OFFICE AND PRACTICE

OF A

NOTARY OF CANADA

(Excepting Province of Quebec)

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PREFACE.

The volume whose pages follow has been written principally for the use of notaries public in Canada who are not at the same time barristers or attorneys and cannot therefore be assumed to be well informed on any of the branches of law which give rise to the various notarial functions.

It has been attempted throughout, when dealing with the duties that are imposed upon notaries, not only to define the specific acts which are to be done by the notary, but also in some measure to present to him a comprehensive idea of the statute or principle of law under which comes the need and authority for his act. And since some of the more difficult tasks which occasionally fall to the office of notary public, such as the preparing of agreements, charter parties and powers of attorney, are so intricate and technical in their nature, and conceal

so many pitfalls for the inexperienced draftsman, that they may safely be and are usually trusted only to persons who have devoted years of study to the profession of law, it has not been deemed useful to attempt to deal with the law governing such documents or to set any forms or precedents to follow in the making of them. Indeed, it is felt that a form or precedent for that kind of document which must of necessity be varied in its most important particulars in every single instance in which it is brought into use, can be of little service to anyone, and may prove to be a weapon which, in the hands of the uninitiate, becomes turned upon and does violence to its own user.

The office of notary public in the Province of Quebec, because of the retention of the French law in that Province, differs widely in its nature from all of the other parts of the Dominion, and the business of notaries is there a distinct profession. The laws and customs which govern the office in that Province are therefore not included in this work.

In the manner above the writer seeks to justify the material and absence of material in the pages that follow, at the same time expressing the hope that the book will itself prove its usefulness.

BERNARD W. RUSSELL.

Halifax, N.S.,
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Canadian Notaries.

CHAPTER I.

History of the Office.

The word notary is derived from the Latin word *notæ*, which meant a system of abbreviated letters, said to have been invented by Cicero's secretary, M. Tullis Tero, for the purpose of taking down his master's speeches, and used in Rome by freedmen or slaves who were employed in receiving instructions for agreements, conveyances, wills and other instruments. These clerks, who came to be known therefore as *notarii*, were in the service of men called *tabelliones*,[1] whose duties were of a more professional nature and consisted in writing *in extenso*, and reducing into proper legal

[1] The term *tabellio* is derived from the Latin *tabula sen, tabella*, which, in this sense, signified those tables or plates covered with wax which were then used instead of paper. 8 Taullier N. 53.

form, the *notæ* taken down by their clerks, and witnessing the execution of their instruments when completed, together with exercising in some cases a judicial jurisdiction.[2] Instruments witnessed by the *tabelliones* were called *instrumenta publica confecta*, possessing a certain authenticity not accorded other documents, and when, in the course of time, it became the rule to register them and place them in a public depository they attained a full degree of credit and authenticity and could be put in evidence without proof.

During the course of evolution of the Roman law the word *notarius*, as applied to the clerks of *tabelliones*, was gradually ceasing to be used, and was being more often applied to registrars of the Courts who, among other things, made conveyances and other legal instruments that were afterwards sealed with the seal of the Court in the presence of the magistrate. The word thus became the name of a much more im-

[2] *Tabelliones* differed from notaries in many respects. They had judicial jurisdiction in some cases, and from their judgments there was no appeal. Jacob. Law Dict.

portant officer than the original *notarius*, and one whose functions more nearly corresponded with those of the *tabellion*. With the extension of Roman law and customs over Europe the name, *notarius*, came to be the popular designation of all persons who exercised any of the functions that had formerly belonged to either of the offices.

Where notaries began to practice in England their duties were very much of the same nature that they are in England today. The earliest mention of the office is in a charter granted by Edward the Confessor, which purported to have been prepared and proved by a notary called Swardius.[3] At this time, however, the office was rarely used in England. There were no English notaries, and documents were authenticated by notarial evidence only upon the occasional visit of foreign notaries to England, one of whom Swardius must have been. In fact it is known that there were no notaries living in England even in 1237, for in that year, Otho, a legate of Pope

[3] Brooke's Notary, p. 9.

Gregory IX., held a council in London for the purpose of effecting certain reforms in the Church in England, at which it was ordained that all the officials of the Church should have a seal, because, as it was recited, notaries public were not then used in England and there was frequent occasion for authentic seals.[4]

In the twelfth and thirteenth centuries important changes were wrought with respect of the office of notary public. The law began to attach a greater authenticity to their documents and it finally became possible to enforce a contract or acknowledgment, proved by a notary, in the same manner as a judicial decree, without the necessity of bringing action, a law that still continues in force in some countries. The office, moreover, gradually broke away from judicial authority, and notaries began to use seals of their own in place of those of the Courts, though in France it was not until some hundreds of years later that the form-

[4] Canons of General Council of London, Otho, legate of Gregory IX., temp. Henry III., 1237.

ality of the Court seal was dispensed with through the agency of King Louis XIV., who granted a seal to each notary.

At this period the world was being ruled theoretically by the Pope in matters spiritual, and by the Roman Emperor represented by the Emperor of Germany in matters temporal. There existed in England, as elsewhere, two systems of Roman law, the canon law and the civil law, each with its separate courts. Notaries were officers connected with these systems of law and were created by papal and imperial authority. They were frequently appointed by legates of the Pope, to whom, by their commissions, many powers were delegated, and it is thus that the authority to appoint in England became vested in the Archbishop of Canterbury, who still retains it, for although in the reign of Henry VIII. the King invested himself with the power to grant faculties, there was established a Court of Faculties attached to the Archbishop of Canterbury, to which Court it was delegated.

Because of their early connection with the Pope, and the canon law, it is frequently said that notaries have a purely ecclesiastical origin, and, though this is not an accurate statement, yet there is no doubt that their functions as they now exist are a survival of those which they exercised under the canon law, for the realm within which the canon law exercised its activities in England during the Pre-reformation period was not greatly restricted. The office and functions of notary public were specially recognized in ecclesiastical matters, one rule of the canon law being that the testimony of one notary is equal to that of two ordinary witnesses: *unus notarius equipellet duobus testibus.*[5]

In 1320 Edward II. issued two writs to the Archbishop of Canterbury and the Sheriff of London prohibiting imperial notaries from practising in the realm and forbidding credit to their instruments. Papal notaries,

[5] "Besides I know thou art a public notary, and such stand in law for a dozen witnesses," is an allusion to this dictum in Massenger's "New Way to Pay Old Debts," Act 5.

however, continued to practise in England, and, as well, in Ireland, until Henry VIII. took to himself the power of appointment through the Archbishop of Canterbury and the Court of Faculties. Papal and imperial notaries were free to practise in Scotland until 1469 in the reign of King James III., when an Act was passed declaring that notaries should be made by the King. It appears, however, that papal notaries continued in Scotland until a later date, and in 1563 it was declared that no person should take on him the office, under pain of death, unless created by the Sovereign's special letters, and thereafter examined and admitted by the Lords of Session, since when the Court of Session has had the exclusive authority of appointment.

CHAPTER II.

Appointment of Notaries.

As has been seen, notaries in England are admitted to the right to practise by the Court of Faculties, which is a court not constituted for the purpose of hearing and determining causes but for the purpose of granting faculties or privileges enabling the recipient to do acts, which, without such grant, he could not do. There is no such court in Canada and the appointment is made by gubernatorial authority.

While in Canada the appointments are made solely by the provincial authorities there is little doubt that the Governor-General has the power to appoint notaries in any Province of the Dominion. Under the British North America Act, 1867, section 12, all powers and functions at that time vested in the Lieutenant-Governor of the Province under any Act of the United Kingdom of the Provincial Legislatures were

made exercisable by and vested in the Governor-General with the advice of the Privy Council of Canada. Although there were no provincial acts authorizing the appointment of notaries at the time, there can be no doubt as to what authority the Provincial Governors had in the matter of these appointments. The commissions to the early Governors of the Provinces all authorized them to appoint judges; and in cases requisite, commissioners of oyer and terminer, justices of the peace, and other necessary offices and ministers for the better administration of justice and carrying the laws into effect; and although, unfortunately, the commissions to some of the Governors who held office at the time of Confederation cannot be found, they certainly must have contained the same authority.[1] The commission issued to Viscount Monk, first Governor-General of Canada in 1867, and the Letters Patent passed under the Great

[1] See Commissions to Governor of N.S., N.B., and P.E.I., Houston's Constitutional Documents of Canada and note of loss, p. 25. Notes 29 and 30. Also see Murdock's Epitome, p. 94.

Seal of the United Kingdom in 1878, constituting the office of Governor-General of Canada, both contain the same words regarding appointments as the commissions to the early Provincial Governors.[2] In 1883 Sir Alexander Campbell, Minister of Justice, in a report approved by the Governor-General in Council upon ordinances passed in the North-West Territories, said: "An ordinance authorizing the appointment of notaries public repeals No. 8 of 1878, which authorized the appointment of notaries, but made no other provision. The present ordinance, in addition, defines in a general way the powers of a notary, and fixes a fee for his commission. Acts similar to this ordinance are in force in other Provinces, and while the undersigned is of opinion that notaries are officers whom the Governor-General could appoint, he thinks it is more convenient to leave the exercise of this power with the local authorities, under their local Acts."[3]

[2] See Houston's Constitutional Documents of Canada for Commissions and Letter Patent.

[3] Hodgins' Dom. and Prov. Legislator, 1887-1895, p. 1239.

All the Provinces of the Dominion except Prince Edward Island now have their Acts providing for the appointment and duties of notaries public, but some of these Acts are of recent date, and many notaries now holding office in Canada were appointed by the Provincial authorities before the Acts were passed in their respective Provinces providing for such appointments, and yet, after the Confederation of the Provinces. While it is submitted that the power was not taken away from the Provincial Governors by the British North America Act, and that these appointments are valid, the legislators of some of the Provinces, in passing their notaries' acts, appear to have thought otherwise, and therefore added sections by which every such commission was declared to have been lawfully issued and all acts done under them were declared to be of the same force and effect in law as they would have been if the acts respecting notaries had been in force at the times of the issue of the commissions.[4]

[4] See Con. Stat. of N.B., 1903, ch. 70, and R. S. B. C. 1911, ch. 173.

In order to become a notary public in England one must serve a five years' apprenticeship in actual and continuous service unless he is a duly sworn and enrolled attorney or solicitor in any of the courts at Westminster, or is a proctor practising in any ecclesiastical court. The office in Canada is neither so important nor so remunerative that the appointment can be restricted to persons of such qualifications. Some of our notaries' acts provide for examination of the applicants, while with the others the matter of qualification is left to the authorities to deal with arbitrarily. As a general rule barristers and solicitors and attorneys are never refused commissions in any of the Provinces.

Alberta.

The Alberta Notaries Act is chapter 16 of the Statutes of Alberta, 1906. Under its terms the Lieutenant-Governor-in-Council may appoint, as a notary, any person that he thinks fit providing such person is a British subject residing in the Province. A fee

of $10 is payable by the appointee. Unless the notary be an advocate his term expires at the end of two years, and the date of the expiration of the notary's commission must appear on every certificate, etc., made by him.

By an amendment in sec. 6, chap. 2 of the Statutes of 1914, an application for a commission must now be accompanied by an affidavit stating that the applicant is a British subject by birth or naturalization, as the case may be, and giving the date and place of birth or the date and place of issue of the naturalization certificate.

British Columbia.

Appointments are made during pleasure in British Columbia. A fee of $20 is payable for the commission. No qualifications are mentioned by the Act, and that matter is left to the discretion of the authorities. The Act is 1911 R. S. B. C., chapter 173.

Manitoba.

In Manitoba, any other than a barrister or solicitor applying for commissions as a

notary is subject to examination by the County Court Judge of the judicial district in which the applicant resides. A fee of $5 is payable by the applicant for this examination. When the applicant has procured a certificate of qualification and it appears that a notary is needed in the place where the applicant intends to practise, he will receive the appointment. The Manitoba Act is 1913 R. S. Man., chapter 144.

New Brunswick.

In New Brunswick, all applicants other than barristers and attorneys, are subject to an examination in regard to their qualifications by the Attorney-General, and no applicant shall be appointed unless he holds a certificate from the Attorney-General certifying that he has been examined and has qualified and that the Attorney-General is of opinion that a notary public is needed for the public convenience in the place where the applicant resides and intends to practise.

The notary acts only during pleasure and residence in New Brunswick.

The Act respecting notaries is 1903 Con. Statutes of N. B., chapter 70.

Nova Scotia.

The Act respecting notaries public in Nova Scotia (1900 R. S. N. S., chapter 34), only restricts the appointment to such persons as the Governor-in-Council thinks fit. It appears, however, to be the policy of the Government, when convenient, to appoint only barristers of the Supreme Court, and to grant commissions to all barristers who apply for them irrespective of the number already practising as notaries in any particular place. By the Interpretation Act, public officers appointed hold office during pleasure only. A fee of $10 is payable for the commission.

Ontario.

Ontario, like New Brunswick and Manitoba, requires examinations for appointment by all others than barristers or solicitors. The examination is held by the County

Court Judge of the county in which the applicant resides or by other persons appointed for the purpose by the Lieutenant-Governor, and nobody shall be appointed without a certificate from such examiners as to qualifications and the need of a notary in the place where the applicant resides and intends to carry on business. The examiner is entitled to receive a fee of $5 from the applicant for each examination.

The Interpretation Act provides that all appointments are during pleasure only. The Ontario Notaries Act is 1914 R. S. Ont., chapter 160.

Prince Edward Island.

In this Province there is no statute respecting the appointment of notaries public. The Lieutenant-Governor-in-Council appoints proper persons to act residing in places where notaries are needed for the public convenience.

Saskatchewan.

The Act is 1909 R. S. Sask., 65. The Lieutenant-Governor-in-Council appoints

such persons being British as are deemed fit. A fee of $10 is payable by the applicant. Unless the person appointed is a solicitor of Saskatchewan, the commission expires at the end of two years, and, as in Alberta, the date of expiration of the commission must appear on every notarial certificate, etc.

Territories.

In the Territories notaries are appointed by the Lieutenant-Governor-in-Council on payment of a fee of $10 or such other sum as is fixed. The notary must be a British subject resident in the Territories. Commissions expire in two years from the 31st day of December in the year of the appointment, and the date of expiration must appear on all affidavits, declarations and other certificates.

CHAPTER III.

Functions and Duties of Canadian Notaries in General.

Ayliffe defines a notary in the following manner: "We call him a notary who confirms and attests the truth of any deeds or other writings, to render the same more credible and authentic in any country whatever. He is principally made use of in courts and in business relating to merchants. For a notary is a witness, and ought to give evidence touching such things as fall under his corporeal senses, and not of such matters as fall under the judgment or understanding."[1]

While it is true that a notary public is really only a ministerial officer whose main function is the authentication of documents, the duties of notaries in England have widely extended since the time of Ayliffe's writing. As is said in Brooke's Notary:[2]

[1] Ayliffe, 382.
[2] Ed. 7th, p. 23.

"An English notary with a foreign practice must not only be proficient in one or two foreign languages, but he must be familiar with the principles and practice of foreign law. He has to prepare important documents, such as contracts, leases, powers of attorney, articles of partnership, wills and other instruments, that are intended to be used in the colonies and abroad."

In most of the continental countries of Europe and in the Province of Quebec, by reason of its retention of French law and customs, notaries are even more important officers than they are in England and elsewhere in the United Kingdom. Their practice more nearly corresponds with that of an English solicitor carrying on a non-litigious business than with the practice of the English notary. They make practically all conveyances and keep in their custody all instruments which it is necessary to make authentic. In France protests of negotiable instruments are not made by notaries but by officers called *huissiers*. This, however, is not true of the Province of Quebec, where

the whole subject of negotiable instruments is governed by Dominion legislation.

The office of notary public in Canada is neither so important nor so profitable as the same office in England, except in the Province of Quebec, where an entirely different system of law prevails from that of the other Provinces of the Dominion. Eleswhere than Quebec, in Canada, there are very few duties of a notary that cannot be performed by commissioners, justices of the peace or other functionaries.

In England notaries are trained men. As has been seen, they are called upon frequently to draw difficult conveyances and other instruments. Whether in Canada the requirements for admission are not so great because the bulk of the work of drafting documents is done by solicitors, or, whether the case is reversed, is difficult to say. The fact, however, is that here, notwithstanding that a notary by his commission is authorized and empowered to draft documents, he seldom has the opportunity of exercising this power, and the work he is called upon to

do is largely that of authentication under various Dominion and Provincial statutes.

Of the statutes which require acts of notaries, the most important is the Bills of Exchange Act, which is legislation of the Dominion Parliament and applicable to all parts of Canada. As in England, and almost all other countries, the noting and protesting of bills of exchange and other negotiable instruments is done almost entirely by notaries. Only the one exceptional case, when the services of a notary cannot be obtained at the place where the instrument is dishonored, may any other functionary act. In such a case the protest may be made by a justice of the peace.

Next to the noting and protesting of negotiable instruments, the work which a notary is most frequently called upon to do in Canada is the proving by his certificate and seal the execution of conveyances and powers of attorney. This is a matter regulated by statutes of the Provinces or States in which the lands affected by the conveyances are situated. In Canada each

Province has its own legislation concerning the execution of conveyances. A notary residing in one of the eastern Provinces is frequently called upon to authenticate the signatures of parties to a deed of land in one of the western Provinces, according to the requirements of the legislation of that Province and *vice versa*. It is therefore convenient that notaries should be familiar with the mode of execution of instruments in all the Provinces of the Dominion, though this knowledge is seldom necessary as in most cases when a conveyance is forwarded from one Province to another for signature, it is accompanied by instructions in detail as to the requirements upon execution. Canadian notaries are also frequently called upon to authenticate conveyances and other documents for use in the United States and occasionally those for use in England or in fact in any civilized country of the world. A notary can scarcely be presumed to know the requirements in the case of foreign documents and when they are not accompanied by instructions he should procure them

before attempting to act, as an improperly executed document is more often the cause of loss to the client than the delay in waiting until the proper mode is ascertained.

Conveyances for execution in Provinces in which the land affected lies are not so frequently proved before notaries. The conveyancing acts of all the Provinces of the Dominion provide for the execution of conveyances by any one of several functionaries. Among the officers who may act in Canada in addition to notaries are justices of the peace, barristers, attorneys and commissioners of the courts. It is only when the document is for use abroad that the services of a notary become really necessary, and that of course is because the other officers named are not recognized beyond the limits of the Province in which they have jurisdiction to act, whereas the office of notary public has, practically speaking, an international character and by the law of nations has credit in foreign countries.[3]

[3] *Hutchison* v. *Manington*, 6 Ves. Jr. 823.

In the same way that conveyances are proved before notaries, so are affidavits for use in the courts at home and abroad, and similarly, the taking of affidavits for use abroad by notaries is a much more frequent occurrence than that of affidavits for use at home. In this connection the notary must be guided by the rules of the court in which the affidavit is to be used.

Notaries who live in or near seaports are often required to prepare ship protests, charterparties, bottomry bonds and average agreements. Seldom, however, in Canada are these matters dealt with by notaries who are not also solicitors or attorneys.

Besides the functions already mentioned there are innumerable statutes, Dominion and Provincial, some of the more important of which it is proposed to deal with in succeeding chapters, by which oaths and declarations are required to be taken and acts evidenced before notaries.

In all things a notary must act in the best interests of his client consistently with the governing laws. If he prepares a docu-

ment he should be sure that the client fully understands the rights and liabilities created by it. It is even said that it is the duty of a notary proving a conveyance not prepared by him to explain to an illiterate grantor the legal and equitable obligations imposed by the conveyance and consequent on its execution.[4] And a notary public may be made liable in damages for negligence in the exercise of powers conferred on him by his commission.

A notary public who is one of the endorsers on a promissory note is not entitled to act as notary to make the protest.[5] Broadly stated it may be taken as a rule that a notary who is a party to, or whose personal affairs are directly affected or concerned by any transaction, is precluded from acting in that particular matter.[6] Relationship is not of itself a disqualification.

[4] *Ayotte* v. *Boucher*, 9 S. C. R. 460, *per* Ritchie, C. J.
[5] *Pelletier* v. *Brosseau*, M. L. R. S. C. 331.
[6] Ayliffe, 382.

CHAPTER IV.

Documents of Notaries as Evidence.

While, as we are accustomed to say, and as it has been put in the early authorities, a notary's attestation by the law of nations is given credit in every civilized country, this cannot, without qualification, be accepted as a correct statement. A notary public is not an international officer though he is to some extent recognized as being possessed of an international character by most nations. It formerly was thought in England that a certificate under the hand and seal of a foreign notary would be accepted as sufficient evidence of the facts certified without further proof. Thus in *Hutcheson* v. *Mannington*,[1] upon a motion that a sum of money in the hands of the Accountant-General of the Court in trust be paid out under a power of attorney executed abroad, where the execution was verified by an affidavit certified to have been

[1] 3 Ves. 823.

sworn before a notary public, Lord Ellenborough granted the order and observed that a notary public by the law of nations has credit everywhere. Similarly in *Hayward* v. *Stephens*,[2] it was decided that the notarial seal or signature mentioned in sec. 22 of the Chancery Practice Act,[3] need not be verified, although an affidavit of verification had been used in a previous case covered by the same statute.[4] In a case of *Garvey* v. *Hilbert*,[5] a petition for payment of a sum of money under authority of a power of attorney executed in the United States and attested by a notary public, was granted. In this case, however, the fact that the notary was such was verified by the Secretary of State at Washington, and in *Kinnaird* v. *Saltaun* where [6] a power of attorney was executed in Paris in the presence of two witnesses and authenticated by the certificate of one Sensier, the Vice-Chancellor made an order that

[2] 36 L. J. Ch. 135. See also *Davies* v. *Atkinson* (1909), W. N. 212.

[3] 15 & 16 Viet. ch. 86.

[4] *Armstrong* v. *Stockholm*, 23 L. J. Ch. 176.

[5] 1 Jac. & W. 180.

[6] 1 Mad. 227.

the power of attorney be acted upon by the Accountant-General only after production of an affidavit verifying that Sensier was a notary public of Paris. A notarial certificate of the protest abroad of a foreign bill of exchange has been held sufficient proof of the protest,[7] and in *Brain* v. *Preece* [8] it was said that the same rule applied to protests made in England, but in *Chesmer* v. *Noyes*,[9] Lord Ellenborough decided that if a bill of exchange be drawn in a foreign country payable in England, and be protested in England, the latter will not be admissible in evidence in an action in England, but must be proved in the same manner as if it were an inland bill. Mr. Justice Story in his book on Bills,[10] however, says that no authority was produced for the doctrine, and that the true question is not where the bill is protested, but whether the bill was a foreign or inland bill. In an Irish case of

[7] Bayley on Bills, 6 Ed., 490.
[8] 11 M. & W. 775.
[9] 4 Camp. 129.
[10] Par. 277.

Furnell v. *Stackpool*,[1] it was held that before copies of documents executed abroad attested by a notary can be admitted in evidence, the notary must be shewn to be such, and his seal proven. The leading English authority is that of *Nye* v. *McDonald*,[2] before the Judicial Committee of the Privy Council, a case, fortunately, which arose in Canada and must be considered here as the last word on the subject. In an action in Lower Canada, the plaintiff produced a deed of sale executed before a notary public in Upper Canada and a certificate of such notary of the due execution of the deed. No further evidence of execution was produced. It was held that the certificate of a notary public of the due execution of a deed in a colony regulated by English law does not dispense with proper evidence of execution, though the certificate is put in evidence in a colony regulated by French law where such is sufficient evidence. It had been argued that the certificate must operate according to

[1] 1829, Millward (Ir.) 247.

[2] 1870, L. R. 3 P. C. 342; 39 L. J. P. C. 34. See also *Re Earls Trusts*, 1858, 4 K. & J. 300; and *Re Davis Trusts*, 1869, L. R. 8 Eq. 98.

the law of the country where it is produced in evidence, and that in Lower Canada where the French law prevails, a notarial certificate is conclusive evidence of the due execution of the instrument. In giving the judgment Lord Cairns said: "A notary public in the Province of Upper Canada, a Province regulated by English law, has no power by English law, to certify to the execution of a deed in such a way as to make his certificate evidence, without more, that the deed was executed, and that it was attested in the manner in which the deed professes to be attested. It is familiar that according to the law of England, the mere production of the certificate of a notary public stating that a deed had been executed before him, would not in any way dispense with the proper evidence of the execution of the deed." Upon the authority of this case it is safe to say that only by statute will the courts now judicially recognize the seal and signature of a notary and receive a notarial certificate as evidence of facts certified in it. In England and in Canada, therefore, the matter is now in nearly every case settled by

some statute. For instance, in England the Commissioners for Oaths Act, 1889, provides by section 3 as follows:—(1) Any oath or affidavit required by the purposes of the registration of any instrument in any part of the United Kingdom may be taken or made in any place out of England before any person having authority to administer an oath in that place; (2) In the case of a person having such authority otherwise than by the law of a foreign country, judicial and official notice shall be taken of his seal or signature affixed, impressed, or subscribed to or on any such oath or affidavit. While no such comprehensive legislation dealing with the subject has been enacted by any of the provinical legislatures of Canada, nevertheless, the oath or affidavit required for the purpose of the registration of instruments is dealt with in this respect by the Land Registry Acts of all the Provinces, as well be seen from following chapters, and the admissibility of documents authenticated by notaries, as evidence in the courts, is regulated by all the Provinces in their statutes respecting evidence.

CHAPTER V.

Registration of Instruments Affecting Lands Generally.

As has been seen, one of the functions of notaries public most frequently exercised in Canada is the authentication of deeds and other instruments affecting the title to lands for registration purposes. In every Province there is some statute or statutes which provide for registry districts, each with its separate registry office wherein instruments concerning the lands within such district must be recorded, in order to preserve to the persons holding under the instruments their rights. The object of this legislation is to provide a means by which intending purchasers and others can ascertain whether the intending vendor is, in fact, the legal owner, the extent and description of the land he owns and what, if any, encumbrances, are charged against it. For example, if the owner of a certain piece of land wishes to borrow money on a mortgage

of it as security for the repayment of the loan, the intending mortgagee, before making the loan, will need to ascertain whether the land legally belongs to the applicant for the loan. He does so by a search of the title in the registry office for the district in which the land is situated. After he has loaned the money he registers in the office his mortgage, which, from the date of its registration, becomes a charge on the property. Any subsequent purchaser of the lands takes the same subject to that mortgage, for its registration is notice to the world of its existence. Similarly, judgments of courts of record when registered are charges against the lands of the judgment debtor.

There exist in Canada several different systems of registration which fall, however, into two main groups. In the eastern Provinces of the Dominion there is in force what may be for convenience called the "old system" of registration of documents. The western Provinces have adopted in various forms the "new system," or the Torrens System of registration of titles.

Under the old system an intending purchaser, by the use of index books which are kept in the registry office, must follow the history of the lands back to an early period, noting all conveyances and other instruments, including judgments and decrees of the courts affecting the lands, in order to find out whether or not the intending vendor can give a good title. The new system which had its origin in Australia was formulated for the purpose of simplifying the process by which the facts in connection with the title are discovered. When land is bought under the operation of the acts governing the new system, its title is searched and a certificate is granted to the owner stating the nature of the title held by him. Subsequent encumbrances are registered in the office, and as each transfer is made a new certificate is made, containing, of course, mention of the intervening registered encumbrances. In all the acts in both systems one essential is the registration of the instruments in order to make them effective, for unregistered instruments are ineffective

against persons claiming under instruments which are registered, notwithstanding that the unregistered instrument be first in point of time as to the making and execution.

It is in connection with the registration of the instrument that the duties of the notary arise under these acts. Before the registrar can accept a document for registration purposes, it must be properly executed, and the execution by the parties to it must be authenticated, and among the officers before whom the execution may be authenticated are notaries. When the document is executed, as it frequently is, outside of the Province where the land is situated, it is in nearly all cases authenticated by a notary, for, as has been seen, the office of notary public has somewhat of an international nature and the notary has an official seal of which, under the acts, the registrars take cognizance.

Besides the registration acts hereafter dealt with in this work, there is a land titles act in Ontario[1] in force in certain sections

[1] 1914, R. S. Ont., ch. 126.

of that Province, and an act somewhat similar in its nature in Nova Scotia,[2] under which nothing has been done, and which is practically a dead letter. As neither of those acts define or provide for any duties of notaries, it is not deemed useful to consider them in this work.

[2] N. S. Acts, 1904, ch. 47.

CHAPTER VI.

Registration in Alberta and Saskatchewan.

The Provinces of Alberta and Saskatchewan have both adopted the Torrens system of land transfer, and their respective Statutes bringing the system into force are so nearly identical that they can be treated here as one. Ontario, Manitoba and British Columbia all have their own systems of land transfer which, in some respects, correspond with that in force in these provinces, but which are more conveniently dealt with separately. The Torrens system of land transfer was founded by Sir Robert Torrens, a collector of customs in South Australia, where the original Act was made law. The object of the system, as said in *Gelk* v. *Wesser*,[1] "is to save persons dealing with registered proprietors from the trouble and expense of going behind the register in order

[1] 1891, A. C., at 254.

to investigate the history of their author's title and to satisfy themselves of its validity." Under the old system of land transfer, such as in use in Nova Scotia and New Brunswick, the entire burden is upon the intending purchaser of ascertaining whether or not his vendor can give him a good title to the land. In order to ascertain this he must employ a solicitor to search the records of all conveyances affecting the land in question which have been placed on record for the period of the preceding sixty or more years, a proceeding which in some cases involves a great deal of time and expense, and about which when completed, because of the defects of the system, there is generally a lingering doubt lest some document in the long lists that have to be scanned has been overlooked or the meaning of the legal effect of the document misunderstood by the searcher. Under the Torrens system any intelligent person can find out exactly the interests of any other person in a piece of real estate without the intervention of the solicitor.

The Provinces of Alberta and Saskatchewan are divided up into registration districts, each with its Registrar of Titles, who must be an experienced barrister. To the owners of all lands brought under the provisions of the Act are granted certificates of title. These certificates merely certify that the owners of action lands are such owners subject to the incumbrances, liens and interests notified on the certificate or which may be made on the register after the issue of the same. Then follows notification of the registered encumbrances, if any. Upon being shown this certificate of title the intending purchaser need only examine the register for liens and encumbrances from the date of the certificate down, to become apprised of the estate which the intended vendor holds in the lands, subject, however, to the following inherent rights:—

(*a*) Subsisting reservations or exceptions contained in the original grant of the land from the Crown.

(*b*) Liens for unpaid taxes.

(*c*) Any public highway, public right-of-way or other public easement over or in respect to the land.

(*d*) Any subsisting lease for a period not exceeding three years where there is actual occupation of the land under the same.

(*e*) Any decrees, order or executions affecting the interests of the owner in the land which have been filed or registered and kept in force.

(*f*) Any government right by statute or ordinance of expropriation.

(*g*) Any right-of-way or other easement granted or acquired, in Alberta, under the provision of any Act or law in force in the Province, and in Saskatchewan, under the provisions of the Irrigation Act.

Like the certificate of title, the instrument by which registered ownership is conveyed is anything but complex in its nature. It is an instrument which, according to authority, would not, apart from the Act, pass any title in land.[2] None of the complicated

[2] *Re Rivers*, 1 Terr. L. R. 474.

clauses of the deed are made a part of it. It merely states simple language that, in consideration of a certain sum of money, the vendor has transferred all his interest in a certain piece of land to the purchaser and that his ownership is subject to the encumbrances, and liens notified thereon, if any. This transfer, together with the vendor's duplicate certificate of title, is delivered to the Registrar of the District in which the land affected is situate. On the latter document the Registrar makes a memorandum cancelling the same and he then grants to the transferee a new certificate of title to the lands and issues to him a duplicate. The instrument executed by the transferor is little more than an authority to the Registrar to cancel the old certificate and grant a new one.

Books are kept containing all encumbrances registered against the owners of the lands, and as each new certificate is made it contains all such encumbrances registered up to the date when it is granted.

As in the case of most of the other Provinces, leases for a term not exceeding three years are without the operation of the Act and attach to the lands independently. Leases, however, when the land is demised for a life or lives or for a term of more than three years, must be executed according to the form presented by the Act and must be registered. Mortgages, likewise, must be made in the form prescribed by the Act and must be registered.

While under the system no unregistered interest in land is effectual as against a *bona fide* transferee, nevertheless, the Courts recognize certain equitable interests and estates. In order that the simplicity of the system should not be destroyed and at the same time that the holder of an unregistered instrument or other person with an equitable interest should not be shut out from his remedy there was devised, what is called in the acts a caveat. The person claiming an interest in the land files with the Registrar a caveat in the form prescribed by the Acts, the caveator forbidding the registration of

any person as transferee or owner unless the instrument transferring the ownership is expressed to be subject to the claim of the caveator and stating the nature of the caveator's claim. This must be supported by an affidavit of the caveator as to the *bona fides* of the claim. The effect of the caveat is that, so long as it remains in force, the Registrar shall not register any instrument affecting the land unless the instrument is expressed to be subject to the claim of the caveator, thus preserving to the caveator his rights in the land, if any, as against third persons who would otherwise have no notice of the equitable interest. The claim under the caveat, unless withdrawn, may be tried out in the Courts and the rights of all parties in the lands determined.

All instruments executed within the province, except instruments under the seal of a corporation, caveats, orders of a court or judge, executions or certificates of any judicial proceedings, attested as such, shall be witnessed by one person who shall sign his name to the instrument as witness and who

shall make an affidavit before the notary or other officer empowered under the Acts to receive the same, in the following form:—

PROVINCE OF)
TO WIT)

I, A.B., of , in the , make oath and say:

1. That I was personally present and did see named in the within (*or* annexed) instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein;

2. That the same was executed at the in the , and that I am the subscribing witness thereto;

3. That I, , know the said and he is in my belief, of the full age of twenty-one years.

SWORN before me at)
in the this)
day of 19) *Signature.*
A Notary Public,)
(Notarial Seal.)

My commission expires on the
day of 19 .

Any instrument executed under the seal of a corporation is exempted from being attested by a witness, the seal being considered to prove itself. The instrument should, however, be countersigned by at least one officer of the corporation.

Every instrument executed outside the Province except grants from the Crown, orders-in-council, instruments under seal of a corporation or caveats, shall be executed and the execution evidenced in the same manner as those executed within the Province. If the affidavit is made before a notary, however, it is imperative that his signature be accompanied by his official seal.

