit of the covenant is intended to be appurtenant; and
- (b) the land which is to be subject to the burden of such covenant; and
- (c) the persons (if any) by whom or with whose consent the covenant may be released, varied, or modified.

(2) This section applies to land under the provisions of the Real Property Act, 1900.

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PART

PART VII.

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No. 6.

MORTGAGES.

DIVISION 1.—*General provisions.*

**90.** This Division of this Part shall apply to mortgages of land under the Real Property Act, 1900, effected by instruments of mortgage under that Act to the extent and subject as in the several sections of such Division provided. Application of Division 1 to mortgages under the Real Property Act, 1900.

**91.** (1) In the case of every mortgage (whether made before or after the commencement of this Act)— In force on mortgages. See N.Z. Act, 1908, No. 152, s. 67.

- (a) the mortgage debt may be discharged ; and
- (b) the rate of interest may be increased or reduced ; 1898, No. 17, s. 105.

- (c) the amount secured by the mortgage may be increased or reduced ; and

- (d) the term or currency of the mortgage may be shortened, extended, or renewed ; and

- (e) the mortgage may be transferred—

by a memorandum indorsed on or annexed to the mortgage, and signed by the persons to be bound thereby and attested by one witness.

(2) Such memorandum may be in such one of the forms in the Fifth Schedule hereto as applicable, or to the effect thereof, and shall in cases (b), (c), (d), and (e) operate as a deed. Fifth Schedule.

(3) (a) Every such memorandum of discharge shall, upon registration, but as from the date of such memorandum, vacate the mortgage debt, and shall operate as a deed of conveyance of the estate and interest of the mortgagee of and in the mortgaged property to the person for the time being entitled to the equity of redemption to the uses and for the estates and interests, and subject to the powers and trusts to, for, and subject to which, the equity of redemption at the date of such memorandum stood limited or subject : Provided that in case there is any subsequent subsisting mortgage on the property at the date of such memorandum, the legal estate in the property under the discharged mortgage shall vest in the person in whom that subsequent mortgage

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No. 6. mortgage is vested, or in the event of there being more than one such mortgage then in the person who has the prior right to call for a conveyance of such legal estate.

(b) Where the mortgage consists of a mortgage and a further charge or of more than one instrument it shall be sufficient for the purposes of this section if the memorandum refers to all the instruments whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured, and is indorsed on or annexed to one of the mortgage instruments.

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

(5) The mortgagor may require the mortgagee to execute a proper instrument of reconveyance of the mortgaged property instead of executing a memorandum of discharge.

(6) Paragraphs (b), (c), and (d) of subsection one of this section shall apply to mortgages under the Real Property Act, 1900; in each such case the memorandum shall be in or to the effect of such form, and be registered in such manner, as may be prescribed, and the Registrar-General shall make such entries in the register and upon the memorandum of mortgage as may be necessary.

Mortgagee  
accepting  
interest on  
overdue  
mortgage not  
to call up  
without  
notice.  
See N.Z. Act,  
1908,  
No. 152, s. 68.

**92.** (1) Where the mortgagor has made default in payment of the principal sum at the expiry of the term of the mortgage, or of any period for which it has been renewed or extended, and the mortgagee has accepted interest on the said sum for any period (not being less than three months) after default has been so made, then, so long as the mortgagor performs and observes all covenants expressed or implied in the mortgage, other than the covenant for payment of the principal sum, the mortgagee shall not be entitled to take proceedings to compel payment of the said sum, or for foreclosure, or to enter into possession, or to exercise any power of sale, without giving to the mortgagor three months' notice of his intention so to do.

(2)

(2) No purchaser from the mortgagee exercising his power of sale shall be concerned to inquire whether the mortgagee has accepted interest as aforesaid after such default. George V,  
No. 6.

(3) This section applies to mortgages under the Real Property Act, 1900.

(4) This section shall have effect notwithstanding any stipulation to the contrary.

**93.** (1) A mortgagor is entitled to redeem the mortgaged property although the time appointed for redemption has not arrived; but in such case he shall pay to the mortgagee, in addition to any other moneys then owing under the mortgage, interest on the principal sum secured thereby for the unexpired portion of the term of the mortgage: Provided that redemption under this subsection shall not prejudice the right of the mortgagee to any collateral benefit, or to enforce any burden or restriction to the extent to which he would be entitled under the mortgage or otherwise if the mortgage were paid off at the due date. Right to redeem before time fixed for redemption.  
See N.Z. Act, 1908, No. 152, s. 70 (2).

(2) For the purposes of this section "moneys owing under a mortgage" includes all costs, charges, and expenses reasonably and properly incurred by the mortgagee— Ibid.  
s. 79 (4).

(a) for the protection and preservation of the mortgaged land or the title thereto, or otherwise in accordance with the provisions of the mortgage; and

(b) with a view to the realisation of his security; and in either case includes interest on the sums so expended after the rate expressed in the mortgage.

(3) 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.

(4) This section applies to mortgages under the Real Property Act, 1900.

**94.** (1) Where a mortgagor is entitled to redeem he shall by virtue of this Act have power to require the mortgagee instead of discharging, and on the terms on which he would be bound to discharge, to transfer the mortgage to any third person as the mortgagor directs; and the mortgagee shall by virtue of this Act be bound to transfer accordingly. Obligation on mortgagee to transfer instead of discharging.  
See 44 & 45 Vic., c. 41, s. 15.

George V.,  
No. 6. (2) This section does not apply in the case of a mortgagee being or having been in possession.

(3) 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.

(4) This section applies to mortgages under the Real Property Act, 1900.

Person  
entitled to  
require  
transfer.  
See 45 & 46  
Vic., c. 39,  
s. 12

**95.** The right of the mortgagor under the last preceding section shall belong to and be capable of being enforced by each incumbrancee or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancee shall prevail over a requisition of the mortgagor, and as between incumbrancees a requisition of a prior incumbrancee shall prevail over a requisition of a subsequent incumbrancee.

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

**96.** (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 by himself or his solicitor, to inspect and to be supplied with copies or abstracts of, or extracts from, the documents of title or other documents relating to the mortgaged property in the custody or power of the mortgagee.

(2) This section applies to mortgages under the Real Property Act, 1900, and in such case the mortgagor shall be entitled to have the relevant certificate of title, or other document of title, lodged at the office of the Registrar-General, to allow of the registration of any authorised dealing by the mortgagor with the land, upon payment of the mortgagee's proper costs and expenses.

(3) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Consolidation  
of mortgages  
abolished.  
See *Ibid.*  
s. 17.

**97.** (1) A mortgagor seeking to redeem any one mortgage made after the commencement of this Act shall by virtue of this Act be entitled to do so without paying any money due under any separate mortgage made whether before or after the commencement of this Act 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)

(2) This section applies notwithstanding any stipulation to the contrary. George V,  
No. 6.

(3) This section applies to mortgages under the Real Property Act, 1900.

**98.** (1) When any person entitled to receive payment of any money secured by mortgage is out of the jurisdiction, cannot be found, or is unknown, or it is uncertain who is so entitled, the Court, upon the application of the person entitled to redeem the mortgaged premises, may order the amount of such debt to be ascertained in such manner as the Court thinks fit, and direct the amount so ascertained to be paid into court. Facilitation  
of redemption  
in case of  
absent or  
unknown  
mortgagees.  
See 1898,  
No. 17, s. 108.  
1901, No. 37,  
s. 5.

(2) A certificate of the Master in Equity that such payment was directed and has been made, shall, in favour of a purchaser of the land, upon registration, operate as a discharge of the land from the mortgage debt: Provided that as between the mortgagor and the person so entitled to receive payment as aforesaid any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due or payable over and above the amount so paid shall continue to be a specialty debt due under the mortgage.

(3) The Court shall order the amount so paid into court to be paid to the person entitled, upon the application of such person, and on proof that the deed or instrument of mortgage, and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same, or in connection therewith, have been delivered up to the person by whom the amount was so paid into court, or his executors, administrators, or assigns, or have been otherwise satisfactorily accounted for.

(4) Subsections one and three of this section shall apply to mortgages under the Real Property Act, 1900, and in the case of any such mortgage upon production to the Registrar-General of the certificate of the Master in Equity as hereinbefore mentioned—

(a) he shall on payment of the prescribed fee make an entry in the register book discharging the mortgage, stating the day and hour on which such entry is made;

(b)

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(b) such entry shall be a discharge of the land from the mortgage: Provided that as between the mortgagor and the person so entitled to receive payment as aforesaid, any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due or payable over and above the amount so paid, shall continue to be a specialty debt due under the mortgage;

(c) the Registrar-General shall indorse on the relevant certificate of title or other document of title, and also on the memorandum of mortgage, whenever those instruments are brought to him for that purpose, particulars of such entry.

(5) Section sixty-seven of the Real Property Act, 1900, is hereby repealed.

Effect of  
advance on  
joint account,  
&c.

See 44 & 45  
Vic., c. 41,  
s. 61.

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

[N.Z. Act,  
1908, No. 152,  
s. 76 (2).]

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

mortgagees, if living, could have done; subject as to lands under the provisions of the Real Property Act, 1900, to compliance with the provisions of that Act. George V.  
No. 6.

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

**100.** (1) On a decree absolute for foreclosure the mortgagee shall be deemed to have taken the property mentioned in such decree, in full satisfaction of the mortgage debt, and his right or equity to bring any action or to take other proceedings for the recovery of the mortgage money from the debtor, surety, or other person, shall be extinguished, and all collateral securities for the debt which have not previously been enforced shall be released, and the right or equity of the mortgagor to redeem the said property shall also be extinguished. Foreclosure extinguishes right of action for mortgage, debt, and equity of redemption.  
See Vict. Act, No. 2,633, s. 32.

(2) In the case of mortgages of land under the Real Property Act, 1900, "decree absolute" includes an order for foreclosure under the hand of the Registrar-General when entered in the register book.

(3) This section applies only to foreclosures obtained after the commencement of this Act.

(4) This section shall have effect notwithstanding any stipulation to the contrary.

**101.** (1) Where mortgage moneys are secured partly by an instrument under the Real Property Act, 1900, and partly by other securities a decree for foreclosure, redemption, or sale, in respect of the land the subject of such instrument, may notwithstanding anything contained in that Act, be made by the Court in the same manner as if such lands were not subject to the provisions of that Act. Decree for foreclosure, &c., in respect of lands mortgaged by instruments under the Real Property Act, 1900, and otherwise.

(2) In cases where a decree absolute for foreclosure is made by the Court under this section, the Registrar-General shall, on the prescribed application, register as proprietor the person in whose favour the order is made.

**102.**



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On judgment for  
mortgage debt  
equity of  
redemption not  
seizable.  
See New York  
Civil Code,  
s. 1432.

Sale of  
mortgaged  
property in  
suit for  
foreclosure,  
redemption,  
&c.

See 44 & 45  
Vic., c. 41,  
s. 25.

See 1901,  
No. 24, s. 12.

**102.** On a judgment of any Court for a debt secured by mortgage of any property the equity of redemption in the mortgaged property shall not be liable to be taken in execution under the judgment.

**103.** (1) Any person entitled to redeem mortgaged property may have an order for sale instead of for redemption in any proceedings instituted by him either for redemption alone or for sale alone, or for sale or redemption, in the alternative.

(2) In any proceedings, 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 proceedings, and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property on such terms as to the Court may seem just, including, if the Court 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) In any proceedings instituted 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 party or other person, and may give such directions as to the Court may seem just respecting the costs of the defendants or any of them.

(4) In any case within this section the Court may direct a sale without previously determining the priorities of incumbrances or mortgagees, and may direct a sale out of Court.

(5) Section twelve of the Equity Act, 1901, is hereby repealed.

(6) This section applies to proceedings instituted either before or after the commencement of this Act.

**104.** (1) In the exercise by the mortgagee of a power of sale or lease contained or implied in any mortgage,—

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Mortgaged property may be sold or leased together at one price or rent.

- (a) the mortgaged premises, or any part thereof, may be sold or leased, together with any other land or property of whatsoever nature or tenure which is the subject of the mortgage or of any collateral security from the mortgagor to the mortgagee by one sale or lease at one price or rent; and in such case—

- (b) the mortgagee shall fairly and equitably apportion all costs, expenses, purchase moneys, and rents between the properties sold or leased.

(2) A failure by the mortgagee to make such apportionment shall not affect the purchaser or lessee, nor the title to the property in his hands.

(3) This section extends to any case in which the whole or any part of any land the subject of the sale or lease is under the provisions of the Real Property Act, 1900.

(4) This section applies to sales and leases made after the commencement of this Act under mortgages, whether made before or after the commencement of this Act.

*DIVISION 2.—Leasing powers of mortgagor and mortgagee in possession.*

**105.** This Division of this Part shall apply to mortgagors and mortgagees in possession under instruments of mortgage or encumbrance pursuant to the Real Property Act, 1900, to the extent and subject as in the two next succeeding sections provided.

Application of Division 2 to mortgagors and mortgagees under Real Property Act mortgages.

**106.** (1) A mortgagor of land while in possession shall as against every incumbrancee 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. For the purposes of this subsection the expression “mortgagor” does not include an incumbrancee deriving title under the original mortgagor.

Leasing powers of mortgagor and of mortgagee in possession.

Sec 44 & 45 Vic., c. 41, s. 18.  
1 & 2 Geo. V, c. 37, s. 3 (10).

(2)

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(2) A mortgagee of land while in possession shall as against all prior incumbrancees (if any) and as against the mortgagor have by virtue of this Act power to make from time to time any such lease as aforesaid.

(3) The lease which this section authorises is—  
A lease for any term not exceeding five 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 three 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 or the rent made payable in advance except as to the last payment which may be made payable on a day not more than one month before the expiration of the term.

(7) Every such lease shall contain a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days, and the covenants implied by section eighty-four of this Act shall not be excluded therefrom.

(8) Every such lease shall be registered and a duplicate or a counterpart thereof 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) 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 duplicate or 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.

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

(11) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee

mortgagee in the mortgage deed, or otherwise 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. George V,  
No. 6.

(12) 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.

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

(14) 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.

(15) 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.

(16) The power of leasing conferred by this section shall, after a receiver of the income of the mortgaged land or of any part thereof has been appointed by a mortgagee under this Act, and the instrument appointing him has been registered, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor as respects any land affected by the receivership in like manner as if such mortgagee was in possession of the land. 1 & 2 Geo. V,  
c. 37, s. 3 (11).