The maker of an instrument for registration must when required to do so by the Registrar make an affidavit to accompany the instrument in the following form:[4]

[4] The Registrar may require evidence that any person making a transfer mortgage, encumbrance or lease is of the full age of 21 years.

CANADA: | I,
PROVINCE OF | make oath and say:
TO WIT: |

1. That I am the within named and that I am of the full age of twenty-one years.

2. That I am the registered owner (*or* the person entitled to be registered as the owner) of the within described lands.

SWORN before me at the)
of in the)
of this day of)
A.D. 191

Every caveat must be supported by an affidavit of the caveator or his agent. In Alberta it must be in the following form:

I, (*the caveator or his agent*) make oath and say (*or* solemnly declare) as follows:

1. I am the within named caveator (*or* agent for the above-named caveator).

2. I believe that I have (*or* the said caveator has) a good and valid claim upon the said land (mortgage *or* incumbrance) and I say that this caveat is not being filed

for the purpose of delaying or embarrassing any person interested in or preparing to deal therewith.

SWORN before me, etc.

In Saskatchewan the affidavit in support of the caveat must be as follows:

I, the above named A. B. (*or* C. D., agent of the above A.B.), of (*residence and description*) make oath and say:

1. That the allegations in the above caveat are true in substance and in fact, to the best of my knowledge, information and belief.

2. That the claim mentioned in the above caveat is not to the best of my knowledge, information and belief founded upon a writing or a written order, contract or agreement for the purchase or delivery of any chattel or chattels within the prohibition contained in sub-section (2) of section 125 of the Land Titles Act.

SWORN before me at)
in the)
this day of)
191 .)

CHAPTER VII.

Registration in British Columbia.

The British Columbia Land Registry Act, which is chapter 127 of the Revised Statutes of British Columbia, 1911, is drawn to a large extent, from the Torrens System, but is different in many respects from the Alberta and Saskatchewan Acts. The system was introduced into Vancouver Island when it was a separate colony from British Columbia, and when the two colonies were united, the system was put in force over the whole new colony. By successive amendments the British Columbia Act has gradually become more like the Alberta and Saskatchewan Acts in principle, though it does not compel the use of simple forms and does not provide for even the optional use of more than a few of them. On the other hand, however, there was introduced into the British Columbia Act progressive features that are not contained in Canadian Torrens System or, indeed, in Australia where the Tor-

rens System had its beginning. One of these features is the provision for registering the "absolute fee," which is *prima facie* evidence of title only and can be converted into an "indefeasible fee" on establishing to the satisfaction of the Registrar that the owner of the "absolute fee" has a good, safe holding and marketable title.

Whenever land is registered under the Act the owner receives a certificate of title from the Registrar and the registration has the same effect as if a grant from the Crown had been issued prior to 1870, the date of the confederation of the united colonies with the Dominion of Canada, and of the passing of the first land registry act for the new Province. The certificate of registration is not conclusive evidence that the holder thereof has a good title to the lands. He is only *prima facie* deemed to be the owner subject to existing registered charges. The registered owner may, however, apply and obtain a certificate of indefeasible title. This application is made to the Registrar. If the lat-

ter is satisfied that a good and marketable title is in the registered owner he grants the certificate, otherwise he refers it to the Master of Titles, by whom the matter is decided and who either grants or refuses the certificate. The certificate of indefeasible title so long as it remains in force and uncancelled, is conclusive evidence in all Courts that the holder is seized of an estate in fee-simple in the lands subject to:

(*a*) The reservations contained in the original grant from the Crown.

(*b*) Any provincial taxes, rates or assessments due or accruing due.

(*c*) Any municipal taxes, rates or assessments due or accruing due.

(*d*) Any lease, or agreement for lease, for a period not exceeding three years, where there is actual occupation under the same.

(*e*) Any public highway or right-of-way, watercourse or right of water, or other public easement.

(*f*) Any right of expropriation by statute.

(*g*) Any *lis pendens*, mechanic's lien, judgment, caveat, issue, charge, or assignment for the benefit of creditors registered since the date of the certificate.

(*h*) Any condition, exception, or reservation indorsed thereon.

(*i*) The right of any person to show that any portion of the land is by wrong description of boundaries or parcels improperly included is such certificate.

(*j*) The right of any person to show fraud, wherein the registered owner has participated in any degree.

The certificate of indefeasible title is therefore substantially the same as the "certificate of title" issued under the Alberta and Saskatchewan Acts. With the qualifications mentioned an intending purchaser can rely upon an inspection of the certificate for assurance that he is getting what he bargained for, and the transfer of lands is therefore made less expensive and less open to the risk taken by every purchaser of lands which are under the old system, that there is some defect in the title.

When land is conveyed the certificate of title is delivered up and cancelled and a new certificate issued.

No instrument purporting to transfer, charge, or in any way affect, land shall pass any estate or interest either at law or in equity unless registered. This, however, does not apply to leases for a term not exceeding three years where there is actual possession under the same.

No deed or other instrument can be registered until the execution of the same is acknowledged or proved in the manner provided by the Act, and such acknowledgment or proof appears by a certificate under the hand and seal of the notary indorsed upon or attached to such deed or instrument.

If the acknowledgment of proof is made within the Province the notary public before whom the same is taken or made must be one practising within the Province; if made without the Province and within British Dominions it may be made before any notary public; if made without British dominions it must be made before a notary

public practising in the county in which it is made duly certified to be a notary public by some British ambassador, charge d'affaires, minister, consul or consular agent, or governor or secretary of the state, province, or territory, or clerk of a court of record having a seal.

No acknowledgment of the execution of an instrument may be taken unless the party offering to make the acknowledgment appears before the officer, and unless he is either personally known to the officer or his identity be proven by the oath or affirmation of a competent witness, and the facts, as the case may be, must be stated in the certificate of acknowledgment.

Acknowledgments and proof of execution of instruments may be made either by the party executing in person the instrument or, except in cases of deeds executed by a married woman, or an attorney in fact, by a subscribing witness to the instrument.

When an instrument is acknowledged by the party executing in person, the party must acknowledge that he is the person

mentioned in the instrument as the maker, and whose name is subscribed thereto as a party, that he is of the full age of twenty-one years, that he knows the contents of the instrument and that he executed the instrument voluntarily, and the certificate must recite the facts.

The following is the form prescribed by the act of certificate of the notary when the execution is acknowledged by the maker.

BRITISH COLUMBIA.
DISTRICT OF SS (*or if the acknowledgment is taken without the Province, as the case may be*).

I hereby certify that , personally known to me (proved by the evidence on oath [*or* affirmation] of E.F.), appeared before me and acknowledged to me that he is the person mentioned in the annexed instrument as the maker thereof, and whose name is subscribed thereto as party, that he knows the contents thereof, and that he executed the same voluntarily, and is of the full age of twenty-one years.

IN TESTIMONY WHEREOF I have hereunto set my hand and seal of office at
this day of , in the year of Our Lord one thousand nine hundred and

(Notarial Seal.) A Notary Public practising at in the Province of British Columbia (*or if the acknowledgment is taken without the Province, as the case may be.*)

Where an instrument is executed by an attorney in fact the acknowledgment may be made by the attorney in fact, and the latter must acknowledge that he is the person who subscribed the name of the maker (naming him) to the instrument, that the maker (naming him) is the person mentioned in the instrument as the maker thereof, that the maker (naming him) is of the full age of twenty-one years, that he, the attorney in fact, knows the contents of the instrument, and subscribed the name of the maker thereto voluntarily, as the free act and deed of the maker (naming him); and the recital

of these acknowledgments must appear in the certificate.

Form of certificate where instrument is executed by attorney in fact:

PROVINCE OF BRITISH COLUMBIA. DISTRICT OF } SS (*or if the acknowledgment is taken without the Province, as the case may be.*)

I hereby acknowledge that (*naming attorney in fact*) personally known to me (proved by the evidence on oath [*or* affirmation] of E.F.), appeared before me, and acknowledged to me that he is the person who subscribed the name of to the annexed instrument as the maker thereof, that the said is the same person mentioned in the said instrument as the maker thereof and that he, the said (*naming the attorney in fact*), knows the contents of the said instrument and subscribed the name of the said (*naming the maker*) thereto voluntarily as the free act and deed of the said .

IN TESTIMONY WHEREOF I have hereunto set my hand and seal of office the

day of in the year of Our Lord one thousand nine hundred and

(Notarial Seal.) A Notary Public practising at in the Province of British Columbia (*or if the acknowledgment is taken without the Province, as the case may be.*)

The power of attorney or a copy certified to be a true copy by the Registrar must be filed in the office of the Registrar of Deeds before application is made to register the instrument executed by the attorney in fact.

Instruments of corporations should be executed by the secretary or other officer of the corporation authorized to affix the seal of the corporation to the instrument and the acknowledgment made by such officer. He must acknowledge that he is the person who subscribed his name and affixed the seal of the corporation as the secretary or the other officer of the corporation to the instrument, and that he was first duly authorized to subscribe his name as such and to affix such

seal to the instrument, a recital of these facts appearing in the certificate of acknowledgment.

Form of certificate of acknowledgment of execution by officer of a corporation:

PROVINCE OF BRITISH COLUMBIA. DISTRICT OF } SS (*or if the acknowledgment is taken without the Province, as the case may be.*)

I hereby certify that , personally known to me (proved by the evidence on oath (*or* affirmation) of E.F.), appeared before me and acknowledged to me that he is the secretary (*or, as the case may be*) of (*naming the corporation*), and that he is the person who subscribed his name to the annexed instrument, as secretary (*or, as the case may be*) of the said (*naming the corporation*), and affixed the seal of the said (*naming the corporation*) to the said instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and seal of office at this day of 19 .

(Notarial Seal.) A Notary Public practising at in the Province of British Columbia (*or if the acknowledgment is taken without the Province, as the case may be.*)

When an instrument is executed by a married woman and before her acknowledgment is taken, she must be first made acquainted with the contents of the instrument and its nature and effect. She acknowledges, on examination apart from and out of the hearing of her husband, that she knows the contents of the instrument and understands the nature and effect thereof, that she executed the same voluntarily without fear or compulsion or undue influence of her husband, that she is of full age and competent understanding, and does not wish to retract the execution of the same; and the

fact of the acknowledgment must be recited in the certificate.

Form of certificate of acknowledgment by a married woman:

PROVINCE OF BRITISH COLUMBIA. DISTRICT OF } SS (*or if the acknowledgment is made without the Province, as the case may be.*)

I hereby certify that A.B. personally known to me to be the wife of C.D. (proved by the evidence on oath (or affirmation) of E.F.), appeared before me, and being first made acquainted with the contents of the annexed instrument, and the nature and effect thereof, acknowledged on examination and apart from and out of the hearing of her said husband, that she is the person mentioned in such instrument as the maker thereof, and whose name is subscribed thereto as party; that she knows the contents and understands the nature and effect thereof; that she executed the same voluntarily without fear or compulsion of, or undue influence of her said husband, and that she is of

full age and competent understanding, and does not wish to retract the execution of the said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and seal of office at the day of in the year of Our Lord one thousand nine hundred and .

(Notarial Seal.) A Notary Public practising at in the Province of British Columbia (*or if the acknowledgment is taken without the Province, as the case may be*).

An instrument of a married woman acknowledged in the manner and form mentioned when registered passes the estate and title of the married woman in the land to which the instrument relates as effectually as if she had been unmarried. It is unnecessary that the husband join in the conveyance or otherwise consent to it.

Instruments, other than those executed by married women and attorneys in fact,

may be acknowledged or proved by a subscribing witness to the instrument. In such cases the subscribing witness must appear personally before the notary and acknowledge to him under oath that he is the person whose name is subscribed to the instrument as a witness, and that he is of the full age of sixteen years, and shall prove that the maker (naming him) whose name is subscribed thereto as such, being of the full age of twenty-one years, executed the instrument in his presence voluntarily; and the certificate must recite these facts.

Form of certificate of acknowledgment of subscribing witness.

PROVINCE OF BRITISH COLUMBIA. DISTRICT OF } SS { *(or if the acknowledgment is taken without the Province, as the case may be).*

I hereby certify that (*naming subscribing witness*), personally known to me (proved by the evidence (or affirmation) of E.F.), appeared before me, and acknowledged to me that he is the person whose

name is subscribed to the annexed instrument as witness, and that he is of the age of sixteen years, and having been duly sworn by me and proved to me that (*name of maker*) being of the full age of twenty-one years, did execute the same in his presence voluntarily.

IN WITNESS WHEREOF I have hereunto set my hand and seal of office at
this day of in the year of Our Lord one thousand nine hundred and

(Notarial Seal.) A Notary Public practising at in the Province of British Columbia (*or if the acknowledgment is taken without the Province, as the case may be*).

As in Alberta, and Saskatchewan, the Courts recognize certain equitable interests that are not registered and in order that the holder of such an interest may be not deprived of it, he may, under the provision of the Act by leave of the Registrar, lodge a

caveat forbidding any disposition of the land until the caveat be disposed of as provided by the Act. This caveat must be verified by the oath of the caveator or his agent. The certification should appear in the form of an affidavit following the caveat and may be in the following form:

I, the above named A.B. (or C.D.) (residence and description) agent for the above-named A.B. make oath (*or* affirm, *as the case may be*) and say that the allegations in the above caveat are true in substance and in fact (*and if no personal knowledge, add,* "as I have been informed and verily believe").

(Notarial Seal.) { Sworn to at / in the / this day of / before me

A Notary Public practising at
in the Province of British Columbia.

CHAPTER VIII.

Registration in Manitoba.

Torrens System.

Manitoba, like the other western provinces, has adopted the Torrens System of Land Registration, but nevertheless still retains the old system also. A general outline of the Torrens System will be found in Chapter VI. on the Alberta and Saskatchewan Land Titles Acts.

The Manitoba Act prescribes no form for the affidavit accompanying instruments. Under Section 14 of the Act, however, all instruments executed by a registered owner and presented for registration under the Act must be accompanied by affidavits as to execution, identity and age, and such other evidence as the district registrar may require. Unless in some special cases where additional evidence may be required the forms used in Alberta and Saskatchewan should prove sufficient.

The Act provides a form of affidavit in support of caveat and it is as follows:

I, A.B., make oath and say (*or* solemnly declare) as follows:

1. I am the within named caveator.

2. I believe that I have a good and valid claim upon the said land (mortgage *or* encumbrance) and I say that this caveat is not filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

3. The allegations in the within caveat are true in substance and in fact (*and if the deponent has not a personal knowledge of the facts, add*) as I verily believe.

Sworn before me, &c.

Under Section 52 of "The Manitoba Evidence Act," affidavits required or provided for by any statute of the Province may be sworn before a notary public, whether made within or outside of the Province, the notary in the latter case affixing his official seal.

Old System.

The old system of land registration in Manitoba (The Registry Act, R. S. Man. 1913, ch. 129) is not unlike the systems in use in the eastern Provinces of the Dominion.

By Sections 69 and 70 any instrument affecting lands shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration unless such instrument is registered before the registration of the instrument under which the subsequent purchaser or mortgagee claims, providing the subsequent purchaser or mortgagee had not actual notice of the prior instrument.

Generally speaking, every instrument affecting lands should be registered. This, however, does not apply to any lease for a term not exceeding three years, where the actual possession goes along with the lease, the Act being declared not to extend to such.

Registry offices are situate in such districts as the Lieutenant-Governor-in-Council deems most satisfactory to the public convenience.

Under Section 36, every instrument other than a will, letters of administration, grant from the Crown, order-in-council, by-law, instrument under the seal of a corporation or of any Court in the Province, claim for lien under "The Mechanic's and Wage Earners' Lien Act" or proceedings under power of sale in a mortgage (except conveyance) for the purpose of registration must be accompanied by an affidavit of a subscribing witness, setting forth in full his name, place of residence and addition or calling, to the following facts:

(*a*) the execution of the original and duplicate, if any there be;

(*b*) the place of execution;

(*c*) that the deponent knew the parties to such instrument if such be the fact; or that he knew such one or more of them, according to the fact;

(*d*) that he is a subscribing witness thereto.

The affidavit may be in the following form:

PROVINCE OF MANITOBA.

TO WIT:

I, A.B. of (*town*) in the (*district*), (*occupation or addition*) make oath and say as follows:

1. That I was personally present and did see (*the grantor*) named in the within (*or* annexed) instrument, who is personally known to me to be the person therein named, duly sign and execute the same.

2. That the said instrument was so executed at in the

3. That I know the said

4. That I am the subscribing witness to the said instrument.

SWORN before me at in the of in the District of this day of A.D. 19

(Notarial Seal.)

A Notary Public.

It is only necessary that the execution by the grantor be verified by affidavit.

The affidavit must be made on the instrument or securely attached to it.

If the affidavit is made before a notary outside of the Province it must be under his official seal.[1]

The seal of any corporation affixed to an instrument with the signature of the Secretary or other authorized officer is sufficient evidence of the due execution for the purpose of registration and no affidavit is required.

The notary cannot take the affidavit of any witness to an instrument to which the notary is himself a party.

Proof by affirmation or declaration may be substituted for the affidavit where by the law of the country where such proof is made an affirmation or declaration may be substituted for an affidavit.

[1] *Vide* Registry Act, sec. 47, and "Manitoba Evidence Act," sec. 52.

CHAPTER IX.

Registration in New Brunswick.

Conveyances affecting the title to lands in the Province of New Brunswick are recorded in offices called Registry of Deeds offices.

The New Brunswick Registry Act is Chapter 151 of the Consolidated Statutes of New Brunswick, 1903. Under its provisions all instruments affecting land shall be fraudulent and void against subsequent purchasers for valuable consideration whose conveyances are previously registered. One exception, however, is made in the case of leases for a term not exceeding three years when the actual possession goes along with the lease.

Besides being void as against subsequent purchasers, instruments, unless registered within three months of the date of their execution, shall be fraudulent and void as

against any *bona fide* judgment creditor of the grantor who has, prior to the registration of the instrument, registered a memorial of his judgment or has lodged with the Sheriff of the County in which the land is situate a writ of execution against the lands covered upon the judgment.

Before an instrument can be registered the execution of the same shall either be acknowledged by the parties executing it or be proved by a subscribing witness. The acknowledgment of the parties of their signatures or the proof of the signatures by the subscribing witness may be taken before a notary among other functionaries.

When proof is made by a subscribing witness it may be made either by oath or affidavit or by affirmation or declaration, provided that by the law of the country where such proof is made an affirmation or declaration is allowed instead of an oath or affidavit. When proof is made by affirmation or declaration it must be stated also in such proof that by the law of the country

where the same is made, proof by affirmation or declaration is allowed instead of by oath or affidavit.

It is not necessary that the full name of the subscribing witness be used. The Christian name may be omitted and the initial letter or letters will be sufficient.

The notary public taking proof or acknowledgment of execution within the Province must be one appointed for and residing within the Province and it is essential that the certificate be accompanied by his official seal. Without the province proof or acknowledgment may be taken by any notary certified under his hand and official seal.

Among other officers besides notaries who may take proof of execution of instruments for registration in New Brunswick are Judges of the High Court of Justice in Great Britain and Ireland, any Judge or Lord of Sessions in Scotland and any judge of a court of supreme jurisdiction in any British colony or dependency. When proof is taken by any of those functionaries their

handwriting and certificates must be authenticated under the hand and seal of a notary public.

Besides the acknowledgment or proof of execution of instruments, in the case where an instrument is made by a married woman or joined in for the purpose of releasing dower, there must be an acknowledgment on the part of such married woman, made separate and apart from her husband, that she executed the instrument freely and voluntarily without fear, threat or compulsion by, of or from her husband, and the notary who takes the acknowledgment of execution must certify also to an examination of the married woman separate and apart from her husband, and the fact of such additional acknowledgment by her.

The following forms of notarial certificates required by the Act are usually used, the necessary minor alterations being made in the case of instruments executed outside the Province.

FORM OF CERTIFICATE OF ACKNOWLEDGMENT OF EXECUTION BY HUSBAND AND WIFE AND OF MARRIED WOMAN'S ACKNOWLEDGMENT.

PROVINCE OF NEW BRUNSWICK
COUNTY OF SS

I, , a Notary Public, duly appointed and sworn in and for the Province of New Brunswick, and residing and practising at , in said Province, DO HEREBY CERTIFY and DECLARE that on the day of , A.D. 19 , at personally came and appeared before me, the said Notary Public, , and wife of said and they acknowledged that they signed, sealed, executed and delivered the within as and for their respective act and deed, and to and for the uses and purposes therein expressed and contained.

And the said being by me examined separate and apart from her said husband acknowledged that she did sign, seal, execute and deliver the within

freely and voluntarily without any threat, fear or compulsion of, from or by her said husband.

IN TESTIMONY WHEREOF, I, the said Notary Public have hereunto set my hand and affixed my official seal, at aforesaid, the day and year last above written.

(Notarial Seal.) Notary Public.

FORM OF CERTIFICATE OF PROOF OF EXECUTION BY A SUBSCRIBING WITNESS.

PROVINCE OF NEW BRUNSWICK. }
COUNTY OF SS }

I, a Notary Public, duly appointed and sworn in and for the Province of New Brunswick, and residing and practising in the City of in the said Province, DO HEREBY CERTIFY AND DECLARE that on the day of , came and appeared before me, the said Notary Public, , subscribing witness to the annexed instrument,

and after being duly sworn saith, "That I am the subscribing witness to the within instrument, and that I know the said (maker of the deed or other instrument) and he acknowledged that he signed, sealed and delivered the within Indenture as and for his free act and deed to and for the uses and purposes therein expressed and contained, and the name (*maker*) is of the proper handwriting of the said (*maker*), and the signature is the signature of the subscribing witness, and that the said instrument was executed at the City of in the Province of New Brunswick on the day of in the year of our Lord .

IN FAITH AND TESTIMONY WHEREOF I, the said Notary Public, have hereunto set my hand and affixed my official and notarial seal, at aforesaid, the day and year last above written.

(Notarial Seal.) *Notary Public.*

NOTARY'S CERTIFICATE AUTHENTICATING HANDWRITING AND CERTIFICATE OF ANOTHER FUNCTIONARY.

CANADA
PROVINCE OF
COUNTY OF SS

I, , a Notary Public by lawful authority duly appointed in and for the Province of and residing and practising at in the County of and the said Province of , do hereby certify that I know the handwriting of a Judge of the Supreme Court of by whom the foregoing and annexed certificate of acknowledgment (*or* proof) purports to have been made and that the signature thereto is in the said handwriting and is his signature, and that the said is a Judge of the Supreme Court of .

IN FAITH AND TESTIMONY WHEREOF I, the said Notary Public, have hereunto set my hand and affixed my official and notarial seal, at aforesaid, on the day of A.D. 191

(Notarial Seal.) Notary Public.

CHAPTER X.

Registration in Nova Scotia.

In Nova Scotia the subject of registration of deeds is regulated by Revised Statutes, 1900, chap. 137, "The Registry Act."

By Section 15 of the Act, unless an instrument is registered in the Registry of Deeds as provided by the Act, it is ineffective against any person claiming for valuable consideration under any instrument which is registered who has no notice of the unregistered instrument. In most of the Provinces an unregistered instrument is ineffective against any registered instrument whether there was notice or not. "Instrument" as used in this section is by the interpretation section of the Act made to include judgments, and by Section 16 a judgment is made a charge upon lands as effectually and to the same extent as a registered mortgage.

Generally speaking every conveyance or other document by which the title to land is

charged or in any way affected should be registered. A lease of land, however, in which the term does not exceed three years, does not need to be registered.

Before an instrument can be registered the execution of such instrument must be proved and this may be done in either of two ways. The party executing the instrument may go before a notary public or one of the other functionaries named in the Act, and acknowledge the execution of such instrument by him under oath. The notary or other functionary must then indorse on the instrument a certificate of such acknowledgment having been made, which is registered with the instrument. No particular form for this certificate is provided by the Act but the following is that usually followed:

PROVINCE OF
NOVA SCOTIA.
COUNTY OF SS

I CERTIFY that on this day of A.D. 191 , before me personally came and appeared A.B. (or A.B. and C.D.) the party

(*or* parties) to the foregoing Indenture who having been by me duly sworn, made oath and acknowledged that he (*or* they) signed, sealed and delivered the same for the uses and purposes therein expressed and contained.

C.D.,

(Notarial Seal.) A Notary Public.

The second way is more usual mode of proving the execution of the instrument. A witness to the signature of the party who himself signs the instrument as witness goes before the notary and makes oath that the party to the instrument executed it in his presence. The notary indorses on the instrument the following certificate or one to the like effect.

PROVINCE OF
NOVA SCOTIA.
COUNTY OF SS

On this day of A.D. 191 before me the subscriber personally came and appeared E.F., the subscribing witness

to the foregoing Indenture, who having been by me duly sworn made oath and said that A.B., the party thereto, signed, sealed and delivered the same in his presence.

C.D.

(Notarial Seal.) A Notary Public.

Notwithsta ding Section 4 of the Married Woman's Property Act, which says that a married woman is capable of disposing of her real property in the same manner as if she was a *femme sole*, it still appears among other things to be necessary in order to make the conveyances of a married woman, or in which a married woman is joined to dispose of any present or future interest in real property by way of dower or otherwise, effectual, that an acknowledgment be taken of such married woman before a notary public or other competent functionary, examining her separate and apart from her husband, that the deed is her free act and deed, and that it was executed freely and voluntarily without fear, threat or compulsion of, from or by her husband.[1] This acknowledgment

[1] Married Woman Deeds Act, 1900, R. S. N. S. ch. 113, sec. 3.

need not be made under oath. In addition to the certificate of execution the notary must indorse on these conveyances a certificate of such acknowledgment in the form following or to the like effect.

PROVINCE OF
NOVA SCOTIA.
COUNTY OF SS

BE IT REMEMBERED that on this day of A.D. 191 , before me, the subscriber, personally came and appeared E.F., wife of A.B. mentioned in the foregoing indenture, who, having been by me examined separate and apart from her said husband, did declare and acknowledge that she executed the said indenture as and for her free act and deed, freely and voluntarily without fear, threat or compulsion of, from or by her said husband, and for a full release of all her claims to the land therein mentioned.

A Notary Public.

(Notarial Seal.)

Conveyances for registration within the Province of Nova Scotia that are executed outside of the Province of Nova Scotia are more often proved through notaries public than those executed within the Province, for notaries are the one class of officers capable of taking the necessary oaths and acknowledgments who are to be found in nearly every civilised place. Section 27 of the Registry of Deeds Act provides for proof of instruments executed without the Province. Several functionaries are named, including notaries, who may act, and the oath or acknowledgment must be taken by one of these residing at or near the place at which such oath or acknowledgment is taken.

The certificate should state that the notary resides at or near the place where the acknowledgment or oath is taken. A convenient way of making the certificate of the oath of subscribing witness follows, and the certificate of acknowledgment of parties should contain the same variations from the form used when taken without the Province.

UNITED STATES OF AMERICA
STATE OF
COUNTY OF

On this day of A.D. 1911, before me, the subscriber, at in the County of in the State of and United States of America, personally came and appeared E.F. the subscribing witness to the foregoing indenture, who having been by me duly sworn made oath and said that A.B., the party thereto, signed, sealed and delivered the same in his presence.

IN FAITH AND TESTIMONY whereof I have at aforesaid signed my name and fixed my notarial seal.

(Sgd.) C.D.

(Notarial Seal.)

A Notary Public residing and practising at aforesaid.

The acknowledgment of a married woman that she executed the instrument voluntarily may be taken outside the Province by any notary public notwithstanding that

he does not reside at or near the place where the acknowledgment is taken. The form would end with the words "In Faith and Testimony, &c.," but need not state where the Notary Public resides or where the acknowledgment is taken.

Some of the Provinces are very particular as to the proof of execution of instruments by corporations. This is not true of Nova Scotia. The instrument is usually signed with the name of the company followed by the signatures of the president and secretary or other officers, and the most important part of the execution is the affixing of the corporate seal. The notary's certificate may be made in any form similar to the following:

PROVINCE OF NOVA SCOTIA.
COUNTY OF

On this day of A.D. 191 before me, the subscriber, personally came and appeared E.F., the subscribing witness

to the foregoing Indenture who having been by me duly sworn, made oath and said that the same was executed by the said Company by its President, and its Secretary, who signed the name of the said Company and their own names as such officers and affixed the seal of the Company thereto in his presence.

C.D.,

(Notarial Seal.) A Notary Public.

CHAPTER XI.

Registration in Ontario.

In Ontario the old system of registration of instruments affecting lands is governed by 1914 R. S. Ontario, ch. 124. As previously pointed out, there also exists in Ontario a new system with which it is unnecessary to deal in this work, provision for the services of notaries being made only in the old Act.

The principle of The Registry Act is similar to that of the acts in force in New Brunswick and Nova Scotia. Every instrument affecting land shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, who has no actual notice of the unregistered instrument, and whose instrument is registered. "Instrument" in the Act has a wider meaning than is usual in registry legislation. It includes wills, grants of administration, certificates of payment of taxes, and nearly every other conceivable

document in any way affecting lands, except, however, as is generally excepted in these Acts, certain leases. Usually only leases for a term not exceeding three years are excepted from the provisions regarding registration. In Ontario leases for a term not exceeding seven years, where the actual possession goes along with the lease, need not be registered, and are not, by reason of non-registration, void as against subsequent purchasers and mortgagees.

Before any instrument, excepting a will, grant from the Crown, Order-in-Council, by-law or other instrument under the seal of a corporation, certificate of judicial proceedings and certain other instruments which must be registered by deposit of a certified copy, shall be registered, there must be an affidavit on or securely attached to the instrument, of a subscribing witness, of the execution of the same and setting forth the name, place of residence, addition, occupation or calling of the deponent. This affidavit must depose not only to the execu-

tion of the instrument and of the duplicate, if any, but also the place of execution, that the deponent knows that the person who executed the instrument in his presence is the party to the instrument as to whose execution thereof he deposes, and that he, the deponent, is a subscribing witness to the instrument. The affidavit must be in the following form:

COUNTY (*or* District) of
To Wit:

I, (*name, residence and addition, occupation or calling*) make oath and say:

1. That I was personally present and did see the annexed (*or* within) instrument (and a duplicate, *if any, according to the fact*) duly signed, sealed and executed by the party thereto.

2. That the said instrument (and duplicate, *if any, according to the fact*) was (*or* were) executed by the said party at
of

3. That I know the said party.

4. That I am a subscribing witness to the said instrument (and duplicate, *if any, according to the fact*).

Sworn to at in the County (or District) of the day of 191 , before me,

(Notarial Seal.) Notary Public.

The affidavit accompanying any instrument which does not purport to convey the land mentioned, but whose nature is that of a security for the payment of a debt or liability, incurred by the party executing in respect of a purchase or delivery of goods or in respect to an advance of money, must contain an additional paragraph stating that the instrument was read over and explained to the person executing the same, and that he appeared perfectly to understand the same, and was informed that it might be registered as an incumbrance on his land. This paragraph is inserted in the foregoing form after the first paragraph and is as follows:

"2. That the said instrument was read over in my presence and explained to the said and that he appeared perfectly to understand the same, and was informed that it might be registered as an incumbrance on his land." Paragraphs 2, 3 and 4 of the ordinary form follow, numbered respectively, 3, 4, and 5.

The seal of a corporation to an instrument with the signature of the secretary, manager, attorney or presiding officer is sufficient proof of the execution by the corporation for the purpose of registration, without any affidavit.

Section 38 provides that the proof of execution may be by affirmation or declaration when the person before whom the same is made certifies that, by the law of the country where proof is made, an affirmation or declaration may be substituted for an affidavit.

In Ontario and as well in all of the other Provinces a witness who objects to being sworn on the ground of religious belief or

from conscientious scruples may be allowed to make an affirmation or declaration instead.

The proof of execution whether made within or outside of the Province may be made before notaries having jurisdiction in the places where the same are made. It is essential that the notary's signature be accompanied by his official seal, when the proof is made outside of the Province. The Ontario Notaries Act, however, makes it unnecessary to affix the seal when the proof is made within the Province.

CHAPTER XII.

Registration in Prince Edward Island.

The whole law applicable to the registration of instruments affecting lands is not to be found in any one volume, since the statutes of this Province have never been consolidated.

The system adopted in Prince Edward Island differs only in detail from those in use in Nova Scotia, New Brunswick and other Provinces which still retain the old system.

Act 3rd William IV., chapter 10, provides for registration of deeds and other instruments affecting lands, and section 10 as amended by 35 and 36 Victoria, chapter 9, section 13, makes all conveyances and instruments affecting land (excepting decrees, judgments, &c.), not registered fraudulent and void against subsequent purchasers or encumbrancers for valuable consideration whose conveyances are previously

registered, whether such purchasers or encumbrancers had notice of the unregistered instruments or not. Unlike the other Provinces there is no provision in the Statutes which excepts leases for a term not exceeding three years from the operation of the general rule as to registry of instruments. It would seem that a written lease for a term not exceeding three years which was unregistered would be fraudulent and void as against subsequent purchasers or encumbrancers whether the latter had notice of such lease or not. The Statute of Frauds however does not make it necessary that such leases be in writing, and if a lease be made for such a term orally, the title or interest of a subsequent purchaser will be subject to the oral lease.[1]

Before instruments may be registered the execution must either be acknowledged by the party executing the instrument or proved by the oath of a subscribing witness, and a certificate of such acknowledgment

[1] *White* v. *Neaylon*, 11 A. C. 171.

or proof signed by the officer before whom the same is made must appear in the back of the instrument in the form provided by the Act 39 Vict., ch. 12.

Only when the acknowledgment or proof is made outside of the Province may it be made before a notary public, commissioners being appointed who alone can act within the Province. The notary must certify under his official seal.

If the execution of the instrument is personally acknowledged before the notary by the party himself, the certificate must be in the following form:

On the day of A.D. 19 personally appeared before me A.B. of in and acknowledged that he (*or* they *as the case may be*) did freely and voluntarily execute the within written deed or writing to and for the uses and purposes therein mentioned.

A Notary Public for
in

(Notarial Seal.)

When the execution is proved by the oath of a subscribing witness the following form is provided:

On the day of A.D. 19 , personally appeared before me C.D. of in and being sworn testified that he (*or* she *as the case may be*) is a subscribing witness to the within written deed or writing, and that he (*or* she) was present and did see the same duly executed by the grantor (*or* grantors *as the case may be*) therein named.

A Notary Public for
in

(Notarial Seal.)

A married woman has dower in her husband's property and must be joined in a deed of the husband's property to dispose of it. Further the deed must be acknowledged apart from her husband to have been voluntarily executed by her and that she was aware of the nature of the contents thereof, and a certificate of such acknow-

ledgment must be written on or annexed to the deed. This acknowledgment however cannot be taken by a notary public either within or without the Province. It is unnecessary that any acknowledgment that the married woman executed voluntarily be taken or certified in the case of a conveyance of her separate property.[2]

[2] *McLeod* v. *Craswell*, 4 E. L. R. 535.

CHAPTER XIII.

Registration in the Territories.

Land registration in the Yukon and North-West Territories is regulated by the Dominion Land Titles Act, R. S. Can. 1906, Chapter 110, which is an adoption of the Torrens System and an Act very similar to those in force in Alberta and Saskatchewan.

Application to bring land under the Act is made to the Registrar of the registration district in which the land is situate, who unless he entertains doubt as to the title in the applicant, grants a certificate of title in duplicate. If the Registrar entertains doubt as to the title he refers it to a Judge, who examines the title, hears all parties claiming any interest in the land and finally disposes of the application.

The land mentioned in any certificate of title is by implication, and without mention in the certificate, subject to:

(1) Any subsisting reservations or exceptions contained in the original grant of the land from the Crown;

(2) All unpaid taxes;

(3) Any public highway or right of way or other public easement, howsoever created, upon, over or in respect of the land;

(4) Any subsisting lease or agreement for a lease for a period not exceeding three years, where there is actual occupation of the land under the same;

(5) Any decrees, orders or executions against or affecting the interest of the owner in the land, which have been registered and maintained in force against the owner;

(6) Any right of expropriation which may, by statute or ordinance, be vested in the Crown or in any person or body corporate;

(7) Any right of way or other easement granted or acquired under the provisions of the Irrigation Act.

Transfers, leases and mortgages are made in short forms provided by the Act.

If a transfer purports to transfer the transferer's interest in the whole or part of the land the transferer delivers up the duplicate to the registrar, who cancels the same either wholly or partially as the case may be, and issues a new certificate to the transferee showing all encumbrances and charges on the land except those to which the land is subject by implication, and without mention on the certificate.

After the certificate of title is granted for any land, no instrument until registered, shall as against any *bona fide* transferee under the Act be effectual to pass any estate or interest in the land except a leasehold interest not exceeding three years, or to render such land liable as security for the payment of money.

The owner of the land for which a certificate of title is granted, except in case of fraud wherein he has participated or colluded, shall hold the land free from all encumbrances, liens, estates or interests whatsoever, excepting the incidents implied by

the Act, and such encumbrances, liens, estates or interests as are certified on the folio of the register which constitutes the certificate of title, and excepting also the estate or interest of an owner claiming the land under a prior certificate granted under the provisions of the Act.

Every instrument executed within or without the limits of the Territories, except instruments under the seal of any corporation, caveats, orders of a court or judge, executions, or certificates of any judicial proceedings, attested as such, requiring to be registered under the Act, must be witnessed by one person who signs his name as a witness to the instrument and appears before the notary or other officer and makes an affidavit in the following form, which is either endorsed on or annexed to the instrument and is certified by the signature and seal of the notary at the end of the jurat.

NORTH-WEST
TERRITORIES OF CANADA.
(*Or* Yukon Territory)
DISTRICT OF

TO WIT:

I, A.B., of in the make oath and say:

1. I was personally present and did see named in the (within *or* annexed) instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2. That the same was executed at the in the , and that I am the subscribing witness thereto.

3. That I know the said and he is in my belief of the full age of twenty-one years.

Sworn before me at in the this day of A.D. 191 C.D. (Signature of deponent)

A Notary Public.

My commission expires on the
day of 191
(Notarial Seal.)

The Registrar may require evidence that any person making a transfer, mortgage, encumbrance or lease is of the full age of twenty-one years. An affidavit made in pursuance of this rule may be in the following form:—

I, , make oath and say:

1. That I am the within named
and that I am of the full age of twenty-one years.

2. That I am the registered owner (*or* the person entitled to be registered as the owner) of the within described lands.

Sworn before me at the
of in the of
this day of , A.D. 19

As in all of the Provinces where the Torrens system is in force, the Courts of the Territories recognize certain equitable interests any holder of which is entitled to

register a caveat to the effect that no registration of any transfer or other instrument shall be made or certificate of title granted until these rights are determined by the Court. The affidavit in support of a caveat is in the following form:—

I, the above-named A.B. (*or* C. B., agent for the above A. B.) of (*residence and description*), make oath (*or* affirmation, *as the case may be*) and say, that the allegations in the above caveat are true in substance and in fact (*and, if there is no personal knowledge, add*) as I verily believe.

Sworn, &c.

(Signature of caveator or agent).

CHAPTER XIV.

Conveyancing.

As deeds of purchase, deeds of mortgage and other instruments affecting the title to lands are often prepared by notaries, it is proposed to outline in a general way the nature of the more important of such instruments.

The word "deed" as ordinarily used means only an instrument by which a vendor conveys land to the purchaser, but in its proper legal sense it includes many other documents under seal, such as mortgages and powers of attorney and leases.

A deed is a writing on paper, vellum, or parchment, sealed and delivered, whereby an interest, right or property passes, or an obligation binding upon some person is created, or which is in affirmance of some act whereby an interest, right or property has passed.[1]

[1] Norton on Deeds, p. 3.

A deed may be in any handwriting or may be typewritten.

A writing without a seal cannot be a deed, though any kind of a seal will do. An impression made in ink with a piece of wood has been held sufficient.[2] Whether an act constitutes a sealing or not depends entirely upon the intention of the party by whom the act was done.[3]

Another essential of a deed is delivery. To be a deed, however, an instrument need not be actually handed over to the party. *Prima facie* the affixing of the seal imports delivery, but this is not so if the intention is otherwise.[4] Delivery is, therefore, also a question of the intention of the party. It may be effected by any words which disclose the intention to deliver or by any act from which such intention can be inferred.

A deed, of course, must be signed by the party from whom the interest, right or property is to pass, for, though it is said that at

[2] *Rex* v. *Inhabitants of St. Paul* (1845), 7 Q. B. 232.
[3] *In re Sandilands*, L. R. 6 C. P. 411.
[4] *Staple of England* v. *Bank of England*, 21 Q. B. D. 160.

common law, and even under the Statute of Frauds, a signature is unnecessary,[5] yet, signature is required by the statutes respecting registry and deeds affecting lands which are not registered in accordance with the provisions of these acts, are in most cases ineffective. Whether an instrument is to be registered or not the signature should never be omitted in practice.

When a deed is made by a party who is blind or illiterate it should be read over to him or the nature and effect of its contents made known to him. If it is read over falsely or its nature and effect falsely stated, it is invalid.

The deed is executed by a blind or illiterate grantor by having him make his mark.

Erasures and interlineations in deeds should be initialled before execution. Erasures should be made by drawing a pen through the words so as to leave them legible, for it can then be seen that the deed has not been altered more than once in this place.

[5] Norton on Deeds, p. 5.

Deeds of Purchase.

The following may be given as the component parts of the ordinary purchase deed:[6]

1. The date.
2. The names of the parties, etc.
3. The recitals, if any.
4. The consideration.
5. The receipt.
6. The operative words of conveyance, and the name of the person to whom the conveyance is made.
7. The parcels and all the estate clause.
8. Exceptions and reservations, if any.
9. The habendum.
10. The declaration of uses.
11. The covenants for title.
12. The testimonium.
13. The attestation.

Clauses 1 to 8 inclusive are called the "premises" of the deed.

[6] Elphinstone's Introduction to Conveyancing, ed. 6, p. 87.

Every deed should contain the full names, addresses and occupations or additions of the parties.

The following examples will indicate the manner in which these requisites are set forth—

Party who has an occupation:

> John M. Smith, of X, in the County of Y, Merchant (or Contractor, or Builder, or Bank Manager, or Laborer, or, etc., etc.)

Party who has retired from business:

> A. B., of X, in the County of Y, Gentleman (or Esquire).

Where the parties reside in different Provinces, or where the parties reside elsewhere in the Province in which the deed be registered:

> Between A. B., of X, in the County of Y and Province of Z, Gentleman, of the one part, and C. D., of F., in the County of G and Province of H, Laborer, of the other part.

When the party is an unmarried woman:

E. F., of X, in the County of Y, Spinster (*or occupation, if any*).

Where the party is a married woman, dealing with her separate property, and the husband joins:

G. H., of X, in the County of Y, wife of I. H. of the same place, Druggist, and the said I. H.

Where the wife joins in her husband's deed:

I. H., of X, in the County of Y, Druggist, and G. H., his wife.

Where the party is a widow:

J. K., of X, in the County of Y, Widow.

An incorporated company:

The A. Company Limited, a body corporate, incorporated under the laws of the Province of Z, having its head office and chief place of business at X, in the County of Y, and Province of Z, aforesaid.

An executor:

A. B., of X, in the County of Y, sole executor under the last will and testament of C. D., late of X aforesaid, deceased.

Where the parties are numerous:

A. B. and C. D., both of X, in the County of Y, Merchants; E. F., of X aforesaid, Physician, and G. F., his wife; H. I., of X aforesaid, wife of J. I., of X aforesaid, Jeweller, hereinafter called the Grantors (*or* Mortgagors, *or* Lessors, *or* the Parties of the First Part, etc.)

The recitals in a deed should be as few and as simple as possible. In ordinary cases recitals are omitted. In cases where a sale is made by order of the Court, or by a person exercising an express or statutory power of sale, he must show such a state of facts as enables the power to be exercised.[7]

A deed may or may not state the consideration, for this statement forms no part of the terms of the deed, but is only a statement

[7] Elphinstone's Introduction to Conveyancing, 6 ed., p. 88.

contained in it of an antecedent fact, and extrinsic evidence of the actual consideration is admissible.[8] The nominal sum of one dollar is often named as the consideration. In deeds made by a trustee for a sale the real consideration should be stated.

The statement of a consideration is followed by a receipt clause. This clause, however, does not prevent the person who acknowledged the receipt from showing in equity that the money was not paid.[9]

The operative words used in deeds are many. In the ordinary purchase deed the words used usually are "grant, bargain, sell, alien, enfeoff, release, remise, convey and confirm," taken together in that order. All of these words have technically a different meaning and the introduction of the use of a number of them all in one instrument was in order that, if the instrument would not operate in one way, it might operate in some other way.

[8] Norton on Deeds, pp. 127 and 128.

[9] Elphinstone's Introduction to Conveyancing, 6 ed., p. 90.

In a quit claim deed, which is strictly a release of all claims against property, the words usually employed are "release, remise and forever quit claim."

"Grant" is the operative word now generally used in any conveyance of freehold. It was formerly thought that the use of this word implied a covenant for title unless the interpretation was rebutted by an express covenant, and therefore in some deeds, after the word "grant," appear the words "by way of conveyance only and not by way of warranty." The word "grant," however, does not imply any covenant and the use of the additional words is unnecessary.[10] "Bargain and sell" are used where a pecuniary consideration passes.

"Alien" means parting with an estate absolutely.

"Enfeoff" comes from the word "feoffment." In early times land was conveyed by the delivery upon the land of a branch of a tree or other small part of the property in

[10] Elphinstone's Introduction to Conveyancing, 6 ed., pp. 92 and 93.

the name of the whole property. This process was called "livery of seisin" or "feoffment." It was usually accompanied by a "charter of feoffment" to explain the transaction, in which document the operative word was "enfeoff."

"Release" and "remise" are the proper words for releasing property from a claim.

"Convey" may be used in any kind of conveyance.

"Confirm" implies a previous conveyance which it is the intention to confirm.

It is the usual practice to add to the name of the person to whom the conveyance is made, when it appears immediately after the operative words in the premises, words of limitation showing the nature of the estate granted, as well as in the habendum which is the proper place for them to appear.

The typical deed should run:

> A. grants to B. (without any words of limitation) certain lands, habendum

to B. and his heirs, or as the case may be.[1]

If words of limitation are added to the grantee's name in the premises, the estate granted cannot be abridged, but may be explained or extended by the limitations in the habendum, and if there is no habendum, the grantee takes the estate limited in the premises.[2]

After the operative part and the name of the grantee comes the description of the property granted. Any description by which the land intended to be conveyed can be picked out is sufficient. The description is usually commenced in the following manner:—"All that certain lot, piece or parcel of land lying, being and situate at X, in the County of Y, and more particularly described as follows." Some point easily located should be taken as the starting point and the lines of the property then given from that point by measurement and angles, or by reference to landmarks. Land is

[1] Norton on Deeds, 279.

[2] Norton on Deeds, 283, 285. See *post* p. 123.

often described, however, as being abutted and bounded by properties, naming the owners of them, on each side. A conveyancer usually prefers to follow the same description as is contained in previous deeds affecting the same piece of land that he is dealing with, if there be any, and reference is often made to the title deeds in any case.

The word "land" in a deed comprehends not only the ground-soil or earth but also houses, woods, waters and mines of metals. Notwithstanding this it is customary to use the words "together with the buildings" after the description.

The conveyance of a parcel of land always passes everything that is legally appendant or appurtenant to it, without the use of the words "with the appurtenances" or the like,[3] and the use of these words will generally not pass anything but that which would pass without the use of these words. But since it is customary to use these words in making deeds the omission of them might

[3] Norton on Deeds, p. 250.

give reason for the contention that certain rights will not pass by the deed.

It is often difficult to decide what is and what is not strictly appendant or appurtenant. The following examples are given by Norton on Deeds:—[4]

An adjoining building not accounted parcel of a house, though held with it for thirty years—Held not to pass.

A kiln—Held not to pass.

Demise of a messuage "with all rooms and chambers with the appurtenances belonging or in anywise appertaining thereto"—Held not to include a room which once formed part of the messuage, but had been separated from it and was not at the time of the demise occupied with it.

An adjoining stable, though used with a house for many years—Held not to pass.

A right of way across adjoining land will not pass as an appurtenance unless the way is over a formed and visible road, in which case the right of way will pass with a grant

[4] P. 252.

of the land,[5] or unless the way be a way of necessity, *i.e.*, a way that arises when a property granted is land-locked and there is no other way of ingress and egress without being a trespasser, than across the grantor's land.

It will be seen, therefore, that in many cases it is necessary, and in nearly every case safer, to specifically mention and define any appurtenance, easement or other interest or right which it is the intention to pass in a deed. Mention of such should be made immediately after the description of the land.

The " all the estate " clause adds nothing to a deed. The only effect of the clause is that it passes interests of the grantor which are not vested in him in the character in which he is made a party to the conveyance.[6] For example, if a woman join in a conveyance for the purpose of disposing of a dower interest in land in which she has also some other interest, that other interest will also pass by the " all the estate " clause.

[5] *Bayley* v. *Great Western Ry. Co.*, L. R. 26 Ch. D. 434; *Brown* v. *Alabaster*, L. R. 37 Ch. D. 490.

[6] *Drew* v. *Earl of Norbury*, 9 Ir. Eq. Rep. at p. 177.

An exception is a clause by which the grantor excepts out of the thing granted something which is in existence at the time of the conveyance. For example, a grantor may grant a certain parcel of land, describing it, excepting thereout a certain lot, this for convenience in making a description of the piece granted. A reservation is a clause by which the grantor reserves to himself something which was not in existence at the time of the grant, for example, a grant of land with a reservation of a yearly rent. A right of way across the land granted, or other easement, is often expressed to be reserved to the grantor. This is not strictly a reservation, but the easement takes effect as a re-grant by the purchaser, if the deed is executed by him as well as by the vendor [1] and in equity the easement takes effect whether the deed is executed by the purchaser or not.

The foregoing clauses are all included within the premises of the deed. Immediately following the premises is the habendum, which is the clause by which the estate

[1] Elphinstone, 104.

is limited. The estate granted may be an estate in fee simple, or life estate, an estate *pur autre vie* (during the lifetime of some other person than the grantee), or an estate for life to one person with remainder over to another, etc. The nature of the estate granted in a deed is ascertained from the habendum.

The word "habendum" is often used as though it comprised more the parts of the deed than it does. The declaration of uses often thought to be a part of the habendum is not. Neither are the words "to hold" a part of the habendum, but are the tenendum.

The tenendum had its use before the passing of the Statute of Quia Emptores,[8] but it is now of no value, though nearly always combined with the habendum in a deed.

A grant of land in fee simple is made by the use of the words "his heirs" following the name of the grantee in the habendum. With certain exceptions an estate in fee simple cannot be passed in any other way. The

[8] 18 Edw. I., c. 1.

omission of these make the grant a life estate only, even though the grant be expressed to be to A.B. " to have and to hold to him in fee simple."

The King can take a fee simple without the use of the words " his heirs " or " his successors." In a deed to the King as a body politic the words used, however, are usually " to him and his successors Kings of England." A fee simple can be passed to a corporation sole without the use of the words " his heirs." The word " successors " is substituted for " heirs " in this case and if omitted only a life estate will be created.

A grant is often expressed to be made to a corporation aggregate " and its successors." Since a corporation aggregate has no successors this is incorrect. A grant of an estate in fee simple to a corporation aggregate is made by the use of the words " in fee simple " in the habendum, the words " his heirs " being obviously unnecessary in this case.

A fee simple is conveyed to the trustees of an association or corporation by using

the words " and their successors in the said trust."

A life estate is created by expressing the grant to be made for and during the grantee's life or by simply making the grant without the use of any words of limitation.

In order that a grant pass an estate *per autre vie*, the grant must, of course, be expressed for and during the lifetime of some other person named.

While to be in proper form a deed should limit the estate in the habendum and not in the premises, it is customary in the deed of an estate in fee simple to use the words of limitation in both places.[9] If words of limitation are added to the grantee's name in the premises, the estate so granted cannot be abridged in the habendum, but may be explained or extended by it, and if there is no habendum the grantee takes the estate limited in the premises.

The word " assigns " following the name of the grantee has no conveyancing signifi-

[9] The Typical deed should run—A grants to B (without any words of limitation) certain lands, habendum, to B and his heirs, or as the case may be. Norton, p. 279.

cance and is superfluous.[10] In a mortgage, however, it should never be omitted, for in its absence it has been said that an assignee of the mortgage could not exercise the power of sale.[1]

A use is a trust or confidence. The declaration of the use in a deed is a declaration of the trust upon which the land is conveyed to the person to whom the conveyance is made. In early times men often gave their lands to others in trust, either for purposes which were lawful, but could not be carried out without the interposition of some person trusted to execute the donor's will, or for the purpose of defrauding creditors and other fraudulent purposes. To overcome the many evils caused by making feoffments to uses there was passed what is known as the Statute of Uses.[2] The effect of this statute is that if one person be seised of hereditaments to the use of another, the latter shall be deemed to be in possession

[10] *Milan* v. *Lane*, 16 T. L. R. 568.

[1] Davidson's Conveyance, 3rd Ed., vol. 2, p. 621; *Bradford* v. *Belford*, 2 Sim. 264.

[2] Stat. 27, Hen. VIII., c. 10.

thereof for such estate as he has in the use. The statute, in fact, executes the estate to the *cestui que trust;* that is, it gives him the same estate and possession at law as he would have if the feoffee to his use had duly made to him a proper legal conveyance of the land.[3] Thus if a man made a feoffment to another without consideration and without declaring any *use* of the land, since it is another rule of law that there would be in this case an implied use to the feoffer himself, he instantly would get back all that he gave, or in other words there would arise a resulting trust. The statute, however, has no effect unless there are at least two persons, one seised to the use of the other, and thus in the ordinary case of a conveyance to the purchaser in fee simple the declaration is not strictly necessary, for the party takes the fee at common law and not by the Statute of Uses, because he is not seised to the use of another. Nevertheless the words "unto the use of" are still employed in these deeds, the *use,* of course,

[3] Williams on Real Property, 20th Ed., p. 171.

being declared in favor of the grantee himself, and they should not be left out, for when a form of words has been sanctioned by usage for the purpose of expressing some particular meaning, the fact of changing them raises a presumption that some other meaning is intended.[4] Should these words be omitted in a conveyance made without consideration nothing would pass, a use to the grantor himself being implied.

A purchase deed sometimes does and sometimes does not contain covenants. Usually a purchaser will not accept any other deed than one with proper covenants of title, and the weight of authority is that a purchaser with an agreement of sale is not obliged to accept a deed without the usual covenants from the vendor, even though no mention of covenants is contained in the agreement.

No particular form of words is necessary to create a covenant, so long as the intention of the parties to covenant is disclosed.[5]

[4] Elphinstone's Introduction to Conveyancing, p. 12.

[5] *Hollis* v. *Carr*, 3 Swan. 638; *Courtney* v. *Taylor*, 6. M. & G. at 867.

It is often difficult to know what covenants should be entered into when the vendor is not the absolute owner.

It is important that great care be taken to see that the proper and usual covenants are in a deed. A notary, like a solicitor, employed to make a deed is bound to take care that his client does not enter into any covenant or stipulation that may expose him to a greater degree of responsibility than is ordinarily attached to the business in hand, or, at all events, that he does not do so till the consequences have been explained to him.[6] Again, the notary may be made liable in damages if, when acting for a purchaser, he does not see the vendor has entered into the usual covenants.[7]

The testimonium clause is not necessary to the validity of a deed and its presence is a mere formality. Attestation of the signature, sealing and delivery of the deed, likewise, is not necessary to make the deed valid, though the statutes respecting registration

[6] *Stannard* v. *Ullithorne*, 10 Bing. 491.
[7] Elphinstone's Introduction to Conveyancing, p. 111.

provide that the deed be subscribed by a witness to the execution before it can be recorded.

Quit Claim Deeds.

A quit claim deed is a deed in the nature of a release. In form it is the ordinary purchase deed without covenants except that the operative words are words of release, such as "release, remise and quit claim," and not words of conveyance. It is, therefore, not a proper deed for conveying land, though the weight of authority is that it transfers whatever interest the maker of the deed has in the land, whether it be a fee, a mere license or nothing at all. It, however, only transfers the maker's present interest in the land and not a subsequently acquired title. The only proper use of the pure quit claim deed is in releasing by a person who is not the owner of the fee, some interest in, or charge against the land.

Besides the pure quit claim deed there is used frequently a deed, which in practice is called a quit claim deed, when a party sells

land and does not wish to warrant the title. This deed is in the ordinary quit claim form but contains words of grant.[8]

Mortgages.

A mortgage is a conveyance of land given as security for a debt (usually a loan advanced at the time of making the mortgage), subject to a proviso for reconveyance, or that it shall be void on payment of the debt with interest within a specified time. At law if the money is not paid within the time specified, the mortgagee becomes the absolute owner of the land, but in equity the only right which the mortgagee can exercise over the land is the right of enforcing payment of the debt; the ownership remaining in the mortgagor. Payment of the debt out of the land is enforced by an action of foreclosure, in which, after a decree for foreclosure and sale, the lands are advertised and sold at public auction, any surplus proceeds after

[8] *State* v. *Kemmerer*, 14 T. Dak. 174, citing 3 Washburn's Real Property, 15th Ed., 376.

payment of the debt and costs being paid out to the mortgagor.

A mortgage is usually in the same form as a purchase deed to the end of the habendum and declaration of uses. The proviso for redemption then follows. The mortgagor covenants for lawful entry and peaceful enjoyment in default of payment and makes the usual covenants for title. If there are buildings on the land, it is usual for the mortgagor also to covenant to keep them insured for the benefit of the mortgagee.

In this country, the time specified in mortgages for repayment is usually a year, but the money is allowed to remain on mortgage for much longer periods, the mortgagor continuing to make the payments of interest at the time of year mentioned in the mortgage. Interest is usually made payable half-yearly or quarterly.

A mortgage is often accompanied by a mortgage bond in double the amount of the money loaned referring to the mortgage and conditioned to be void on payment of the

debt and interest. If joined in by some one as a surety the bond may be very useful in securing repayment of the loan. A bond should always be taken from the purchaser of lands which are subject to a mortgage, the payment of which he assumes.

A mortgage is transferred by an indenture known as an assignment of mortgage. The operative part of this instrument contains not only the words "assign and set over," transferring the mortgage, but also the words "grant and convey," to transfer the land, which is described in the same manner as the description in the mortgage. The assignment usually contains covenants that the mortgage is a good security, that the mortgagee has not permitted the mortgage to be released or discharged and that he will do every act necessary to enforce the covenants in the mortgage.

A mortgage which has been paid off, must be released. A release of mortgage is made in the form of a deed poll, that is to say, it begins with the words "To all to whom these

presents shall come, A. B., etc., sends greeting," and continues throughout as a declaration to all who may be concerned. The mortgage, of course, is recited, as is also any assignment of the mortgage or transfer of the equity of redemption in the mortgaged lands. In the latter case the release should properly be made not to the mortgagor, but to the present owner of the land, though as a matter of law the effect is the same whether this rule is adhered to or not. It is unnecessary to describe the lands, reference to the description in the mortgage being sufficient.

A partial release is often given a mortgagor upon repayment of part of the loan. A partial release should contain an accurate description of the portion of the land released.

LEASES.

A lease is a contract for the possession and profits of lands and tenements for life, years or at will in consideration of a pecuniary rent or other recompense.

The usual clauses in a lease are the following:—

1. Names and descriptions of parties.
2. Consideration.
3. Operative words.
4. Parcels, with licenses and exceptions, if any.
5. Habendum.
6. Reservation of rent.
7. Lessee's covenants.
8. Proviso for re-entry.
9. Lessor's covenants.

The parties to a lease are often described in the lease as "lessor" and "lessee."

The consideration is generally stated to be "the rent hereinafter reserved and the covenants on the part of the lessee hereinafter contained."

The operative words of a lease are "demise and lease" or "let." These words, besides creating a tenancy, imply a covenant for quiet enjoyment unless the lease contains an express covenant on the same subject matter,[9] and there is authority that they also

[9] *Williams* v. *Burrel* (1845), 1 C. B. at p. 429; *Noke's Case* (1598), 4 Rep. 80.

imply a covenant for title,[10] though this is doubted in the more recent case of *Bayers* v. *Lloyd*.[1]

The parcels may be described in various ways according to their nature. The premises should always be described with sufficient certainty. "All that messuage or tenement situate;" "all that parcel or tract of land situate;" "all that certain house and premises in the town of;" "all those certain premises forming part of the lessor's building, known and described as suite;" these are forms for the commencement of the description. A house in a city or town may be described by the street number.

The habendum, of course, states the term demised to the lessee, and is immediately followed by the reservation of the rent, which begins "yielding and paying therefor," and names the sums and dates on which they are to be paid. The words "yielding and paying" amount to an express covenant by the

[10] *Holder* v. *Taylor* (1714), Hob. 12; *Burnett* v. *Lynch*, 5 B. & C. at p. 609; *Hart* v. *Windsor*, 12 M. & W. at p. 85.

[1] L. R. 1895, 2 Q. B. 610.

lessee to pay the rent.[2] When the lessor is seised in fee, the rent is generally reserved to him, "his heirs and assigns."[3]

The most difficult parts of a lease to draft are, of course, the covenants, first, because it is seldom easy to decide what subject matter there should be covenants on contained in the lease, and secondly, because covenants on any one subject matter so often have to vary in their wording in different leases.

It is said that a party to an agreement for a lease, in which agreement there is no mention of the nature of the covenants to be contained in the lease, can insist upon the following covenants and these only:—(*a*) covenants by the lessee to pay rent; to pay taxes (except such as are expressly made payable by the landlord); to keep and deliver up the premises in repair; to allow the lessor to enter and view the state of repair; a clause for re-entry on non-payment

[2] *Hellier* v. *Casboard*, L. Tid. 266; *Porter* v. *Swetnam*, Sty. 406.

[3] Elphinstone's Introduction to Conveyancing, p. 272.

of rent; such clauses are, according to the custom of trade or local usage, usually inserted in leases of a similar nature; and the usual qualified covenant by the lessor for quiet enjoyment.[4]

A lessor has always a remedy by action for rent, whether there be a covenant to pay rent or not, but the covenant is valuable in that it gives a remedy against the lessee notwithstanding his assignment of the lease to a third party, whereas without the covenant the lessor's only remedy for rent, which accrued due after the assignment, would be against the assignee of the lease.[5]

The usual covenant in a lease on the part of the lessor is a covenant for quiet enjoyment. Owing to the unsettled state of the law regarding the covenants implied by the word "demise," this covenant may be insisted upon in a lease. By using the express covenant the implication of any other covenant on the same subject matter is prevented from being raised, and it is thus to the advantage of the lessor to have this covenant

[4] Elphinstone's Introduction to Conveyancing, p. 250.
[5] *Annal* v. *Mills*, 4 I. R. 94.

contained in the lease, since the covenant for quiet enjoyment is limited to acts of the lessor and persons claiming under him, and should the lessor prove to have no ownership and the lessee's enjoyment be disturbed by the true owner claiming under a paramount title, there is no liability upon the lessor by reason of the covenant, for the disturbance is not the act of the lessor or of any person claiming under him.[6]

There is often inserted in a lease a covenant for a renewal of the lease for a further term after the expiration of the term granted, at the option of the lessee. In many leases there are words in the covenant to the effect that such renewal lease shall contain the same covenants as the original lease, excepting the present covenant for renewal. It is unnecessary to make this exception, for a stipulation that the renewal shall contain the same covenants does not entitle the lessee to have a covenant for renewal in the new lease.[7]

[6] Elphinstone's Introduction to Conveyancing, 289-290.

[7] *Hyde* v. *Skinner*, 2 P. Wms. 196; *Tritton* v. *Forth*, 2 Bro. C. C. 636.

FORMS.

Purchase deed with covenants, wife joining to bar dower.

This Indenture made the day of in the year of our Lord one thousand nine hundred and

Between A. B., of X, in the County of Y., merchant, and L. B., his wife, of the one part, and C. D., of X aforesaid, laborer, of the other part—

Witnesseth, that the said A. B. and L. B., for and in consideration of the sum of one dollar of lawful money of the Dominion of Canada, to the said A. B. in hand well and truly paid by the said C. D. at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have and each of them hath granted, bargained, sold, aliened, enfeoffed, released, remised, conveyed and confirmed, and by these presents do and each of them doth grant, bargain, sell, alien, enfeoff, release, remise, convey and confirm unto the said C. D., his heirs and assigns, all that certain lot, piece or parcel of land lying, being and situate on the eastern side of the

Road, in the County of Y, aforesaid, and more particularly described as follows:—Beginning at the south-west angle of lands of E. F., on the eastern side of the Road aforesaid, thence running north forty-five degrees east to the River, thence along the course of the said river, in a southerly direction chains and links to land now or formerly of G. H., and from thence in a straight line to the place of beginning, containing acres, more or less, together with all and singular the buildings, easements, tenements, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, with the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim, property and demand both at law and in equity of the said A. B., and L. B., or, in, to or out of the same, or any part thereof.

To have and to hold the said land and premises, with the appurtenances and every part thereof, unto the said C. D., his heirs and assigns to his and their sole use, benefit and behoof forever.

And the said A. B., for himself, his heirs, executors, and administrators, does hereby covenant, promise and agree to and with the said C. D., his heirs and assigns, in manner following, that is to say: That it shall be lawful for the said C. D., his heirs and assigns, from time to time, and at all times hereafter peaceably and quietly, to enter into the said lands and premises, and to have, hold, occupy, possess and enjoy the same without the lawful let, suit, hindrance, eviction, denial or disturbance of, from or by the said A. B., or any person or persons whomsoever, lawfully claiming or to claim the same. And also that the said A. B. has a good, sure, perfect and indefeasible estate of inheritance in fee simple in the said land and premises, and good right, full power and lawful authority to sell and convey the same, in manner and form as they are hereby sold and conveyed and mentioned or intended so to be, and that the same are free from incumbrances.

And lastly that the said A. B., his heirs, the said land and premises, and every part

thereof, unto the said C. D., his heirs and assigns, against the lawful claims of all persons whomsoever, shall and will by these presents warrant and forever defend.

In witness whereof, the said parties to these presents have hereunto set their hand and affixed their seals the day and year first above written.

Signed, sealed and delivered in the presence of:

All that certain lot, piece or parcel of land covered by water situate, etc. Description of a water lot.

All that undivided moiety or equal half part or share of the said of and in that certain lot, piece or parcel of land, etc. Description in deed of undivided half.

(*Following description*) together with a free and uninterrupted right of passage in and along a certain road of feet in width extending from the lands hereby described and conveyed easterly across land of the said to the Road for passage on foot and with carts, vehicles, carriages, horses or cattle, at all Inclusion of right of way in deed.

times and seasons and together with all and singular the buildings, tenements, easements, hereditaments and appurtenances to the lands herein described and conveyed belonging, etc.

Revesting right of way in the grantor.

Excepting and reserving unto the said (*grantor*), his heirs and assigns, full and free right and liberty at all times and seasons hereafter to use the passageway feet in width leading from other lands of the said A. B., across the lands hereby conveyed for all purposes for which the same is now used by the said (*grantor*).

Quit claim deed.

This indenture made this day of in the year of our Lord one thousand nine hundred and Between A. B., of X., in the County of Y., merchant, of the one part, and C. D., of X., aforesaid, laborer, of the other part—

Witnesseth that the said A. B., for and in consideration of the sum of one dollar of lawful money of the Dominion of Canada, to the said A. B. in hand well and truly paid by the said C. D., at or before the sealing

and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and forever quitted claim, and by these presents does remise, release and forever quit claim unto the said C. D., his heirs and assigns, to, all that certain lot, piece or parcel of land, etc., together with all and singular the buildings, easements, tenements, hereditaments and appurtenances to the same belonging, or in anywise appertaining with the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim, property and demand, both at law and in equity of the said A. B., of, in, to or out of the same, or any part thereof.

To have and to hold the said land and premises, with the appurtenances and every part thereof unto, and to the use of the said C. D., his heirs and assigns, to his and their sole use, benefit and behoof forever.

In witness whereof, the parties to these presents have hereunto their hands and seals

set and affixed the day and year first above written.

Signed, sealed and delivered in the presence of:

Operative part of another form of quit claim deed.