(17)

George V,  
No. 6. (17) This section applies to land under the provisions of the Real Property Act, 1900, subject to mortgage or incumbrance under that Act; section fifty-three subsection four of that Act shall not apply to leases authorised under this Division of this Part.

Powers (with  
a view to the  
grant of an  
authorised  
lease) for  
mortgagor  
and mort-  
gagee in  
possession to  
accept  
surrenders of  
leases.  
See 1 & 2  
Geo. V, c. 37,  
s. 3.

**107.** (1) For the purpose only of enabling a lease, authorised under the last preceding section, or under any agreement made pursuant to such section or by the mortgage deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while in possession shall, in like manner as if the legal estate were vested in him and as against every incumbrancee, have, by virtue of this Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them, and, on a surrender of part only of the land or mines and minerals leased, the rent may be apportioned.

(2) For the same purpose a mortgagee of land while in possession shall, in like manner, and as against all prior or other incumbrancees (if any), and as against the mortgagor, have, by virtue of this Act, power to accept from time to time any such surrender as aforesaid.

(3) On a surrender of part only of the land or mines and minerals leased the original lease may be varied: Provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender, and on a surrender and the making of a new or other lease, whether for the same or for an extended or other term, and whether subject or not to the same or to any other covenants, provisions, or conditions, the value of the lessee's interests in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(4) Nothing in this section shall, where any consideration (except an agreement to accept an authorised lease) for the surrender is given by or on behalf of  
the

the lessee to or on behalf of the person accepting the surrender, authorise a surrender to a mortgagor without the consent of the incumbrancees, or authorise a surrender to a second or subsequent incumbrancee without the consent of any prior incumbrancee.

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(5) No surrender shall, by virtue of this section, be rendered valid unless—

- (a) an authorised lease is granted of the whole of the land or mines and minerals comprised in the surrender, to take effect in possession immediately or within one month after the date of the surrender; and
- (b) the term certain or interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and
- (c) where the whole of the land mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted; and
- (d) a memorandum thereof, signed by the parties thereto, is registered.

(6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

(7) Subsections eleven, fourteen, and fifteen of the last preceding section shall apply to surrenders under this section.

(8) Nothing in this section shall prevent the mortgage deed from reserving to or conferring on the mortgagor or mortgagee, or both, any further or other powers

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No. 6. powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Act, and with the like results, unless a contrary intention is expressed in the mortgage deed.

(9) Nothing in this section shall operate to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor, with the concurrence of all the incumbrancees, if this Act had not been passed.

(10) For the purposes of this section, the expression "mortgagor" does not include an incumbrancee deriving title under the original mortgagor.

(11) The power of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged land or any part thereof has been appointed by the mortgagee, under this Act, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects land affected by the receivership, in like manner as if such mortgagee were in possession of the land.

(12) This section applies to land under the provisions of the Real Property Act, 1900.

### DIVISION 3.—*Powers of mortgagee.*

Application of  
Division to  
mortgages and  
incumbrances  
under Real  
Property Act.

**108.** This Division shall apply to mortgages and incumbrances under the Real Property Act, 1900, to the extent and subject as in the several sections of such Division provided.

Powers inci-  
dent to estate  
or interest of  
mortgagee.  
See 44 & 45  
Vic., c. 41,  
s. 19.

**109.** (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 :—

- (a) A power 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, in subdivision or otherwise, by public auction or by private contract, subject to such conditions respecting title

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 resell without being answerable for any loss occasioned thereby.

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No. 6.

- (b) 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.
- (c) A power to appoint a receiver of the income of the mortgaged property or of any part thereof.
- (d) A power, while the mortgagee is in possession, to cut and sell timber except trees 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.
- (e) A power to sever and sell fixtures apart from the balance of the mortgaged property.
- (f) A power to sell any easement, right, or privilege of any kind over or in relation to the mortgaged property.

See 45 and 46  
Vic., c. 38,  
s. 3 (1).]

(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)



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

(5) This section applies to mortgages and incumbrances under the Real Property Act, 1900.

Powers  
incident to  
power of sale.  
1 & 2 Geo. V,  
c. 37, s. 4.

**110.** (1) The power of sale conferred on a mortgagee by the last preceding section shall include the following powers as incident thereto, namely :—

- (a) A power to impose, or reserve, or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of the land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing.
- (b) A power to sell the mortgaged property, or any part thereof, or any mines and minerals apart from the surface—
  - (i) with or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold ;
  - (ii) with or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold ;
  - (iii) with or without covenants by the purchaser to expend money on the land sold.
- (c) A power to lay out and make such roads, streets, and ways, to be dedicated to the public

or

See Vict. Act,  
No. 2,633,  
s. 35 (1).

or not, and grant such easements, rights of way, or drainage over the same as the circumstances of the case may require, and he (the mortgagee) thinks fit.

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(2) Subsections two and three of the last preceding section shall apply to the foregoing powers conferred by this section.

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

(4) This section applies to mortgages and incumbrances under the Real Property Act, 1900.

**111.** (1) In case of a memorandum of mortgage or incumbrance registered under the Real Property Act, 1900, the mortgagee or incumbrancee shall only exercise the power of sale conferred by this Act in the events and subject to the conditions contained in sections fifty-seven and fifty-eight of that Act, and the provisions of section fifty-nine of that Act shall apply to any transfer executed for the purpose of such sale.

Regulation of  
exercise of  
power of sale.  
See 44 & 45  
Vic., c. 41,  
s. 20.

(2) In all other cases a mortgagee shall not exercise the power of sale conferred by this Act unless and until—

- (a) notice requiring payment of the mortgage money due has been served on the mortgagor, or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for two months after such service; or
- (b) some interest under the mortgage is in arrear and unpaid for one month after becoming due; or
- (c) there has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed other than and besides a covenant for payment of the mortgage money or interest thereon, and in case the breach is capable of remedy a notice requiring the breach to be repaired has been served on the mortgagor, or one of the mortgagors, and such notice is not complied with within fourteen days after service.

**112.**

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Conveyance  
receipt, &c.,  
on sale.

See 44 & 45  
Vic., c. 41,  
s. 21.

1 & 2 Geo. V,  
c. 37, s. 5.

[See 1898,  
No. 17, s. 95.]

**112.** (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.

(2) In the case of a mortgage by demise, such mortgagee shall in exercise of any power of sale vested in him have power to convey the reversion for all the estate which was held by the mortgagor at the date of the mortgage, whether the same is by the mortgage deed declared to be held in trust for the mortgagee or any purchaser from him or not.

(3) Where a conveyance is made in professed exercise of the power of sale conferred by this Act—

(a) a purchaser shall not, either before or on conveyance, be concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised ;

(b) 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.

(4) 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 in the absence of an express contract to the contrary 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), due under

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. George V,  
No. 6.

(5) 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.

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

(7) 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, or of any power or provision contained in the mortgage deed.

(8) At any time after the power of sale conferred by this Act has become exercisable 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.

(9) This section does not apply to mortgages or incumbrances under the Real Property Act, 1909.

**113.** (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 the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage or to see to the application of the money or securities so paid or transferred. Mortgagee's  
receipts,  
discharges,  
&c.  
See 44 and 45  
Vic., c. 41,  
s. 22.

(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

**George V, No. 6.** 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.

(3) This section applies to mortgages and incumbrances under the Real Property Act, 1900.

Amount and application of insurance money.

See 44 and 45 Vic., c. 41, s. 23.

[Vict. Act No. 2,633, s. 41.]

**114.** (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, the full insurable value of the buildings upon the mortgaged land, or the amount owing to the mortgagee in respect of the mortgage.

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

- (a) Where there is a declaration in the mortgage deed that no insurance is required.
- (b) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed.
- (c) 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 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 express contract, a mortgagee may require that all money received on an insurance effected under the mortgage deed, or under this Act, be applied in or towards discharge of the money secured by the mortgage whether due or not.

Appointment, powers, remuneration, and duties of receiver.

See *Ibid.* s. 24.

**115.** (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

to exercise the power of sale conferred by this Act, but may then, by writing under his hand in the prescribed form, appoint such a person as he thinks fit to be receiver; on such appointment being registered the person so appointed shall be entitled to exercise the powers conferred by this section on the receiver.

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(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 inquire 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.

(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.

(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)

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No. 6.

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

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

## PART VIII.

### LEASES.

Application  
of Part VIII  
to land under  
Real Property  
Act.

**116.** The provisions of this Part shall apply to leases and sub-leases of land under the provisions of the Real Property Act, 1900, notwithstanding anything in that Act contained.

### DIVISION 1.—*General provisions.*

Rent and  
benefit of  
lessees' cove-  
nants to run  
with rever-  
sion.  
44 & 45 Vic.,  
c. 41, s. 10.

**117.** (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 lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed

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.

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(2) The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease shall be capable of being 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, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable.

1 & 2 Geo. V,  
c. 37, s. 2.

(3) This section shall not render enforceable any condition of re-entry or other condition waived or released before the person became entitled as aforesaid..

(4) This section applies to—

- (a) leases made after the commencement of this Act; and
- (b) leases made before the commencement of this Act, but with respect only to rent accruing due after the commencement of this Act and to the benefit of a condition of re-entry or forfeiture for a breach committed after the commencement of this Act of any covenant, condition, or provision contained in the lease.

**118.** (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

Obligation of  
lessors' cove-  
nants to run  
with rever-  
sion.  
See 44 & 45  
Vic., c. 41,  
s. 11.



George V, time to time entitled to that reversionary estate, the  
 No. 6. obligation aforesaid may be taken advantage of and  
 enforced against any person so entitled.

(2) This section applies to—

- (a) leases made after the commencement of this Act; and
- (b) leases made before the commencement of this Act so far only as relates to breaches of covenant committed after the commencement of this Act.

Apportion-  
 ment of con-  
 ditions on  
 severance,  
 &c.

See 44 & 45  
 Vic., c. 41,  
 s. 12.

**119.** (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 to—

- (a) leases made after the commencement of this Act; and
- (b) leases made before the commencement of this Act where the reversionary estate in the lands comprised therein is severed or there is an avoidance or cesser of the term as above mentioned after the commencement of this Act.

Restriction of  
 effect of  
 waiver.

1899, No. 18,  
 s. 60.

23 & 24 Vic.,  
 c. 38, s. 6.

**120.** Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs, executors, administrators, or assigns is proved to have taken place in any one particular instance, such actual waiver shall not be assumed, or deemed to extend to any instance or any breach of covenant

covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears. George V,  
No. 6.

**121.** (1) In case any lease is duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord, such new lease shall without a surrender of all or any of the under-leases, be as good and valid to all intents and purposes as if all the under-leases derived thereout had been likewise surrendered at or before the taking of such new lease. Chief leases  
may be  
renewed  
without sur-  
rendering  
under-leases.  
4 Geo. II,  
c. 28, s. 6.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease and his executors and administrators shall be entitled to the rents, covenants, and duties, and have like remedy for the recovery thereof, and the under-lessees shall hold and enjoy the lands in the respective under-leases comprised, as if the original leases out of which the respective under-leases are derived had been still kept on foot and continued.

(3) The chief landlord shall be entitled to the same remedy by distress or entry in and upon the lands comprised in any such under-lease for the rents and duties reserved by such new lease (so far as the same do not exceed the rents and duties reserved in the lease out of which such under-lease was derived) as he would have had in case such former lease had been still continued or as he would have had in case the respective under-leases had been renewed under such new principal lease.

(4) Section six of the Imperial Act Four George the Second, chapter twenty-eight, is hereby repealed so far as the same applies to New South Wales.

**122.** When the reversion expectant on a lease of land made either before or after the commencement of this Act is surrendered or merges after the commencement of this Act, the estate which for the time being confers as against the tenant under the lease the next vested right to the land, shall, to the extent and for the purpose of preserving such incidents to, and obligations When rever-  
sion on a lease  
is surren-  
dered, &c.,  
the next  
estate to be  
deemed the  
reversion.  
See 8 & 9 Vic,  
c. 106, s. 9.

on,

**George V,** on, the reversion as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the lease.

**No. 6.**

Restriction  
on effect of  
license to  
alien, &c.  
1899, No. 18,  
s. 57.  
22 & 23 Vic.,  
c. 35, s. 1.

**123.** Where any license to do any act which without such license would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease is given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given or to any specific breach of any proviso or covenant made, or to be made, or to the actual assignment under-lease or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license), and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition assignment under-lease or other matter not specifically authorised or made punishable by such license in the same manner as if no such license had been given, and the condition or right of re-entry shall be and remain in all respects as if such license had not been given except in respect of the particular matter authorised to be done.

Restricted  
operation of  
partial  
licenses.

1899, No. 18,  
s. 58.  
22 & 23 Vic.,  
c. 35, s. 2.

**124.** Where in any lease there is a power or condition of re-entry on assigning, or under-letting, or doing any other specified act without license, and a license is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or is given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property, as the case may be, over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

**125.**

**125.** (1) Upon a conveyance of the reversion or remainder expectant or depending upon a lease of any land no attornment by the lessee under the lease shall be necessary.

George V,  
No. 6.  
Attornment unnecessary.  
See 4 Anne,  
c. 16 (c. 3), s. 9.

(2) No lessee shall be prejudiced or damaged by payment of any rent to any grantor, transferror, or assignor of any reversion, or by breach thereby occasioned of any condition for non-payment of rent, before notice is given to him of such grant, transfer, or assignment by the grantee, transferee, or assignee.

Tenant not to be prejudiced without notice.  
*Ibid.* s. 10

(3) An attornment by a lessee of land to a stranger claiming title to the estate of the lessor shall be void unless the same is made with the consent of the lessor.

Attornment to stranger.  
See 11 Geo. II,  
c. 19, s. 11.

(4) Sections nine and ten of the Imperial Act Four Anne, chapter sixteen (or chapter three), and section eleven of the Imperial Act Eleven, George the Second, chapter nineteen, are hereby repealed, so far as the same apply to New South Wales.

Repeal.

**126.** (1) Where a lease is made under a power contained in any 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.

Contract for lease not part of title to lease.  
45 & 46 Vic.,  
c. 39, s. 4.

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

**127.** (1) No tenancy from year to year shall, after the commencement of this Act, be implied by payment of rent; if there is a tenancy, and no agreement as to its duration, then such tenancy shall be deemed to be a tenancy determinable at the will of either of the parties by one month's notice in writing expiring at any time.

Tenancy from year to year not to be implied.  
See N.Z. Act,  
1908, No. 152,  
s. 16.