"doth grant, release and quit claim unto , his heirs and assigns, all estate, right, title, interest, claim and demand whatsoever, both at law and in equity or otherwise howsoever, and whether in possession or expectancy of him the said , of, in, to or out of all that certain lot, piece or parcel of land, etc."

(*When this form is used the "all estate" clause is not repeated after the description of the land*).

Deed from executor.

This Indenture made this day of in the year of our Lord one thousand nine hundred and Between A. B., of X., in the County of Y., the executor of and under the last will and testament of C. D., late of X., aforesaid, deceased, of the one part, and E. F., of X., aforesaid, merchant, of the other part.

Whereas, the said C. D., was at the time of his decease entitled to the land and premises hereinafter described and conveyed; and before his decease did make and publish his last will and testament bearing date the day of , in the year of our Lord one thousand nine hundred and , thereby authorizing and empowering his said executor to make and execute deeds of conveyance of his said land and premises.

And whereas the said C. D. departed this life on the day of , in the year of our Lord one thousand nine hundred and , without making or otherwise altering or cancelling his said will.

Now this indenture witnesseth that the said A. B., in pursuance of the powers vested in him by and under the said will and for and in consideration of the sum of one hundred dollars of lawful money of the Dominion of Canada, to the said A. B., as such executor in hand well and truly paid by the said E. F., at or before the sealing and de-

livery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, remised, conveyed and confirmed and by these presents does grant, bargain, sell, alien, enfeoff, release, remise, convey and confirm unto the said E. F., his heirs and assigns, all that certain lot, piece or parcel of land, etc., together with all and singular the buildings, easements, tenements, hereditaments and appurtenances to the same belonging, or in anywise appertaining, with the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold the said land and premises, with the appurtenances and every part thereof unto, and to the use of the said E. F., his heirs and assigns, to his and their sole use, benefit and behoof forever.

And the said A. B., for himself, his heirs, executors and administrators, doth hereby covenant with the said F. F., his heirs and assigns, that he, the said A.B., had not, at any time, heretofore, made, done, committed or executed, or wittingly or willingly suf-

fered any act, deed, matter or thing whatsoever, whereby or by reason whereof the said lands and premises or any part thereof are, is, shall or may be in anywise impeached, charged, affected or incumbranced in title, charge, estate, or otherwise howsoever. And that he, the said A. B., will, in his character, as such executor, execute any and all such further assurances of the said lands as may be requisite.

In witness whereof the parties to these presents have hereunto their hands and seals set and affixed the day and year first above written.

Signed, sealed and delivered in the presence of:

Mortgage with insurance clause.

This indenture, made this day of in the year of our Lord one thousand nine hundred and

Between A. B., of X., in the County of Y., merchant, of one part and C. D., of X., aforesaid, farmer, of the other part.

Witnesseth that the said A. B., for and in consideration of the sum of

dollars of lawful money of the Dominion of Canada, to the said A. B., in hand well and truly paid by the said C. D., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, does grant, bargain, sell, alien, enfeoff, release, remise, convey and confirm unto the said C. D., his heirs and assigns, all (*description*), and the buildings, easements, hereditaments and appurtenances to the same belonging and the reversions, remainders, rents and profits thereof, and all the estate, right, title, interest, claim and demand, of the said A. B., of, in, to or out of the same. To have and to hold, the said above granted and described land and premises, with the appurtenances, unto and to the use of the said C. D., his heirs and assigns forever, provided always that if the said A. B., his heirs, executors or administrators do well and truly pay unto the said C. D., heirs or assigns, the said full sum of dollars of lawful money of Canada, in one year from the date hereof, and interest for the same after the rate of

per centum per annum, payable half yearly on the days of
then these presents shall be void, and the said A. B., for himself, his heirs, executors and administrators, does hereby covenant with the said C. D., his heirs and assigns, that he, the said A. B., his heirs, executors or administrators, shall and will well and truly pay unto the said C. D., his heirs or assigns, the said full sum of
of lawful money aforesaid and interest for the same at the days and times, after the rate and in the manner mentioned in the foregoing proviso. And that after breach of the foregoing proviso, it shall be lawful for the said C. D., his heirs, executors, administrators and assigns, peaceably and quietly, to enter into, hold and enjoy the said granted land and premises, without hindrance, or disturbance of, from or by any person or persons lawfully claiming the same or any part thereof. And also that the said A. B. has a good, sure, perfect and indefeasible estate of inheritance in fee simple in the said land and premises and has good

right, full power and lawful authority to grant and convey the same, in manner and form aforesaid, according to the true intent and meaning hereof.

And also that the said A. B. and his heirs, the land and premises unto the said C. D., his heirs and assigns, against the lawful claims and demands of all persons shall and will by these presents warrant and forever defend. And that until payment shall be made of the principal sum and interest hereby secured to be paid to the said C. D., the said A. B. his heirs, executors, administrators and assigns will keep without intermission insured against casualties by fire on the building on the said granted land and premises the sum of of lawful money aforesaid in some good fire insurance office in to be selected by and in the name and for the benefit of the said C. D., his executors, administrators and assigns; and will deposit with the said C. D. all policies and receipts for renewal premiums of such insurance. And in default thereof that the said C. D.,

his heirs, executors, administrators and assigns shall and may, as required, effect, renew and continue such insurance, and charge all payments made for in respect thereof, with interest after the rate aforesaid, upon the said mortgaged land and premises.

In witness whereof, the parties to these presents have hereunto set their hand and seals the day and year first above mentioned.

Signed, sealed and delivered in the presence of .

Assignment of mortgage.

This Indenture made the day of 19 Between A. B., of X., in the County of Y., manufacturer, hereinafter called the "Assignor," of the first part, and C. D., of X., in the County of Y., aforesaid, banker, hereinafter called the "Assignee," of the other part.

Whereas by a mortgage dated the day of one thousand nine hundred and E. F., of X., aforesaid, merchant, and G. F., his wife, did grant and

mortgage the land and premises therein described to the said A. B., his heirs and assigns, for securing the payment of twelve hundred dollars, and there is now owing upon the said mortgage the said full sum of twelve hundred dollars.

Now this indenture witnesseth that in consideration of the sum of twelve hundred dollars of lawful money of Canada, now paid by the Assignee to the said Assignor (the receipt whereof is hereby acknowledged), the said Assignor doth hereby assign and set over unto the said Assignee, his executors, administrators and assigns, all that the said before in part recited mortgage and all the said sum of twelve hundred dollars now owing as aforesaid, together with all moneys that may hereafter become due or owing in respect of the said mortgage and the full benefit of all powers and of all covenants and provisos contained in said mortgage, and also full power and authority to use the name or names of the Assignor, his heirs, executors, administrators or assigns, for enforcing the performance of the covenants

and other matters and things contained in the said mortgage; and the said Assignor doth hereby grant and convey unto the said Assignee, his heirs and assigns, all and singular that certain parcel or tract of land and premises situate, lying and being (*description as in mortgage*).

To have and to hold the said mortgage and all moneys arising in respect of the same and to accrue thereon and also the said land and premises thereby granted and mortgaged to the use of the said Assignee, his heirs, executors, administrators and assigns, absolutely forever; but subject to the terms and provisos contained in such mortgage.

And the said Assignor, for himself, his heirs, executors, administrators and assigns, doth hereby covenant with the said Assignee, his heirs, administrators and assigns, that the said mortgage hereby assigned is a good and valid security, and that the said sum of twelve hundred dollars is now owing and unpaid, and that he hath not done or permitted any act, matter or thing whereby the said mortgage has been released or dis-

charged either partly or in entirety; and that he will, upon request, do, perform and execute every act necessary to enforce the full performance of the covenants and other matters contained therein.

In witness whereof, etc.

Signed, sealed and delivered in the presence of:

Release of mortgage.

To all to whom these presents shall come, A. B., of X., in the County of Y., manufacturer,

Sends greeting.

Whereas in and by a certain indenture of mortgage, being date the day of A.D. 19 , and duly registered in the Registry of Deeds at in libro , folio , and made between C. D., of X., aforesaid, merchant, and E. D., his wife, of the one part, and the said A. B. of the other part, the said C. D. and E. D. did, subject to a proviso for the redemption thereof in the said indenture contained, convey and confirm to the said A. B., his heirs and assigns, certain lands

and premises situated at , in the County of , and in said indenture more fully described, to secure the repayment of the sum of
of lawful money of Canada, with interest in manner and form, and at times therein set forth.

And whereas the said C. D. has fully paid off and satisfied the said mortgage and the principal and interest due thereon, and has requested a release of the same.

Now know ye that the said A. B. for and in consideration of the premises and of the sum of one dollar to him in hand well and truly paid by the said C. D. at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, released, remised, discharged and forever quitted claim to and by these presents, doth grant, release, remise, discharge and forever quit claim to as well the said mortgage and the bond given therewith, and the sum thereby secured as all interest due thereon, together with the said premises, and all and singular the appurtenances

thereto, and all the estate, right, title, interest, claim, property and demand whatsoever both at law and in equity of him the said A. B. under and by virtue of the said mortgage.

To have and to hold the said lot of land and premises, with all and singular the appurtenances to the said C. D., his heirs and assigns, to his and their behoof forever, absolutely acquitted, discharged and released of and from the said in part recited indenture or mortgage and the sum thereby secured.

In witness whereof the party to these presents has hereunto his hand and seal subscribed and set this day of , A.D. 19 .

Signed, sealed and delivered in the presence of:

Partial release of mortgage.

This Indenture made this day of , in the year of our Lord one thousand nine hundred between A. B., of X., in the County of Y., manufacturer, of the one part, and C. D., of X., aforesaid, merchant, of the other part.

Whereas by indenture of mortgage duly made and executed by and between the said C.D., and E.D., his wife, of the one part, and the said A. B., of the other part, bearing date on or about the day of , and registered in the Registry of Deeds Office, at in liber , folio , the said C. D., and E. D., in consideration of the sum of to the said C. D., paid by the said A. B., the receipt whereof was thereby acknowledged, did grant unto the said A. B., his heirs and assigns, certain lands and premises, including the lands and premises hereinafter particularly described, to hold the same to the said A. B., his heirs and assigns forever, subject nevertheless to the proviso for the redemption thereof therein contained whereby it was provided that the same should cease and become void on payment by the said C. D., his heirs, executors, administrators or assigns, of the said sum of dollars with lawful interest thereon and premiums of insurance as by reference to said indenture will more fully appear.

And whereas the said C. D. has applied to the said A. B. for a release from the said mortgage of that part of the said mortgaged lands hereinafter mentioned and described.

Now this indenture witnesseth that the said A. B., for and in consideration of the said sum of dollars of lawful money as aforesaid to him in hand paid by the said C. D., at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, remised, released and forever quitted claim, and by these presents does grant, remise, release and forever quit claim unto the said C. D., his heirs and assigns forever, all that certain parcel of land situate, lying and being, etc., with all and singular the appurtenances thereof, and all the estate, right, title, interest, claim, property and demand whatsoever both at law and in equity of him, the said A. B., as such mortgagee as aforesaid to have and to hold the said lot of land and premises last above described, with all and every the appurtenances thereof unto the said C. D., his heirs and assigns, to his and

their own proper use and behoof forever, absolutely acquitted, released and discharged of and from the said above in part recited mortgage and the sum thereby secured.

In witness whereof, etc.

Signed, sealed and delivered in the presence of:

Lease of a concert hall.

This Indenture made the day of in the year of our Lord one thousand nine hundred and , between A. B., of X., in the County of Y., real estate agent, hereinafter called the Lessor, of the first part, and C. D., of X., aforesaid, theatre manager, hereinafter called the Lessee, of the second part.

Witnesseth that in consideration of the rent, covenants and agreements herein reserved and contained on the part of the said Lessee, his executors, administrators and assigns, to be paid, observed and performed, the said Lessor hath demised and leased and by these doth demise and lease unto the said Lessee, his executors, administrators and

assigns, all that messuage or tenement and premises, situate, lying and being in the city of , consisting of a concert hall and stage on the ground floor of a building known as Union Hall, being Nos. 126 and 128 Street, together with the office adjoining the same and the dressing rooms at the rear of the said stage;

To have and to hold the said messuage or tenement and premises unto the said Lessee, his executors, administrators and assigns for and during the term of five years to be computed from the day of one thousand nine hundred and , and from thenceforth next ensuing and fully to be complete and ended; yielding and paying therefor yearly and every year during the said term hereby granted unto the said Lessor, his heirs, executors, administrators or assigns, the sum of dollars of lawful money of Canada to be payable the sum of on the day of A.D. 19 , the first of such payments to become due and be made on the day of

now next, and last payment to become due and to be paid in advance on the
day of one thousand nine hundred and .

Provided always, and these presents are upon this express condition, that if the said yearly rent hereby reserved, or any part thereof, shall at any time remain behind or unpaid for the space of twenty-one days next over or after any of the days on which the same shall become due and payable, or if a breach or default shall be made in any of the covenants hereinafter contained by the said Lessee, his executors, administrators or assigns, then and in every such case it shall be lawful for the said Lessor, his heirs, executors, administrators or assigns, into and upon the said premises or any part thereof in the name of the whole to re-enter and the same to have again, repossess and enjoy, as if these presents had never been executed; and also, that if the term hereby granted shall be at any time seized or taken in execution or in attachment by any creditor of

the said Lessee (or if the said Lessee shall make an assignment for the benefit of creditors, or, becoming bankrupt or insolvent, shall take the benefit of any act that may be in force for bankrupt or insolvent debtors), the then current rent shall immediately become due and payable, and the said term shall immediately become forfeited and void, but the next succeeding current rent shall also nevertheless be at once due and payable; and the said Lessee for himself, his heirs, executors, administrators and assigns, do hereby covenant, promise and agree, to and with the said Lessor, his heirs, executors, administrators and assigns, that he, the said Lessee, his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, to the said Lessor, his heirs, executors, administrators or assigns, the said yearly rent hereby reserved, at the times and in the manner hereinbefore appointed for the payment hereof. And also shall and will from time to time and at all times during the said term keep in good and sufficient repair the said premises here-

by demised, reasonable wear and tear and accidents by fire and tempest excepted, and the same so kept in repair, shall and will at the end, expiration or other sooner determination of the said term, peaceably and quietly yield and deliver up to the said Lessor, his heirs, executors, administrators or assigns.

And also, that it shall be lawful for the said Lessor, his heirs, executors, administrators and assigns, and their agents respectively, either alone or with workmen or others, from time to time at all reasonable times in the daytime during the said term to enter upon the said demised premises and every part thereof, to view and examine the state and condition thereof, and in case any want of reparation or amendment be found on any such examination he, the said Lessee, his executors, administrators or assigns, shall and will from time to time, cause the same to be well and sufficiently repaired, amended and made good within one month next after notice in writing shall have been given to him or left at or upon the said hereby demised premises for that purpose; and

if the said Lessee, his executors, administrators or assigns, shall fail in making the necessary repairs in manner hereinbefore described that it shall be lawful for the said Lessor, his heirs, executors, administrators or assigns, and his agent to enter into and upon the said hereby demised premises and have the same repaired in a proper manner, and to render the account for such repairs to the said Lessee, his executors, administrators or assigns, and demand payment for the same; and if default be made, to sue for the same in any court of law having jurisdiction over the same.

And the said Lessee covenants with the said Lessor that he, the said Lessee, his executors, administrators or assigns, shall not nor will at any time or times during the continuance of this demise, sell, assign, let or otherwise part with this present lease, or the said premises hereby demised or any part thereof, to any person or persons whomsoever, for the whole or any part of the said term, nor alter, change or remove any part of the said premises, without the license or

consent in writing of the said Lessor, his heirs, executors, administrators or assigns, from time to time first had and obtained, and the said Lessor, for himself, his heirs, executors, administrators or assigns, covenant with the said Lessee, his executors, administrators and assigns, that he, the said Lessee, his executors, administrators and assigns, well and truly paying the rent hereinbefore reserved, and observing, performing and keeping the covenants hereinbefore contained, shall and may from time to time, and at all times during the said term, peaceably and quietly enjoy the said premises hereby demised, without molestation or hindrance.

And also, that if the said premises be destroyed, or so much injured as to become unfit for occupation, by fire or other casualty not caused by the wilful default or neglect of the said Lessee, his executors, administrators or assigns, the said term hereby demised shall cease, and the current rent shall be duly apportioned, and the due proportionate part thereof shall be at once due and payable.

In witness whereof, all the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:

Lease of house.

This Indenture made the day of A.D. 19
Between

Witnesseth, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said part of the second part, executors, administrators and assigns, to be paid, observed and performed the said part of the first part ha demised and leased, and by these presents do demise and lease unto the said part of the second part, executors, administrators and assigns, all that messuage or tenement situate, lying and being , together with all houses, outhouses, yards and other appurtenances thereto belonging or usually known as part or parcel thereof, or as belonging thereto:

To have and to hold the said premises unto the said part of the second part, executors, administrators and assigns, for and during the term of to be computed from the day of , 19 , and from thenceforth next ensuing, and fully to be complete and ended: yielding and paying therefor yearly and every year during the said term hereby granted, unto the said party of the first part, heirs, executors, administrators or assigns, the sum of to be payable on the following days and times, that is to say:

The first of such payments to become due and be made on the day of next, and the last of such payments to be made in advance on the day of preceding the expiration of the said term.

Provided always, and these presents are upon this express condition, that if the said yearly rent hereby reserved or any part thereof, shall at any time remain unpaid for the space of twenty-one days after any of

the days on which the same shall become due and payable, or if a breach or default shall be made in any of the covenants hereinafter contained by the said part of the second part, executors, administrators or assigns, then and in every such case it shall be lawful for the said part of the first part, heirs, executors, administrators, or assigns, into and upon the said premises or any part thereof in the name of the whole, to re-enter, and the same to have again, repossess and enjoy as if these presents had never been executed; And the said part of the second part, for heirs, executors, administrators or assigns, do hereby covenant, promise and agree to and with the said part of the first part, heirs, executors, administrators and assigns; that the said part of the second part, executors, administrators and assigns, shall and will well and truly pay or cause to be paid to the said part of the first part, heirs, executors, administrators or assigns, the said yearly rent hereby reserved, at the times and in the manner

hereinbefore appointed for the payment thereof; And also shall and will, from time to time, and at all times during the said term, keep in good and sufficient repair the said premises hereby demised, reasonable wear and tear and accidents by fire and tempest excepted: And the same, so kept in repair, shall and will at the end, expiration or other sooner termination of the said term, peaceably and quietly yield and deliver up to the said part of the first part, heirs, executors, administrators or assigns; And also shall and will well and truly pay or cause to be paid all taxes, rates, levies, duties, charges, assessments and impositions whatsoever, whether parliamentary, local or otherwise, which now are or which during the continuance of this demise shall at any time be rated, taxed or imposed on or in respect of the said demised premises, or any part thereof; And also, that it shall be lawful for the said part of the first part, heirs, executors, administrators and assigns, and their agents respectively, either alone or with workmen or others, from time to

time, at all reasonable times in the daytime during the said term, to enter upon the said demised premises, and every part thereof, to view and examine the state and conditions thereof, and in case any want of reparation or amendment be found on any such examination, the said part of the second part, executors, administrators or assigns, shall and will from time to time cause the same to be well and sufficiently repaired, amended and made good within one month next after notice in writing shall have been given to or left at or upon the said hereby demised premises for that purpose; And if the said part of the second part, executors, administrators or assigns, shall fail in making the necessary repairs in manner hereinbefore described, that it shall be lawful for the said part of the second part, heirs, executors, administrators and assigns, and agents, to enter into and upon the said hereby demised premises, and have the same repaired in a proper manner, and to render the account for such repairs to the said part of

the second part, executors, administrators and assigns, and demand payment for the same, and if default is made, to sue for the same in any court of law having jurisdiction over the same:

And the said part of the second part, executors, administrators or assigns, shall not, nor will at any time or times during the continuance of this demise, sell, assign, let or otherwise part with this present lease, or the said premises hereby demised, or any part thereof, to any person or persons whomsoever, for the whole or any part of said term, nor alter, change or remove any part of the said premises, yards or offices, externally or internally, without the license or consent in writing of the said part of the first part, heirs, executors, administrators or assigns, from time to time first had and obtained:

And the said part of the first part, for heirs, executors, administrators and assigns: covenant with the said part of the second part, executors, administrators and assigns, that the said

part of the second part, executors, administrators and assigns, well and truly paying the rent hereinbefore reserved, and observing, performing and keeping all the covenants hereinbefore contained, shall and may from time to time, and at all times during the said term, peaceably and quietly enjoy the said premises hereby demised without molestation or hindrance.

And if the term hereby demised shall at any time be seized or taken in execution, or in attachment by any creditor of the party of the second part, or if the said party of the second part shall make any assignment for the benefit of creditors, or being bankrupt or insolvent shall take the benefit of any act in force for bankrupt or insolvent debtors, the then current rent shall immediately become due and payable, and said term shall immediately become forfeited and void, but the next current rent shall nevertheless be at once due and payable.

In witness whereof, etc.

Signed, sealed, etc.

Use of passage-way in lease.

Together with the exclusive use and enjoyment of the passageway of the width of feet, leading from the rear part of the said demised premises to Street aforesaid.

Reservation of passage-way in lease.

Excepting and reserving unto the Lessor the use at all times and for all purposes, in common with the Lessee, of the passageway leading from the rear part of the said demised premises to Street aforesaid.

Covenant restricting use of premises in lease.

And also that the Lessee will use the said premises for a , and for no other purpose.

Covenant for renewal in lease.

And the Lessor doth hereby for himself, and his assigns, covenant with the Lessee, that if the Lessee, his executors, administrators or assigns, shall be desirous of taking a renewal lease of the said premises for the further term of years from the expiration of the said term hereby granted, and of such desire shall, prior to the expiration of the said last mentioned term, give to the Lessor, his heirs and assigns, or leave at the

last known place of business or abode in Canada six calendar months' previous notice in writing and shall pay the said rent hereby reserved, and observe and perform the several covenants and agreements herein contained; and on the part of the Lessee, his executors, administrators or assigns, to be observed and performed up to the expiration of the said term hereby granted, he, the Lessor, his heirs and assigns, will, upon the request and at the expense of the Lessee, his executors, administrators and assigns (and upon payment by him or them of the sum of $ as a premium on such renewal), and upon his or their executing and delivering to the Lessor, his heirs or assigns, a duplicate thereof, forthwith execute and deliver to the said Lessee, his executors, administrators or assigns, a renewed lease of the said premises for the further term of years at the same yearly rent, and under and subject to the same covenants, provisoes and agreements as are herein contained [other than this present covenant.]

Assignment of lease.

This Indenture, made the day of , A.D. 19 , between hereinafter called the Assignor of the first part, and hereinafter called the Assignee of the second part.

Witnesseth that in consideration of now paid by the said Assignor to the said Assignee (the receipt whereof is hereby acknowledged), the said Assignor do grant and assign unto the said Assignee executors, administrators, and assigns, all and singular, the premises comprised in and demised by a certain Indenture of Lease, bearing date the day of , A.D. 19 , and made between together with the appurtenances, to hold the same unto the said Assignee, executors, administrators, and assigns, henceforth for and during the residue of the term thereby granted, and for all other the estate, term and interest (if any) of the said Assignor herein. Subject to the payment of the rent and the performance of the Lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

And the said Assignor for heirs, executors and administrators, do hereby covenant with the said Assignee executors, administrators, and assigns, that notwithstanding any act of the said Assignor he now ha good right to assign the said lease and premises in manner aforesaid.

And that subject to the payment of the rent and the performance of the Lessee's covenants, it shall be lawful for the Assignee executors, administrators and assigns, peaceably and quietly to hold, occupy and enjoy the said premises hereby assigned during the residue of the term granted by the said Indenture of Lease, and receive the rents and profits thereof without any interruption by the said Assignor, or any person claiming under free from all charges and incumbrances whatsoever. And also that the said Assignor and all persons lawful claiming under will, at all times hereafter, at the request and costs of the said Assignee executors, administrators, or assigns, assign and conform to

and them, the said premises for the residue of the said term as the said Assignee , executors, administrators or assigns shall reasonably require.

And the said Assignee for heirs, executors and administrators, do hereby covenant with the said Assignor, executors and administrators, that the said Assignee, executors, administrators and assigns, will, from time to time, pay the rent and observe and perform the Lessee's covenants and conditions in the said Indenture of Lease, reserved and contained, and indemnify and save harmless the said Assignor, heirs, executors and administrators, from all losses and expenses in respect of the non-observance or performance of the said covenants and conditions or any of them.

In witness, etc.

Consent by lessor to assignment of lease.

I, , the Lessor named in the within assignment of lease, hereby consent to the said assignment to of as within written.

Witness.

Testimonium and attestation where a company executes.

In witness whereof the said Company, Limited, has hereunto affixed its corporate seal, the day and year first above written.

Signed, sealed, delivered and countersigned by President (*or other proper officer or officers*) of the said Company, Limited, in the presence of:

Name of Company.
The corporate seal.
Signature of proper officer or officers.

Testimonium and attestation where a company and a private individual execute.

In witness whereof the said parties have hereunto set their corporate seal and hand and seal respectively, on the day and year first above written.

Signed, sealed, delivered and countersigned by President of the said Company, Limited, in the presence of:

Name of Company.
The corporate seal.
Signature of President.

Signed, sealed and delivered by
in the presence of: } *Signature opposite seal.*

Attestation where instrument is signed by mark.

Signed, sealed and delivered by the said , I having first truly and audibly read over to him the contents of the above Indenture (*or, if read over by another person,* the contents of the above Indenture having first been truly and audibly read over to him), when he appeared perfectly to understand the same, and made his mark thereto in my presence.

(Signature of witness) his John X Smith mark.

Attestation where interlineations and alterations have been made.

Signed, sealed and delivered (the interlineations in the and lines [*or* alterations in] of the page, identified with the initials of the parties [*or* of the subscribing witness] having first been made) in the presence of:

Power of attorney.

Know all men by these presents, that I, , of , in the County of , do hereby make, nominate,

constitute and appoint , of , in the County of , my true and lawful attorney for me in my name, place and stead, and for my sole use and benefit (*add clause or clauses required*).

To execute an instrument—

To sign, seal and deliver in my name, and as my act and deed, a certain instrument bearing date on or about the day of , 19 , intending to convey to , of , in the County of , all that certain piece or parcel of land, situate, etc., for the sum of dollars, and to receive the said sum of purchase money thereof for me and on my behalf (*or*, intending to mortgage, etc., *or* intending to lease, etc.)

To sell land—

To sell all that certain piece or parcel of land situate, etc., to such person or persons and upon such terms and conditions as the said shall think fit, and to execute to the purchaser or purchasers of said land

such deed or deeds of grant and conveyance for the purpose aforesaid as may be required, and to receive and give receipts for on my behalf for the purchase moneys of the said lands.

To mortgage land—

To sign, seal and deliver a mortgage in my name and as my act and deed of all that piece or parcel of land, etc., with the usual provisoes and covenants to such person or persons or corporation as shall advance to me by way of loan the sum of dollars upon the security of the said mortgage.

To execute leases—

To sign, seal and deliver in my name and as my act and deed all such leases and agreements as shall be requisite or as the said shall deem necessary, in the care and management of my houses and estate situate at ; and to receive and collect all the rents, that may be payable to me, and in my name to sign receipts for the same.

Ratification—

I, the said , hereby agreeing and covenanting for myself, my heirs, executors and administrators, to allow, ratify and confirm whatsoever the , shall lawfully do or cause to be done in the premises by virtue of these presents.

In witness whereof I have hereunto set my hand and affixed my seal the day of , 19 .

Signed, sealed and delivered)
in the presence of:)

CHAPTER XV.

Conveyancing under the Torrens System.

The Torrens System of holding and conveying lands, an outline of which will be found elsewhere in the work, is in force in the Provinces of Alberta, Manitoba and Saskatchewan and in the Territories, there existing in Manitoba, however, also the old system of land transfer. All instruments affecting lands which are under the Torrens System are made in statutory forms provided by the Acts bringing the system into force in these parts of Canada.

The transfer is a short instrument made by the transferor in the first person, reciting the nature of the estate held by the transferor, and having as its operative word "transfer," followed by the estate or interest to be transferred. In Alberta, Manitoba and the Territories the transfer must contain a memorandum of all leases, mortgages or incumbrances to which the land is

subject. It is said, however, that the omission of such a memorandum does not affect the validity of the transfer.[1]

No words of limitation are necessary, but every transfer operates as an absolute transfer of all such right and title as the transferor has, unless a contrary intention is expressed in the transfer.

The transfer itself does not imply any covenants, but one of the effects of registration of a transfer in Alberta, Saskatchewan and the Territories is that an implied covenant arises on the part of the transferor that he will do such acts and execute such instruments as are necessary in accordance with the provisions of the Act to give effect to all covenants, conditions, and purposes expressly set forth in the transfer.

In every transfer of land subject to a mortgage, there is, upon registration, implied a covenant by the transferee that he will pay the principal and interest or the charges secured by the mortgage and will

[1] Thom's Canadian Torrens System, 239; *Glenn* v. *Scott*, 2 Terr. L. R. 339.

protect the transferor from liability in respect thereto, and in respect of any of the covenants contained or implied in the mortgage.

A mortgage under the Torrens System has the same effect as the mortgage employed under the old system, which purports to be a conveyance of the land, but in equity is regarded as creating only a right to enforce repayment out of the land. The Torrens System strips the old form of mortgage of its fictions and makes it a charge only, providing a form which does not purport to do more.

The mortgage under the Acts is an instrument for use when the land is to be charged for the purpose of securing a debt or loan. The Acts also provide for somewhat similar instrument known as an incumbrance which is used for other purposes, namely, for charging land with the payment of annuities, rent charges, etc.

The body of the mortgage recites the estate held by the mortgagor in the lands describing them, states the consideration,

contains covenants for repayment and closes with the mortgaging words.

Elsewhere than in Manitoba, in addition to the covenants expressed in the form, there is implied upon registration a covenant that the mortgagor will do such acts and execute such instruments as, in accordance with the provisions of the Act, are necessary to give effect to all covenants, conditions and purposes expressly set forth in the mortgage, and there is also implied, against a mortgagor, remaining in possession, a covenant that he will repair and keep in repair all buildings and other improvements upon the land, and that the mortgagee may enter upon the land with others to inspect the state of repair.

All other covenants may or may not enter into the mortgage according to the requirements of the parties. For these special covenants short forms are provided by the Act, which, when used in the mortgage, give it the same effect as if the long forms or words in the column opposite, set out also in the forms, were inserted in the mortgage.

The Acts do not give any validity to these forms of covenants and are, in some instances, defective, as for instance, in the use of the words "heirs" and "conveying" which are inappropriate in instruments made in pursuance of the Acts.[2]

Incumbrances do not contain covenants for payment, otherwise they differ but slightly in form from mortgages.

A transfer of a mortgage or incumbrance is made in a form provided by the Acts.

Mortgages and incumbrances are discharged in Manitoba by producing to the Registrar any memorandum of discharge duly executed, discharging the mortgage or incumbrance in whole or in part or the land in whole or in part from the moneys secured. In Alberta, Saskatchewan and the Territories, a receipt in statutory form is endorsed on the original mortgage or incumbrance, executed and attested as the ordinary instrument. In practice in Alberta and Saskatchewan the discharge form is made in the same manner as in Manitoba.[3]

[2] Thom's Canadian Torrens System, pp. 287 and 288.
[3] Thom's Canadian Torrens System, p. 350.

The Torrens System Acts do not apply to leases for a term of three years or under and these leases need not be in the forms provided. If, however, a lease for a term less than three years purports to be made under the Act, the implied covenants in leases under the Act may be read into it, even though it be not registered.[4]

In every lease, unless a contrary intention appears therein, there is implied a covenant on the part of the lessee for payment of rent and payment of all rates and taxes, and a covenant that he will keep and deliver up the premises in good repair, accidents and damage from fire, storm and tempest or other casualty and reasonable wear and tear excepted. In many cases, therefore, it is necessary to state a contrary intention of the parties, particularly with respect to payment of the taxes.

Unless a different intention appears in the lease, there are implied in the lessor the following powers:—

[4] Thom's Canadian Torrens System, p. 252; *Telfer Bros.* v. *Fisher*, 15 W. L. R. 400.

(*a*) That he may, by himself or his agents, enter upon the demised lands and view the state of repair, and may require the lessee by notice in writing to repair in so far as the latter is bound to do so, any defect within a reasonable time.

(*b*) That in case any rent is in arrear for two months, or in case default is made in the fulfilment of any covenant, express or implied, and is continued for two months, or in case repairs required to be made by notice are not completed within the time limited, the lessor may enter upon and take possession of the demised land.

In all the Acts, except that in force in Manitoba, there are provided short forms for special covenants in leases, the use of the few words in the first column of the form giving the lease the same effect as if the many words in the second column were inserted in it. Special covenants, however, may be made in leases under the Manitoba Act.

Leases are transferred by a transfer in the same form as mortgage and incumbrances.

When a lease is surrendered otherwise than by operation of law, a surrender is made in statutory form and shown to the registrar.

The Acts provide for the making of powers of attorney. Except in Manitoba, their use is restricted to registered owners, and a mortgagee for instance cannot deal with his mortgage by power of attorney. No special form for powers of attorney is prescribed by the Manitoba Act, and elsewhere, though short forms are given, the Acts allow the use of almost any form in which this instrument is made.

Forms in Alberta.

Transfer. I, *A. B.*, being registered owner of an estate (*state the nature of estate*) subject, however, to such incumbrances, liens and interests as are notified by memorandum underwritten (*or* indorsed hereon) in all that certain tract of land containing acres more or less, and being (*part of*) section township , range , in the (*or as the case may be*), (*here state rights of*

way, privileges, easements, if any, intended to be conveyed along with the land and if the land dealt with contains all included in the original grant refer thereto for descriptions of parcels and diagrams; otherwise set forth the boundaries and accompany the description by a diagram) do hereby, in consideration of the sum of dollars paid to me by *E. F.*, the receipt of which sum I hereby acknowledge, transfer to the said *E. F.* all my estate and interest in the said piece of land. (*When a lesser estate describe such lesser estate.*)

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by said *A. B.* in the presence of } (*Signature.*)

Lease.

I, *A. B.*, being registered owner, subject, however, to such mortgages and incumbrances as are notified by memorandum underwritten (*or* indorsed hereon), of that piece of land (*describe it*), part of section , township , range ,

(*or as the case may be*), containing acres, more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title or lease, refer thereto for description and diagram, otherwise set forth the boundaries by metes and bounds*), do hereby lease to *E. F.* of (*here insert description*), all the said land, to be held by him, the said *E. F.* as tenant, for the space of years, from (*here state the date and term*), at the yearly rental of dollars, payable (*here insert terms of payment of rent*), subject to the covenants and powers implied (*also set forth any special covenants or modifications of implied covenants*).

I, *E. F.* of (*here insert description*), do hereby accept this lease of the above described land, to be held by me as tenant, and subject to the conditions, restrictions and covenants above set forth.

Dated this day of .

Signed by the above named *A. B.* as lessor, and *E. F.* as lessee, in presence of } (*Signature of lessor.*) (*Signature of lessee.*)

(*Here insert memorandum of mortgages and incumbrances.*)

COLUMN ONE.	COLUMN TWO.
1. Will not, without leave in writing, assign or sublet.	1. The covenantor, his executors, administrators, or transferees, will not, during the said term, transfer, assign or sublet the land and premises hereby leased, or any part thereof, or otherwise by any act or deed procure the said land and premises, or any part thereof, to be transferred or sublet, without the consent in writing of the lessor or his transferees first had and obtained.
2. Will fence.	2. The covenantor, his executors, administrators, or transferees, will during the continuance of the said term erect and put upon the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.

Short covenants in lease.

COLUMN ONE.	COLUMN TWO.
3. Will cultivate.	3. The covenantor, his executors, administrators, or transferees, will, at all times during the said term, cultivate, use and manage in a proper husbandlike manner, all such parts of the land as are now or shall hereafter, with the consent in writing of the said lessor or his transferees, be broken up or converted into tillage, and will not impoverish or waste the same.
4. Will not cut timber.	4. The covenantor, his executors, administrators, or transferees will not cut down, fell, injure or destroy any living timber or timberlike tree standing and being upon the said land, without the consent in writing of the said lessor or his transferees.
5. Will not carry on offensive trade.	5. The covenantor, his executors, administrators, or transferees will not, at any time during the said term, use, exercise, or carry on, or permit or suffer to be used, exercised or carried on, in or upon the said premises, or any part thereof, and noxious, noisome or offensive art, trade, business, occupation or calling; and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the said premises, or any part thereof, which shall or may be or

COLUMN ONE. COLUMN TWO.

grow to the annoyance, nuisance, grievance, damage or any disturbance of the occupiers or owners of the adjoining lands and properties.

Surrender of lease.

In consideration of dollars to me paid by (*lessor or his assigns, as the case may be*) I do hereby surrender and yield up from the day of the date hereof unto the lease (*describe the lease fully*) and the term therein created.

Dated the day of A.D. 19 .

Signed by the above named in the presence of } (*Signature.*)

Mortgage.

I, *A. B.*, being registered as owner of an estate (*here state nature of interest*), subject, however, to such incumbrances, liens and interests as are notified by memorandum underwritten (*or* indorsed hereon) of that piece of land (*description*), part of section township , range , (*or as the case may be*) containing acres, be the same more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land,*

and if the land dealt with contains all included in the original grants refer thereto for description of parcels and diagrams; otherwise set forth the boundaries and accompany the description by a diagram), in consideration of the sum of dollars lent to me by *E. F.* (*here insert description*), the receipt of which sum I do hereby acknowledge, covenant with the said *E. F.*:

Firstly.—That I will pay to him, the said *E. F.*, the above sum of dollars, on the day of .

Secondly.—That I will pay interest on the said sum at the rate of on the dollar, in the year, by equal payments on the day of and on the day of in every year.

Thirdly.—(*Here set forth special covenants, if any.*)

And for the better securing of the said *E. F.* the repayment in manner aforesaid of the principal sum and interest, I hereby mortgage to the said *E. F.* my estate and interest in the land above described.

In witness whereof, I have hereunto signed my name this day of , 19 .

Signed by the above named *A. B.* as mortgagor, in the presence of | (*Signature of mortgagor.*)

(*Insert memorandum of mortgages and incumbrances.*)

Incumbrance.

I, *A. B.*, being registered as owner of an estate (*state nature of estate*), subject, however, to such mortgages and incumbrances as are notified by memorandum underwritten (*or* indorsed hereon), of that piece of land of (*description*) part of section , township , range , (*or as the case may be*) containing acres, more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries and accompany*

the description by a diagram), and desiring to render the said land available for the purpose of securing to and for the benefit of *C. D.*, of (*description*) the (*sum of money, annuity or rent charge*) hereinafter mentioned, do hereby incumber the said land for the benefit of the said *C. D.*, with the (*sum, annuity or rent charge*) of , to be paid at the times and in the manner following, that is to say: (*Here state the times appointed for the payment of the sum, annuity or rent charge intended to be secured, the interest, if any, and the events in which such sum, annuity or rent charge shall become and cease to be payable, also any special covenants or powers, and any modification of the powers or remedies given to an incumbrance by this Act*): And subject as aforesaid, the said *C. D.* shall be entitled to all powers and remedies given to an incumbrance by *The Land Titles Act*.

Signed by the above named } (*Signature of*
in the presence of } *incumbrancer.*)

Insert memorandum of mortgages and incumbrances.)

Transfer of mortgage, incumbrance or lease.

I, *C. D.*, the mortgagee (incumbrancee *or* lessee, *as the case may be*), in consideration of dollars, this day paid to me by *X. Y.*, of , the receipt of which sum I do hereby acknowledge, hereby transfer to him the mortgage (incumbrance *or* lease, *as the case may be, describe the instrument fully*), together with all my rights, powers, title, and interest therein.

In witness whereof I have hereunto subscribed by name this day of , 19 .

Signed by the said } *C. D.* (*Transferor.*)
in presence of } *X. Y.* (*Transferee.*)

Transfer of part of mortgage or incumbrance.

I, *C. D.*, the mortgagee (incumbrancee *or* lessee, *as the case may be*), in consideration of dollars, this day paid to me by *X. Y.*, of , the receipt of which sum I do hereby acknowledge, hereby transfer to him dollars of the mortgage (*or* incumbrance, *as the case may be, describe the instrument fully*), together with all my rights, powers, title, and interest therein, and the sum so transferred shall be

preferred (*or* deferred *or* rank equally, *as the case may be*) to the remaining sum secured by the mortgage (*or* incumbrance).

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the said in presence of } *C. D.* (*Transferor.*) Accepted, *X. Y.* (*Transferee.*)

Short covenants in mortgage.

COLUMN ONE.	COLUMN TWO.
1. Has a good title to the said land.	1. And also, that the said mortgagor at the time of the sealing and delivery hereof, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the lands, tenements, hereditaments and all and singular other the premises hereinbefore described, with their and every part of their appurtenances, and of and in every part and parcel thereof, without any manner of trusts, reservations, limitations, provisos or conditions, except those contained in the original grant thereof from the Crown, or any other matter or thing to alter, charge, change, incumber or defeat the same.

COLUMN ONE.	COLUMN TWO.
2. Has the right to mortgage the land.	2. And also, that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to mortgage the said lands, tenements, hereditaments, and all and singular other the premises hereby mortgaged or hereinbefore mentioned or intended so to be with their and every of their appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns in manner aforesaid, and according to the true intent and meaning of these presents.
3. And that on default the (*mortgagee*) shall have quiet possession of the land.	3. And also, that from and after default shall happen to be made of or in the payment of the said sum of money, in the said above covenant mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants in this mortgage particularly set forth, contrary to the true intent and meaning of these presents, then and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators, and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess, and enjoy the

COLUMN ONE.	COLUMN TWO.
	aforesaid lands, tenements, hereditaments and premises, hereby mortgaged or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of him the said mortgagor, his heirs, or assigns, or any other person or persons whomsoever.
4. Free from all incumbrances.	4. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments and premises, or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner of other charges or incumbrances whatsoever.
5. Will execute such further assurances of the land as may be requisite.	5. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said covenant mentioned, or the interest thereof, or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants

COLUMN ONE. COLUMN TWO.

in this mortgage particularly set forth, contrary to the true intent and meaning of these presents and of the said covenants then and in every such case the said mortgagor, his heirs and assigns, and all and every other person or persons whosoever having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title interest or trust of, in, to or out of the lands, tenements, hereditaments and premises hereby mortgaged, or mentioned, or intended so to be, with the appurtenances or any part thereof, by, from, under or in trust for him the said mortgagor, shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying the said lands, tenements, hereditaments and premises, with the appurtenances unto the said mortgagee,

COLUMN ONE.	COLUMN TWO.
	his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs, executors or his or their counsel learned in the law, shall or may be lawfully and reasonably devised, advised or required, so as no person who shall be required to make or execute such assurances shall be compelled, for the making or executing thereof, to go or travel from his usual place of abode.
6. Has done no act to incumber the land.	6. And also, that the said mortgagor hath not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof, the said lands, tenements, hereditaments and premises hereby mortgaged or mentioned or intended so to be, or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or incumbered in title, estate, or otherwise howsoever.

Power of attorney.

I, *A. B.*, being registered owner of an estate (*here state nature of the estate or interest*), subject, however, to such incumbrances, liens and interests as are notified

by memorandum underwritten (*or* indorsed hereon), (*here refer to schedule for description and contents of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificate of title or lease of each parcel*) do hereby appoint *C. D.* attorney on my behalf to (*here state the nature and extent of the powers intended to be conferred, as to sell, lease, mortgage, etc.*) the land in the said schedule described, and to execute all such instruments, and do all such acts, matters and things as may be necessary for carrying out the powers hereby given and for the recovery of all rents and sums of money that may become or are now due or owing me in respect to the said lands, and for the enforcement of all contracts, covenants or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage, or trespass.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above named A. B. in the presence of } (*Signature.*)

Revocation of power of attorney.

I, *A. B.*, of , hereby revoke the power of attorney given by me to , dated the day of , 19 , and recorded in the land titles office at , for the land registration district, on the day of , 19 , as No.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above named A. B. in the presence of } (*Signature.*)

Receipt or acknowledgment of payment of mortgage or other incumbrance.

I, *C. D.*, the mortgagee (incumbrancee *or* assignee *as the case may be*), do acknowledge to have received all the moneys due or to become due under the within written mortgage (*or* incumbrance, *as the case may be*), and that the same is wholly discharged.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above named *C.D.* in the presence of } (*Signature.*)

FORMS IN MANITOBA.

Memorandum of transfer.

I, *A. B.*, of , being registered owner of an estate (*state the nature of estate*), subject, however, to such incumbrances, liens and interests as are notified by memorandum underwritten (*or* indorsed hereon), in all that land described as follows:

do hereby, in consideration of the sum of $, paid to me by E. F., of , the receipt of which sum I hereby acknowledge, transfer to the said E. F. all my estate and interest in the said piece of land. (*When a less estate, then describe such less estate*).

In witness whereof I have hereunto signed my name this day of .

Signed in presence of

Memorandum of lease.

I, *A. B.*, of , being registered as owner, subject, however, to such incumbrances, liens and interests as are notified

by memorandum underwritten (*or* indorsed hereon), of that land described as follows:

do hereby lease to *E. F.*, of , all the said land, to be held by him, the said *E. F.*, as tenant for the space of years from (*here state the date and term*) at the yearly rental of dollars, payable (*here insert terms of payment of rent*), subject to the covenants and powers implied (*also set forth any special covenants or modifications of implied covenants*).

In witness whereof I have hereunto signed my name this day of .

Signed in presence of

Memorandum of mortgage.

I, *A. B.*, of , being registered as owner of (*here state nature of estate or describe mortgage as case may require*), subject, however, to such incumbrances, liens and interests as are notified by memorandum underwritten (*or* indorsed hereon), in that piece of land described as follows:

in consideration of the sum of dollars lent to me by *E. F.*, of , the receipt

of which sum I do hereby acknowledge, covenant with the said *E. F.*:

First.—That I will pay to him, the said *E. F.*, the above sum of dollars on the day of .

Second.—That I will pay interest on the said sum at the rate of on the dollar in the year by equal payments on the day of , and on the day of , in every year.

Third.—(*Here set forth special covenants, if any.*)

And for the better securing to the said *E. F.* the repayment in manner aforesaid of the principal sum and interest, I hereby mortgage to the said *E. F.* my estate and interest in the land above described (*or* the said mortgage).

In witness whereof I have hereunto signed my name this day of .

Signed by the above-named
A. B. in presence of

Memorandum of incumbrance.

I, *A. B.*, of , being registered as owner of an estate (*state nature of estate*),

subject, however, to such incumbrances, liens and interests as are notified by memorandum underwritten (*or* indorsed hereon), in that land described as follows:

and desiring to render the said land available for the purpose of securing to and for the benefit of *C. D.*, of the (*sum of money, annuity or rent charge*) hereinafter mentioned, do hereby incumber the said land for the benefit of the said *C. D.* with the (*sum, annuity or rent charge*) of dollars, to be raised and paid at the times and in the manner following, that is to say:

In witness whereof I have hereunto signed my name this day of .

Signed in presence of

Transfer of lease, mortgage or incumbrance.

I, *A. B.*, of , being registered owner of a numbered , affecting the following land , subject to such incumbrances, liens and interests as are herein referred to, in consideration of the sum of paid to me by *C. D.*, of , do hereby transfer to the said *C. D.*, the said

(lease, mortgage *or* incumbrance), together with all my rights, powers, title and interest therein.

In witness whereof I have hereunto signed my name this day of .

Signed in the presence of

Canada: }
Province of }

Discharge of mortgage.

To the registrar of Land Registration District:

I,
the mortgagee do acknowledge to have received all the moneys due or to become due under a certain mortgage made by of in the to which mortgage bears date the day of A.D. 19 , and was registered in the Land Titles Office for the said Land Registration District at o'clock m., on the day of , A.D. 19 , No. , book , folio .

That such mortgage has been assigned .

And that the person entitled by law to receive the money, and that such mortgage is therefore discharged.

In witness whereof I have hereunto subscribed my name this day of , A.D. 19 .

Signed by the above named)
in presence of)

[*Affidavit of Execution.*]

FORMS IN SASKATCHEWAN.

Mortgage.

I, *A. B.*, (*insert name as in certificate of title and addition*), being registered as owner of an estate (*here state nature of interest*), in that piece of land described as follows: (*here insert description*) containing acres, be the same more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and, if the land dealt with contains all included in the original grants, refer thereto for description of parcels and diagram. Otherwise set forth the boundaries and accompany the description by a diagram*), in consideration of the sum of

dollars lent to me by *E. F.* (*here insert description*), the receipt of which sum I do hereby acknowledge, covenant with the said *E. F.*:

Firstly.—That I will pay to him, the said *E. F.*, the above sum of dollars on the day of .

Secondly.—That I will pay interest on the said sum at the rate of on the dollar, in the year, by equal payments on the day of , and on the day of in every year.

Thirdly.—(*Here set forth special covenants, if any.*)

And for the better securing of the said *E. F.* the repayment in manner aforesaid, of the principal sum and interest, I hereby mortgage to the said *E. F.* my estate and interest in the land above described.

In witness whereof, I have hereunto signed my name this day of 19 .

Signed by the above named *A. B.* as mortgagor in the presence of .....

.....
Signature of Mortgagor.

Incumbrance.

I, *A. B.* (*insert name as in certificate of title and addition*), being registered as owner of an estate (*state nature of estate*), subject, however, to such mortgages and incumbrances as are notified by memorandum underwritten (*or* indorsed hereon), in that piece of land described as follows: (*here insert description*) containing acres more or less (*here state rights of ways, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries and accompany the description by a diagram*), and desiring to render the said land available for the purpose of securing to and for the benefit of *C. D.* of (*description*) the (*sum of money, annuity or rent charge*) hereinafter mentioned; do hereby incumber the said land for the benefit of the said *C.D.* with the (*sum, annuity or rent charge*) of , to be paid at the times and in the manner following, that is to say: (*Here state the times*

appointed for the payment of the sum, annuity or rent charge intended to be secured, the interest, if any, and the events in which such sum, annuity or rent charge shall become and cease to be payable, also any special covenants or powers and any modification of the powers or remedies given to an incumbrancee by this Act.) And subject as aforesaid the said *C. D.* shall be entitled to all powers and remedies given to an incumbrancee by *The Land Titles Act.*

Signed by the above named) .....
in the presence of) *Signature of*
.....) *Incumbrancer.*

(*Insert memorandum of mortgages and incumbrances.*)

Affidavit to be filed with a mortgage or incumbrance.

Province of Saskatchewan,
To wit:

I, (*name of mortgagor or incumbrancer*) of the of in the make oath and say:

1. That I am the mortgagor (*or* incumbrancer) named in the hereunto annexed instrument bearing date the and made

in favor of against (*describe the lands mortgaged or incumbered*).

2. That I have paid the full purchase price for the said land and hold therefor the receipt of the executed by their duly authorized agent at and am entitled to a transfer in fee simple from the said .

3. That the grant from the Crown has not yet been issued (*or* the transfer from the company has not yet been received, *as the case may be*), but I am the person rightfully in possession of the said land and entitled to create the said mortgage (*or* incumbrance) under section 88 of *The Land Titles Act*.

4. That said land hereby mortgaged (*or* incumbered) is neither a homestead, purchased homestead nor a pre-emption under *The Dominion Lands Act*.

Sworn before me at the of on the day of 19 . } ..... *Signature.*

COLUMN ONE.	COLUMN TWO.
1. Have a good title to the said land.	1. And also that at the time of the execution and delivery hereof I am and stand solely, rightfully and lawfully seized of a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple of and in the lands, tenements, hereditaments and all and singular other the premises hereinbefore described with their and every part of their appurtenances and of and in every part and parcel thereof without any manner of trusts, reservations, limitations, provisos or conditions, except those contained in the original grant thereof from the Crown or any other matter or thing to alter, charge, change, incumber or defeat the same.
2. Have the right to mortgage the land.	2. And also that I now have in myself good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns in manner aforesaid and according to the true intent and meaning of these presents.

Short covenants in mortgage.

COLUMN ONE.	COLUMN TWO.
3. And that on default the mortgagee shall have quiet possession of the land.	3. And also that from and after default shall happen to be made of or in the payment of the said sum of money in the said above proviso mentioned or the interest thereof or any part thereof or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreement or stipulations in the said above proviso particularly set forth contrary to the true intent and meaning of these presents and of the said proviso then and in every such case it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators and assigns peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be with their appurtenances without the let, suit, hindrance, interruption or denial of me, the said mortgagor, my heirs or assigns or any other person or persons whomsoever.
4. Free from all incumbrances.	4. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or

COLUMN ONE.	COLUMN TWO.
	in respect of the said lands, tenements, hereditaments and premises or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner of other charges or incumbrances whatsoever.
5. Will execute such further assurance of the land as may be requisite.	5. And also that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned or the interest thereof or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then and in every such case I, the said mortgagor, my heirs and assigns and all and every other person or persons whosoever having or lawfully claiming or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so

COLUMN ONE. COLUMN TWO.

to be with the appurtenances on any part thereof by, from, under or in trust for me the said mortgagor shall and will from time to time and at all times thereafter at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns make, do, suffer and execute or cause or procure to be made, done, suffered and executed all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying the said lands, tenements, hereditaments and premises with the appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs, executors or his or their solicitor, shall or may be lawfully and reasonably devised, advised or required, so that no person who shall be required to make or execute such assurances shall be compelled for the making or executing thereof to go or travel from his usual place of abode.

COLUMN ONE.	COLUMN TWO.
6. Have done no act to incumber the land.	6. And also that I, the said mortgagor, have not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or incumbered in title, estate or otherwise howsoever.

Receipt or acknowledgment of payment of mortgage or other incumbrance.

I, *C. D.*, the mortgagee (incumbrancee *or* assignee *as the case may be*) do acknowledge to have received all the moneys due or to become due under the within written mortgage (*or* incumbrance, *as the case may be*) and that the same is wholly discharged.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above named *C.D.* in the presence of .....

..... *Signature.*

Lease.

I, *A. B.* (*insert name as in certificate of title and addition*), being registered as owner, subject, however, to such mortgages and incumbrances as are notified by memorandum underwritten (*or* indorsed hereon), of that piece of land described as follows: (*here insert description*) containing acres more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title or lease refer thereto for description and diagram, otherwise set forth the boundaries by metes and bounds*) do hereby lease to *E. F.* of (*here insert description*), all the said land to be held by him, the said *E. F.*, as tenant, for the space of years, from (*here state the date and term*), at the yearly rental of dollars, payable (*here insert terms of payment of rent*) subject to the covenants and powers implied (*also set forth any special covenants or modifications of implied covenants*).

I, *E. F.*, of (*here insert description*), do hereby accept this lease of the above described land, to be held by me as tenant, and subject to the conditions, restrictions and covenants above set forth.

Dated this day of , 19 .

Signed by the above named *A.B.* as lessor, and *E.F.* as lessee, in the presence of .....

Signature of lessor.

.....

Signature of lessee.

.....

(*Here insert memorandum of mortgages and incumbrances.*)

Short Covenants in Lease.

COLUMN ONE.	COLUMN TWO.
1. Will not without leave assign or sublet.	1. That I, the said lessee, my executors, administrators or transferees will not during the said term transfer, assign or sublet the land and premises hereby leased or any part thereof or otherwise by any act or deed procure the said land and premises or any part thereof to be transferred or sublet, without the consent in writing of the lessor or his transferees first had and obtained.

COLUMN ONE.	COLUMN TWO.
2. Will fence.	2. That I, the said lessee, my executors, administrators or transferees will during the continuance of the said term erect and put upon the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.
3. Will cultivate.	3. That I, the said lessee, my executors, administrators or transferees will at all times during the said term cultivate, use and manage in a proper husbandlike manner all such parts of the land as are now or shall hereafter, with the consent in writing of the said lessor or his transferees, be broken up or converted into tillage and will not impoverish or waste the same.
4. Will not cut timber.	4. That I, the said lessee, my executors, administrators or transferees will not cut down, fell, injure or destroy any living timber or timberlike tree standing and being upon the said land without the consent in writing of the said lessor or his transferees.
5. Will not carry on offensive trade.	5. That I, the said lessee, my executors, administrators or transferees will not at any time during the said term use, exercise or carry on or permit or suffer to be used, exer-

COLUMN ONE. COLUMN TWO.

cised or carried on in or upon the said 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 said term be done in or upon the said premises or any part thereof which shall or may be or grow to annoyance, nuisance, grievance, damage or any disturbance of the occupiers or owners of the adjoining lands and properties.

Surrender of lease.

In consideration of dollars to me paid by lessor (*or* his assigns, *as the case may be*) I do hereby surrender and yield up from the day of the date hereof unto the lease (*describe the lease fully*) and the term therein created.

Dated the day of , 19 .

Signed by the above named in the presence of .....

..... *Signature.*

Power of attorney.

I, *A. B.*, being registered owner of an estate (*here state nature of the estate or interest*), subject, however, to such incum-

brances, liens and interest as are notified by memorandum underwritten (*or* indorsed hereon), (*here refer to schedule for description and contents of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificate of title or lease of each parcel*) do hereby appoint *C. D.* attorney on my behalf to (*here state the nature and extent of the powers intended to be conferred, as to sell, lease, mortgage, etc.*), the land in the said schedule described and to execute all such instruments, and do all such acts, matters and things as may be necessary for carrying out the powers hereby given and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect to the said lands, and for the enforcement of all contracts, covenants or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above named *A.B.* in the presence of .....

.....
Signature.

I, *A. B.*, of , hereby revoke the power of attorney given by me to , dated the day of , 19 , and recorded in the land titles office at for the land registration district, on the day of , 19 , as Number . Revocation of power of attorney.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above named *A.B.* in the presence of .....

.....
Signature.

I, *A. B.*, being registered owner of an estate (*state the nature of the estate*) in all that certain tract of land containing acres more or less and being (part of) section township range in the (*or as the case may be*), (*here* Transfer.

state rights of way, privileges, easements, if any, intended to be conveyed along with the land and if the land dealt with contains all included in the original grant refer thereto for description of parcels and diagrams; otherwise set forth the boundaries and accompany the description by a diagram), do hereby in consideration of the sum of dollars paid to me by *E. F.*, the receipt of which sum I hereby acknowledge, transfer to the said *E. F.* all my estate and interest in the said piece of land. (*When a lesser estate describe such lesser estate.*)

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by said *A. B.* in the presence of .....

.....
Signature.

Transfer of mortgage, incumbrance or lease.

I, *C. D.*, the mortgagee (incumbrancee *or* lessee, *as the case may be*), in consideration of dollars this day paid to me by *X. Y.* of , the receipt of which sum I do hereby acknowledge, hereby transfer to

him the mortgage (incumbrance *or* lease, *as the case may be*), (*describe the instrument fully*) together with all my rights, powers, title and interests therein.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the said ..... in the presence of ..... } *C. D., Transferor.*

..... } Accepted,
X. Y., Transferee.

Transfer of part of mortgage or incumbrance.

I, *C.D.*, the mortgagee (*or* incumbrancee, *or as the case may be*), in consideration of dollars this day paid to me by *X. Y.* of , the receipt of which sum I do hereby acknowledge, hereby transfer to him dollars of the mortgage (*or* incumbrance, *as the case may be*), (*describe the instrument fully*) together with all my rights, powers, title and interest therein and the sum so transferred shall be preferred (*or* deferred *or* rank equally, *as the case may be*) to the remaining sum secured by the mortgage (*or* incumbrance).

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the said in the presence of .....

.....
C. D., Transferor.

.....
Accepted,

X. Y., Transferee.

FORMS IN TERRITORIES.

Transfer. I, *A. B.*, being registered owner of an estate (*state the nature of estate*), subject, however, to such incumbrances, liens and interests as are notified by memorandum underwritten (*or* endorsed thereon), in all that certain tract of land containing acres, more or less, and being (part of) section , township , range , in the (*or as the case may be*), (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land and if the land dealt with contains all included in the original grant refer thereto for descriptions of parcels and diagrams;*

otherwise set forth the boundaries and accompany the description by a diagram), do hereby, in consideration of the sum of dollars paid to me by *E. F.*, the receipt of which sum I hereby acknowledge, transfer to the said *E. F.*, all my estate and interest in the said piece of land. (*When a lesser estate describe such lesser estate.*)

In witness whereof, I have hereunto subscribed my name this day of , 19 .

Signed by said *A. B.*, in the presence of } (*Signature.*)

Lease.

I, *A. B.*, being registered as owner, subject, however, to such mortgages and incumbrances as are notified by memorandum underwritten (*or* indorsed hereon), of that piece of land described as follows: (*here insert description*) containing acres, more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title or lease, refer*

thereto for description and diagram, otherwise set forth the boundaries by metes and bounds) do hereby lease to *E. F.*, of (*here insert description*), all the said land, to be held by him, the said *E. F.*, as tenant, for the space of years, from (*here state the date and term*), at the yearly rental of dollars, payable (*here insert terms of payment of rent*), subject to the covenants and powers implied (*also set forth any special covenants or modifications of implied covenants*).

I, *E. F.*, of (*here insert description*), do hereby accept this lease of the above described land, to be held by me as tenant, and subject to the conditions, restrictions and covenants above set forth.

Dated this day of , 19 .

Signed by the above named *A. B.*, as lessor, and *E. F.*, as lessee, in the presence of

(*Signature of lessor.*)
(*Signature of lessee.*)

(*Here insert memorandum of mortgages and incumbrances.*)

COLUMN ONE.	COLUMN TWO.
1. Will not, without leave assign or sublet.	1. The covenantor, his executors, administrators, or transferees, will not, during the said term, transfer, assign or sublet the land and premises hereby leased, or any part thereof, or otherwise by any act or deed procure the said land and premises, or any part thereof, to be transferred or sublet, without the consent in writing of the lessor or his transferees first had and obtained.
2. Will fence.	2. The covenantor, his executors, administrators, or transferees, will during the continuance of the said term, erect and put upon the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.
3. Will cultivate.	3. The covenantor, his executors, administrators, or transferees, will, at all times during the said term, cultivate, use and manage in a proper husband-like manner, all such parts of the land as are now or shall hereafter, with the consent in writing of the said lessor or his transferees, be broken up or converted into tillage, and will not impoverish or waste the same.

Short covenants in lease.

COLUMN ONE.	COLUMN TWO.
4. Will not cut timber.	4. The covenantor, his executors, administrators, or transferees, will not cut down, fell, injure or destroy any living timber or timber-like tree standing and being upon the said land, without the consent in writing of the said lessor or his transferees.
5. Will not carry on offensive trade.	5. The covenantor, his executors, administrators, or transferees, will not, at any time during the said term, use, exercise, or carry on, or permit or suffer to be used, exercised or carried on, in or upon the said 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 said term, 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 any disturbance of the occupiers or owners of the adjoining lands and properties.

Surrender of lease.

In consideration of dollars to me paid by (lessee or his assigns, *as the case may be*) I do hereby surrender and yield up from the day of the date hereof unto

the lease (*describe the lease fully*) and the term therein created.

Dated the day of , A.D. 19 .

Signed by the above named
in the presence of

(*Signature.*)

Mortgage.

I, *A. B.*, being registered as owner of an estate (*here state nature of interest*), subject, however, to such incumbrances, liens and interests, as are notified by memorandum underwritten (*or* indorsed hereon) in that piece of land described as follows:—(*here insert description*) containing acres, be the same more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant, refer thereto for description of parcels and diagrams otherwise set forth the boundaries and accompany the description by a diagram*), in consideration of the sum of dollars lent to me by *E. F.* (*here insert description*),

the receipt of which sum I do hereby acknowledge, covenant with the said *E. F.*:—

Firstly.—That I will pay to him, the said *E. F.*, the above sum of dollars, on the day of .

Secondly.—That I will pay interest on the said sum at the rate of on the dollar, in the year, by equal payments on the day of , and on the day of in every year.

Thirdly.—(*Here set forth special covenants, if any.*)

And for the better securing of the said *E. F.*, the repayment, in manner aforesaid, of the principal sum and interest, I hereby mortgage to the said *E. F.*, my estate and interest in the land above described.

In witness whereof, I have hereunto signed my name this day of 19 .

Signed by the above-named *A.B.* as mortgagor, in the presence of) (*Signature of mortgagor.*)

(*Insert memorandum of mortgages and incumbrances.*)

Incumbrance.

I, *A. B.*, being registered as owner of an estate (*state nature of estate*), subject, however, to such mortgages and incumbrances as are notified by memorandum underwritten (*or* indorsed hereon), in that piece of land described as follows:—(*here insert description*) containing acres, more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries and accompany the description by a diagram*), and desiring to render the said land available for the purpose or securing to and for the benefit of *C. D.*, of (*description*) the (*sum of money, annuity or rent charge*) hereinafter mentioned; do hereby incumber the said land for the benefit of the said *C. D.*, with the (*sum, annuity or rent charge*) of , to be paid at the times and in the manner following, that is to say: (*here state the times appointed for the payment of the sum, annuity or rent charge intended to be secured.*

the interest, if any, and the events in which such sum, annuity or rent charge shall become and cease to be payable, also any special covenants or powers, and any modification of the powers or remedies given to an incumbrance by this Act): And subject as aforesaid, the said *C. D.* shall be entitled to all powers and remedies given to an incumbrancee by the Land Titles Act.

Signed by the above named , in the presence of } (*Signature of incumbrancer.*)

(*Insert memorandum of mortgages and incumbrances.*)

Receipt or acknowledgment of payment of mortgage or other incumbrance.

I, *C. D.*, the mortgagee (incumbrancee *or* assignee, *as the case may be*), do acknowledge to have received all the moneys due or to become due under the within written mortgage (*or* incumbrance, *as the case may be*), and that the same is wholly discharged.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above named *C. D.*, in the presence of } (*Signature.*)

Transfer of mortgage, incumbrance or lease.

I, *C. D.*, the mortgagee (incumbrancee *or* lessee, *as the case may be*), in consideration of dollars this day paid to me by *X. Y.*, of , the receipt of which sum I do hereby acknowledge, hereby transfer to him the mortgage (incumbrance *or* lease, *as the case may be, describe the instrument fully*), together with all my rights, powers, title, and interest therein.

In witness whereof, I have hereunto subscribed my name this day of , 19 .

Signed by the said
in the presence of

C. D., Transferor.

Accepted,

X. Y., Transferee.

Transfer of part of mortgage or incumbrance.

I, *C.D.*, the mortgagee (*or* incumbrancee, *or as the case may be*), in consideration of dollars this day paid to me by *X. Y.*, of , the receipt of which sum I do hereby acknowledge, hereby transfer to him dollars of the mortgage (*or* incumbrance, *as the case may be, describe the instrument fully*), together with all my rights, powers, title, and interest therein, and the

sum so transferred shall be preferred (*or* deferred *or* rank equally, *as the case may be*), to the remaining sum secured by the mortgage (*or* incumbrance).

In witness whereof, I have hereunto subscribed my name this day of , 19 .

Signed by the said } *C. D., Transferor.*
in presence }
Accepted,
X. Y., Transferee.

Short covenants in mortgage.

COLUMN ONE.	COLUMN TWO.
1. Has a good title to the said land.	1. And also, that the said mortgagor, at the time of the sealing and delivery hereof, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee-simple, of and in the lands, tenements, hereditaments and all and singular other the premises hereinbefore described, with their and every part of their appurtenances and of and in every part and parcel thereof, without any manner of trusts, reservations, limitations, provisos or conditions, except those contained in the original grant thereof from the Crown, or any other matter or thing to alter, charge, change, encumber or defeat the same.