(2) This section shall not apply where there is a tenancy from year to year which has arisen by implication before the commencement of this Act:

Provided that in the case of any such tenancy in respect of which the date of its creation is unknown to the lessor or the lessee, as the case may be, who is seeking to determine the same, such tenancy shall, subject to any express agreement to the contrary, be determinable by

George V, by six months' notice in writing expiring on the thirtieth day of June, one thousand nine hundred and twenty-one, or any date thereafter.

DIVISION 2.—*Forfeiture.*

Interpretation.  
1901, No. 66,  
s. 1 (3).  
1095, No. 8,  
s. 4.  
44 & 45 Vic.,  
c. 41, s. 14  
(3).  
55 & 56 Vic.,  
c. 13, s. 5.

**128.** For the purposes of this Division of this Part,—

“Bankruptcy” does not include the voluntary winding-up of any solvent company.

“Lease” includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition, and an agreement for a lease where the lessee has become entitled to have his lease granted.

“Lessee” includes an original or derivative under-lessee, a grantee under such a grant as aforesaid, his executors, administrators, and assigns, a person entitled under an agreement as aforesaid, and the executors, administrators, and assigns of a lessee.

“Lessor” includes an original or derivative under-lessee, a grantor as aforesaid, a person bound to grant a lease under an agreement as aforesaid, and the executors, administrators, and assigns of a lessor.

“Under-lease” includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted.

“Under-lessee” includes any person deriving title through or from an under-lessee.

Restrictions on and relief against forfeiture of lease.

See 1901, No. 66, s. 1 (1).  
44 & 45 Vic., c. 41, s. 14.

**129.** (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant, condition, or agreement (express or implied) in the lease, shall not be enforceable by action or otherwise unless and until the lessor serves on the lessee a notice—

(a) specifying the particular breach complained of ;  
and,

(b)

- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and George V,  
No. 6.
- (c) in case the lessor claims compensation in money for the breach, requiring the lessee to pay the same,

and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and where compensation in money is required to pay reasonable compensation 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, or has re-entered without action the lessee may, in a suit brought by himself, apply to the Court for relief; and the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, may grant or refuse relief, as it thinks fit; and in case of relief may grant the same on such terms (if any) as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit. 1901, No. 66,  
s. 1 (2).  
44 & 45 Vic.,  
s. 41, s. 14.

(3) The provisions of subsection one shall not extend to a covenant or condition or agreement against doing, committing, or suffering anything whereby or by means whereof either alone or with other circumstances any license under the Liquor Act, 1912, is or may be endangered, or is or may be liable to expire or be forfeited, suspended, taken away, or refused. [Vict. Act,  
No. 2,633,  
s. 21.]

(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)

George V.  
No. 6.

1901, No. 66,  
. 1 (6).

55 & 56 Vic.,  
c. 13, s. 2 (2)  
(3).

(6) This section does not extend—

- (a) to any Crown lease or to any lease granted by an owner under section sixty-nine of the Mining Act, 1906, or to any lease or tenancy for a term of one year or less; or
- (b) to a covenant, condition, or agreement against the assigning, under-letting, parting with the possession or disposing of the land leased; or
- (c) to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest in any lease of—
  - (i) agricultural or pastoral land;
  - (ii) mines or minerals;
  - (iii) a house used or intended to be used as licensed premises under the Liquor Act, 1912;
  - (iv) a house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures;
  - (v) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor or to any person holding under him;
- (d) in case of a mining lease to a covenant, condition, or agreement 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;
- (e) to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest in any lease (other than a lease mentioned in paragraph (c) of this subsection) after the expiration of one year from the date of the bankruptcy or taking in execution, provided the lessee's interest be not sold within such

such one year: But if the lessee's interest be sold within such one year this section shall extend and be applicable to such condition for forfeiture.

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(7) When a lessee has assigned or transferred the lease with the consent of the lessor, the bankruptcy of the lessee after such assignment or transfer shall not work a forfeiture or determine the lease unless the condition for forfeiture on bankruptcy contained in the lease be therein expressly extended to bankruptcy of the lessee after the date of such assignment or transfer.

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

(9) The notice mentioned in this section shall be in the form set out in the Sixth Schedule to this Act or to a similar effect.

Sixth  
Schedule.

(10) 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.

**130.** (1) Where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture, under any covenant, proviso, or stipulation in a lease made either before or after the commencement of this Act, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease, or any part thereof, make an order staying any such action or other proceeding on such terms as to the Court may seem just, and vesting, for the whole term of the lease, or any less term, the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in such property, upon such conditions as to execution of any deed or other document, payment of proper and reasonable rent, costs, expenses, damages, compensation, giving security, or otherwise as the Court in the circumstances of each case, and having regard to the consent or otherwise of the lessor to the creation of the estate

Power of  
court to  
protect  
under-lessee  
on forfeiture  
of superior  
leases.  
1905, No. 8,  
s. 5.  
See 55 & 56  
Vic., c. 13,  
s. 4.

OR



**George V.** or interest claimed by the under-lessee, thinks fit; but  
**No. 6.** in no case shall any such under-lessee be entitled to require a lease to be granted to him for a larger area of land or for any longer term than he had under his original under-lease.

(2) Any such order may be made in a suit brought for the purpose by the person claiming as under-lessee, or, where the proceeding by the lessor is in the Court may be made in such proceeding.

Costs of  
waiver and  
forfeiture.  
See 55 & 56  
Vic., c. 13,  
s. 2 (1).

**131.** A lessor shall be entitled to recover as a debt due to him from a lessee or from the assignee or transferee of a lessee (where the assignment or transfer has been with the express consent of the lessor and the breach of covenant or condition has occurred since the assignment or transfer), or partly from the lessee and partly from such assignee or transferee, and in addition to damages (if any) all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer or otherwise in reference to any breach giving rise to a right of re-entry or forfeiture which at the request of the lessee is waived by the lessor by writing under his hand; or from which the lessee is relieved under the provisions of this Act. And the lessor shall be so entitled to recover whether the lessee has or has not rendered forfeiture unenforceable against him under section one hundred and twenty-nine subsection two of this Act.

[Vict. Act,  
No. 2,633,  
s. 23.]

No fine for a  
license to  
assign.  
See 55 & 56  
Vic., c. 13,  
s. 3.

**132.** In all leases containing a covenant, condition, or agreement that the lessee shall not, without the license or consent of the lessor, assign, underlet, part with the possession, or dispose of the demised premises or any part thereof, such covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall, after the commencement of this Act, be payable for or in respect of such license or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such license or consent.

**133.** Neither the assignment nor the underletting of any leasehold by the official assignee of a bankrupt, or by the liquidator of a company (other than a liquidator in a voluntary winding-up of a solvent company), nor the sale of any leasehold under an execution, nor the bequest of a leasehold, shall be deemed to be a breach of a covenant, condition, or agreement against the assigning, underletting, parting with the possession, or disposing of the land leased.

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Involuntary  
assignment  
no breach of  
covenant  
against  
assignment,  
&c.

See N.Z. Act,  
1908, No. 152,  
s. 95 (2).

## PART IX.

### LONG TERMS.

**134.** (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, 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, or a money value not exceeding two pounds per annum 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.

Enlargement  
of residue of  
long term  
into fee  
simple.

See 44 & 45

Vic., c. 41,

s. 65.

45 & 46 Vic.,

s. 39, s. 11.

(2) Each of the following persons, namely:—

- (a) Any person beneficially entitled in right of the term, whether subject to an incumbrance or not, to possession of any land comprised in the term, but, in case of a married woman, with the concurrence

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concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence ;

- (b) 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 ;
- (c) any person in whom, as legal 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 and registration of the deed, the term shall be enlarged into a fee simple.

(3) Upon registration of the deed 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) This section shall apply to and include every such term, whether having as the immediate reversion thereon the freehold or not ; but not—

- (a) any term liable to be determined by re-entry for condition broken ; or
- (b) any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

(5) 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.

(6) 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,

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.

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(7) 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, or are not reserved to the Crown.

(8) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

(9) This section applies to lands under the provisions of the Real Property Act, 1900.

## PART X.

### INVALID LEASES UNDER POWERS.

**135.** When a valid power of leasing is vested in or may be exercised by a person granting a lease, and such lease (by reason of the determination of the estate or interest of such person or otherwise) cannot have effect and continuance according to the terms thereof, independently of such power, such lease shall, for the purposes of this Part, be deemed to be granted in the intended exercise of such power, although such power is not referred to in such lease.

Lease deemed  
to be granted  
in intended  
exercise of  
power.  
1905, No. 8,  
s. 6.  
12 & 13 Vic.,  
c. 26, s. 5.

F

**136.**

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Certain  
invalid leases  
under powers  
to be con-  
strued as  
agreements to  
lease.

1905, No. 8  
s. 7.

12 & 13 Vic.,  
c. 26, s. 2.

**136.** (1) Where in the intended exercise of any power of leasing, whether derived under an Act or under any instrument lawfully creating such power, a lease has been or may hereafter be granted which is, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of such power, invalid as against the person entitled after the determination of the interest of the person granting such lease to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled for any estate to the property comprised in such lease, such lease, in case the same has been made bona fide, and the lessee named therein, his executors, administrators, or assigns (as the case may require), have entered thereunder, shall be considered in equity as a contract for a grant at the request of the lessee, his executors, administrators, or assigns (as the case may require), of a valid lease under such power, to the like purport and effect as such invalid lease as aforesaid, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound in equity by such contract:

Proviso where  
parties  
interested  
agree.

(2) Provided that no lessee under any such invalid lease as aforesaid, his executors, administrators, or assigns, shall be entitled by virtue of any such equitable contract as aforesaid to obtain any variation of such lease where the persons who would have been bound by such contract are willing to confirm such lease without variation.

Land subject  
of equitable  
contract.

(3) Land the subject of any such equitable contract shall, for the purposes of subsection two of section fourteen of the Real Property Act, 1900, be deemed to be a leasehold.

Certain leases  
validated  
where grantor  
could not  
grant them.

*Ibid.* s. 8.

*Ibid.* s. 4.

**137.** Where a lease granted in the intended exercise of any such power of leasing as aforesaid is invalid by reason that at the time of the granting thereof the person granting the same could not lawfully grant such lease, but the estate of such person in the property comprised in such lease has continued after the time when such or the like lease might have been granted by him in the lawful

lawful exercise of such power, then and in every such case such lease shall take effect, and be as valid as if the same had been granted at such last-mentioned time, and all the provisions contained in this Part shall apply to every such lease :

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Provided that this section shall not apply where at the time of the granting of the lease the person granting the same was under the age of twenty-one years.

Proviso.

**138.** Where, upon or before the acceptance of rent under any such invalid lease as above mentioned, any receipt, memorandum, or note in writing, confirming such lease, is signed by the person accepting such rent, or some other person by him thereunto lawfully authorised, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease.

Confirmation  
of invalid  
leases.  
1905, No. 8,  
s. 9.  
13 & 14 Vic.,  
s. 17, s. 2.

**139.** Where, during the continuance of the possession taken under any such invalid lease as above mentioned, the person for the time being entitled (subject to such possession as aforesaid) to the property comprised in such lease, or to the possession thereof, is able to confirm such lease without variation, the lessee, his executors, or administrators (as the case may require), or any person who would have been bound by the lease if the same had been valid, shall, upon the request of the person so able to confirm the same, be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing, signed by the persons confirming and accepting respectively, or by some other persons by them respectively thereunto lawfully authorised; and after confirmation and acceptance of confirmation such lease shall be valid, and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid.

Lessee bound  
to accept  
confirmation  
of lease.  
*Ibid.* s. 10.  
*Ibid.* s. 3.

**140.** Nothing in this Part shall extend or be construed to prejudice or take away any right of action or other right or remedy to which, but for the enacting of this Part, the lessee named in any such lease as aforesaid, his executors, administrators, or assigns would or might have been entitled under or by virtue of any covenant for title or quiet

Savings.  
*Ibid.* s. 11.  
12 & 13 Vic.,  
s. 26, s. 6.

George V, quiet enjoyment contained in such lease on the part of No. 6. the person granting the same, or to prejudice or take away any right of re-entry or other right or remedy to which, but for the enacting of this Part, the person granting such lease, his executors, administrators, or assigns, or other the person for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled, for or by reason of any breach of the covenants, conditions, or provisos contained in such lease, and on the part of the lessee, his executors, administrators, or assigns, to be observed or performed.

This part not to extend to certain leases.

1905, No. 8, s. 12.

12 & 13 Vic. c. 26, s. 7.

**141.** This Part shall not extend to any lease where, before the twenty-first day of August, one thousand nine hundred and five (being the day of the commencement of the Forfeiture and Validation of Leases Act, 1905), the property comprised in such lease was surrendered or relinquished, or recovered adversely by reason of the invalidity thereof, or there has been any judgment or order in any action or suit concerning the validity of such lease.

## PART XI.

### APPORTIONMENT.

Interpretation of terms.

1905, No. 2, s. 2.

33 & 34 Vic., c. 35, s. 5.

**142.** For the purposes of this Part—

“Annuities” include salaries and pensions.

“Dividends” include (besides dividends strictly so-called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies or companies registered under the Companies Act, 1899, divisible between all, or any, of the members of such respective companies, whether such payments shall be usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Part be deemed to have accrued by equal daily increment during, and within, the period for or in respect of which the payment of the same revenue shall be declared,

declared, or expressed to be made; but the said word "dividend" does not include payments in the nature of a return or reimbursement of capital.

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"Rents" include rent-service, rent-charge, and rent-seck, and all periodical payments or renderings in lieu of or in the nature of rent.

*Quit-rents.*

**143.** (1) Where any quit-rent issues to the Crown out of any land, the Colonial Treasurer may, in his discretion, apportion such quit-rent in respect of the land, and on redemption of the portion of the quit-rent, so apportioned in respect of any part of such land, such part of the land shall be released from such quit-rent; but, notwithstanding such redemption and release, the residue of the quit-rent shall issue out of the residue of the land, subject, however, to apportionment under this section.

Apportion-  
ment of  
quit-rents  
in respect of  
land.  
See 1905,  
No. 2, s. 3.  
See 44 and 45  
Vic., c. 41,  
s. 45 (3).

(2) Where, before the twenty-fourth day of July, one thousand nine hundred and five (being the day of the commencement of the Apportionment Act, 1905), any such quit-rent has been apportioned, and any such redemption has been accepted by the Crown, in respect of any part of land out of which any quit-rent issued to the Crown, the residue of the quit-rent shall, notwithstanding any such redemption and release, be deemed to have issued, and to issue, out of the residue of the land, subject, however, to apportionment under this section.

*Other rents and periodical payments.*

**144.** (1) All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

Rents, &c.,  
apportionable  
in respect of  
time.  
1905, No. 2,  
ss. 4, 5, 6.  
See 33 & 34  
Vic., c. 35,  
ss. 2, 4, 6, 7.

(2) The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment, when the entire portion of which such apportioned part forms part becomes due and payable,

Time when  
apportion-  
ment payable.



George V,  
No. 6. payable, and not before; and in the case of a rent annuity or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before.

Apportion-  
ment how  
recovered.

(3) All persons and their respective executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies, at law and in equity, for recovering such apportioned parts as aforesaid when payable (allowing proportionate parts of all just allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively :

Provided that where any person is liable to pay rent reserved out of or charged on lands, that person and the said lands shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically ; but the entire or continuing rent, including such apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under this section or otherwise, would have been entitled to such entire or continuing rent ; and such apportioned part shall be recoverable from such last-mentioned person by the executors, administrators, or other parties entitled thereto under this section by action or suit.

Sections not  
to extend to  
assurance  
policies.

Saving clause.

(4) Nothing in this section shall render apportionable any annual sums payable under policies of assurance of any description.

(5) This section shall not extend to any case in which it is expressly stipulated that no apportionment shall take place.

Application  
of section.

(6) This section extends to and includes deeds, wills, and other instruments that were made before, but came into operation on or after the twenty-fourth day of July, one thousand nine hundred and five (being the day of the commencement of the Apportionment Act, 1905).

## PART XII.

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## DEBTS CHARGED ON LAND.

**145.** (1) Where any person dies after the commencement of this Act, entitled to any land which, at the time of his death, is charged with the payment of any sum of money by way of mortgage, and such person has not, by his will or by deed or other document, signified any contrary or other intention, the devisee or legatee to whom such land is devised or bequeathed shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other land of such person, but the land so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

Devisee, &c.,  
of land  
not to claim  
payment of  
mortgage out  
of personal  
assets.

See 1898,  
No. 17, s. 109.  
30 and 31  
Vic., c. 69,  
ss. 1 and 2.  
40 and 41  
Vic., c. 34.

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

Rule of  
construction.

(3) Nothing in this section shall affect or diminish any right of the mortgagee of such land to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the deceased or otherwise.

Saving of  
right of  
mortgagee to  
recover his  
debt.

(4) The word "mortgage" in this section shall be deemed to extend to any equitable charge including any lien for unpaid purchase money upon any land purchased by a testator.

Mortgage  
includes  
equitable  
charge.

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## PART XIII.

## RENT-CHARGES AND OTHER ANNUAL SUMS.

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

**146.** (1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent-charge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to 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,

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.

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(5) The rule of law relating to perpetuities shall not apply to any powers or remedies conferred by this section, nor to the same or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section.

1 & 2 Geo. V,  
s. 37, s. 6.

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

(7) This section shall not apply to land under the provisions of the Real Property Act, 1900.

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No. 6.

## PART XIV.

## MARRIED WOMEN.

Acknowledg-  
ment by married  
woman not  
necessary.

N.Z. Act, 1908,  
No. 152, s. 22.

Repeal.

Married woman  
may by deed  
dispose of land  
or reversionary  
interest in  
property, &c.

See 1898, No. 17,  
s. 25 (2) to (8).  
1901, No. 37,  
Part II.

See 8 & 9 Vic.,  
c. 106, s. 7.

Power for  
Court to bind  
interest of  
married  
women.

See 1 & 2 Geo.  
V, c. 37, s. 7.

**147.** (1) It shall not be necessary to the validity of any deed or instrument executed by a married woman after the commencement of this Act, that such deed or instrument be acknowledged by her.

(2) This section applies to land under the provisions of the Real Property Act, 1900, and section one hundred and nine of that Act is hereby repealed; that section shall be deemed not to have applied in any case where a married woman has executed any instrument registered under that Act in respect of her separate property, or in exercise of a power of appointment.

**148.** (1) A married woman may, by deed,—

- (a) dispose of any land ; or
- (b) dispose of any future or reversionary interest in property ; or
- (c) release or extinguish or disclaim or contract not to exercise any power in regard to property ; or
- (d) release her right or equity to a settlement out of any property ; or
- (e) disclaim any interest in any property :

Provided that nothing in this section shall make the concurrence of the husband of the married woman unnecessary in cases where such concurrence would be necessary if this section had not been passed.

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

**149.** (1) Where a married woman is restrained from anticipation or from alienation in respect of any property belonging to her, or is by law unable to dispose of or bind such property or her interest therein, including a reversionary interest arising under her marriage settlement, the Court may, where it appears to the Court to be for her benefit, by order, with her consent, bind her interest in such property.

(2) Orders under this section may be registered ; no such order shall bind or release any land unless and until it is registered.

(3)

(3) This section applies only to orders made after the commencement of this Act. George V,  
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(4) Section twenty-four subsection one of the Married Women's Property Act, 1901, is hereby repealed.

**150.** In any action, suit, or other proceeding instituted after the commencement of this Act in which a married woman is a party, the Court before which the action, suit, or other proceeding is pending may, where it appears just and equitable so to do by judgment or order from time to time, order payment of any costs out of her property which is subject to a restraint on anticipation or alienation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just. Power for  
Court to bind  
interest of  
married  
woman.  
See 56 and 57  
Vic., c. 63,  
s. 2.

**151.** (1) Notwithstanding section twenty-four subsections two and three of the Married Women's Property Act, 1901, a settlement or agreement for a settlement made after the commencement of this Act by the husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or have married, shall not be valid unless it is executed by her if she is of full age, or confirmed by her after she attains full age. Settlement of  
a married  
woman's  
separate  
property.  
See 7 Edw.  
VII, c. 18,  
s. 2.

(2) But if she dies an infant any covenant or disposition by her husband contained in the settlement or agreement shall bind or pass any interest in any property of hers to which he may become entitled on her death, and which he could have bound or disposed of if this Act had not been passed.

(3) Nothing in this section shall render invalid any settlement or agreement for a settlement made or to be made under the provisions of the Infants' Custody and Settlement Act of 1899.

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## PART XV.

## EXECUTORS AND ADMINISTRATORS.

Interpreta-  
tion.

**152.** For the purposes of this Part—

- (a) “Real estate” has the same meaning as in Part II of the Wills, Probate and Administration Act, 1898.
- (b) “Purposes of administration” includes the payment in a due course of administration of the debts, funeral and testamentary expenses duties and commission, and the costs, charges, and expenses of the executor or administrator, and any costs which may be ordered to be paid out of the estate.
- (c) A power to mortgage includes power to re-mortgage from time to time for the purpose of paying off a mortgage executed under the power.

Powers of  
executors and  
administra-  
tors as to sale,  
mortgage, or  
lease of real  
estate.

See 1893,  
No. 13, s. 46.

**153.** (1) Subject as hereinafter mentioned executors and administrators may without the consent of any person or the order of a court—

- (a) sell or mortgage the real estate of the deceased person for purposes of administration;
- (b) sell the real estate of the deceased person as to which he died intestate for purposes of distribution or division amongst the persons entitled;
- (c) lease the real estate of the deceased person in possession for any term not exceeding three years.

See 1900,  
No. 33, s. 4.

(2) Any conditions may be imposed on the exercise of any such power of sale, mortgage, or lease by an administrator or executor, and either generally or in the case of a particular sale, mortgage, or lease, by rules of court, or by the Supreme Court in its probate jurisdiction in the grant of administration (if any) or by other order.

(3) No purchaser, nor the Registrar-General, Crown Solicitor, or other person registering or certifying title under any sale, mortgage, or lease under this section, shall be bound to inquire whether the powers abovementioned

abovementioned or any of them are being or have been exercised for the purposes abovementioned, and the receipt of the executor or administrator shall be a sufficient discharge, and shall exonerate the persons paying the same from any responsibility for the application of the moneys expressed to have been so received.

George V,  
No. 6.

(4) Some or one only of several executors or administrators shall be entitled to exercise such powers with the leave of such Court and not otherwise, and such Court may make such orders as it thinks fit for the purpose of carrying out any such sale, mortgage, or lease, and for that purpose shall have all the powers of the Supreme Court in its equitable jurisdiction.

See 60 & 61  
Vic., c. 65,  
s. 2 (2).

(5) This section applies only in the case of grants of probate or administration or orders to collect made after the commencement of this Act.

**154.** (1) The executor of any person dying on or after the fifteenth day of December, 1890 (being the day of the passing of the Probate Act of 1890), and to whom probate has been granted prior to the commencement of this Act, shall have and shall be deemed to have had power without the leave of a Court—

Powers of  
executors as  
to sale,  
mortgage, or  
lease of real  
estate.

- (a) to sell or mortgage the real estate of the deceased for purposes of administration ;
- (b) to sell the real estate as to which the testator died intestate for purposes of distribution or division amongst the persons entitled ;
- (c) to lease the real estate of the deceased in possession for any term not exceeding three years.

(2) Any conditions may be imposed on the exercise of any such power of sale, mortgage, or lease, and either generally or in the case of a particular sale, mortgage, or lease, by rules of court, or by order of the Supreme Court in its probate jurisdiction.

(3) No purchaser, nor the Registrar-General, Crown Solicitor, or other person registering or certifying title under any sale, mortgage, or lease under this section shall be bound to inquire whether the powers abovementioned, or any of them, are being or have been exercised for the purposes abovementioned, and the receipt



George V, receipt of the executor or administrator shall be a sufficient discharge and shall exonerate the persons paying the same from any responsibility for the application of the moneys expressed to have been so received.

(4) Nothing in this section shall be taken to invalidate any lease for a longer period than three years which was validly granted by an executor prior to the commencement of this Act.

Partial repeal  
of 1900, No.  
38, s. 4.

**155.** (1) Section four of the Administration (Validating) Act, 1900, is hereby repealed so far as relates to executors under all grants of probate, made before or after the commencement of this Act, and to administrators under grants of administration made after the commencement of this Act.

(2) The last two preceding sections of this Act shall apply to the Public Trustee notwithstanding anything contained in the Public Trustee Act, 1913.

Validation of  
certain sales  
by adminis-  
trators.

See 1900,  
No. 38,  
ss. 2, 3.

**156.** In all cases where administration of the estate of a deceased person was granted before the twenty-sixth day of October, one thousand nine hundred (being the day of the commencement of the Administration (Validating) Act, 1900), no sale of any land of such deceased person heretofore or hereafter made by the administrator shall be deemed to have been or to be invalid by reason—

- (a) that the grant contains a prohibition against the sale of such land without the order of the Supreme Court in its ecclesiastical or probate jurisdiction; or
- (b) that at the date of such sale a period of more than twenty years since the death of such deceased person had elapsed.

Purchaser  
from devisee,  
&c., not  
bound to  
inquire as to  
payment of  
debts of  
testator  
or intestate.

**157.** (1) Where an executor or administrator has, as to any land of a deceased person vested in him as such executor or administrator—

- (a) conveyed the land to; or
- (b) executed an acknowledgment vesting the land in; or
- (c) consented to the transmission under the Real Property Act, 1900, of the land to,

a devisee, legatee, or person entitled on intestacy as the case may be, or to any person claiming under him, neither the purchaser of the land nor the Registrar-General, nor in the case of land under any Act relating to Crown lands, the Crown Solicitor shall be or shall be deemed ever to have been concerned to inquire as to the payment of the debts, funeral and testamentary expenses of such deceased person.

George V,  
No. 6.

(2) Any such purchaser shall take and be deemed to have taken the land free from such debts, funeral and testamentary expenses, and no action shall lie against the Registrar-General or the Crown in respect of any such debt, funeral or testamentary expense.

(3) This section applies to purchases made before as well as after the commencement of this Act.

## PART XVI.

### POWERS OF ATTORNEY.

**158.** This Part shall extend to powers of attorney authorising, whether expressly or in general terms, the execution of instruments under the Real Property Act, 1900.

Application  
of Part XVI  
to land under  
Real Property  
Act, 1900.

**159.** (1) The donee of a power of attorney may 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 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.

Execution  
under power  
of attorney.  
44 & 45 Vic.,  
c. 41, s. 46.

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

**160.**

George V,  
No. 6.

Powers of  
attorney to  
continue in  
force until notice  
of death or  
revocation.  
See 44 & 45 Vic.,  
c. 41, s. 47.  
1901, No. 37,  
s. 14.

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

Declaration  
by donee of  
power of non-  
receipt of  
notice to be  
proof of non-  
revocation.  
Seventh  
Schedule.

**160.** (1) Subject to any stipulation to the contrary contained in the instrument creating a power of attorney, such power shall, so far as concerns any act or thing done or suffered thereunder in good faith, operate and continue in force until notice of the death of the donor of the power, or, until notice of other revocation thereof has been received by the donee of the power.

(2) Every act or thing within the scope of the power done or suffered in good faith by the donee of the power after such death or other revocation as aforesaid, and before notice thereof has been received by him, shall be as effectual in all respects as if such death or other revocation had not happened or been made.

(3) A statutory declaration by the donee of the power in or to the effect of the form set out in the Seventh Schedule hereto, if made at the time such act or thing was done or suffered, or at any time after shall be taken to be conclusive proof of such non-revocation at the time when such act or thing was so done or suffered in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of such death or other revocation.

(4) (a) Where any instrument made after the commencement of this Act is made or purports to be made in exercise of a power of attorney, a statement that the donee of the power has no notice of the revocation of the power of attorney at the time of the making by him of such instrument if contained—

- (i) in the body of the instrument ; or
- (ii) in a memorandum indorsed on the instrument signed by the donee of the power at the time of making such instrument, and stating the date and place of signature, such signature being attested by one witness,

shall have the same force and effect as the statutory declaration mentioned in the last preceding subsection.

(b) Any donee of a power of attorney who signs any such instrument or memorandum knowing such statement to be untrue, or falsely states in such memorandum the date of the signature thereof, shall be guilty of a misdemeanour.

(5)

(5) In this section "revocation" includes the determination of the power otherwise than by the expiration of a fixed period of time. George V,  
No. 6.

(6) This section shall extend to a substitute or sub-attorney, duly appointed under a power of attorney, and acting thereunder.

(7) This section applies to powers of attorney executed in or out of New South Wales, and whether executed before or after the commencement of this Act.

**161.** (1) Where a power of attorney given for valuable consideration (whether executed in or out of New South Wales) is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,— Irrevocable  
power of  
attorney for  
value.  
See 45 & 46  
Vic., c. 39,  
s. 8.