COLUMN ONE.	COLUMN TWO.
2. Has the right to mortgage the land.	2. And also that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments, and all and singular other the premises, hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns in manner aforesaid, and according to the true intent and meaning of these presents.
3. And that on default the mortgagee shall have quiet possession of the land.	3. And also, that from and after default shall happen to be made of or in the payment of the said sum of money, in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then, and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators, and assigns, peaceably and quietly to

COLUMN ONE.	COLUMN TWO.
	enter into, have, hold, use, occupy, possess, and enjoy the aforesaid lands, tenements, hereditaments and premises, hereby conveyed or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of him the said mortgagor, his heirs, or assigns, or any other person or persons whomsoever.
4. Free from all encumbrances.	4. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments and premises, or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner of other charges or encumbrances whatsoever.
5. Will execute such further assurances of the land as may be requisite.	5. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned, or the interest thereof, or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of

COLUMN ONE. COLUMN TWO.

some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then and in every such case the said mortgagor, his heirs and assigns, and all and every other person or persons whosoever having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the lands, tenements, hereditaments, and premises hereby conveyed or mentioned or intended so to be, with the appurtenances or any part thereof, by, from, under or in trust for him the said mortgagor, shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying the said lands, tenements, hereditaments and

COLUMN ONE.	COLUMN TWO.
	premises, with the appurtenances, unto the said mortgagee, his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs, executors, or his or their counsel learned in the law, shall or may be lawfully and reasonably devised, advised or required, so as no person who shall be required to make or execute such assurances shall be compelled, for the making or executing thereof, to go or travel from his usual place of abode.
6. Has done no act to encumber the land.	6. And also that the said mortgagor hath not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or encumbered in title, estate, or otherwise howsoever.

Power of attorney.

I, *A. B.*, being registered owner of an estate (*here state nature of the estate or interest*), subject, however, to such incumbrances, liens and interests as are notified

by memorandum underwritten (*or* indorsed hereon), (*here refer to schedule for description and contents of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificate of title or lease of each parcel*) do hereby appoint *C. D.* attorney on my behalf to (*here state the nature and extent of the powers intended to be conferred, as to sell, lease, mortgage, etc.*), the land in the said schedule described, and to execute all such instruments, and do all such acts, matters and things as may be necessary for carrying out the powers hereby given and for the recovery of all rents and sums of money that may become or are now due, or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass.

In witness whereof, I have hereunto subscribed my name this , day of , 19 .

Signed by the above named *A. B.*, in the presence of } (*Signature.*)

Revocation of power of attorney.

I, *A. B.*, of , hereby revoke the power of attorney given by me to , dated the day of , 19 , and recorded in the Land Titles Office at for the Land Registration District, on the day of , 19 , as Number .

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above named *A. B.*, in the presence of } (*Signature.*)

CHAPTER XVI.

Short Forms in British Columbia.

There are in force in British Columbia, as in Ontario, three separate Acts, passed for the purpose of simplifying the making of conveyances, mortgages, and leases respectively. These Acts are the Real Property Conveyance Act, the Mortgage Statutory Form Act, and the Leaseholds Act.[1]

Differing from instruments made in pursuance of the Ontario short forms acts, instruments made under the British Columbia Acts must contain the words "his heirs" to limit an estate in fee simple instead of the words "in fee simple," for in Ontario, the short forms acts are taken in conjunction with the Conveyancing and Law of Property Act in force in that Province, which sanctions the use of the words "in fee simple" for limiting an estate, while British

[1] Chapters 47, 167 and 135 of 1911 R. S. B. C., respectively.

Columbia has no such provision in its legislation.

Instruments made under the British Columbia Acts, unless any exception be specially made in them, include within the grant all easements and appurtenances belonging to the land, and if the instrument purport to convey a fee simple, also the reversion and reversions, remainder and remainders, rents, issues and profits and every interest which would pass by the "all the estate" clause in a deed.

Each act provides a form in the first schedule for the body of the instrument dealt with by the act. In the second schedule of each are set out two columns of words. The acts provide that when any set of words of the first column of the second schedule are employed in an instrument made in the form set out in the first schedule or in any other instrument of that kind expressed to be made in pursuance of the act on referring to it, the instrument is to have the same effect as if the corresponding set of words in the second column were inserted

in it. The set of words in the second column, of course, constitute long covenants and provisoes usually employed in such instruments, and the corresponding set of words in the first column are in the nature of a synopsis.

THE REAL PROPERTY CONVEYANCE ACT.

SCHEDULES.

FIRST SCHEDULE.

This Indenture, made the day of , one thousand nine hundred [*or other year*], in pursuance of the "Real Property Conveyance Act," between [*here insert the names of parties and recitals (if any)*], witnesseth, that in consideration of dollars of the lawful money of Canada, now paid by the said [*grantee or grantees*] to the said [*grantor or grantors*], the receipt whereof is hereby by him [*or* them] acknowledged, he [*or* they] the said [*grantor or grantors*] doth

[*or* do] grant unto the said [*grantee or grantees*], his [*or* their] heirs and assigns, forever, all, etc., [*parcels. Here insert covenants or any other provisions.*]

In witness whereof the said parties hereto have hereunto set their hands and seals.

Second Schedule.

Directions as to the Forms in this Schedule.

1. Parties who use any of the forms in the first column of this Schedule may substitute for the words "covenantor" or "covenantee," or "releasor" or "releasee," "grantor" or "grantee," 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 any of 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 introduce into or annex to any of the forms in the first column any express exceptions from or other express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

4. Such parties may add the name or other designation of any person or persons, or class or classes of persons, or any other words, at the end of form 2 of the first column, so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons, or of all persons whomsoever; and in every such case the covenants 2, 3, and 4, or such of them as shall be employed in such deed, shall be taken to extend to the acts of the person or persons, class or classes of persons so named.

COLUMN ONE.	COLUMN TWO.
1. The said [*covenantor*] covenants with the said [*covenantee*].	1. And the said covenantor doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said covenantee, his heirs, executors, administrators, and assigns, in manner following, that is to say:
2. That he has the right to convey the said lands to the said [*covenantee*] notwithstanding any act of the said [*covenantor*];	2. That, for, and notwithstanding any act, deed, matter, or thing by the said covenantor done, executed, committed, or knowingly or wilfully permitted or suffered to the contrary, he the said covenantor now hath in himself good right, full power, and absolute authority to convey the said lands and other the premises hereby conveyed, or intended so to be, with their and every of their appurtenances, unto the said covenantee, in manner aforesaid, and according to the true intent of these presents;
3. and that the said [*covenantee*] shall have quiet possession of the said lands,	3. And that it shall be lawful for the said covenantee, his heirs, executors, administrators, and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess, and enjoy the said lands and premises hereby conveyed, or intended so to be, with their and every of their appurtenances, and

COLUMN ONE.	COLUMN TWO.
	to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of, from, or by him the said covenantor or his heirs, or any person claiming, or to claim, by, from, under, or in trust for him, them, or any of them;
4. Free from all incumbrances.	4. And that free and clear, and freely and absolutely acquitted, exonerated, and forever discharged, or otherwise by the said covenantor or his heirs well and sufficiently saved, kept harmless, and indemnified, of, from, and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble, and incumbrance whatsoever, made, executed, occasioned, or suffered by the said covenantor or his heirs, or by any person claiming or to claim by, from, under, or in trust for him, them, or any of them.

COLUMN ONE.	COLUMN TWO.
5. And the said [*covenantor*] covenants with the said [*covenantee*], that he will execute such further assurances of the said lands as may be requisite.	5. And the said covenantor doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said covenantee, his heirs, executors, administrators, and assigns, that he the said covenantor, his heirs, executors, or administrators, and all and every other person whosoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest whatsoever, either at law or in equity, in, to, or out of the said lands and premises hereby conveyed or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him, them, or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said covenantee, his heirs, executors, administrators, or assigns, make, do, execute, or cause to be made, done, or executed, all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the better, more perfectly, and absolutely conveying and assuring the said lands and premises hereby conveyed, or intended so to be, and

COLUMN ONE.	COLUMN TWO.
	every part thereof, with their appurtenances, unto the said covenantee, his heirs and assigns, in manner aforesaid, as by the said covenantee, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised, or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors, or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof to go or travel from his usual place of abode.
6. And the said [*covenantor*] covenants with the said [*covenantee*], that he will produce the title deeds enumerated hereunder, and allow copies to be made of them at the expense of the said [*covenantee*].	6. And the said covenantor doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said covenantee, his heirs, executors, and administrators, and assigns, that the said covenantor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request, costs, and charges of the said covenantee, his heirs or assigns, or his or their attorney, solicitor, agent, or

COLUMN ONE.	COLUMN TWO.
	counsel, at any trial or hearing in any action, or suit at law or in equity, or other judicature, or otherwise, as occasion shall require, produce all and every or any deed, instrument, or writing hereunder written, for the manifestation, defence, and support of the estate, title, and possession of the said covenantee, his heirs or assigns, in or to the said lands and premises hereby conveyed, or intended so to be, and, at the like request, costs, and charges, shall and will make and deliver, or cause to be made and delivered, true and attested or other copies or abstracts of the same deeds, instruments, and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds by the said covenantee, his heirs and assigns, or such person as he or they shall for that purpose direct and appoint.
7. And the said [*covenantor*] covenants with the said [*covenantee*], that he has done no acts to incumber the said lands.	7. And the said covenantor, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said covenantee, his heirs, executors, administrators, and assigns, that he hath not at any time heretofore made, done, committed, executed,

COLUMN ONE.	COLUMN TWO.
	or wilfully or knowingly suffered any act, deed, matter, or thing whatsoever, whereby, or by means whereof, the said lands and premises hereby conveyed, or intended so to be, or any part or parcel thereof, are, is, or shall or may be in anywise impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever: Provided that where works of local improvement benefiting the said lands and premises have heretofore, or shall hereafter, or are in process of being made, under the provisions of any Act or Acts for the time being in force, the costs whereof, in whole or in part, have been charged upon or against the said lands and premises, or any part thereof, the petitioning for or procuring to be made, or the making-up of any such works, or the charging the costs thereof upon or against the said lands and premises or any part thereof, or the fact that they are a charge upon or against such lands and premises, or any part thereof, shall not be deemed or taken to be a breach of this covenant, except to the extent that the annual or other payments in respect of such works are in arrear and unpaid at the time of the execution of these presents.

COLUMN ONE.	COLUMN TWO.
8. And the said [*releasor*] releases to the said [*releasee*] all his claims upon the said lands.	8. And the said releasor hath remised, released, and forever quitted claim, and by these presents doth remise, release, and forever quitclaim, unto the said releasee, his heirs, executors, administrators, and assigns, all and all manner of right, title, interest, claim, and demand whatsoever, both at law or in equity, in, to, and out of the said lands and premises hereby granted, or intended so to be, and every part and parcel thereof, so as that neither he, nor his heirs, executors, administrators, or assigns, shall, nor may at any time hereafter, have, claim, pretend to challenge, or demand the said lands and premises, or any part thereof, in any manner howsoever; but the said releasee, his heirs, executors, administrators, and assigns, and the same lands and premises shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demand whatsoever which the said releasor might or could have upon him in respect of the said lands and premises, or upon the said lands and premises.

THE MORTGAGES STATUTORY FORM ACT.

SCHEDULES.

FIRST SCHEDULE.

This Indenture, made the day of , one thousand nine hundred and , in pursuance of the Act respecting Short Forms of Mortgages, between [*here insert names of parties, and recitals (if any)*], witnesseth that, in consideration of of lawful money of Canada, now paid by the said [mortgagee *or* mortgagees] to the said [mortgagor *or* mortgagors], the receipt whereof is hereby acknowledged, the said [mortgagor *or* mortgagors] doth [*or* do] grant and mortgage unto the said [mortgagee *or* mortgagees], his [her *or* their] heirs and assigns, forever, all [*parcels*] [*here insert provisoes, covenants, or other provisions*].

In witness whereof the said parties hereto have hereunto set their hands and seals.

SECOND SCHEDULE.

Directions as to the Forms in this Schedule.

1. Parties who use any of the forms in the first column of this Schedule may substitute for the words "mortgagor" or "mortgagors," or "mortgagee" or "mortgagees," 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 any of 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 introduce into or annex to any of the forms in the first column any express exceptions from or other express qualifications thereof respectively; and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

4. Such parties may introduce into any mortgage expressed to be made in pursuance of this Act such other or further covenants, powers, and provisions as may be agreed upon between them.

COLUMN ONE.	COLUMN TWO.
1. Provided: This mortgage to be void on payment of [*amount of principal money*] of lawful money of Canada, with interest at [*rate of interest*] per cent., as follows: [*terms of payment of principal and interest*] and taxes and performance of statute labour.	1. Provided always and these presents are upon this express condition, that if the said mortgagor, his heirs, executors, administrators, or assigns, or any of them, do and shall well and truly pay or cause to be paid unto the said mortgagee, his executors, administrators, or assigns, the just and full sum of [*amount of principal money*] of lawful money of Canada, with interest thereon at the rate of [*rate of interest*] per centum per annum, on the days and times and in manner following, that is to say: [*terms of payment of principal and interest*], without any deduction, defalcation, or abatement out of the same for or in respect of any taxes, rates, levies, charges, rents, assessments, statute labour, or other impositions whatsoever already rated, charged, assessed, or imposed, or hereafter to be rated, charged, assessed, or imposed by authority of Parliament or of the Legislative

COLUMN ONE.	COLUMN TWO.
	Assembly, or otherwise howsoever, on the said lands and tenements, hereditaments, and premises, with the appurtenances, or on the said mortgagee, his heirs, executors, administrators, or assigns, in respect of the said premises, or of the said money or interest, or any other matter or thing relating to these presents, and until such default as aforesaid shall and will well and truly pay, do, and perform or cause or procure to be paid, done, and performed all matters and things in this proviso hereinbefore set forth, then these presents, and everything in the same contained, shall be absolutely null and void.
2. The said mortgagor covenants with the said mortgagee.	2. And the said mortgagor doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said mortgagee, his heirs, executors, administrators, and assigns, in manner following, that is to say:—
3. That the mortgagor will pay the mortgage money and interest, and observe the above proviso.	3. That the said mortgagor, his heirs, executors, administrators, or some one of them, shall and will well and truly pay or cause to be paid unto the said mortgagee, his executors, administrators, or assigns, the said sum of money in the

COLUMN ONE.	COLUMN TWO.
	above proviso mentioned, with interest for the same as aforesaid, at the days and times and in manner above limited for payment thereof, and shall and will in everything well, faithfully, and truly do, observe, perform, fulfil, and keep all and singular the provisions, agreements, and stipulations in the said above proviso particularly set forth, according to the true intent and meaning of these presents and of the said above proviso.
4. That the mortgagor has a good title in fee-simple to the said lands.	4. And also that the said mortgagor at the time of the sealing and delivery hereof is and stands solely, rightfully, and lawfully seised of a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee-simple of and in the lands, tenements, hereditaments, and all and singular other the premises hereinbefore described, with their and every of their appurtenances, and of and in every part and parcel thereof, without any manner of trusts, reservations, limitations, provisoes, or conditions, except those contained in the original grant thereof from the Crown, or any other matter or thing to alter, charge, change, incumber, or defeat the same.

COLUMN ONE.	COLUMN TWO.
5. And that he has the right to convey the said lands to the said mortgagee.	5. And also that the said mortgagor now hath in himself good right, full power, and lawful and absolute authority to convey the said lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances, unto the said mortgagee, his heirs and assigns, in manner aforesaid and according to the true intent and meaning of these presents.
6. And that on default the mortgagee shall have quiet possession of the said lands.	6. And also that from and after default shall happen to be made of or in the payment of the said sum of money in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling, or keeping of some one or more of the provisions, agreements, or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then and in every such case it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators, and assigns, peaceably and quietly to enter into, have, hold, use, occupy, pos-

COLUMN ONE.	COLUMN TWO.
	sess, and enjoy the aforesaid lands, tenements, hereditaments, and premises hereby conveyed or mentioned or intended so to be, with the appurtenances, without the let, suit, hindrance, interruption, or denial of him the said mortgagor, his heirs or assigns, or any other person or persons whomsoever.
7. Free from all incumbrances.	7. And that free and clear and freely and clearly acquitted, exonerated, and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments, and premises, or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions, and recognizances, and of and from all manner of other charges or incumbrances whatsoever.
8. And that the said mortgagor will execute such further assurances of the said lands as may be requisite.	8. And also that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned or the interest thereof, or any part of such money or interest, or of or in the doing, observing, performing, fulfilling, or keeping of some one or more of the provisions, agreements, or stipulations in

COLUMN ONE. COLUMN TWO.

the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of said proviso, then and in every such case the said mortgagor, his heirs and assigns, and all and every other person or persons whosoever having or lawfully claiming, or who shall or may have or lawfully claim, any estate, right, title, interest, or trust of, in, to, or out of the lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be, with the appurtenances, or any part thereof, by, from, under, or in trust for him the said mortgagor, shall and will, from time to time and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators, or assigns, make, do, suffer, and execute, or cause or procure to be made, done, suffered, and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances, and assurances in the law for the further, better, and more perfectly and absolutely conveying and assuring the said lands, tenements, hereditaments, and premises with the appurtenances unto the said mort-

COLUMN ONE.	COLUMN TWO.
	gagee, his heirs and assigns, as by the said mortgagee, his heirs and assigns, or his or their counsel learned in the law, shall or may be lawfully and reasonably devised, advised, or required, so as no person who shall be required to make or execute such assurances shall be compelled for the making or executing thereof to go or travel from his usual place of abode.
9. And also that the said mortgagor will produce the title deeds enumerated hereunder and allow copies to be made at the expense of the mortgagee.	9. And also that the said mortgagor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time and at all times hereafter, at the request and proper costs and charges in the law of the said mortgagee, his heirs, executors, administrators, or assigns, at any trial or hearing in any action or suit at law or in equity or other judicature or otherwise as occasion shall require, produce all, every, or any deed, instrument, or writing hereunder written for the manifestation, defence, and support of the estate, title, and possession of the said mortgagee, his heirs, executors, administrators, and assigns, of, in, to, or out of the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned or intended so to be, and

COLUMN ONE.	COLUMN TWO.
	at the like request, costs, and charges shall and will make and deliver or cause or procure to be made and delivered unto the said mortgagee, his heirs, executors, administrators, and assigns, true and attested or other copies or abstracts of the same deeds, instruments, and writings respectively or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds by the said mortgagee, his heirs and assigns.
10. And that the said mortgagor has done no act to incumber the said lands.	10. And also that the said mortgagor hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered any act, deed, matter, or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be, or any part or parcel thereof, are, is, or shall or may be in anywise impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever.
11. And that the said mortgagor will insure the buildings on the said lands to	11. And also that the said mortgagor or his heirs shall and will forthwith insure, unless already insured, and during the continuance of this security keep insured against

COLUMN ONE.	COLUMN TWO.
the amount of not less than currency.	loss or damage by fire, in such proportions upon each building as may be required by the said mortgagee, his heirs or assigns, the messuages and buildings erected on the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be, in the sum of of lawful money of Canada at the least in some insurance office, to be approved of by the said mortgagee, his heirs, executors, administrators, or assigns, and pay all premiums and sums of money necessary for such purpose as the same shall become due, and will on demand assign, transfer, and deliver over unto the said mortgagee, his heirs, executors, administrators, or assigns, the policy or policies of assurance, receipt and receipts thereto appertaining; and if the said mortgagee, his heirs, executors, administrators, or assigns, shall pay any premiums or sums of money for insurance of the said premises or any part thereof, the amount of such payments shall be added to the debt hereby secured, and shall bear interest at the same rate from the time of such payments, and shall be payable at the time appointed for the then next ensuing payment of interest on the said debt.

COLUMN ONE.	COLUMN TWO.
12. And the said mortgagor doth release to the said mortgagee all his claims upon the said lands subject to the said proviso.	12. And the said mortgagor hath released, remised, and forever quitted claim, and by these presents doth release, remise, and forever quit-claim unto the said mortgagee, his heirs and assigns, all and all manner of right, title, interest, claim, and demand whatsoever, both at law and in equity of, unto, and out of the said lands, tenements, hereditaments, and premises hereby conveyed, or mentioned or intended so to be, and every part and parcel thereof, so as that neither the said mortgagor, his heirs, executors, administrators, or assigns, shall or may at any time hereafter have claim, pretend to, challenge, or demand the said land, tenements, hereditaments, and premises, or any part thereof, in any manner howsoever, subject always to the said above proviso; but the said mortgagee, his heirs, executors, administrators, or assigns, and the said lands, tenements, hereditaments and premises, subject as aforesaid, shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demands whatsoever, which the said mortgagor, his heirs or assigns, might or could have upon the said mortgagee, his

COLUMN ONE.	COLUMN TWO.
	heirs, executors, administrators, or assigns, in respect of the said lands, tenements, hereditaments, and premises, or upon the said lands, tenements, hereditaments, and premises.
13. Provided that the said mortgagee, on default of payment for month may on notice enter on and lease or sell the said lands.	13. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors, or administrators, shall make default in any payment of the said money or interest, or any part of either of the same, according to the true intent and meaning of these presents and of the proviso in that behalf hereinbefore contained, and calendar month shall have thereafter elapsed without such payment being made (of which default, as also of the continuance of the said principal money and interest, or some part thereof, on this security, the production of these presents shall be conclusive evidence), it shall and may be lawful to and for the said mortgagee, his executors, administrators, or assigns, after giving written notice to the said mortgagor, his heirs or assigns, of his intention in that behalf, either personally, or at his or their usual or last-known place of residence within this Pro-

COLUMN ONE. COLUMN TWO.

vince, or by affixing the same on the mortgaged premises, not less than previous without any further consent or concurrence of the said mortgagor, his heirs or assigns, to enter into possession of the said lands, tenements, hereditaments, and premises hereby conveyed, or mentioned, or intended so to be, and to receive and take the rents, issues, and profits thereof, and whether in or out of possession of the same, to make any lease or leases thereof, or of any part thereof, as he shall think fit, and also to sell and absolutely dispose of the said lands, tenements, hereditaments, and premises hereby conveyed, or mentioned, or intended so to be, or any part or parts thereof, with the appurtenances, by public auction or private contract, or partly by public auction and partly by private contract, as to him shall seem meet, and to convey and assure the same when so sold unto the purchaser or purchasers thereof, his heirs and assigns, or as he, she, or they shall direct and appoint, and to execute and do all such assurances, acts, matters, and things as may be found necessary for the purposes aforesaid; and the said mort-

COLUMN ONE.	COLUMN TWO.
	gagee shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid, unless the same shall happen by reason of his wilful neglect or default; and it is hereby further agreed between the parties to these presents that, until such sale or sales shall be made as aforesaid, the said mortgagee, his heirs, executors, administrators, or assigns, shall and will stand and be possessed of and interested in the rents and profits of the said lands, tenements, hereditaments, and premises in case he shall take possession of the same, or any default as aforesaid, and after such sale or sales shall stand and be possessed of and interested in the moneys to arise or be produced by such sale or sales, or which shall be received by the mortgagee, his heirs, executors, administrators, or assigns, by reason of any insurance upon the said premises or any part thereof, upon trust in the first place to pay and satisfy the costs and charges of preparing for and making sales, leases, and conveyances as aforesaid, and all other costs and charges, damages and expenses which the said mort-

COLUMN ONE. COLUMN TWO.

gagee, his heirs, executors, administrators, or assigns, shall bear, sustain, or be put to for taxes, rent, insurances, and repairs, and all other costs and charges which may be incurred in and about the execution of any of the trusts in him hereby reposed; and in the next place to pay and satisfy the principal sum of money and interest hereby secured or mentioned or intended so to be, or so much thereof as shall remain due and unsatisfied up to and inclusive of the day whereon the said principal sum shall be paid and satisfied; and after full payment and satisfaction of all such sums of money and interest as aforesaid, upon this further trust that the said mortgagee, his heirs, executors, administrators, or assigns, do and shall pay the surplus (if any) to the said mortgagor, his heirs or assigns, or as he shall direct and appoint, and shall also, in such event, at the request, costs, and charges in the law of the said mortgagor, his heirs or assigns, convey and assure unto the said mortgagor, his heirs or assigns, or to such person or persons as he shall direct and appoint, all such parts of the said lands, tenements, hereditaments, and premises as shall

COLUMN ONE.	COLUMN TWO.
	remain unsold for the purposes aforesaid, freed and absolutely discharged of and from all estate, lien, charge, and incumbrance whatsoever by the said mortgagee, his heirs or assigns, in the meantime, so as no person who shall be required to make or execute any such assurances shall be compelled for the making thereof to go or travel from his usual place of abode: Provided always, and it is hereby further declared and agreed by and between the parties to these presents, that, notwithstanding the power of sale and other the powers and provisions contained in these presents, the said mortgagee, his heirs, executors, administrators, or assigns, shall have and be entitled to his right of foreclosure of the equity of the redemption of the said mortgagor, his heirs and assigns, in the said lands, tenements, hereditaments, and premises, as fully and effectually as he might have exercised and enjoyed the same in case the power of sale and the other former provisoes and trusts incident thereto had not been herein contained.
14. Provided that the mortgagee may distrain for arrears of interest.	14. And it is further covenanted, declared, and agreed by and between the parties to these presents that if the said mortgagor, his heirs, execu-

COLUMN ONE.	COLUMN TWO.
	tors, or administrators, shall make default in payment of any part of the said interest at any of the days or times hereinbefore limited for the payment thereof, it shall and may be lawful for the said mortgagee, his heirs or assigns, to distrain therefor upon the said lands, tenements, hereditaments, and premises, or any part thereof, and by distress warrant to recover by way of rent reserved, as in the case of a demise of the said lands, tenements, hereditaments, and premises, so much of such interest as shall from time to time be or remain in arrear and unpaid, together with all costs, charges, and expenses attending such levy or distress, as in like cases of distress for rent.
15. Provided that in default of the payment of the interest hereby secured, or taxes as hereinbefore provided, the principal hereby secured shall become payable.	15. Provided always, and it is hereby further expressly declared and agreed by and between the parties to these presents, that if any default shall at any time happen to be made of or in the payment of the interest money hereby secured or mentioned, or intended so to be, or any part thereof, or in payment of any of the said taxes, rates, levies, charges, rents, assessments, statute labour, or other impositions whatsoever, then and in such case

COLUMN ONE.	COLUMN TWO.
	the principal money hereby secured or mentioned, or intended so to be, and every part thereof, shall forthwith become due and payable in like manner and with the like consequences and effects to all intents and purposes whatsoever as if the time herein mentioned for payment of such principal money had fully come and expired, but that in such case the said mortgagor, his heirs or assigns, shall, on payment of all arrears under these presents, with lawful costs and charges in that behalf, at any time before any judgment in the premises recovered at law, or within such time as by the practice of equity relief therein could be obtained, be relieved from the consequences of non-payment of so much of the money secured by these presents or mentioned, or intended so to be, as may not then have become payable by reason of lapse of time.
16. Provided that, until default of payment, the mortgagor shall have quiet possession of the said lands.	16. And provided also, and it is hereby further expressly declared and agreed by and between the parties to these presents, that, until default shall happen to be made of or in the payment of the said sum of money hereby secured or mentioned, or intended so to be, or the interest

COLUMN ONE. COLUMN TWO.

thereof, or any part of either of the same, or the doing, observing, performing, fulfilling, or keeping some one or more of the provisions, agreements, or stipulations herein set forth, contrary to the true intent and meaning of these presents, it shall and may be lawful to and for the said mortgagor, his heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues, and profits thereof to his own use and benefit, without let, suit, hindrance, interruption, or denial of or by the said mortgagee, his heirs, executors, administrators, or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall or may lawfully claim, by, from, under, or in trust for him, her, them, or any or either of them.

THE LEASEHOLDS ACT.

SCHEDULES.

FIRST SCHEDULE.

This Indenture, made the day of , one thousand nine hundred and [*or other year*], in pursuance of the "Leaseholds Act," between [*here insert the names of the parties, and recitals (if any)*], witnesseth that, the said [*lessor or lessors*] doth [*or* do] demise unto the said [*lessee or lessees*], his [*or* their] executors, administrators, and assigns, all etc., [*parcels*], from the day of , for the term of thence ensuing, yielding therefor during the said term the rent of [*state the rent and mode of payment, also the covenants to be inserted*].

In witness whereof the said parties hereto have hereunto set their hands and seals. R. S. 1897, c. 117, Sch. 1.

Second Schedule.

Directions as to the Forms in this Schedule.

1. Parties who use any of the forms in first column of this Schedule may substitute for the words "lessee" or "lessor" any name or names [*or other designation*]; 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 6 and 7 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 of the forms in the first column any express exceptions from or express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised shall be of freehold tenure, the covenants 1 to 13, inclusive, shall be taken to be made with, and the proviso 14 to apply to, the heirs and assigns of the lessor; and where the premises demised shall be of leasehold tenure, the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns.

COLUMN ONE.	COLUMN TWO.
1. That the said [*lessee*] covenants with the said [*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, and assigns, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever;

COLUMN ONE.	COLUMN TWO.
2. and to pay taxes;	2. and also will pay all taxes, rates, duties, and assessments whatsoever, whether parochial, municipal, parliamentary, or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor, on account thereof, except such taxes, rates, duties, and assessments which the lessee is by law exempted from:
3. and to repair;	3. and also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises, with the appurtenances, in good and substantial repair, and all fixtures, and things thereto belonging or which at any time during the said term shall be erected and made, when, where, and so often as need may be;
4. and to keep up fences;	4. and also will from time to time, during the said term, keep up the fences and walls of or belonging to the said 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;
5. and not to cut down timber;	5. and also will not, at any time during the said term, hew, fell, cut down, or destroy, or cause or knowingly permit or suffer to be hewed,

COLUMN ONE.	COLUMN TWO.
	felled, cut down, or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs or firewood, or for the purpose of clearance, as herein set forth;
6. and to paint outside every year;	6. and also that the said lessee, his executors, administrators, and assigns, will in every year in the said term paint all the outside woodwork and ironwork belonging to the said premises with two coats of proper oil colours, in a workmanlike manner;
7. and to paint and paper every year;	7. and also that the said lessee, his executors, administrators, and assigns, 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 repaper, with a 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 said premises as are now plastered;
8. and to insure from fire, in the joint names of the said [*lessor*] and the said [*lessee*];	8. and also that the said lessee, his executors, administrators, and assigns, will forthwith insure the said premises hereby demised to the full insurable value thereof, in some respectable insurance office, in the joint names of the said les-

COLUMN ONE.	COLUMN TWO.
	sor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, or assigns, and keep the same so insured during the said term; and
to show receipts;	will, upon the request of the said lessor or his agent, show the receipt for the last premium paid for such insurance for every current
and to rebuild in case of fire.	year; and as often as the said premises hereby demised shall be burnt down or damaged by fire, all and every the sums or sum of money which shall be recovered by the said lessee, his executors, administrators, or assigns, for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises, or such parts thereof as shall be burnt down or damaged by fire, as aforesaid.
9. and the said [*lessor*] may enter and view state of repair, and that the said [*lessee*] will repair according to notice.	9. And it is hereby agreed that it shall be lawful for the said lessor and his agents, at all reasonable times during the said term, to enter the said demised premises, or any of them, and to examine the condition thereof; and, further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors,

COLUMN ONE.	COLUMN TWO.
	administrators, and assigns, will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.
10. That the said [*lessee*] will not use premises as a shop.	10. And also that the said lessee, his executors, administrators, and assigns, will not convert, use, or occupy the said 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 said lessor.
11. And will not assign without leave.	11. And also that the said lessee, his executors, administrators, or assigns, shall not, nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises, or any of them, or the term hereby granted, to be assigned, transferred, or set over, unto any person or persons whomsoever, without the consent in writing of the said lessor, his heirs, executors, administrators, or assigns, first had and obtained.
12. And will not sub-let without leave.	12. And also that the said lessee, his executors, administrators, and assigns, shall not, nor will, during

COLUMN ONE.	COLUMN TWO.
	the said term, sublet the said premises hereby granted, or any part thereof, to any person or persons without the consent in writing of the said lessor, his heirs, executors, administrators, or assigns, first had and obtained.
13. And that he will leave premises in good repair.	13. And further that the said lessee, his executors, administrators, and assigns, will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor, his heirs, executors, administrators, or assigns, the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.
14. Proviso for re-entry by the said lessor on non-payment of rent, or non-performance of covenants.	14. Provided always, and it is expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and

COLUMN ONE.	COLUMN TWO.
	agreements herein contained on the part of the said lessee, his executors, administrators, or assigns, then and in either of such cases it shall be lawful for the said lessor, his heirs, executors, administrators, or assigns, at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
15. The said [*lessor*] covenants with the said [*lessee*] for quiet enjoyment.	15. And the lessor doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they, paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his heirs, executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them. R. S. 1897, c. 117, Sch. 2.

CHAPTER XVII.

Short Forms in Manitoba.

The Manitoba Short Form Act,[1] differs only in detail from the acts of like nature in other Provinces. Three schedules are set out in the Act applicable to conveyances, mortgages and leases respectively, with two columns of words, the use of the words in the first column giving the instruments the same effect as if the corresponding words in the second column were contained in it.

Substitutions may be made for the words "covenantor," "releasor," "grantor," "lessor," etc., the feminine gender may be substituted for the masculine, and express exceptions and qualifications may be introduced into the forms in the first column.

No words of limitation are necessary.

First Schedule.

Deed of Conveyance.

This indenture made the day of , in the year of our Lord one

[1] 1913, R. S. Man. ch. 181.

thousand nine hundred and , in pursuance of "The Act respecting Short Forms of Indentures," between (*here insert the names and recitals, if any*), witnesseth that, in consideration of (*if there be recitals*) the premises and of dollars (*if no recitals, omit the word "premises," and say* of dollars) of lawful money of Canada, now paid by the said party of the part (the receipt whereof is hereby by him or them acknowledged), he (*or* they) the said party of the first part doth (or do) grant unto the said party of the part, his (*or* her *or* their) heirs and assigns forever, all and singular the lands following, that is to say: (*describe lands*).

(*Here insert covenants and other provisions, conditions, etc., etc., if any.*)

In witness whereof the said parties have hereto set their hands and seals.

Signed, sealed and delivered in the presence of:

The forms of covenants are the same as those set out in the British Columbia Real Property Conveyance Act (p. 252 *et seq.*)

Second Schedule.

Deed of Mortgage.

This indenture made the day of , in the year of our Lord one thousand nine hundred and , in pursuance of "The Act respecting Short Forms of Indenture," between (*here insert parties and recitals, if any*), witnesseth that, in consideration of (*if recitals, say,* the premises and of dollars (*if no recitals, omit the premises*), of lawful money of Canada, now paid by the said party of the part to the said party of the first part (the receipt whereof is hereby by acknowledged) he (*or* they), the said party of the first part, doth (*or* do) grant and mortgage unto the said party of the part all and singular the lands following, that is to say:—(*describe lands*).