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

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

**162.** (1) Where a power of attorney (whether executed in or out of New South Wales, and whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for Power of  
attorney  
made irrevocable for fixed  
time.  
See *Ibid.* s. 9.

George V, a fixed time therein specified, not exceeding two years  
 No. 6. from the date of the instrument, then, in favour of a purchaser,—

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

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

Registration  
 of powers of  
 attorney.

See Vict. Act,  
 No. 2,672,  
 s. 219.

See 44 & 45  
 Vic., c. 41,  
 s. 48.

**163.** (1) Any instrument (whether executed before or after the commencement of this Act) creating a power of attorney for any purpose whatever may be registered.

(2) Where such instrument is executed after the commencement of this Act no conveyance or other deed not being a lease or agreement for a lease for a term not exceeding three years, and no memorandum by this Act operating as a deed executed by the donee of the power in pursuance of the power shall be of any force or validity whatsoever unless the instrument creating the power has been registered.

(3) Any instrument revoking any such power may also be registered.

PART XVII.

George V,  
No. 6.

PURCHASERS: WHEN AFFECTED BY NOTICE.

*Notice.*

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

Restriction  
on construc-  
tive notice.  
See 45 & 46  
Vic., c. 39,  
s. 3.

- (a) it is within his own knowledge, or would have come to his knowledge, if such searches as to instruments registered or deposited under any Act of Parliament, inquiries, and inspections had been made as ought reasonably to have been made by him; or
- (b) 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 searches, 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 is pending at the commencement of this Act the rights of the parties shall not be affected by this section.

**165.**

George V,  
No. 6.

Stamping of  
conveyance  
not to give  
notice of trust  
or written  
contract.

Sec 1 & 2  
Geo. V,  
c. 37, s. 13.

**165.** Where any conveyance is marked by the Commissioner of Stamp Duties as sufficiently or fully stamped, and the stamp duty payable in respect thereof if payable ad valorem would exceed the sum of one pound, a purchaser shall not by reason only of the conveyance bearing a one pound stamp or being so marked as aforesaid be deemed to have or to have had notice of any trust or of any written contract of sale affecting the title.

Rights of  
bona fide  
holders for  
value, &c.,  
under con-  
tracts with  
money-  
lenders.

Sec 1 & 2  
Geo. V,  
c. 38, s. 1.

**166.** (1) Notwithstanding anything in section two of the Money-lenders and Infants Loans Act, 1905,—

- (a) any agreement with, or security taken by, a money-lender shall be, and shall be deemed always to have been, valid in favour of any bona fide purchaser without notice of any defect due to the operation of that section, and of any person deriving title under him; and
- (b) any payment, transfer, or conveyance of money or property made bona fide by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect, shall, in favour of that person, be and be deemed always to have been as valid as it would have been if the agreement or security had been valid;

but in either such case the money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section of this Act, and nothing in this section shall render valid an agreement or security in favour of a purchaser who is himself a money-lender.

(2) A person shall not be deemed to have had notice of a defect in an agreement or security by reason only that a search in the register established under the Money-lenders and Infants Loans Act, 1905, would have disclosed the defect or shown that the agreement or security was effected with a money-lender; and, for the purposes of the last-mentioned Act, the provisions of the last preceding section but one of this

Act

Act shall apply and be deemed always to have applied as if the expression "purchaser" included a person making any such payment or transfer as aforesaid. George V,  
No. 6.

(3) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from section two of the Money-lenders and Infants Loans Act, 1905, have been void or unenforceable, nor any agreement or security which has, before the commencement of this Act, been declared void by a court of competent jurisdiction.

**167.** (1) No purchaser of any land which is subject to section eight of the Voluntary Workers (Soldiers' Holdings) Act, 1917, shall be affected by the provisions of that section unless and until—

Protection of  
purchasers of  
land subject  
to Voluntary  
Workers  
(Soldiers'  
Holdings)  
Act, 1917.

(a) in the case of land under the provisions of the Real Property Act, 1900, a caveat has been lodged upon the certificate of title or Crown Grant comprising the land ; and

(b) in the case of other lands an instrument in the prescribed form is registered in the register of causes, writs, and orders affecting land.

(2) The Registrar-General is hereby authorised to enter a caveat under this section upon the written application of the Public Trustee, or the member of the forces, or the dependent in whom the land is vested upon being satisfied that the land is subject to the said section.

(3) Any instrument under paragraph (b) of subsection one may be signed by the Public Trustee, or the member of the forces, or the dependent in whom the land is vested.

(4) This section shall be read with the Voluntary Workers (Soldiers' Holdings) Act, 1917, and this Act.



George V,  
No. 6.

## PART XVIII.

VERIFICATION OF INSTRUMENTS: STATUTORY  
DECLARATIONS.

Verification of  
instruments  
executed out  
of New South  
Wales.

See N.Z. Act,  
1908, No. 152,  
s. 119.  
1900, No. 25,  
s. 107.

**168.** (1) Every instrument (other than a will) heretofore or hereafter appearing to have been duly executed out of New South Wales shall, so far as regards the execution thereof, be without further proof thereof admissible in evidence in any Court of justice in New South Wales, and before any officer or person having by law or consent of parties authority to hear, receive, and examine evidence in New South Wales, if such instrument purports to be attested in any of the following ways, that is to say—

- (a) where the instrument is executed in any part of the British dominions other than New South Wales, then by any judge, or notary public, or any justice of the peace for New South Wales, or any commissioner for taking affidavits for New South Wales, or the mayor or chief officer of any municipal or local government corporation in such part, or the Governor, Government Resident, or Chief Secretary of such part, or such other person as the Chief Justice may appoint;
- (b) where the instrument is executed in any foreign country, then by a British Minister or Consul exercising his functions in that country, and sealed with his seal of office (if any); or if there is indorsed thereon or annexed thereto a declaration of the due execution thereof purporting to be made by an attesting witness thereto before any such Minister or Consul as aforesaid, and sealed as aforesaid, or before such other person as the Chief Justice may appoint.

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

to attest the same in the character in which he purports so to do, unless the party objecting to the admission of the document proves the contrary. George V.  
No. 6.

(3) A register of all appointments made by the Chief Justice under this section shall be kept in the office of the Registrar-General.

(4) Attestation in accordance with this section may be taken as sufficient proof of the execution of any instrument under the Real Property Act, 1900.

(5) In this section—

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

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

**169.** (1) Any statutory declaration required by this Act or the Real Property Act, 1900, or by the practice of conveyancers to be made for the proof in New South Wales of any fact may be taken or made— Statutory  
declarations.  
See 52 & 53  
Vic., c. 10,  
s. 3.

- (a) in any place in the said State before any justice of the peace, commissioner for affidavits, or notary public, or other person having authority to administer an oath in New South Wales;
- (b) in any place out of the said State in which there is a local statutory provision enabling statutory declarations to be made for use in such place, then under and in pursuance of such provision;
- (c) in any place out of the said State in which there is no such statutory provision, then under and in pursuance of the Imperial Declarations Act, 1835, or any other Imperial Act in that behalf.

(2) The provisions of sections twenty-one, twenty-five, and twenty-six (A) of the Oaths Act, 1900, shall apply to declarations made under this section.

(3) Any person before whom any declaration under this section is made shall state in the attestation thereof at what place and on what date the declaration was made. Ibid. s. 5.

George V,  
No. 6.

## PART XIX.

## SERVICE OF NOTICES.

Regulations  
respecting  
notices.

See 44 & 45  
Vic., c. 41,  
s. 67.

1901, No. 66,  
s. 2.

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

- (a) if delivered personally ;
- (b) if left at the last known place of abode or business in New South Wales of the person to be served, or, where such person is a mortgagor in possession or a lessee, if left for him at any occupied house or building comprised in the lease or mortgage, or in the case of a mining lease if left for the lessee at the office or counting house of the mine ;
- (c) if sent by post in a registered letter addressed to the person to be served, by name, at his aforesaid place of abode or business, and if that letter is not returned through the post-office undelivered ; and such service shall be deemed to be made at the time when the registered letter would in the ordinary course be delivered ;
- (d) in such manner as the Court may direct.

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

(3) This section does not apply to notices served in proceedings in any court.

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

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PART

PART XX.

George V,  
No. 6.

PROCEDURE : ORDERS : EXECUTION.

**171.** (1) Payment of money into court under the provisions of this or any other Act shall effectually exonerate therefrom the person making the payment.

Regulations  
respecting  
payments  
into court and  
applications.

(2) Every application to the Court shall be by summons at chambers, except where it is otherwise provided in this Act (expressly or by implication) or in rules made under this Act.

See 44 and 45  
Vic., c. 41,  
s. 69.  
1 & 2 Geo. V,  
c. 57, s. 1.

(3) On an application by a purchaser, notice shall be served in the first instance on the vendor unless the Court dispenses with such service.

(4) On an application by a vendor, notice shall be served in the first instance on the purchaser unless the Court dispenses with such service.

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

(6) 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.

**172.** The judges of the Supreme Court, or any three of them, may from time to time make general rules under this Act for regulating the practice and procedure of the Court under this Act.

Rules of  
court.

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

Orders of  
court  
conclusive.  
See 44 and 45  
Vic., c. 41,  
s. 70.

(2) This section shall have effect with respect to any lease, sale, or other act under the authority of such Court and purporting to be in pursuance of the Settled Estates Act, 1886, or Part IV of the Conveyancing and Law of Property Act, 1898, notwithstanding any exceptions in either of those Acts.

(3) This section applies to all orders made before or after the commencement of this Act except any

George V, any order which has, before the commencement of this  
 No. 6. Act, been set aside or determined to be invalid on any ground, and except any order as regards which any action, suit, or other proceeding is, at the commencement of this Act, pending for having it set aside or determined to be invalid.

Invalidity of writ not to affect sale.

**174.** No purchase of any property of a judgment debtor at any sale made in pursuance of any writ of execution issued by the Supreme Court or any District Court shall be affected by the invalidity of any such writ, but the person at whose instance the writ was issued shall be liable to indemnify any person prejudiced by the sale.

Property subject to power may be sold in execution.

See 1 & 2 Vic., c. 110, ss. 11, 13.

**175.** (1) The sheriff or other officer to whom any writ of fieri facias is directed may take in execution and sell any property over which the judgment debtor has a power of disposition which might have been exercised by him for his own benefit without the assent of any other person.

(2) The deed of bargain and sale executed by the sheriff or other officer shall be deemed to be an exercise of such power of disposition by the judgment debtor.

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## PART XXI.

### ADOPTION OF ACT.

Protection of solicitors, conveyancers, trustees, &c., acting under this Act.

44 and 45 Vic., s. 41, s. 66.

**176.** (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 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 connection with, or applied to, any such contract or transaction; and a solicitor or certificated conveyancer shall

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.

George V.  
No. 6.

(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 or certificated conveyancer 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 or certificated conveyancer, they shall also be protected in like manner.

## PART XXII.

### MISCELLANEOUS.

**177.** (1) Notwithstanding anything in the Imperial Act twenty-seven Elizabeth chapter four contained, no settlement of land duly registered under the Registration of Deeds Act, 1897, or any Act thereby repealed, or under the Real Property Act, 1900, shall, in favour of a purchaser taking under any contract, deed, or other instrument made subsequent to such registration, be deemed fraudulent by reason only that such settlement was not made for valuable consideration.

Voluntary  
settlement of  
land not to be  
deemed  
fraudulent.  
1898, No. 17,  
s. 29.  
See 56 & 57  
Vic., c. 21.

(2)

George V,  
No. 6.  
Interpre-  
tation of  
"settlement."

(2) The word "settlement" in this section includes conveyance, assignment, lease, mortgage, charge, limitation of uses, declaration of trusts, transfer, and other instruments creating or transferring any estate or interest in land, whether under the provisions of the Real Property Act, 1900, or otherwise.

Rights of  
purchasers  
previously to  
the 30th  
December,  
1891, not  
affected.

(3) This section shall not affect the rights of any purchaser under any contract, deed, or other instrument entered into or made before the thirtieth day of December, one thousand eight hundred and ninety-one (being the day of the passing of the Voluntary Conveyances Amendment Act, 1891).

No way by  
user against  
Crown, &c.  
See 1902, No.  
46, s. 3.

**178.** No dedication or grant of a way shall be presumed or allowed to be asserted or established as against—

(a) the Crown; or

(b) persons holding lands in trust for any public purposes,

by reason only of user, and this whether in proceedings instituted by or on behalf of the Crown or not, and whether such user commenced before or after the eighteenth day of October, one thousand eight hundred and sixty-one (being the day of the commencement of the Crown Lands Alienation Act of 1861).

Right to light  
not deemed to  
exist by  
reason only of  
enjoyment or  
presumption  
of lost grant.  
1904, No. 16,  
s. 1.

**179.** From and after the first day of December, one thousand nine hundred and four (being the day of the commencement of the Ancient Lights Declaratory Act, 1904), no right to the access or use of light to or for any building shall be deemed to exist, or to be capable of coming into existence by reason only of the enjoyment of such access, or use, for any period, or of any presumption of a lost grant based upon such enjoyment.

Sale under  
power not  
to be avoided  
by reason of  
mistaken  
payment to  
tenant for  
life.

1898, No. 17,  
s. 36.  
22 & 23 Vic.,  
c. 35, s. 13.

**180.** (1) Where, under a power of sale, a bona fide sale is made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life, or any other party to the transaction, is by mistake allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, the Court, upon any claim or application as the case may require or permit, may declare that upon payment by the purchaser or the claimant under him of

of the full value of the timber and articles at the time of sale, with such interest thereon as the Court directs, and the settlement of the said principal moneys and interest under the direction of the Court upon such parties as in the opinion of the Court are entitled thereto, the sale ought to be established.

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(2) Upon such payment and settlement being made accordingly the Court may declare that the sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed.

(3) The costs of the application as between solicitor and client shall be paid by the purchaser or the claimant under him.

**181.** The term "month," when used in any conveyance, lease, agreement, contract, or other instrument, whether relating to property or not, and in any rules or regulations made under this Act shall be deemed to mean calendar month, unless the circumstances otherwise require.

Month in documents to mean calendar month.  
See Vict. Act, No. 2,733, s. 59.

**182.** In the case of an acknowledgment to the effect that a mortgage has been satisfied which was endorsed on such mortgage and signed previously to the thirteenth day of December, one thousand eight hundred and ninety-three, nothing contained in this Act, or in any Act hereby repealed, shall invalidate or affect any estate, right, or interest which has been acquired subsequent to such signing, or any other act or thing that would have been valid if this Act had not been passed.

Saving clause as to acknowledgments endorsed on mortgages previously to 1893.  
1898, No. 17, s. 105 (2).

**183.** (1) Any seller or mortgagor of any property conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such seller or mortgagor, who, after the commencement of this Act, conceals any settlement, deed, will, or other instrument material to the title, or any incumbrance from the purchaser or mortgagee, or falsifies any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall be guilty of a misdemeanour, and, being found guilty, shall be liable, at the discretion of

Punishment of vendor, &c., for fraudulent concealment of deeds, &c., or falsifying pedigree.  
*Ibid.* s. 117.  
22 & 23 Vic., c. 35, s. 24.  
23 & 24 Vic., c. 38, s. 8.



**George V.** of the Supreme Court, to suffer such punishment by  
**No. 6.** fine or imprisonment for any time not exceeding two years, with or without hard labour, or by both, as the Court awards, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, for any loss sustained by them, or either or any of them, in consequence of the settlement, deed, will, or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree.

(2) In estimating such damages where the estate is recovered from such purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land.

(3) No prosecution for any offence included in this section against any seller or mortgagor, or any solicitor or agent, shall be commenced without the sanction of His Majesty's Attorney-General or Solicitor-General.

(4) No such sanction shall be given without previous notice of the application for leave to prosecute to the person intended to be prosecuted in such form as the Attorney-General or the Solicitor-General directs.

Committee  
for framing  
short forms.

**184.** (1) A committee consisting of the Chief Justice, the Chief Judge in Equity, the Master in Equity, one of the Examiners of Titles under the Real Property Act, 1900, such examiner to be appointed by the Chief Justice from time to time, and two other persons to be so appointed on the nomination of the Council of the Bar and the Incorporated Law Institute respectively, or any three of them, the Chief Justice being one, may from time to time frame short forms of—

- (a) instruments; and
- (b) covenants, conditions, or provisions relating to any matter or thing for use in any instruments executed or made after the commencement of this Act.

(2)

(2) Such last-mentioned forms with directions for their use may be framed in a form similar to Schedule IV to this Act, setting out the nature of the instrument for which the same may be used, and the persons to be bound thereby or to whom the same are to apply, and a short form and a corresponding long form in two parallel columns.

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(3) Whenever in any such instrument which is expressed to be made in pursuance of this Act the short form of words set out in the first of such columns is used, such form of words shall import and be deemed to include the long form of words corresponding thereto set out in the second column, and shall have effect as though such last-mentioned words were set out at length in such instrument.

(4) The provisions of section eighty-six, subsection two, of this Act, shall apply to the forms prescribed under this section.

(5) The covenants contained in Schedule IV may in like manner be varied by the committee.

(6) Forms framed under this section shall be published in the Gazette, and thereupon the provisions of this section shall apply thereto.

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## PART XXIII.

## REGISTRATION.

DIVISION 1.—*Causes, writs, and orders affecting land.*

Register of  
causes, writs,  
and orders  
affecting  
land.

See 51 & 52  
Vic., c. 51,  
ss. 5, 6.

**185.** (1) A register, to be called the register of causes, writs, and orders affecting land, shall be kept at the office of the Registrar-General.

(2) Every entry made in such register shall be made in the name of the person whose land is affected by the entry registered, or in such other manner as may be prescribed.

Writs or  
orders under  
judgments  
and  
lis pendens.

*Ibid.*  
63 & 64 Vic.,  
c. 26, s. 3.

**186.** (1) There may be registered in such register—

- (a) any writ or order affecting land issued or made by any court for the purpose of enforcing a judgment, order, statute, or recognisance, whether obtained on behalf of the Crown or otherwise including any order appointing a receiver or sequestrator of land; and
- (b) any lis pendens.

See 2 & 3  
Vic., c. 11,  
s. 7.

(2) The registration of a writ, order, or lis pendens under this section shall cease to have effect at the expiration of five years from the date of the registration, but may be renewed in the prescribed manner from time to time, and if renewed shall have effect for five years from the date of the renewal.

(3) Registration under this section shall not operate to extend the time for which the writ or order would remain in force if not so registered.

Court orders  
affecting title  
to or user of  
land, land  
charges,  
orders, &c.,  
affecting user  
of land.

**187.** There may also be registered in such register in the prescribed manner—

- (a) any order affecting the title to land, or restricting the right of dealing with or the user of land or any buildings thereon or creating a charge over land, made by any court;
- (b) any charge upon land (not being in respect of a rate or tax) imposed by or under the provisions of any Act of Parliament for securing to  
any

[See 51 and 52  
Vic., c. 51,  
ss. 4, 10-14.]

any person either the moneys spent by him (with or without interest) or the costs, charges, and expenses incurred by him under such Act, or the moneys advanced by him (with or without interest) for repaying the moneys spent and the costs, charges, and expenses incurred by any other person or the Crown under the authority of an Act of Parliament; and

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- (c) any order, award, determination, or notification made under the provisions of any Act of Parliament by any local or other authority restricting the right of dealing with land or the user of land, or any buildings thereon, or prescribing any act to be done thereon or in relation thereto.

**188.** (1) Every such writ issued or renewed, and every such order, award, determination, notification, or charge, and every proceeding thereunder, shall be void against, and a lis pendens shall not bind a person who becomes a purchaser of the land affected thereby without notice of the writ, order, award, determination, notification, charge, or lis pendens unless the same is registered in the register of causes, writs, and orders affecting land so that such registration has effect at the time of the purchase, and is so indexed that the purchaser ought reasonably to have found the entry on search.

Protection of  
purchasers  
against non-  
registered  
writs, orders,  
&c.  
See 51 & 52  
Vic., c. 51,  
s. 6.  
63 & 64 Vic.,  
c. 26, s. 3.  
2 & 3 Vic.,  
c. 11, s. 7.

(2) No purchaser shall be affected with notice of any such writ, order, award, determination, notification, charge, or any proceeding thereunder or of any lis pendens by reason of omission to make any inquiry or any search other than search in the register of causes, writs, and orders affecting land or the general registry of deeds.

**189.** (1) No judgment statute or recognisance, whether obtained or entered into on behalf of the Crown or otherwise, and whether obtained or entered into before or after the commencement of this Act, shall operate as a charge on land, or on the unpaid purchase money for any land, unless and until the writ or order for the purpose of enforcing it is registered in the register of causes, writs, and orders affecting land.

Judgments,  
&c., not to be  
a charge on  
land until  
writ or order  
registered.  
See 63 & 64  
Vic., c. 26,  
s. 2.

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(2) This section shall apply to any inquisition finding a debt due to the Crown, and any obligation or specialty made to the Crown, and any acceptance of office from or under the Crown, whatever may have been its date in like manner as it applies to a judgment.

Charge on land to include expenses of registration. See 51 & 52 Vic., c. 51, s. 11.

**190.** Any charge on land registered under this Division shall extend to and include the expenses of registration thereof.

Application of Division 1 to land under Real Property Act, 1900.

**191.** (1) The provisions of this Division shall in the case of land under the provisions of the Real Property Act, 1900, extend only to such orders, awards, determinations, notifications, and charges as would be effective against the land without any entry in the register book under the said Act.

[See Vict. Act, No. 1149, s. 235.]

(2) No *lis pendens* or registration of a *lis pendens* shall affect or be deemed to have affected the right of any person to obtain the registration of any dealing under the Real Property Act, 1900, or shall deprive or be deemed to have deprived any person dealing under that Act of the benefit of section forty-three or of any other section of that Act.

Writs, orders, &c., to which Division applies.

**192.** This Division, except where otherwise expressly provided, applies only to writs issued or renewed, or orders, awards, determinations, notifications and charges made or brought into effect after the commencement of this Act.

*Lis pendens* to which Division applies.

**193.** This Division applies to every *lis pendens* in existence at, or coming into existence after the commencement of this Act.

Crown bound by Division.

**194.** This Division shall apply to and bind the Crown.

#### DIVISION 2.—*Bankruptcy proceedings.*

Registration of sequestration orders, &c., made in bankruptcy.

**195.** (1) The Registrar in Bankruptcy shall forthwith send to the Registrar-General a notice of the filing of every bankruptcy petition, and of every order dismissing any such petition, and of every sequestration order, order vesting any land, or annulling or discharging any sequestration order, or granting a certificate of discharge to or releasing the estate of any bankrupt or insolvent, or any other order affecting the title to land made under the Bankruptcy Act, 1898.

(2)

(2) The Registrar-General shall enter, in such manner as may be prescribed, in the register of causes, writs, and orders affecting land, all notices of bankruptcy petitions, and of all such orders so received by him from the Registrar in Bankruptcy.

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(3) Every such petition shall be of no effect, and every such order shall be void as against a person purchasing land from the bankrupt or person sought to be made bankrupt without notice of any petition filed or order made after the commencement of this Act, unless the same is registered in pursuance of this section.

(4) No purchaser shall be affected with notice of any such petition or order by reason of omission to make any inquiry or any search other than search in such register.

(5) Section eleven of the Bankruptcy Act of 1898 is hereby amended by the omission of the words "and also send a like notice to the Registrar-General who shall make a note of the same in every index and registered instrument kept in his office for public inspection."

Amendment  
of 1898,  
No. 25, s. 11.

(6) This section applies only to petitions filed or orders made after the commencement of this Act.

### DIVISION 3.—*Plans of subdivisions.*

**196.** (1) Any person who lays out any land in lots may lodge in the office of the Registrar-General a plan of the land as so laid out.

Plans may be  
lodged with  
Registrar-  
General, &c.

(2) Every plan lodged in pursuance of this section shall be prepared in such manner and shall contain such particulars as may be prescribed, shall be certified by a licensed surveyor in the prescribed form, and shall bear the signature or common seal of the person on whose behalf it is lodged or of the duly authorised agent of such person. In the case of land under the provisions of the Real Property Act, 1900, the surveyor shall be specially licensed under that Act.

(3) Every such plan shall comply with all statutory provisions relating to anything appearing in such plan.

(4) All necessary consents and approvals shall be endorsed upon or annexed to every such plan.

(5)

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(5) Every such plan shall contain a statement as to which, if any, of the roads, streets, and lanes shown thereon are intended to be dedicated to the public, and as to what easements, if any, are intended to be created in favour of purchasers of lots shown on such plan, and as to any restrictions affecting the user of any land stipulated for by the vendor.

(6) When any such plan is lodged as aforesaid, the Registrar-General shall satisfy himself whether as regards such plan all the requirements of this Act have been complied with.

(7) If the Registrar-General is not satisfied that as regards any such plan all the requirements of this Act have been complied with, he shall give notice to the person on whose behalf it is lodged of all such requirements as have not been complied with.

(8) When the Registrar-General is satisfied that as regards any such plan all such requirements have been complied with, he shall cause such plan to be numbered and recorded, and shall cause an entry to be made in a register of such plans of the date on which such plan is so numbered and recorded.

(9) A plan so numbered and recorded of land under the old system of title shall be styled a "registered plan," and of land under the provisions of the Real Property Act, 1900, shall be styled a "deposited plan."

(10) Every conveyance of land comprised in a registered or deposited plan may be made by reference to such plan.

(11) The Registrar-General, on the application of any person interested in any land to which a registered or deposited plan relates, may, on such evidence as appears to him sufficient, and after such notices, if any, as he thinks proper, amend or cause to be amended any such plan so as to correct any error therein or supply any omission therefrom. Such amendment shall be so made that the original words or symbols shall not be rendered illegible, and the date of every such amendment shall be noted on the plan and initialled by the Registrar-General or his deputy. Every such amendment shall take effect as if the error or omission thereby corrected or supplied had not been made: Provided that

that any such amendment shall not affect the construction of any instrument made before such amendment so as to prejudice any person claiming under such instrument.

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(12) This section applies to land under the provisions of the Real Property Act, 1900, and section one hundred and thirteen of that Act is hereby repealed. The Registrar-General may in the case of any such land require a plan of any subdivision to be lodged before or in connection with the registration of any dealing.

DIVISION 4.—*Official searches.*

**197.** (1) Where any person requires search to be made in the office of the Registrar-General in respect of the title to any land for entries of any instruments registered or allowed to be deposited under this Act, or the Registration of Deeds Act, 1897, or any other Act, or entries made in any register under this Act, he may deliver in the office a requisition in that behalf.

Official  
searches.  
See 45 and 46  
Vic., c. 39,  
s. 2.

(2) The Registrar-General shall cause to be made and filed in the office a certificate setting forth the result of any search made under his direction whether in pursuance of a requisition or not, and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3) Where any purchaser on whose behalf an office copy certificate is issued, suffers loss or damage by reason of any error in or omission from such certificate or office copy, he may recover compensation in an action under the Claims against the Government and Crown Suits Act, 1912.

(4) Every requisition under this section shall be in writing, signed by or on behalf of the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and such other particulars as may be prescribed.

(5) If any officer, clerk, or person employed in the office of the Registrar-General, commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent in the making of, or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(6)



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(6) Nothing in this section, or in any regulation made under this Part shall affect any right which any person may have independently of this section to make any search in such office.

(7) Where a solicitor or certificated conveyancer obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in or omission from the certificate.

(8) Where the solicitor or certificated conveyancer is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(9) Where such persons obtain such an office copy without a solicitor or certificated conveyancer, they shall also be protected in like manner.

#### DIVISION 5.—*General.*

Index to  
registers.  
51 & 52 Vic.,  
c. 51, s. 15.

Searches.  
*Ibid.* s. 16.

Vacation of  
entries.

Vacation of  
entry of  
lis pendens.  
See 30 & 31  
Vic., c. 47,  
s. 3.

**198.** An alphabetical index in the prescribed form shall be kept at the office of the Registrar-General of any registers kept in pursuance of this Act.

**199.** Any person on paying the prescribed fee may search in any register or index kept in pursuance of this Act.

**200.** (1) Any registration under this Act may be vacated pursuant to an order of the Supreme Court in any of its jurisdictions or of any judge thereof.

(2) The Registrar-General may upon the filing with him of an application in the prescribed form vacate any registration under this Act.

**201.** Any registration of a lis pendens under this Part may be vacated pursuant to an order of the Supreme Court in any of its jurisdictions or of any judge thereof, and such order may be made after the determination of the lis pendens, or, in case the Court is satisfied that the litigation is not being prosecuted bona fide, during the pendency thereof, and in any case, if the Court thinks fit, without the consent of the person who caused the same to be registered.