(*Here insert provisoes, covenants and other provisions and stipulations according to agreement*).

In witness thereof the said parties have hereto set their hands and seals.

Signed, sealed and delivered in the presence of:

The forms of provisoes and covenants are the same as those set out in the British Columbia Mortgage Statutory Form Act (p. 261 *et seq.*)

THIRD SCHEDULE.

Deed of Lease.

This indenture, made the day of , in the year of our Lord one thousand nine hundred and , in pursuance of "The Act respecting Short Forms of Indentures," between , of the first part, and , of the second part; (*any recitals required may be here inserted*); Witnesseth that in consideration of the premises and (*if any recitals; if not, omit* of the premises and) of the rents, covenants and agreements hereinafter reserved and contained on the part of the party of the second part, his (*or* their) executors, admin-

istrators and assigns, to be paid, kept, observed and performed, he (*or* they), the said party of the first part, hath (*or* have) demised and leased, and by these presents doth (*or* do) demise and lease, unto the said party of the second part, his (*or* their) executors, administrators and assigns, all that messuage or tenements, lands and premises situate (*or* all that parcel or tract of land situate, lying and being; *here insert a description of the premises with sufficient certainty*).

To have and to hold the said demised premises for and during the term of , to be computed from the day of , one thousand nine hundred and , and from thenceforth next ensuing and fully to be complete and ended; Yielding and paying therefor, yearly and every year during the said term hereby granted, unto the said party of the first part, his (*or* their) heirs, executors, administrators or assigns, the sum of , to be payable on the following days and times, that is to say: (on, etc.), the first of such pay-

ments to become due and be made on the day of next.

(*Here insert any provisoes, conditions and covenants required.*)

In witness whereof, etc.

Signed, sealed and delivered in the presence of

COLUMN ONE.	COLUMN TWO.
1. That the said [*lessee*] covenants with the said [*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 and assigns, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned without any deduction whatsoever:
	(*a*) Provided that, in the event of the said demised premises being destroyed by fire or tempest, or the act of God, during the said term, or not being totally destroyed but to such an extent as to render the same unfit for occupation, the said lessee, his or her heirs, executors, administrators and assigns, may, at any time within ten days after such destruction or injury to said pre-

COLUMN ONE. COLUMN TWO.

mises, give notice to the lessor requiring the said premises to be repaired and put in such condition as may be necessary to render them suitable for occupation for the purposes for which they have been leased, and with such notice shall serve a certificate of an architect as to the time within which such premises could be so repaired; and the lessor shall, within three days, give notice to the lessee that he intends so to repair; and upon failure to so repair within such time as may be so certified to by such architect as reasonably sufficient to make the necessary repairs, the said lease shall then determine;

(*b*) Provided, further, that, if the lessor do not so give notice within such three days, the lessee may either surrender the said premises or repair the same and charge it against the rent thereafter to be paid.

And the said lessor may at any time within ten days after the destruction or accident to the said premises as aforesaid, give notice to the lessee that it is not his intention to repair said premises, whereupon the said lessee may either surrender the said premises

COLUMN ONE.	COLUMN TWO.
	or repair the same and charge it against the rent to be thereafter paid;
	(*c*) Provided, always, that in case the tenant surrender said premises under either of these conditions, rent shall cease to be payable after such damage or destruction as aforesaid;
	(*d*) Provided, further, and it is expressly understood by and between the parties hereto that the said lessee, his executors, administrators and assigns shall not be bound to repair, where the same may be necessary from reasonable wear and tear, or the damage be caused by fire, tempest or the act of God.
2. And to pay taxes.	2. And, also, will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof.
3. And to repair.	3. And, also, will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises, with the appurtenances, in good and substantial repair, and all fixtures and things

COLUMN ONE. COLUMN TWO.

thereto belonging, or which at any time during the said term shall be erected and made, when, where and so often as need shall be:

(*a*) Provided that, in the event of the said demised premises being destroyed by fire, tempest or the act of God, or during the said term, or not being totally destroyed but to such an extent as to render the same unfit for occupation, the said lessee, his or her heirs, executors, administrators, and assigns, may, at any time within ten days after such destruction or injury to said premises, give notice to the lessor requiring the said premises to be repaired and put in such condition as may be necessary to render them suitable for occupation for the purposes for which they have been leased; and with such notice shall serve a certificate of an architect as to the time within which such premises could be so repaired; and the lessor shall, within three days, give notice to the lessee that he intends so to repair, and upon failure to so repair within such time as may be so certified to by such architect as reasonably sufficient to make the necessary repairs, the said lease shall then determine;

COLUMN ONE.	COLUMN TWO.
	(*b*) Provided, further, that if the lessor do not so give notice within such three days the lessee may either surrender the said premises or repair the same and charge it against the rent thereafter to be paid. And the said lessor may at any time within ten days after the destruction or accident to the said premises as aforesaid, give notice to the lessee that it is not his intention to repair the said premises, whereupon the said lessee may either surrender the said premises or repair the same, and charge it against the rent to be thereafter paid; (*c*) Provided, always, that, in case the tenant surrender said premises under either of these conditions, rent shall cease to be payable after such damage or destruction as aforesaid; (*d*) Provided, further and it is expressly understood by and between the parties hereto, that the said lessee, his executors, administrators and assigns, shall not be bound to repair where the same may be necessary from reasonable wear and tear, or the damage is caused by fire, tempest or the act of God.

COLUMN ONE.	COLUMN TWO.
4. And to keep up fences.	4. And also will, from time to time during the said term, keep up the fences and walls of or belonging to the said premises, and make anew in a good and husbandlike manner, and at proper seasons of the year any parts thereof that may require to be new-made.
5. And not to cut down timber.	5. And also will not at any time, during the said term, hew, fell, cut down or destroy or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs or firewood, or for the purpose of clearance as herein set forth.
6. And that the said [*lessor*] may enter and view state of repair, and that the said [*lessee*] will repair according to notice.	6. And it is hereby agreed that it shall be lawful for the lessor and his agents, at all reasonable times during the said time, to enter the said demised premises to examine the condition thereof, and, further, that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises of the said lessee, his executors, administrators and assigns, will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly:

COLUMN ONE. COLUMN TWO.

(*a*) Provided that, in the event of the said demised premises being destroyed by fire, or tempest, or the act of God, during the said term, or not being totally destroyed but to such an extent as to render the same unfit for occupation, the said lessee, his or her heirs, executors, administrators and assigns, may, at any time within ten days after such destruction or injury to said premises, give notice to the lessor requiring the said premises to be repaired and put in such condition as may be necessary to render them suitable for occupation for the purposes for which they have been leased; and with such notice shall serve a certificate of an architect as to the time within which such premises could be so repaired; and the lessor shall, within three days, give notice to the lessee that he intends so to repair, and upon failure to so repair within such time as may be so certified to by such architect as reasonably sufficient to make the necessary repairs, the said lease shall then determine;

(*b*) Provided, further, that, if the lessor do not so give notice within such three days, the lessee may either surrender the said pre-

COLUMN ONE.	COLUMN TWO.
	mises or repair the same and charge it against the rent thereafter to be paid; And the said lessor may at any time within ten days after the destruction or accident to the said premises as aforesaid, give notice to the lessee that it is not his intention to repair the said premises, whereupon the said lessee may either surrender the said premises or repair the same and charge it against the rent to be thereafter paid; (*c*) Provided, always, that, in case the tenant surrender said premises under either of these conditions, rent shall cease to be payable after such damage or destruction as aforesaid; (*d*) Provided, further, and it is expressly understood by and between the parties hereto, that the said lessee, his executors, administrators and assigns, shall not be bound to repair, where the same may be necessary from reasonable wear and tear or the damage is caused by fire, tempest or the act of God.
7. And will not assign or sub-let without leave.	7. And, also, that the lessee shall not nor will, during the said term, assign, transfer or set over, or

COLUMN ONE.	COLUMN TWO.
	otherwise by any act or deed, procure the said premises or any of them to be assigned, transferred, set over or sublet, unto any person or persons whomsoever without the consent in writing of the lessor, his heirs or assigns first had and obtained.
8. And that he will leave the premises in good repair.	8. And, further, the lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised, with the appurtenances, together with all buildings, erections and fixtures thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire, tempest or the act of God only excepted.
9. Proviso for re-entry by the said [*lessor*] on non-payment of rent or non-performance of covenants.	9. Provided, always, and it is hereby expressly agreed, that, if the rent hereby reserved, or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of lessee, his executors, administrators or assigns, then, and in

COLUMN ONE.	COLUMN TWO.
	either of such cases, it shall be lawful for the lessor at any time thereafter, into and upon the said demised premises, or any part thereof in the name of the whole, to re-enter, and the same to have again, repossess and enjoy as of his or their former estate, anything hereinafter contained to the contrary notwithstanding.
10. The said [*lessor*] covenants with the said [*lessee*] for quiet enjoyment.	10. And the lessor doth hereby, for himself, his heirs, executors, administrators and assigns, covenant with the lessee, his executors, administrators and assigns, that he and they, paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, his heirs, executors, administrators and assigns, or any other person or persons lawfully claiming by, from or under him, them or any of them.

CHAPTER XVIII.

Statutes Respecting Conveyancing in Ontario.

In the Province of Ontario there is in force an Act called "The Conveyancing and Law of Property Act,[1] similar in its nature to the English Act of the same title, by which the method of conveyancing is greatly simplified. It is intended here to deal with the more important provisions of the Act affecting deeds of purchase, mortgage and leases.

The Act provides that it shall be unnecessary in the limitation of an estate in fee simple to use the word "heirs;" or in the limitation of an estate in tail, to use the words "heirs of the body;" or in the limitation of an estate in tail male or in tail female, to use the words "heirs male of the body," or "heirs female of the body," but that for the purposes of limiting an estate it shall be

[1] 1914, R. S. Ont., ch. 109.

sufficient to use the words " in fee simple, in tail, in tail male, or in tail female," according to the limitation intended. Where no words of limitation are used, the conveyance passes all the estate, right, title, interest, claim and demand which the conveyancing party has in, to or on the property or which he has power to convey, unless a contrary intention appears from the conveyance.

Every conveyance of land, unless an exception is specially made therein, includes all buildings on the land, water privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances belonging or appertaining to the land, and if it be a conveyance in fee simple, also the reversion or reversions, remainder and remainders, rents, issues and profits, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand of the grantor.

In every conveyance for valuable consideration other than a mortgage, the following covenants by the person who conveys,

and is expressed to convey as beneficial owner, are implied:—

1. Right to convey;
2. Quiet enjoyment;
3. Freedom from encumbrances, and
4. Further assurances;

according to the forms of covenants numbered 2, 3, 4 and 5 of the Short Forms of Conveyance Act, and subject to the provisions of that Act.[2]

In a conveyance, when the person conveying is, and is expressed to convey as a trustee or mortgagee, or as a personal representative of a deceased person, or as a committee of a lunatic, or under an order of the Court, there is implied the following covenant, namely:—

"That the person so conveying has not executed, or done, or knowingly suffered, or been party or privy to any deed, act, matter or thing, whereby or by means whereof the subject matter of the conveyance, or any part thereof is or may be impeached,

[2] *Post*, p. 308 *et seq.*

charged, affected, or incumbranced in title, estate or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying such subject matter, or any part thereof, in the manner in which it is expressed to be conveyed.

Under the provisions of "The Mortgages Act,"[3] in a conveyance by way of mortgage, the person who conveys covenants impliedly:—

1. For payment of the mortgage money and interest, and observing in other respects of the proviso in the mortgage;

2. For good title;

3. For right to convey;

4. That, on default, the mortgagee shall have quiet possession of the land; free from all encumbrances;

5. That the mortgagor will execute further assurances of the said lands as may be requisite; and

6. That the mortgagor has done no act to encumber the land mortgaged; accord-

[3] 1914, R. S. Ont., ch. 112, sec. 6.

ing to the forms of covenants in the Short Forms of Mortgages Act, for such purposes.[4]

The Short Forms Acts.

Other Acts in force in Ontario by which conveyancing in that Province has been simplified are the Short Forms Acts, namely, the three Acts respecting short forms of conveyances, leases and mortgages respectively.[5]

These Acts provide forms for the bodies of the instruments, setting out schedules of the covenants which, taken with the provisions of the Act, provide a means of making long covenants by the use of a few words. In other words, when a conveyance is expressed to be made in pursuance of the Short Forms Act, the use of the few words contained in the first column of the schedule are held to be of the same effect in the instrument as if it contained the form of words set out in the second column of

[4] *Post*, p. 320, *et seq.*

[5] 1914, R. S. Ont., chaps. 115, 116 and 117.

the schedule. For example, by using the words " the said grantor covenants with the said grantee " the deed is made of the same effect as though it contained " and the said grantor doth hereby for himself, his heirs, executors and administrators covenant, promise and agree, with and to the said grantee, his heirs, executors, administrators and assigns, in manner following, that is to say "

It must be borne in mind that the operation of instruments under these acts is also governed by the provisions of " The Conveyancing and Law of Property Act " and " The Mortgages Act."

The Short Forms of Conveyances Act.

Where a deed of land is made according to the form in Schedule "A" of the Act, or any other deed of land is expressed to be made in pursuance of the Act or referring thereto, and contains any of the forms contained in column one of Schedule "B" of the Act, and distinguished by any number thereon, such deed shall have the same effect as if it contained the forms of words in column two of Schedule "B" distinguished by the same number as is annexed to the form

of words used in such deed, but it is unnecessary in any such deed to insert any such number.

In using any of the forms in the first column of Schedule "B" there may be substituted for the words "grantor" and "grantee" any name or other designation and in every such case a corresponding substitution shall be taken to be made in the corresponding form of the second column. Similarly, the feminine gender may be substituted for the masculine, or the plural for the singular. Further, a party may introduce into, or annex to, any of the forms in the first column any express exceptions from, or other express qualifications thereof, and the like exception and qualification shall be taken to be made from and in the corresponding form in the second column.

SCHEDULE A.

Form of Conveyance.

This Indenture made the day of , one thousand nine hundred and in pursuance of The Short

Forms of Conveyances Act, between (*here insert names of parties and recitals, if any*), witnesseth, that in consideration of
dollars, of lawful money of Canada, now paid by the said (*grantee*) to the said (*grantor*) the receipt whereof is hereby by him acknowledged, he the said (*grantor*) doth grant unto the said (*grantee*) in fee simple (*or otherwise as the case may be*) all, etc. (*parcels.*)

(*Here insert covenants, or any other provisions.*)

In witness whereof the said parties hereto have hereunto set their hands and seals.

Schedule B.

The forms in this Schedule are the same as those in the second schedule of the British Columbia Real Property Conveyance Act, ante (p. 252 *et seq.*) *with the addition of a section numbered 9, it being necessary to join a wife in a deed in Ontario to bar her dower. Section 9 of the Ontario Act is as follows:*

COLUMN ONE.	COLUMN TWO.
9. And the said wife of the said grantor hereby bars her dower in the said lands.	9. And the said wife of the said grantor, for and in consideration of the sum of one dollar of lawful money of Canada, to her in hand paid by the said grantee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said grantee, his heirs, executors, administrators and assigns, all her dower and right and title which, in the event of her surviving her said husband, she might or would have to dower, in, to or out of the lands and premises hereby conveyed or intended so to be.

The second column of No. 7 in the Ontario forms omits the proviso contained in the corresponding form of the British Columbia Act.

The Short Forms of Leases Act.

Where a lease under seal, made according to the form in Schedule "A," or any other such lease expressed to be made in pursuance of the Act or referring thereto, contains any of the forms of words in column one of Schedule "B," the lease shall

have the same effect as if the corresponding forms in column two of schedule "B" were contained in it.

Parties who use the form in the first column of Schedule "B" may substitute other words or designations for the words "lessor" and "lessee," or may substitute the feminine for the masculine gender and the plural for the singular, and may introduce into or annex express exceptions or qualifications; and the same changes will automatically be made in the second column of the Schedule.

Unless the contrary is expressly stated in the lease, all covenants not to assign or sub-let without leave entered into by a lessee in any lease under the Act, shall run with the land leased, and shall bind the executors, administrators and assigns, whether mentioned in the lease or not, unless it is by the terms of the lease otherwise expressly provided, and the proviso for re-entry contained in Schedule "B" shall, when inserted in a lease, apply to a breach of either an affirmative or negative covenant.

5. Where the premises demised are of freehold tenure, the covenants 2 to 9 shall be taken to be made with, and of the proviso 12 to apply to, the heirs and assigns of the lessor; and where the premises demised are of leasehold tenure, the said covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators and assigns. Where the word "lessor" occurs in the second column, it includes the heirs, executors, administrators and assigns of the lessor if the premises demised are of freehold tenure, and when the premises demised are of leasehold tenure it includes the executors, administrators and assigns of the lessor. Where the word "lessee" occurs in the second column it includes the executors, administrators and assigns of the lessee.

SCHEDULE A.

Form of Lease.

This Indenture, made the day of , in the year of our Lord one thousand nine hundred and , in pursuance of The Short Forms of Leases Act, between , of the first part, and , of the second part, witnesseth, that in consideration of the rents, covenants and agreements, hereinafter reserved and contained on the part of the lessee, the lessor doth demise and lease unto the lessee, his executors, administrators and assigns (*here insert a description of the premises with sufficient certainty.*)

To have and to hold the said demised premises for and during the term of , to be computed from the day of , one thousand nine hundred and , and from thenceforth next ensuing and fully to be complete and ended.

Yielding and paying therefor yearly and every year during the said term hereby granted unto the said lessor, his (*or* their)

heirs, executors, administrators or assigns, the sum of , to be payable on the following days and times, that is to say (or, *etc.*), the first of such payments to become due and be made on the day of next, (*here insert covenants or any other* provisions). In witness whereof, etc.

Schedule B.

COLUMN ONE.	COLUMN TWO.
1. The said lessee covenants with the said lessor.	1. And the said lessee doth hereby covenant with the said lessor in manner following, that is to say:
2. To pay rent.	2. That he, the said lessee, will during the said term, pay unto the said lessor, the rent hereby received, in manner hereinbefore mentioned, without any deduction whatsoever.
3. And to pay taxes, except for local improvements.	3. And also will pay all taxes, rates, duties, and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof, except municipal taxes for local improvements or works assessed upon the property benefited thereby.
4. And to repair, reasonable	4. And also will, during the said term, well and sufficiently repair,

COLUMN ONE.	COLUMN TWO.
wear and tear and damage by fire, lightning and tempest only excepted.	maintain, amend and keep the said demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said 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 and tempest only excepted.
5. And to keep up fences.	5. And also will, from time to time, during the said term, keep up the fences and walls of or belonging to the said 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.
6. And not to cut down timber.	6. And also will not at any time during the said term hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs, or firewood, or for the purpose of clearance as herein set forth.
7. And that the said lessor may enter and view state of repair,	7. And it is hereby agreed that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the

COLUMN ONE.	COLUMN TWO.
and that the said lessee will repair according to notice in writing, reasonable wear and tear, and damage by fire, lightning and tempest only excepted.	said demised premises to examine the condition thereof; and further, that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly, reasonable wear and tear and damage by fire, lightning and tempest only excepted.
8. And will not assign or sub-let without leave.	8. And also that the lessee shall not, nor will during the said term, assign, transfer or set over, or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, set over or sub-let unto any person or persons whomsoever without the consent in writing of the lessor first had and obtained.
9. And that he will leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.	9. And further, the lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor, the said premises hereby demised, with the appurtenances, together with all buildings, erections and fixtures erected or made by the lessor thereon, in good and substantial repair and

COLUMN ONE.	COLUMN TWO.
	condition, reasonable wear and tear, and damage by fire, lightning and tempest only excepted.
10. Provided that the lessee may remove his fixtures.	10. Provided, always, and it is hereby expressly agreed, that the lessee may at or prior to the expiration of the term hereby granted, take, remove and carry away from the premises hereby demised all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes or other articles upon the said premises in the nature of trade or tenants' fixtures or other articles belonging to or brought upon the said premises by the said lessee but the lessee shall in such removal do no damage to the said premises, or shall make good any damage which he may occasion thereto.
11. Provided that in the event of fire, lightning or tempest, rent shall cease until the premises are rebuilt.	11. Provided, and it is hereby declared and agreed, that in case the premises hereby demised or any part thereof shall at any time during the term hereby agreed upon be burned down or damaged by fire, lightning or tempest so as to render the same unfit for the purposes of the said lessee, then and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature

COLUMN ONE.	COLUMN TWO.
	and extent of the injuries sustained, shall abate, and all or any remedies for recovery of said rent or such proportionate part thereof shall be suspended until the said premises shall have been rebuilt or made fit for the purposes of the said lessee.
12. Proviso for said lessor on non-re-entry by the payment of rent or non-performance of covenants.	12. Provided always, and it is hereby expressly agreed, that if and whenever the rent hereby reserved or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made therefor, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, then, and in either of such cases, it shall be lawful for the lessor at any time hereafter, into and upon the said demised premises or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess and enjoy, as of his or their former estate, anything hereinafter contained to the contrary notwithstanding.

COLUMN ONE.	COLUMN TWO.
13. The said lessor covenants with the said lessee for quiet enjoyment.	13. 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 said 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.

The Short Forms of Mortgages Act.

Where a mortgage of land made according to the form in Schedule "A" or in any other mortgage of land, expressed to be made in pursuance of the Act in referring thereto, contains any of the forms of words in column one of Schedule "A," the mortgage shall have the same effect as if the corresponding forms of words in column two of Schedule "B" were contained in it. Other words and designations may be substituted for "mortgagor" and "mortgagee," the feminine may be substituted for the masculine gender, the plural may be substituted

for the singular, and express exceptions or qualifications may be introduced or annexed, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

SCHEDULE A.

Form of Mortgage.

This Indenture, made the day of , one thousand nine hundred and , in pursuance of The Short Forms of Mortgages Act, between (*here insert the name of parties and recitals, if any*), Witnesseth, that in consideration of of lawful money of Canada, now paid by the said mortgagee to the said mortgagor, the receipt whereof is hereby acknowledged, the said mortgagor doth grant and mortgage unto the said mortgagee, his heirs, executors, administrators and assigns for ever, all (*parcels*).

(*Here insert provisoes, covenants or other provisions*).

In witness whereof the said parties hereto have hereunto set their hands and seals.

SCHEDULE B.

COLUMN ONE.	COLUMN TWO.
1. And the said wife of the said mortgagor hereby bars her dower in the said lands.	1. And the said wife of the said grantor, for and in consideration of the sum of one dollar of lawful money of Canada to her in hand paid by the said mortgagee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said mortgagee, his heirs, executors, administrators and assigns, all her dower and right and title which in the event of her surviving her said husband, she might or would have to dower, in, to or out of the lands and premises hereby conveyed or intended to so be.

The provisoes and covenants are in the same form as set out in Schedule 2 of the British Columbia Mortgages Statutory Form Act (p. 261 *et seq.*), *except that in the insurance clause the words* "of lawful money of Canada" *are used in the Ontario Act, instead of* "currency," *used in the British Columbia Act.*

Other Forms in Ontario.

By virtue of the provisions of The Registry Act, a registered mortgage is discharged by a certificate in statutory form executed by the mortgagee, his executors, administrators or assigns, and duly proven in the manner provided for the proof of other instruments, which certificate, together with the required affidavit, are rendered in the same manner as other instruments.

Conveyance by beneficial owner under "The Conveyancing and Law of Property Act."

This Indenture, made the day of , 19 , (in pursuance of The Conveyancing and Law of Property Act), between of the of in the County of , , hereinafter called the grantor, of the first part, and of the of in the County of , , hereinafter called the grantee of the second part—

(*Recitals, if any*).

Witnesseth that in consideration of dollars of lawful money of Canada, now paid by the grantee to the grantor (the receipt whereof is by him acknowledged), he, the

grantor, as beneficial owner, doth convey unto the grantee in fee simple (*or otherwise as the case may be*) all, etc.

In witness whereof, etc.

Signed, sealed, etc.

Short form deed with dower.

This Indenture, made (in duplicate) the day of , A. D. 19 , in pursuance of the Short Forms of Conveyances Act:

Between of the first part; wife of the said party of the first part, of the second part; and of the third part:

Witnesseth that in consideration of of lawful money of Canada, now paid by the said part of the third part, to the said party of the first part (the receipt whereof is hereby by him acknowledged) the said party of the first part do grant unto the said part of the third part, heirs and assigns, for ever.

All and singular th certain parcel or tract of land and premises, situate, lying and being (*description*).

To have and to hold unto the said part of the third part, heirs and assigns, to and for their sole and only use for ever; subject, nevertheless, to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown.

The said part of the first part covenant with the said of the third part, that ha the right to convey the said lands to the said part of the third part notwithstanding any act of the said part of the first part.

And that the said part of the third part shall have quiet possession of the said lands, free from all incumbrances.

And the said part of the first part, covenant with the said part of the third part, that will execute such further assurance of the said lands as may be requisite.

And the said part of the first part, covenant with the said part of the third part, that ha done no act to encumber the said lands.

And the said part of the first part release to the said part of the third part all claims upon the said lands.

And the said part of the second part, wi of the said part of the first part, hereby bar dower in the said lands.

In witness whereof, etc.

Signed,, sealed, etc.

Short form mortgage.

This Indenture, made (in duplicate) the day of , A.D. 19 , in pursuance of the Short Forms of Mortgages Act. Between

Witnesseth, that in consideration of of lawful money of Canada, now paid by the said mortgagee to the said mortgagor (the receipt whereof is hereby acknowledged), the said mortgagor do grant and mortgage unto the said mortgagee heirs and assigns forever:

All and singular, th certain parcel or tract of land and premises.

Provided this mortgage to be void on payment of lawful money of Canada, with

interest at per cent. per annum as follows; and taxes and performance of statute labour.

The said mortgagor covenant with the said mortgagee that the mortgagor will pay the mortgage money and interest and observe the above proviso;

That the mortgagor ha a good title in fee simple to the said lands; and that he ha the right to convey the said lands to the said mortgagee and that on default the mortgagee shall have quiet possession of the said lands, free from all encumbrances. And that the said mortgagor will execute such further assurances of the said lands as may be requisite.

And that the said mortgagor ha done no act to incumber the said lands; and that the said mortgagor will insure the building on the said lands to the amount of not less than currency; and the said mortgagor do release to the said mortgagee all claims upon the said lands, subject to the said proviso;

Provided that the said mortgagee on default of payment for month may enter on and lease or sell the lands;

Provided that the mortgagee may distrain for arrears of interest; provided that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable; provided that until default of payment the mortgagor shall have quiet possession of the said lands.

In witness whereof, etc.

Signed, sealed, etc.

PROVINCE OF ONTARIO. } Dominion of
To WIT: } Canada.

Statutory discharge of mortgage.

To the Registrar of the do certify that ha satisfied all money due on or to grow due on a certain mortgage made by , which mortgage bears date the day of A.D. 19 , and was registered in the registry office for the on the day of , A.D. 19 , at minutes past o'clock noon, in Liber

for as No. (*Here mention the day and date of registration of each assignment thereof, and the names of the parties—or mention that such mortgage has not been assigned, as the case may be*). And that I am the person entitled by law to receive the money; and that such mortgage is therefore discharged.

Witness my hand this day of , A.D. 19 .

Witness:

CHAPTER XIX.

Short Forms in Nova Scotia.

No Act respecting short forms of deeds, leases and mortgages was passed in Nova Scotia until 1912,[1] and as yet it is seldom that the provisions of the Act are taken advantage of in making instruments in this Province.

The Nova Scotia Act is of the same nature as the short forms acts of the other Provinces. It will be noted that in the form of deed under the Act no words of limitation are used, but instead the words "in fee simple" as in Ontario. In this respect the Nova Scotia Act was defective until 1913, when an amendment was passed[2] to the effect that deeds under the Act containing the words "in fee simple" should pass the whole estate of the grantor.

The schedules of the Act, of course, contain the two columns of words, the use of

[1] Acts of N. S. 1912, ch. 2.
[2] Acts of N. S. 1913, ch. 54.

the words in the first of which give to the instrument expressed to be made in pursuance of the Act the same effect as if the corresponding words in the second column were contained in it. The same substitutions, annexations and exceptions may be made in the forms as are provided for in the directions for use of the forms in the British Columbia Acts.[3]

Form of Deed.

This indenture made the day of one thousand nine hundred and in pursuance of The Act respecting Short Forms of Conveyances.

Between (*here insert names of parties, and recitals if any*), witnesseth, that in consideration of dollars, of lawful money of Canada, now paid by the said (grantee) to the said (grantor) the receipt whereof is hereby by him acknowledged, he the said (grantor) doth grant unto the said (grantee) in fee simple (or otherwise as the case may be) etc., all, etc., (parcels)

[3] *Vide* p. 247, *et seq.*

(Here insert covenants, or any other provisions.)

In witness whereof the said parties hereto have hereunto set their hands and seals.

Forms of Covenants in Deed.

These forms are similar to the corresponding schedule of the British Columbia Real Property Conveyance Act, except that it does not contain covenant numbered six of that schedule as to the production of title deeds. The Nova Scotia form further contains the bar of dower in the following form unnecessary in the British Columbia Act.[4]

COLUMN ONE.	COLUMN TWO.
8. And the said (*A. B.*) wife of the said (*grantor*) hereby bars her dower in the said lands.	8. And the said (A. B.) wife of the said grantor, for and in consideration of the sum of dollars of lawful money of Canada to her in hand paid by the said grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released,

[4] *Vide* p. 249, *et seq.*

COLUMN ONE.	COLUMN TWO.
	and by these presents doth grant and release unto the said grantee, his heirs, executors, administrators and assigns, all her dower and right and title which in the event of her surviving her said husband, she might or would have to dower, in, to or out of the lands and premises hereby conveyed or intended to so be.

Form of Mortgage.

This Indenture, made the day of one thousand nine hundred and , in pursuance of The Act respecting Short Forms of Conveyances.

Between (here insert names of parties, and recitals if any).

Witnesseth, that in consideration of of lawful money of Canada now paid by the said mortgagee (or mortgagees) to the said mortgagor (or mortgagors) the receipt whereof is hereby acknowledged, the said mortgagor (or mortgagors) doth (or do) grant and mortgage unto the mortgagee (or mortgagees) his (her or their), heirs, execu-

tors, administrators and assigns for ever, all (parcels) (here insert provisoes, covenants or other provisions).

In witness whereof the said parties hereto have hereunto set their hands and seals.

Form of Covenants, etc., in Mortgage.

COLUMN ONE.	COLUMN TWO.
1. And the said (*A. B.*) wife of the said mortgagor, hereby bars her dower in the said lands.	1. And the said (A. B.), wife of the said mortgagor, for and in consideration of the sum of of lawful money of Canada, to her in hand paid by the said mortgagee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said mortgagee, his heirs, executors, administrators, and assigns all her dower, and right and title which in the event of her surviving her said husband, she might or would have to dower, in, to or out of the lands and premises hereby conveyed or intended so to be.

The remainder of the form is similar to the corresponding schedule of the British Columbia Mortgages Statutory Form Act [5] *except that it does not contain covenants numbers 9 and 13 in the British Columbia schedule dealing with the production of title deeds and entry in default of payment respectively.*

Form of Lease.

This indenture made the day of in the year of our Lord, one thousand nine hundred and , in pursuance of The Act respecting Short Forms of Conveyances.

Between of the first part,
and of the second part,

Witnesseth that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said party (or parties) of the second part, his (or their) executors, administrators and assigns, to be paid, observed and performed, he (or they) the said party (or parties) of

[5] *Vide* p. 261, *et seq.*

the first part hath (or have) demised and leased, and by these presents doth (or do) demise and lease unto the said party (or parties) of the second part, his (or their) executors, administrators and assigns, all that messuage or tenement situate (or all that parcel or tract of land situate) lying and being (here insert description of the premises with sufficient certainty.) To have and to hold the said demised premises for and during the term of to be computed from the day of one thousand nine hundred and , and from thenceforth next ensuing and fully to be completed and ended.

Yielding and paying therefor yearly and every year during the said term hereby granted unto the said party (or parties) of the first part, his (or their) heirs, executors, administrators or assigns, the sum of to be payable on the following days and times, that is to say (on, etc.,) the first of such payments to become due and be made on the day of next.

Forms of Covenants in Lease.

These forms are similar to the corresponding schedule in the Ontario Short Forms of Leases Act.[6]

[6] *Vide* p. 315, *et seq.*

CHAPTER XX.

Negotiable Instruments.

One of the powers exercised by notaries public that cannot, except under special circumstances, be exercised by any other officer is the presentment, noting and protesting of negotiable instruments. By reason of this fact, together with the so frequent use of bills of exchange and other negotiable instruments in commercial transactions, this function has become the one which Canadian notaries are most often called upon to perform.

The law relating to negotiable instruments is governed by the Bills of Exchange Act,[1] which is applicable to all the Provinces, the British North America Act making this subject one for legislation by the Dominion Parliament only. As it is impossible to comprehend fully either the necessity for or the requisites of presentment and protest without at least a superficial knowledge of the nature of negotiable instru-

[1] 1906, R. S. Canada, ch. 119.

ments and the laws relating to them, it is proposed here to outline in brief some of their main features and so much of the Bills of Exchange Act as is useful for that purpose.

Nature of Instruments.

Though the short title to the Act is "The Bills of Exchange Act," it relates not only to bills of exchange but to promissory notes and cheques.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer.[1]

[1] Sec. 17. The usual bill of exchange is in some form similar to the following:

$100.00 Ottawa, Ont., June 1st, 1915.

At sight (*or* days after date) pay to the order of E. F. at the Central Bank, Ottawa, the sum of one hundred dollars.

Value received and charge to the account of

To C. D., Ottawa, Ont. (Sgd.) A. B.

Sometimes the place of payment is not mentioned in the body of the bill but is expressed in the acceptance which is written across the face of the bill.

A promissory note is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay, on demand, or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer.[2]

A cheque is a bill of exchange drawn on a bank payable on demand.