**202.**

**202.** (1) The Governor may make regulations under this Part of this Act— George V,  
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- (a) prescribing the manner and form of registering instruments under this Act, the Real Property Act, 1900, the Registration of Deeds Act, 1897, or any other Act; General rules under this part of this Act as to registration and fees.
- (b) prescribing forms and contents of requisitions and certificates under Division 4 of this Part; See 51 & 52 Vic., c. 51, ss. 8, 14, and 53 & 54 Vic., c. 69, s. 19.
- (c) regulating the practice of the office of the Registrar-General under this Act, the Real Property Act, 1900, the Registration of Deeds Act, 1897, or any other Act;
- (d) prescribing the fees to be taken in such office for any matter or thing to be done therein under this or any other Act; and
- (e) prescribing anything to be prescribed under this Act.

(2) "Prescribed" in this Act in relation to any of the aforesaid matters means prescribed under the provisions of this section.

**203.** (1) The Registration of Deeds Act, 1897, is amended as follows:— Amendment of Registration of Deeds Act, 1897.

Section five: By the substitution of the word "two" for the word "three" in subsection one, and by the addition of the words "or to be observed as bank holidays under the Banks and Bank Holidays Act, 1898," at the end of subsection two.

Section six: By the omission of the words "Except leases for less than three years" occurring in subsection three.

Section seven: By the insertion after the word "thereof" wherever occurring of the words "neatly and legibly written," and by the insertion after the word "parchment" wherever occurring of the words "or other prescribed material"; and by the deletion of the words "not residing within five miles of Sydney" wherever occurring and the insertion in their place of the words "or any justice of the peace."

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Section nine is repealed and the following section is substituted therefor:—

9. When any party to an instrument tendered for registration is dead or absent from New South Wales at the time when the registration thereof is sought to be made, the executor or administrator of such party, or the attorney duly constituted under a power of attorney of the party absent, may sign the attested copy of such instrument as if a party to the instrument; and in case the Registrar-General is satisfied that the signature of a party cannot be obtained for any other reason, the Registrar-General may accept and register the attested copy of such instrument signed by himself personally, and such signing shall in each of the above cases be as valid and effectual to all intents and purposes as if such attested copy had been signed by the original party to the instrument.

By the addition of new sections seventeen and eighteen in the following terms:—

17. (1) Instruments may also be registered in the following manner, that is to say:—By the lodging of the original instrument with the Registrar-General, together with the prescribed fees for registration, and for the making of the registration copy thereof by him.

(2) In such case it shall be the duty of the Registrar-General to have a full and correct copy made and registered as if lodged with the instrument; no signature by a party to the instrument shall be required, but the copy shall be signed by the Registrar-General or one of his deputies.

18. The Registrar-General may in the prescribed manner, and on payment of the prescribed fee, receive and register for the purposes of record any instrument whatsoever, whether affecting or relating to land or not.

Repeal.

(2) The Registration of Deeds (Amending) Act, 1918, is hereby repealed.

**204.** The Evidence Act, 1898, section twenty-eight, George V,  
is amended as follows:— **No. 6.**

By the addition of the words “or writing” after the word “deed” in such section wherever occurring; and in paragraph (b) of subsection one by the addition of the words “or an office copy of any copy in use in the office of the Registrar-General of such certified copy” after the words “certified copy”; and by the addition thereto of the following subsection:—

Amendment  
of Evidence  
Act, 1898,  
s. 28.

(3) Such certified copy or office copy shall, if the deed or writing has been registered for more than thirty years, be prima facie evidence of the due execution of the deed or writing.

## PART XXIV.

### SOLICITORS' REMUNERATION.

**205.** For the purposes of this Part:—

“Client” includes any person who, as a principal or on behalf of another or as trustee or executor, or in any other capacity has power, expressed or implied, to retain or employ and retains or employs or is about to retain or employ a solicitor, and any person for the time being liable to pay to a solicitor for his services any costs, remuneration charges, expenses, or disbursements.

Interpre-  
tation.  
See 44 & 45  
Vic., c. 44,  
s. 1.

“Incorporated Law Institute” means the body incorporated under the provisions of the Companies Act, 1899, by the name of the Incorporated Law Institute of New South Wales.

“Solicitor”

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“Solicitor” means an attorney, solicitor, and proctor of the Supreme Court, and includes a certificated conveyancer under the Legal Practitioners Act, 1898.

“Taxing officer” means the officer whose duty it is to tax costs in any jurisdiction of the Supreme Court.

#### DIVISION 1.—*General orders.*

Power to  
make general  
orders for  
remuneration  
in convey-  
ancing, &c.  
See 44 & 45  
Vic., c. 44,  
s. 2.

**206.** The Chief Justice, the Chief Judge in Equity, the Master in Equity, and the president for the time being of the Incorporated Law Institute, and one or more practising solicitors to be selected and nominated from time to time by the Chief Justice, or any four of them, the Chief Justice being one, may from time to time make any such general order as to them seems fit for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business not being business in any action or transacted in any court or in the chambers of any judge or the Master in Equity, Prothonotary, or other officer of any court, and not being otherwise contentious business, and may revoke or alter any such order.

Communica-  
tion to Incor-  
porated Law  
Institute.  
*Ibid.* s. 3.

**207.** One month at least before any such general order is made the Chief Justice shall cause a copy of the regulations and provisions proposed to be embodied therein to be communicated in writing to the council of the Incorporated Law Institute, who shall be at liberty to submit such observations and suggestions in writing as they may think fit to offer thereon; and the Chief Justice and the other persons hereby authorised to make such order shall take into consideration any such observations or suggestions which may be submitted to them by the said council within one month from the day on which such communication to the said council shall have been made as aforesaid, and after duly considering the same, may make such order, either in the form or to the effect originally communicated to the said council, or with such alterations, additions, or amendments, as to them may seem fit.

**208.**

**208.** Any general order under this Part may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another or others, and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following among other considerations, namely :—

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Principles of  
remuneration.

See 44 & 45  
Vic., c. 44,  
s. 4.

See 1899,  
No. 18, s. 5.

The position of the party for whom the solicitor is concerned in any business, that is whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like.

The place, district, and circumstances at, or in which the business, or part thereof, is transacted.

The amount of the capital money, or of the rent to which the business relates.

The skill, labour, and responsibility involved therein on the part of the solicitor.

The number and importance of the documents prepared or perused, without regard to length.

**209.** Any general order under this Part may authorise and regulate the taking by a solicitor from his client of security for future remuneration in accordance with any such order to be ascertained by taxation or otherwise and the allowance of interest.

Security for  
costs and in-  
terest on dis-  
bursements.

*Ibid.* s. 5.

**210.** (1) Any general order under this Part shall be published in the Gazette, and thereupon shall have the force of law in accordance with this Act.

Order to be  
laid before  
Houses of  
Parliament ;  
disallowance  
on resolution.

(2) Any such general order shall, immediately upon the publication thereof as aforesaid, be laid before both Houses of Parliament, if then sitting, or if not, within ten days after the next sitting thereof, and if either of the said Houses shall, by any resolution passed within thirty days after such general order has been laid before it, resolve that such order or any part thereof ought not to continue in force, then such order or part shall immediately cease to be binding.

See 1901,  
No. 24, s. 94.

**211.** As long as any general order under this Part is in operation, the taxation of bills of costs of solicitors shall be regulated thereby.

Effect of  
order as to  
taxation.

44 & 45 Vic.,  
c. 44, s. 7.

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DIVISION 2.—*Agreements.*

Power for  
solicitor and  
client to  
agree on form  
and amount  
of remunera-  
tion.

44 & 45 Vic.,  
c. 44, s. 8.

**212.** (1) With respect to any business to which the foregoing provisions of this Part relate, whether any general order under this Act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after, or in the course of the transaction of any such business, for the remuneration of the solicitor, to such amount and in such manner as the solicitor and the client think fit, either by a gross sum or by commission or percentage or by salary or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor, remuneration accordingly.

(2) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

(3) The agreement may if the solicitor and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for, either shall include or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify the same to the Supreme Court, and if, upon such certificate, it shall appear to such Court or a judge thereof that just cause has been shown, either for cancelling the agreement or for reducing the amount payable under the same, the Court or judge shall have power to order such cancellation or reduction and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or judge may seem fit.

DIVISION

DIVISION 3.—*Solicitor mortgagees.*

George V,  
No. 6.

**213.** (1) Any solicitor to whom, either alone or jointly with any other person, a mortgage is made, or the firm of which such solicitor is a member, shall be entitled to receive for all business transacted, and acts done by such solicitor or firm in negotiating a loan, deducing and investigating the title to the property, and preparing and completing the mortgage, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business, and do such acts; and such charges and remuneration shall accordingly be recoverable from the mortgagor.

Charges, &c.,  
where mort-  
gage is made  
with solicitor.  
See 58 & 59  
Vic., c. 25,  
s. 2.

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

**214.** (1) Any solicitor to or in whom either alone or jointly with any other person any mortgage is made or is vested by transfer or transmission, or the firm of which such solicitor is a member, shall be entitled to receive and recover from the person on whose behalf the same is done or to charge against the security for all business transacted and acts done by such solicitor or firm subsequent and in relation to such mortgage or to the security thereby created or the property therein comprised, all such professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to and had remained vested in a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts, and accordingly no such mortgage shall be redeemed except upon payment of such charges and remuneration.

Right of  
solicitor with  
whom mort-  
gage is made  
to recover.  
*Ibid.* s. 3.

(2) This section applies to mortgages made and business transacted, and acts done either before or after the commencement of this Act.

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SCHEDULES.



George V,  
No. 6.

## SCHEDULES.

### SCHEDULE I.

Reference to Act.	Subject or short title.	Extent of repeal.
A. IMPERIAL ACTS.		
32 Henry VIII, c. 9.	Pretenced Titles .....	Sections 2 and 4, so far as the same apply to New South Wales.
4 Anne, c. 16 (c. 3).	Attornment by lessees.....	Sections 9 and 10, so far as the same apply to New South Wales.
4 Geo. II, c. 28, s. 6.	Landlord and Tenant Act, 1730.....	Section 6, so far as the same applies to New South Wales.
11 Geo. II, c. 19	Distress for Rent Act, 1737 .....	Section 11, so far as the same applies to New South Wales.
39 & 40 Geo. III, c. 98.	Thellusson Act (Accumulations of Income).	Whole Act, so far as the same applies to New South Wales.
B. NEW SOUTH WALES ACTS.		
1897, No. 22 ...	Registration of Deeds Act, 1897 ...	Section 9.
1898, No. 13 ...	Wills, Probate and Administration Act, 1898.	Section 56.
1898, No. 17 ...	Conveyancing and Law of Property Act, 1898.	Sections 29, 30, 34 to 36 inclusive; 91 to 105 inclusive; 108 to 120 inclusive.
1899, No. 18 ...	Landlord and Tenant Act of 1899...	Sections 3 to 6 inclusive; 57 to 61 inclusive; Schedules B and C.
1900, No. 25 ...	Real Property Act, 1900 .....	Sections 67, 77, 78, 79, 80, subsection 4, 109, and 113.
1900, No. 33 ...	Administration (Validating) Act, 1900.	Section 4. Repealed in part. See section 155.
1901, No. 24 ...	Equity Act, 1901 .....	Section 12.
1901, No. 37 ...	Conveyancing and Law of Property (Supplemental) Act, 1901.	Sections 5 to 14 inclusive.
1901, No. 45 ...	Married Women's Property Act, 1901.	Section 24, subsection 1.
1901, No. 66 ...	Forfeiture of Leases Act of 1901 ...	Whole Act.
1902, No. 46 ...	Dedication by User Act, 1902 .....	Whole Act.
1904, No. 16 ...	Ancient Lights Declaratory Act, 1904.	Whole Act.
1905, No. 2 ...	Apportionment Act, 1905 .....	Whole Act.
1905, No. 8 ...	Forfeiture and Validation of Leases Act, 1905.	Whole Act.
1906, No. 4 ...	Dower Abolition Act, 1906.....	Whole Act.
1918, No. 4 ...	Registration of Deeds (Amendment) Act, 1918.	Whole Act.

SCHEDULE

George V,  
No. 6.

This deed, made the \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine Sec. 43.  
hundred and \_\_\_\_\_, between A.B., of Sydney, in New South Wales,  
merchant, of the one part, and C.D., of the same place, carpenter, of  
the other part [*Recitals, if any*]: (Now this deed) witnesseth that, in  
consideration of the sum of one hundred pounds paid by the said C.D.  
to the said A.B. (the receipt whereof is hereby acknowledged) the said  
A.B., as beneficial owner [*if it is not intended to include the usual  
covenants for title, omit words "as beneficial owner"*] doth hereby  
convey unto the said C.D. in fee simple [*or as the case may be*] all  
that piece of land [*describing particularly the situation, boundaries,  
and measurements, and if comprised in a registered plan quoting the  
lot and section number and number of plan*].

In witness whereof the said A.B. hath hereunto subscribed his  
name [*and affixed his seal*].

Signed [*sealed*] and delivered by the above-named A.B. in the presence of—

[Place of abode and description.]

*Conditions of sale.*

1. This contract is made subject to the provisions of the Conveyancing Sec. 60, Act, 1919.
2. The land is sold subject to the conditions and reservations other than quit rent in the Crown grants under which the land is held.
3. The vendor shall within twenty-one days after the date of the contract deliver to the purchaser or his solicitor—
  - (a) as to land under the Real Property Act, 1900, or held under any Acts relating to Crown lands (except conditionally purchased land), or held under the Mining Act, 1906, particulars of title sufficient to enable the purchaser to prepare his transfer; and
  - (b) as to land conditionally purchased under the Crown Lands Acts, and all other land, a complete abstract of his title.

- George V,  
No. 6.**
4. The purchaser shall within twenty-eight days after the delivery of such particulars of title or abstract deliver to the vendor or his solicitor a statement in writing of his objections and requisitions (if any) to or on the title as shown by such particulars or abstract, and in this respect time shall be of the essence of the contract. In default of or subject only to any such objections and requisitions so made the purchaser shall be taken to have accepted the title.
5. No error or misdescription of the land shall annul the sale, but a compensation, if demanded in writing before the proper time for completion, shall be made to or given by the purchaser, as the case may be, the amount to be settled in case of difference in accordance with the provisions of the Arbitration Act, 1902.
6. All rates, taxes, and annual outgoings shall be paid by the vendor up to the proper time for completion, from which time they shall be paid by the purchaser, and for the purpose of this condition such rates, taxes, and outgoings shall be apportioned.

#### SCHEDULE IV.

##### SHORT FORMS OF COVENANTS IN MORTGAGES AND LEASES.

###### *Direction as to the forms in this Schedule.*

- Secs. 81 & 86.**
1. Parties who use any of the forms in the first column in this Schedule may substitute for the words "lessee" or "lessor," "mortgagee," or "mortgagor," any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.
2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.
3. Such parties may fill up the blank spaces left in the forms in the first column of this Schedule so employed by them with any words or figures and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.
4. Such parties may introduce into or annex to any form in the first column any addition to, exception from, or qualification of the same, or may strike out or omit any words of or from such column; and a proviso which would give effect to the intention indicated by such addition, exception, qualification, striking out, or omission shall be taken to be added to the corresponding form in the second column.
5. The covenants in the second column shall be taken to be made with and apply to the lessor or lessee or mortgagor or mortgagee as the case may be, his executors, administrators, and assigns, unless otherwise stated.

#### SCHEDULE

SCHEDULE IV—*continued.*

George V,  
No. 6.

Column one.	Column two.
PART I.— <i>Mortgages.</i>	
1. That the mortgagor covenants with the mortgagee to keep all buildings or other improvements in repair.	1. That the mortgagor will keep all buildings or other improvements erected and made upon the land in as good and substantial repair as the same were in at the date of the mortgage, and that the mortgagee, his executors, administrators, and assigns, may at all convenient times, until such mortgage is redeemed, be at liberty, with or without surveyors or others, to enter into, and upon, such land to view and inspect the state of repair of such buildings and improvements.
2. And to insure in the name of the mortgagee.	2. That the mortgagor, his executors, administrators, and assigns, will insure, and so long as any money shall remain secured by this mortgage, keep insured against loss or damage by fire in the name of the mortgagee, or his executors, administrators, or assigns, in some public insurance office to be approved of by him or them all buildings which shall for the time being be erected on the said land, and which shall be of a nature or kind capable of being so insured to the amount either of the principal money hereby secured, or of the full value of such buildings, and will when required deposit with the mortgagee, or his executors, administrators, or assigns, the policy of such insurance, and within seven days after each premium shall become payable, the receipt for such premium. And that the moneys which shall be received on account of such insurance shall, at his or their option, be applied either in or towards satisfaction of the moneys secured by this mortgage, or in rebuilding or reinstating, under the superintendence of his or their surveyor, the buildings destroyed or damaged. And that on any breach or non-observance of this covenant he or they shall be at liberty to effect such insurance and continue the same for such period as may be deemed fit, and the costs and expenses paid on account thereof shall be a charge upon the said land and bear interest at the same rate as if principal money overdue.

SCHEDULE

George V,  
No. 6.

SCHEDULE IV—*continued*.

Column one.	Column two.
PART II.— <i>Leases</i> .	
1. That the lessee covenants with the lessor to pay rent.	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he the said lessee, his executors, administrators, or assigns, will, during the said term, pay unto the said lessor, his executors, administrators, or assigns the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever, other than any deduction which the lessee is by any Act of Parliament entitled to make.
2. Provided that in the event of damage by fire, lightning, flood, or tempest, rent shall abate until the premises are restored.	2. Provided that in case the demised premises, or any part thereof, shall at any time during the continuance of the lease be destroyed or damaged by fire, flood, lightning, storm, or tempest, so as to render the same unfit for the occupation and use of the lessee, then, and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature and extent of the damage sustained shall abate, and all or any remedies for recovery of the rent or such proportionate part thereof shall be suspended until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee, and in case of difference under this proviso the same shall be referred to arbitration under the provisions of the Arbitration Act, 1902.
3. And to pay taxes, except for local improvements.	3. And also that the lessee will pay all taxes, rates, and assessments whatsoever, whether municipal, local government, parliamentary, or otherwise which are at any time during the term charged upon the demised premises, or upon the lessor, on account thereof, except taxes for local improvements or works assessed upon the property benefited thereby.

SCHEDULE

SCHEDULE IV—*continued.*

George V,  
No. 6.

Column one.	Column two.
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PART II.—*Leases—continued.*

- |   |   |
|---|---|
| <p>4. And to repair reasonable wear and tear, and damage by fire, lightning, flood, and tempest only excepted.</p>  | <p>4. And also that the lessee will, during the term, well and sufficiently repair, maintain, amend, and keep the demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the term shall be erected and made by the lessor, when, where, and so often as need shall be, reasonable wear and tear, and damage by fire, lightning, flood, and tempest only excepted.</p>   |
| <p>5. And to leave the premises in good repair (having regard to the condition thereof at the commencement of the lease) reasonable wear and tear, and damage by fire, lightning, flood, and tempest only excepted.</p> | <p>5. And also that the lessee will at all times during the continuance of the said lease keep and at the expiration or sooner determination of the term, peaceably surrender and yield up unto the lessor the demised premises, with the appurtenances and all buildings, erections, and fixtures erected or made by the lessor thereon in good and substantial repair and condition, having regard to the condition thereof at the commencement of the lease, reasonable wear and tear, and damage by fire, lightning, flood, and tempest only excepted.</p>  |
| <p>6. And that the lessor may enter and view state of repair, and that the lessee will repair according to notice in writing, and that in default the lessor may repair.</p>  | <p>6. That the lessor, his executors, administrators and assigns, may, by himself or themselves, or his or their agents, twice in every year during the term at a reasonable time of the day upon giving to the lessee two days previous notice, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee, his executors, administrators, or assigns, or leave at his or their last or usual place of abode in New South Wales, or upon the demised premises, a notice in writing of any defect, requiring him or them, within a reasonable time, to repair same in accordance with any covenant expressed or implied in the lease, and that in default of his or their so doing it shall be lawful for the lessor, his executors, administrators, or assigns from time to time to enter and execute the required repairs.</p> |

SCHEDULE

George V,  
No. 6.

SCHEDULE IV—*continued.*

Column one.	Column two.
PART II.— <i>Leases—continued.</i>	
7. And that the lessor may enter and carry out requirements of public authorities, and repair under the lease.	7. That the lessor, his executors, administrators and assigns, may, by himself or themselves, or his or their agents, at all reasonable times during the term, with workmen and others, and all necessary materials and appliances, enter upon the demised premises, or any part thereof, for the purpose of complying with the terms of any present or future legislation affecting the said premises, and of any notices served upon the lessor or lessee by the Board of Health, licensing, municipal, or other competent authority, involving the destruction of noxious weeds or animals, or the carrying out of any repairs, alterations, or works of a structural character, which the lessee may not be bound, or if bound may neglect to do, and also for the purpose of exercising the powers and authorities of the lessor under the lease; provided that such destruction, repairs, alterations, and works shall be carried out by the lessor without undue interference with the occupation and use of the demised premises by the lessee.
8. And to insure from fire in the joint names of the lessor and the lessee.	8. And also that the lessee will forthwith insure the demised premises to the full insurable value thereof in some insurance office approved by the lessor in the joint names of the lessor and the lessee, and keep the same so insured during the continuance of the lease, and will upon the request of the lessor show to him the receipt for the last premium paid for such insurance, and as often as the demised premises shall be destroyed or damaged by fire all and every the sum or sums of money which shall be recovered or received for or in respect of such insurance, shall be laid out and expended in building or repairing the demised premises or such parts thereof as shall be destroyed or damaged by fire as aforesaid.

SCHEDULE

SCHEDULE IV—*continued*.

George V,  
No. 6.

Column one.	Column two.
PART II.— <i>Leases—continued</i> .	
9. And to paint outside every [ ] year.	9. And also that the lessee will, in every year during the continuance of the lease, paint all the outside woodwork and ironwork belonging to the demised premises now or usually painted with two coats of proper oil colours, in a workmanlike manner.
10. And to paint and paper inside every [ ] year.	10. And also that the lessee will, in every year, paint the inside wood, iron and other works now or usually painted, with two coats of proper oil colours, in a workmanlike manner, and also will repaper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour such parts of the demised premises as are now plastered.
11. And to fence.	11. And also that the lessee will, during the continuance of the lease, erect and put up on the boundaries of the demised land or upon such boundaries upon which no substantial fence now exists a good and substantial fence.
12. And to keep up fences.	12. And also will, from time to time, during the continuance of the lease, keep up the fences and walls of or belonging to the demised premises, and make anew any parts thereof that may require to be new-made in a good and husband-like manner and at proper seasons of the year.
13. And to cultivate.	13. And also that the lessee will at all times during the continuance of the lease cultivate, use, and manage all such parts of the land as are or shall be broken up or converted into tillage in a proper and husband-like manner, and will not impoverish or waste the same.
14. That the lessee will not cut timber.	14. And also that the lessee will not cut down, fell, injure, or destroy any growing or living timber or timber-like trees standing and being upon the demised land, without the consent in writing of the lessor.



George V,  
No. 6.SCHEDULE IV—*continued*.

Column one.	Column two.
PART II.— <i>Leases—continued</i> .	
15. That the lessee will not without consent use premises otherwise than as a private dwelling-house.	15. And also that the lessee or any sub-tenant will not convert, use, or occupy the demised premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the lessor.
16. And will not assign or sublet without leave; no fine to be taken.	16. And also that the lessee or any sub-tenant will not, during the continuance of the lease, assign, transfer, demise, sublet, or part with the possession, or by any act or deed, procure the demised premises, or any part thereof, to be assigned, transferred, demise, sublet unto, or put into the possession of any person or persons, without the consent in writing of the lessor, but such consent shall not be refused in the case of a proposed respectable and responsible assign, tenant, or occupier: Provided further, that no fine or sum of money in the nature of a fine shall be payable for or in respect of such license or consent, but this proviso shall not preclude the right of the lessor to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such license or consent.
17. That the lessee will not carry on any offensive trade.	17. That the lessee or any sub-tenant will not at any time during the continuance of the lease use, exercise, or carry on, or permit or suffer to be used, exercised, or carried on in or upon the demised premises or any part thereof, any noxious, noisome, or offensive art, trade, business, occupation, or calling, and no act, matter, or thing whatsoever shall, at any time during the continuance of the lease, be done in or upon the said premises or any part thereof which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of any neighbouring premises.

SCHEDULE

SCHEDULE IV—*continued.*

George V,  
No. 6.

Column one.	Column two.
PART II.— <i>Leases—continued.</i>	
18. That the lessee will carry on the business of a hotelkeeper and conduct the same in an orderly manner.	18. And also that the lessee, or the sub-tenant for the time being, will at all times during the continuance of the lease, use, exercise, and carry on, in and upon the demised premises, the trade or business of a licensed victualler or hotelkeeper, and keep open and use the buildings upon the demised land as and for a hotel, and manage and conduct such trade or business in a quiet and orderly manner, and will not do, commit, or permit, or suffer to be done or committed any act, matter, or thing whatsoever whereby or by means whereof any license shall or may be forfeited or become void or liable to be taken away, suppressed, or suspended in any manner howsoever; and will comply in all respects with the requirements of the Liquor Acts for the time being in force.
19. And will apply for renewal of license.	19. And also that the lessee, or the sub-tenant for the time being, will from time to time, during the continuance of the lease at the proper times for that purpose, apply for and endeavour to obtain at his own expense all such licenses as are or may be necessary for carrying on the said trade or business of a licensed victualler or hotelkeeper in and upon the demised premises, and keeping the buildings open as and for a hotel.
20. And will facilitate the transfer of license.	20. And also that the lessee, or the sub-tenant for the time being, will at the expiration or other sooner determination of the lease sign and give such notice or notices, and allow such notice or notices of a renewal or transfer of any license as may be required by law to be affixed to the demised premises, to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that

George V,  
No. 6.

SCHEDULE IV—*continued*.

Column one.	Column two.
PART II.— <i>Leases—continued</i> .	
	behalf, and generally to do and perform all such further acts, matters, and things as shall be necessary to enable the lessor, or any person authorised by him, to obtain the renewal of any license or any new license, or the transfer of any license then existing and in force.
21. The said (lessor) covenants with the said (lessee) for quiet enjoyment.	21. And the lessor doth hereby covenant with the lessee that he paying the rent hereby reserved, and performing the covenants hereinbefore on his part contained, shall and may peaceably possess and enjoy the demised premises for the term hereby granted, without any interruption or disturbance from the lessor or any other person or persons lawfully claiming by, from, or under him.
22. And that the lessee may remove his fixtures.	22. And also that the lessee may at or prior to the expiration of the lease take, remove, and carry away from the demised premises all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes, or other articles upon the demised premises in the nature of trade or tenants' fixtures brought upon the demised premises by the lessee, but the lessee shall in such removal do no damage to the demised premises, or shall forthwith make good any damage which he may occasion thereto.

SCHEDULE V.

George V,  
No. 6.

(1.) DISCHARGE OF MORTGAGE DEBT.

Sec. 91.

Memorandum made this                      day of                      between                      and                      whereby it is acknowledged that the within security [*or the annexed security or securities specifying them*] has been discharged.

Witness to signature of C.D. :

E.F.,                      C.D., Mortgagee.  
[*Place of abode and description.*]

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

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

Dated this                      day of                      , 19                      .

Witness to signature of A.B. :

E.F.,                      A.B., Mortgagor.  
[*Place of abode and description.*]

Witness to the signature of C.D.,

G.H.,                      C.D. Mortgagee.  
[*Place of abode and description.*]

(3.) INDORSEMENT OF INCREASE OR REDUCTION OF MORTGAGE DEBT.

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

Dated this                      day of                      , 19                      .

Witness to the signature of A.B. :

E.F.,                      A.B., Mortgagor.  
[*Place of abode and description.*]

Witness to the signature of C.D. :

G.H.,                      C.D., Mortgagee.  
[*Place of abode and description.*]

(4.)

**Conveyancing Act.****George V, No. 6.** (4.) MEMORANDUM OF SHORTENING OR RENEWAL OR EXTENSION OF TERM OR CURRENCY OF MORTGAGE.

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

Dated this day of , 19 .

Witness to the signature of A.B. :

E.F., A.B., Mortgagor.  
[Place of abode and description.]

Witness to the signature of C.D. :

G.H., C.D., Mortgagee.  
[Place of abode and description.]

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**(5.) TRANSFER OF MORTGAGE**

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

Dated this day of 19 .

Witness to the signature of A.B. :

E.F., A.B., Assignor.  
[Place of abode and description.]

Witness to the signature of X.Y.

G.H., X.Y., Mortgagor.  
[Place of abode and description.]

Witness to the signature of C.D. :

K.L., Accepted. C.D., Assignee.  
[Place of abode and description.]

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**SCHEDULE**