The parties to a bill of exchange are the drawer, the drawee and the payee. When the bill has been accepted by the drawee the latter is called the acceptor and becomes liable to the payee for payment of the sum mentioned in the bill. The payee may negotiate the bill by endorsing his name upon it and delivering it to another person. When this is done such person becomes an endorsee and is entitled to receive payment of

[2] The usual promissory note is in some form similar to the following:—

Ottawa, Ont., June 1st, 1915.

$100.00

days after date I promise to pay to the order of A. B. at the Central Bank, Ottawa, Ont., the sum of one hundred dollars.

Value received. (Sgd.) C.D.

the amount of the bill at maturity and the payee becomes also an endorser and is liable to the endorsee for payment of it if the acceptor dishonors the bill by non-payment. In every case the drawer by drawing the bill contracts with the payee, and every person to whom the right of receiving payment may be subsequently transferred, that the bill will be duly paid at maturity.

The parties to a promissory note are the maker, the payee and the endorsers, the maker engaging to pay the amount mentioned in the note to the payee or to any person to whom it may subsequently be endorsed, and corresponding with the acceptor of a bill of exchange.

Endorsement may be effected by the endorser simply signing his name on the instrument without any additional words. Such an endorsement is an endorsement in blank and an instrument so endorsed becomes payable to bearer. The endorsement may, however, specify the person to whom or to whose order the instrument is to be payable, in which case it is called a special

Endorsement.

endorsement. The endorsement of all instruments (which is not complete without delivery) whether specially or in blank, consists of three distinct contracts: (1) the transfer by the endorser of the property in the instrument, which is a *jus in rem;* (2) the transfer by the endorser of the right to receive payment from the acceptor or maker, which is a *jus in personam;* and (3) the assumption by the endorser of a contingent liability for payment of the amount of the bill or note.[3]

An endorsement, however, in some cases does not create this new liability on the part of the endorser. By the use of the words "without recourse," "sans recours," or any other words of similar meaning, after his signature, the endorser may negotiate the instrument without creating any new right of others against himself.

The endorsement is usually written on the back of the instrument, but it has been held that an endorsement written on the face of the bill is valid.[4]

[3] Russell on Bills, p. 241.

[4] *Young* v. *Glover*, 13 Jur. N. S. 637.

Bills of exchange because of their nature must usually be presented for the drawee's acceptance, sometimes to fix the date of maturity and always in order to make the drawee liable upon them. Promissory notes, of course, do not need to be presented for acceptance because the maker of a note, who corresponds with the acceptor of a bill, is liable upon the note as soon as he makes and delivers it, and the time of maturity is also then a fixed or determinable date. With respect to cheques it may be said that the presentment for acceptance is merged in the presentment for payment, for a cheque is a bill of exchange payable on demand. The only cases in which it is necessary according to the Act, to present bills for acceptance, in order to render liable the parties to the bill, are [5] (1) Where a bill is payable at sight or after sight. (Presentment here is necessary in order to fix the date of maturity.) (2) Where a bill expressly stipulates that it shall be presented for acceptance before it is presented for payment.

Presentment for acceptance.

[5] Sec. 75.

(3) Where a bill is drawn payable elsewhere than at the place of residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render liable any party to the bill. It must be borne in mind, however, in this connection that the words "party to the bill" as used here do not include a drawee who has not accepted the bill, and that in every case when it is sought to make the drawee liable upon a bill the bill must be accepted by him, thus involving the necessity of presentment.

It was held by the Privy Council in a case that the person in possession of a bill as agent for the legal holder is bound to present it for acceptance, notwithstanding that presentment in the particular case was optional for the purposes of the Act.[6]

The presentment of a bill for acceptance must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf,

[6] *Bank of Van Diemen's Land* v. *Bank of Victoria*, L. R. 3 P. C. at 542.

at a reasonable hour on a business day and before the bill is overdue,[7] the holder, of course, being the payee or endorsee who is in possession of it, or the bearer in possession of a bill payable to bearer, or on which the only or last endorsement is an endorsement in blank. Presentment could not be made to a servant who opened the door, but giving the bill to a clerk in the drawee's office or placing it in the bill box in the usual way is a proper presentment.[8] If the presentment is to be made to a business man it should be made during business hours, and if it is to be made at a bank it should be made during banking hours.[9] A "business day" is any day other than a day directed to be observed as a legal holiday or non-juridical day.[10] Where the holder of a bill payable elsewhere than at the place of business

[7] Sec. 78 (a).

[8] Chalmers on Bills, 6th ed., 138.

[9] Russell on Bills, 269.

[10] Sec. 43 of the Act reads as follows:—

43. In all matters relating to bills of exchange, the following and no other days shall be observed as legal holidays or non-juridical days:—

(*a*) In all the provinces of Canada—Sundays, New Year's Day, Good Friday, Easter Monday, Victoria Day,

or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance is excused, and does not discharge the drawer and endorsers.[11]

When the bill is accepted or endorsed after maturity it is deemed as against the acceptor who so accepts, or any endorser who so endorses it, a bill payable on demand.[1]

Dominion Day, Labour Day, Christmas Day, the birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign; any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada; the day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign when such days respectively fall on Sunday.

(*b*) In the province of Quebec in addition to the said days—The Epiphany, The Ascension, All Saints' Day, Conception Day.

(*c*) In any of the provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such province for a public holiday, or for a fast or thanksgiving within the same, and any non-juridical day by virtue of a statute of such province.

[11] Sec. 76.

[1] Sec. 23 (2).

Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, or for any of the others, in which case presentment to that one who has such authority is sufficient presentment to those for whom he has authority to accept.[2] The person presenting the bill in such a case should indicate that an acceptance is required, not only by the person to whom it is presented, but also on behalf of the other or others, otherwise it will not operate as a presentment to the latter.

Where the drawee is dead the holder may at his option present it to personal representative of the drawee or treat the bill as dishonored.[3]

Presentment by mail is sufficient when it is authorized by agreement between the parties.[4]

Under certain circumstances presentment for acceptance is excused and the bill

[2] Sec. 78 (b).
[3] Sec. 78 (c) and 79 (a).
[4] Sec. 78 (d).

may be treated as dishonored by non-acceptance.[5] One of such cases, as has been already seen, is where the drawee is dead. The other cases are—where the drawee is a fictitious person; where the drawee has not capacity to contract by bill, as in the case of a corporation under whose memorandum of association or charter there is no authority to deal with negotiable instruments; where after the exercise of reasonable diligence, such presentment cannot be effected; and where, although the presentment has been irregular, acceptance has been refused on some other ground.

The drawee, when a bill is presented for acceptance, has three days inclusive of day of presentment within which to accept or refuse the bill, and when at the expiration of that time there has been no acceptance the bill must be treated as dishonored by the person presenting it, otherwise the holder loses his right of recourse against the drawer and endorsers.[6] In the case of a bill payable at sight or after sight, in which case

[5] Sec. 79.
[6] Sec. 80.

the date of maturity of the bill is fixed by the date of acceptance, the acceptor may date his acceptance as of any of the three days that he has in which to consider acceptance or refusal, and if an acceptance is not dated as of one of those days the holder may at his option refuse to take the acceptance and may treat the bill as dishonored by non-acceptance.[7]

Dishonor of a bill by non-acceptance, which includes within its meaning an excused presentment, gives the holder an immediate right of recourse against the drawer and endorsers without presentment for payment. As it will hereafter be seen, however, any action taken upon the dishonored bill must be preceded by notice of dishonor to the parties against whom the action is to be taken, and sufficient time must be allowed for the notice to reach these parties.[8]

Presentment for payment is a formality often necessary to be made by the holder

Presentment for payment.

[7] Sec. 80 (4) and (5).

[8] *Vide* p. 357, *et seq.*

of an instrument. With certain exceptions, the omission on the part of the holder of a bill of exchange to present it for payment discharges the drawer and endorsers, and relieves them not only from liability on the bill but also from any revival of liability for the indebtedness in payment of which it was given. Presentment is effected by exhibiting the instrument to the person by whom payment should be made and demanding payment of him on the date of maturity, or, if the instrument be one payable on demand, within a reasonable time after its issue.[9]

Where a bill is not payable on demand, three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace. Whenever the last day of grace falls on a legal holiday or non-juridical day then the business day next following is the last day of

[9] Sec. 95 (3) and 86.

grace.[10] The presentment must be made at a reasonable hour, and the burden of showing that the presentment was made at a proper time and in the proper manner is upon the holder.

In a case where it was proved that presentment was made after a store closed, and the witness was not asked at what hour of the day presentment was made, the Court drew the inference that the store had been closed at the usual business closing hour and that the presentment was not made at a reasonable time of day.[1] In a learned opinion in the matter of the time for presentment for payment, in the Journal of the Canadian Bankers' Association,[2] it is said that since there is no provision for the hour for presentment for payment in the Act, while there is such a provision regarding presentment for acceptance, it might be argued that the holder has the whole day for presentment, but

[10] Sec. 42. Legal holidays and non-juridical days are set out *ante*, pp. 345, 346, note.

[1] *Patterson* v. *Tapley*, Allen, N. B. 292.

[2] 9 J. C. B. 237.

that this view must be rejected because presentment for payment at a reasonable hour is implied in the provision which requires reasonable diligence on the part of the holder to find the proper person at the proper place. Presentment at a bank must be made during banking hours or later where it is customary for the clerks to remain after hours.[3] Presentment must be made by the holder or by some other person authorized to receive payment on his behalf either to the person designated by the instrument as payer or to his representative or some other person authorized to pay or refuse payment on his behalf, if, with reasonable diligence, such person can be found.[4] The most difficult matter in connection with presentment for payment is often finding out the proper place for presentment of a particular bill or note. Where, of course, a place of payment is mentioned in the instrument, either in the body of the instrument or, if it be a bill, in the acceptance, the instru-

[3] Russell on Bills, 278, 279, 280.
[4] Sec. 87.

ment is to be presented at that place. If no place of payment is mentioned, but the address of the payer is given in the instrument, it must be presented at such address, and where such address also does not appear in the instrument, it must be presented at the payer's place of business, if known, and if not known then at his ordinary residence if known. If neither the place of business nor the place of residence be known the instrument may be presented to the payer personally wherever he can be found, or presented at the payer's last known place of business or residence.[5] In all of the cases mentioned except that of presentment to the payer wherever he can be found, it is immaterial that the payer is not present when the instrument is presented, if after the exercise of reasonable diligence he cannot be found at that place,[6] and if an instrument is payable at a bank or other place and is at the place of payment at maturity this is a sufficient presentment.[7] When, if the instrument is a bill, it is drawn upon or

[5] Sec. 88.
[6] Sec. 89.
[7] Russell on Bills, p. 283.

accepted by, or, if it is a note, it is made by, two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all, and where the payer is dead and no place of payment is specified, presentment must be made to a personal representative, if there is one who can with reasonable diligence be found.[8] It has been held in Manitoba that a note payable at a particular bank, not naming the place, the bank named having agencies in more than one place, is payable at the agency in the place where the note is made.[9] When the place of payment specified is any city, town or village, and no place therein is specified, the instrument must be presented at the payer's known place of business or ordinary residence in such city, town or village, and if there is no such place of business or residence, it may be presented at the principal post office therein.[10]

[8] Sec. 87 (2) and (3).

[9] *Commercial Bank* v. *Bissett*, 7 Man. 586.

[10] Sec. 90. Sec. 88 (d) permits presentment at the last known place of business or residence instead of at the post office, under such circumstances.

Delay in making presentment on the proper day is excused only when it is caused by circumstances beyond the control of the holder, and is not in any way caused by his own default, misconduct or negligence, and in every case as soon as the cause of delay ceases to operate, presentment must at once be made.[1]

Presentment for payment of a bill of exchange is not necessary in order to render the acceptor liable when no place of payment is specified.[2] When, in a bill, a place of payment is specified, the acceptor is not discharged by the omission to present the bill on the day that it matures, but if an action be taken against the acceptor the holder, unless he has after the date of maturity presented the bill for payment, may be deprived of the costs of the action.[3] While presentment for payment is necessary in order to make the endorsee of a promissory note liable, it is not necessary for

[1] Sec. 91.

[2] Sec. 93.

[3] Sec. 93, and *Vide* Russell on Bills, 297 *et seq.*, for discussion upon the meaning of this section.

the purpose of rendering the maker liable.[4] When, however, a note is payable at a particular place it should be presented for payment and the result of omission is the same as in the case of a bill in which the place of payment is specified in respect to presentment to the acceptor.[5]

Where in a promissory note a place of payment is indicated by way of memorandum only and is not named in the body of the note, presentment at the place indicated is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, is sufficient for this purpose also.[6]

Presentment for payment in cases where under the Act it would otherwise be necessary is dispensed with when, after the exercise of reasonable diligence it cannot be effected according to the requirements of the Act, and when the drawee of a bill is a fictitious person, and when presentment is expressly or by implication waived. A

[4] Sec. 183.
[5] *Supra* p. 352, *et seq.*
[6] Sec. 184.

waiver may be before or after maturity and may be either written or verbal. Since it is for the court to decide in each case whether the facts shown amount to a waiver it is usually safer not to rely on anything but an express waiver in writing to dispense with the necessity of presenting an instrument. Presentment is also dispensed with as regards the drawer of a bill when the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented. As regards the endorser of a bill or note, presentment is dispensed with where the bill or note was accepted or made for the accommodation of that endorser, and he has no reason to expect that the bill would be paid if presented.

Notice of dishonor.

When an instrument has been dishonored by non-acceptance or by non-payment, formal notice of the fact must be immediately given to the drawer, if it be a bill, and to every endorser whose name was on the instrument when it came into the

holder's possession,[7] unless such notice is excused. The drawer and any endorser to whom such notice is not given is discharged from liability on the instrument, but when a bill of exchange is dishonored by non-acceptance the rights of a subsequent holder in due course are not prejudiced by an omission to give such notice.[8] It is not necessary to give the acceptor of a bill or the maker of a note notice of dishonor by non-payment.[9] Where a bill is dishonored by non-acceptance and due notice of dishonor is given, it is not necessary to give notice of a dishonor by non-payment unless the bill has been in the meantime accepted.[10]

There is a distinction between an endorser who was at the time of his endorsement the payee or holder and an endorser who was not and whose endorsement is really only a guarantee that the party primarily liable will pay at maturity. An endorser of the latter class stands in the position of

[7] Sec. 96.
[8] Sec. 96.
[9] Sec. 96 (2).
[10] Sec. 96(b).

a surety whose principal is the party the payment by whom he guarantees, and as his rights and obligations are determined by the law of principal and surety, he like his principal is not entitled to notice of dishonor.[1]

Notice of dishonor, whether for non-acceptance of a bill or for non-payment of any instrument, to be effectual must be given not later than the juridical or business day[2] next following the dishonor.[3] It must be given by or on behalf of the holder or by or on behalf of an endorser who at time of giving it is himself liable on the bill;[4] it may be given by an agent (such as a bank) either in his own name or in the name of any party entitled to give notice, whether that party is his principal or not;[5] and it may be given either to the party to whom the same is required to be given, or to his agent in that behalf.[6]

[1] Russell on Bills, 304.
[2] See definition of days, *ante*, pp. 345, 346.
[3] Sec. 97 (a).
[4] Sec. 97 (b).
[5] Sec. 98 (c).
[6] Sec. 98 (b).

When the person to whom notice should be given is dead and party giving the notice is aware of the fact, the notice must be given to the personal representative of the deceased if there is one and he can with the exercise of reasonable diligence be found.[7]

When there are two or more drawers or endorsers who are not partners, notice must be given to each unless one has authority to receive notice for the others.[8]

Notice may be given either in writing or verbally and in any terms which identify the instrument and indicate that it has been dishonored and whether by non-acceptance or non-payment,[9] and if the notice is written it need not be signed.[10] The returning of a dishonored bill to the drawer is a sufficient, though not always an advisable, mode of giving notice of the dishonor of the bill.[1] An insufficient written notice may be supplemented and made valid by verbal com-

[7] Sec. 97 (c).
[8] Sec. 97 (d).
[9] Sec. 98 (d).
[10] Sec. 99 (b).
[1] Sec. 99 (a).

munication,[2] and a misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled by such misdescription.[3]

When notice of dishonor is duly addressed and posted it is deemed to have been given notwithstanding any miscarriage by the post office.[4]

Delay in giving notice of dishonor, like delay in making presentment for payment, is excused when the delay is caused by circumstances beyond the control of the party on whom the obligation rests, and when the cause of delay ceases to operate the notice must be given with reasonable diligence.[5]

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given as required by the Act, and when the giving of it is expressly or impliedly waived. As in the case of presentment it is open to risk to omit to give

[2] Sec. 99 (2).
[3] Sec. 98 (2).
[4] Sec. 104.
[5] Sec. 105.

the notice relying upon a waiver unless the waiver is express and in writing. As regards the drawer of a bill of exchange only, notice of dishonor is dispensed with where the drawer and drawee are the same person; where the drawee is a fictitious person or an infant or other person not having capacity to contract; where the drawer is the person to whom the bill is presented for payment; where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill; and when the drawer has by notice to the drawee stopped payment of the bill.[6] As regards the endorser of an instrument notice of dishonor is dispensed with where the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill; where the endorser is the person to whom the instrument is presented for payment; and where the instrument was made or accepted for the endorser's accommodation.[7]

[6] Sec. 107.
[7] Sec. 108.

When an instrument has been dishonored by non-payment or if the instrument be a bill, by non-acceptance, it may and in some cases must be protested in order to render the drawer and endorsers liable upon it, and it is in connection with the matter of protesting that the duties of notaries arise under the Act. Protest.

It is necessary here to distinguish between what are known in the Act as inland bills and notes and what are known as foreign bills and notes, for foreign bills and notes must be protested and inland bills and notes may or may not be, according to holder's wishes. The same rule applies to cheques.

An inland bill is defined as one which is, or on the face of it purports to be, either drawn within Canada and payable within Canada, or drawn within Canada upon some person resident in Canada. Any other bill is a foreign bill.[8] The effect of the definition is that if a bill is or on its face purports to be drawn and payable in Canada, it is an

[8] Sec. 25.

inland bill notwithstanding that it is drawn on some person resident outside of Canada, and if the bill on its face purports to be drawn in Canada upon some person who is resident in Canada it is an inland bill notwithstanding that on its face it is payable abroad. Furthermore, it is provided by the Act that the holder may treat any bill as an inland bill which does not negative on its face either that it is drawn and payable within Canada, or that it is drawn within Canada upon some person resident therein.

A note which, on the face of it, purports to be both made and payable within Canada, is an inland note, and any other note is a foreign note.[9]

The beginning of the making of protests dates back to the early history of negotiable instruments in Europe, when their use was almost entirely confined to foreign trade transactions. Protests were used in England and elsewhere as documentary proof of the regularity of the proceedings abroad respecting the instruments, and were, natur-

[9] Sec. 177.

ally, made by notaries because of the international character of the office which permitted the reception in evidence in most countries of their documents without further proof of their authenticity than the hand and seal of the notary, and as evidence of the matters stated therein.

Since the law seems to be now settled that unless by some statute it is so provided, a notary's certificate is neither evidence of the matters contained in it or of its own authenticity, the Canadian Bills of Exchange Act contains the following provisions:—

"Sec. 11. A protest of any bill or note within Canada and any copy thereof as copied by the notary or justice of the peace, shall in any action be *prima facie* evidence of presentation and dishonor, and also of service of notice of such presentation and dishonor as stated in such protest or copy."

"Sec. 12. If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of

the notice of dishonor, and a notarial certificate of the service of such notice, shall be received in all courts, as *prima facie* evidence of such protest, notice and service."

The convenience and, indeed, necessity of a protest can readily be seen in a case, for instance, where a bill which is payable abroad is the subject of an action within Canada. Should the question whether or not the bill had been presented for payment at the place named be in dispute, then, if protests were not receivable as evidence of the presentation, it would be necessary to examine witnesses by commission in the place abroad as to the facts, a proceeding which usually involves considerable delay and expense.

Strictly speaking, a protest is the document made by the notary attesting that the instrument has been dishonored. In practice, however, it includes more, for the making of the mere formal attestation is not the only procedure necessary to be carried out by the notary in order to render the parties liable. First of all, when a protest is

required to be made, the instrument must be presented a second time to the drawee, acceptor or maker, as the case may be. Technically this presentment should be made by the notary himself as the protest should only certify to facts that have come within the notary's own observation and hearing, and not as to matters for the truth of which the notary must rely upon the statement of some other person. Notwithstanding this, however, it is customary in Canada, as in England and parts of the United States, for the notary's clerk to make the presentment. As to the place and manner of making the presentment the notary must be guided by the same rules that govern presentment for acceptance or presentment for payment, as the case may be, by the holder, for it is the same presentment made over again, made in the second case by the notary so that he can give evidence of the dishonor.

If the protest be for dishonor for non-payment, the presentment by the notary may be made at any time after three o'clock in the afternoon of the day when payment

should have been made. In the case of dishonor by non-acceptance it must be borne in mind that the drawee has the day on which it is first presented for payment and two days thereafter to make up his mind whether he will accept or not. Where in the latter case the drawee does not either accept or give a refusal to accept, the final presentment and the protest should be made after six o'clock on the last day on which it could be accepted, but when, however, the drawer refuses acceptance before the expiration of the period allowed him, the bill may then be treated as dishonored, and the steps necessary to protest may be taken at once.[10]

An instrument must be protested at the place where it is dishonored, or at some other place in Canada situate within five miles of the place of dishonor.[1] When, however, a bill is presented through the post office for acceptance, as is permissible where there is agreement between the parties to that effect, and returned by post dishonored, it may be

[10] Sec. 121 (a).
[1] Sec. 161.

protested at the place to which it is returned, not later than on the day of its return or the next juridical day.[2]

Where an instrument is lost or destroyed or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where it is payable, presentment may be made by exhibiting a copy of the instrument or written particulars of it.[3]

The protest must contain a copy of the instrument protested, or the instrument itself may be annexed, and it must specify the person at whose request the instrument is protested, the place and date of protest, whether the instrument is protested for non-acceptance or non-payment, the demand made at the time of presentment by the notary, and the answer given, if any, or the fact that the proper party could not be found.[4] When protest is made because the acceptance of a bill of exchange is qualified, as, for instance, in the case where the drawer

[2] Sec. 121 (c).
[3] Sec. 120.
[4] Sec. 122.

accepts for a smaller amount than that named in the bill, or where he names some condition in the acceptance, payment by him being dependent upon the fulfilment of that condition, or where the bill is accepted payable on a different date than that mentioned in the bill, the protest must not state a general refusal to accept, for the holder has the right either to treat the bill as dishonored by non-acceptance or as accepted with qualification, and if the protest states a general refusal to accept, the holder cannot avail himself of the qualified acceptance.[5]

The protest must be signed at the end by the notary. There is some conflict of opinion as to the necessity for the notary's seal on a protest,[6] but the use of the seal is customary, and in the case of foreign instruments often necessary, as in some countries a protest will not be received in evidence without a seal.

Usually a protest is drawn up in duplicate, the notary retaining one copy and giv-

[5] Maclaren on Bills, 3rd ed., p. 290.

[6] On this subject, see *Merchants Bank* v. *Spinney*, 1 R. & G. 91, and Maclaren on Bills, 4th ed., 303.

ing the other to the holder with the protested instrument, though protesting in duplicate is not compulsory. Very often notaries keep what is known as a Protest Register, in which a copy of the protest is made for future use should the necessity arise.

The notary's charges for protesting must be endorsed on the back of the protest, so that the amount of his fees can be recovered by the holder as well as the amount of the instrument from the party liable, as the holder pays the charges when the protest is made.[7]

Instead of drawing up the protest on the day of dishonor the notary may, after making the presentment, simply note the instrument for protest and extend the protest at a later date.[8] The noting is an "incipient protest and is unknown in law as distinguished from the protest."[9]

The provision of the Act respecting noting is seldom taken advantage of as it is

[7] See appendix for notary's fees on protest.
[8] Sec. 118.
[9] Chalmers on Bills, 8th ed., 284.

usually as convenient to draw up the protest in the first instance as to make the minute, especially where the notary has at hand printed forms to be filled in as the circumstances require.

It is one of the essentials of protest that when the protest be drawn up or the note of protest entered, the notary give notice thereof to the same parties and in the same manner and addressed in the same way as notice of dishonor.[10] The notice of protest must be given on the same day as the protest is made or on the next following juridical or business day.[1]

Protest is dispensed with by any circumstances which would dispense with notice of dishonor, and delay in protesting is excused according to the same rules as those regarding delay in giving notice of dishonor.[2]

No clerk, teller or agent of any bank may act as a notary in the protesting of any instrument payable at the bank in which he

[10] *Vide*, p. 357 *et seq.*, for rules as to notice of dishonor.

[1] Sec. 126. *Vide*, *ante*, p. 345, for juridical and business days.

[2] *Vide*, p. 357 *et seq.*, for rules as to notice of dishonor.

is employed.[3] It has been held that a notary who is an endorser on an instrument is not entitled to make the protest.[4]

A notary is liable in damages for any loss occasioned his client through neglect or lack of skill on the part of himself or his clerk in protesting instruments.

Protest for better security.

Besides protesting for non-acceptance and non-payment a notary may be called upon to protest a bill of exchange for better security. This may occur where the acceptor of a bill suspends payment before it matures, the holder having the right in such a case of causing the bill to be protested for better security against the drawer and endorsers.[5]

The Imperial Bills of Exchange Act permits protest for better security when the acceptor "becomes bankrupt or insolvent," but since there is no general bankruptcy act in Canada the Canadian Act has a different wording in this particular. In some coun-

[3] Sec. 13.
[4] *Pelletier* v. *Brosseau*, M. L. R. 6 S. C. 331 (1890).
[5] Sec. 116.

tries when the acceptor suspends payment before the date of maturity the holder can demand security from the drawer and endorsers, and in France if the acceptor fails the bill may at once be treated as dishonored. When, therefore, the acceptor of a foreign bill suspends payment it is advisable that the bill be protested for better security.

In England and Canada the only right which suspension of payment by the acceptor gives is that of having the bill protested for better security, the effect of which is that it permits a second acceptance, being what is called an acceptance for honor *supra protest* by some person not already liable on the bill, whereas ordinarily there cannot be two acceptances of the same bill.

When a bill is to be protested for better security the notary should first of all ascertain whether that acceptor has in fact suspended payment and then make the demand for better security for its payment than is afforded by the acceptance. If better security is not obtained the bill may be then protested and notice of the protest sent to the

drawer and endorsers. The holder, however, must wait until the bill has been dishonored by non-payment before enforcing any rights, and if the bill be a foreign bill, it must also be protested for non-payment.

Acceptance for honor.

In any case where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra protest,* for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn.[6]

The acceptance for honor *supra protest* must be written on the bill and indicate that it is an acceptance for honor.[7] It is usual for the acceptance for honor to state for whose honor the bill is accepted. The Act provides, however, that where this is not expressly stated on the bill it is deemed an acceptance for the honor of the drawer.[8]

[6] Sec. 147.
[7] Sec. 151.
[8] Sec. 149.

The acceptor for honor of a bill engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment to the acceptor and protested for non-payment, and that he receives notice of these facts, and the acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.[9]

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of protesting for non-acceptance.[10]

If the acceptor for honor pays the bill, he is entitled to have recourse against the person for whose honor he accepted and against all parties liable to the latter on the bill for repayment of the amount and expenses.

Act of honor on acceptance.

It is one of the rules of the law merchant, which by the Act still applies to instruments,[1] that an acceptance for honor *supra*

[9] Sec. 152.
[10] Sec. 150.
[1] Sec. 10.

protest must be attested by what is called an act of honor.[2] An act of honor is the certificate of a notary appended to a copy of the bill setting forth that after the bill had been protested for non-acceptance a person not liable thereon declared that he would accept the bill for the honor of some party to it and that all the other parties who would thereby become liable to him are held responsible for the amount of the bill and expenses. The act of honor should be made in triplicate by the notary, one to be kept by the notary himself with a copy of the note, one to be given to the holder of the bill for his security, and the third to be given the acceptor *supra protest* with which to enforce his right against the parties who become liable to him on the bill.

The expenses of the act of honor are paid by the acceptor *supra protest* and if he accept for the full amount of the bill he also must pay the expenses incidental to the protest.

[2] *Mitchell* v. *Baring*, 10 B. & C. 4.

Payment for honor.

Where a bill or note has been protested for non-payment any person may intervene and pay it *supra protest* for the honor of any party liable.

Where the holder of the instrument refuses to receive payment *supra protest* he loses his right of recourse against any party who would have been discharged by such payment.

When an instrument has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the party who pays for honor is automatically placed in the same position as and succeeds to the same rights and duties of the holder as regards the party for whose honor he pays and all parties liable to that party.[3] The payer *supra protest* has the right to the possession of the instrument for the purpose of enforcing his rights against those parties as soon as he pays the amount of the instrument and the notarial expenses incidental to its dishonor.

[3] Sec. 155.

Act of honor on payment.

In order that payment for honor *supra protest* may operate as such and give the payer any rights against the person for whose honor he pays, and not merely as a voluntary payment, the payer, or his agent in that behalf, must before or at the time of payment declare before a notary his intention to pay the bill for honor and for whose honor he pays, and the notary must attest this fact by what is called a notarial act of honor, which may be appended to the protest or form an extension of it.

The act of honor should be made in duplicate and one copy kept by the notary and the other given the payer in order that he may enforce his rights.

Forms.

Section 125 of the Bills of Exchange Act provides:—"The forms in the schedule to this Act may be used in noting or protesting any bill (*includes note and cheque*) and in giving notice thereof.

"2. A copy of the bill and endorsement may be included in the forms, or the original bill may be annexed and the necessary charges in that behalf made in the forms."

The forms in the schedule to the Act are copied from Schedule B to R. S. C. (1886) chapter 123, where they were applicable to the Province of Quebec only. It was formerly necessary in Quebec to make the protest in duplicate, and thus the words "protested in duplicate" are to be found in the forms of protest given in the schedule. It is usual but not compulsory to protest in duplicate, and when the instrument is not so protested the words may be omitted.

Forms Provided by Schedule to Bills of Exchange Act.

NOTING FOR NON-ACCEPTANCE.

(Copy of Bill and Endorsements.)

On the 19 , the above bill was, by me, at the request of , presented for acceptance to E. F., the drawee, personally (*or,* at his residence, office or usual place of business), in the city (town *or* village) of and I received for answer: ' ';

The said bill is therefore noted for non-acceptance.

A. B.,
Notary Public.

(*Date and place.*) 19 .

Due notice of the above was by me served upon { A. B., / C. D., } the { drawer, / endorser, } personally, on the day of (*or,* at his residence, office or usual place of business), in , on the day of (*or,* by depositing such notice, directed to him at in His Majesty's post office in the city, [town *or* village], on the day of , and prepaying the postage thereon).

A. B.,
Notary Public.

(*Date and place.*) 19 .

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(*Copy of Bill and Endorsements.*)

On this day of , in the year 19 , I, A. B., notary public for the province of , dwelling at ,

in the province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the { acceptor / drawee } thereof personally (*or*, at his residence, office *or* usual place of business) in , and, speaking to himself (*or* his wife, his clerk, *or* his servant, &c.,) did demand { acceptance / payment } thereof; unto which demand { he / she } answered: ' .'

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers (*or* drawer and endorsers) of the said bill, and other parties thereto or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come for want of { acceptance / payment } of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B., *Notary Public.*

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.

(*Copy of Bill and Endorsements.*)

On this day of in the year 19 , I, A. B., notary public for the province of , dwelling at , in the province of , at the request of , did exhibit the original bill of exchange whereof a true copy is above written, unto E. F., { drawee / acceptor } thereof, at , being the stated place where the said bill is payable, and there speaking to did demand { acceptance / payment } of the said bill; unto which demand he answered: ' .'

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers (*or* drawer and endorsers) of the said bill and all other parties thereto or therein concerned, for all

exchange, re-exchange, costs, damages and interest, present and to come for want of { acceptance / payment } of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words 'and afterwards on, etc.,' *continuing as in the last preceding form, but introducing between the words* 'did' *and* 'exhibit' *the word* 'again,' *and in a parenthesis, between the words* 'written' *and* 'unto,' *the words*: 'and which bill was by me duly noted for non-acceptance on the day of .'

But if the protest is not made by the same notary, then it should follow a copy of the

original bill and endorsements and noting marked on the bill—and then in the protest introduce, in a parenthesis, between the words 'written' *and* 'unto,' *the words:* 'and which bill was on the day of , by , notary public for the province of , noted for non-acceptance, as appears by his note thereof marked on the said bill.'

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(*Copy of Note and Endorsements.*)

On this day of , in the year 19 , I, A. B., notary public for the province of , dwelling at , in the province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, personally (*or*, at his residence, office *or* usual place of business,) in , and speaking to himself (*or* his wife, his

clerk *or* his servant, etc.) did demand payment thereof; unto which demand { he / she } answered: ' .'

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(*Copy of Note and Endorsements.*)

On this day of , in the year 19 , I, A. B., notary public for the province of , dwelling at , in the province of , at the request

of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, at , being the stated place where the said note is payable, and there, speaking to did demand payment of the said note, unto which demand he answered: ' .'

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-ACCEPTANCE, OR OF A PROTEST FOR NON-PAYMENT OF A BILL.

(*Place and Date of Noting or of Protest.*)

1st.

To P. Q., (*the drawer*)

at

Sir,

Your bill of exchange for $, dated at , the day of , upon E. F., in favor of C. D., payable days after { sight / date } was this day, at the request of duly { noted / protested } by me for { non-acceptance / non-payment }

A. B.,
Notary Public.

(*Place and Date of Noting or of Protest.*)

2nd.

To C. D., (*endorser*)

(*or* F. G.),

at

Sir,

Mr. P. Q.'s bill of exchange for $, dated at the day of , upon E. F., in your favor (or in favor of C. D.,) payable days after { sight, / date, } nd by you endorsed, was this day, at the request of , duly { noted / protested } by me for { non-acceptance / non-payment }

A. B.,
Notary Public.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

(*Place and Date of Protest.*)

To ,

at

Sir,

Mr. P. Q.'s promissory note for $, dated at , the day of , payable { days / months / on ——— } after date to { you / E. F. } or order, and endorsed by you, was this day, at the request of , duly protested by me for non-payment.

A. B.,
Notary Public.

NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL, OR NOTE.

(*To be subjoined to the Protest.*)

And afterwards, I, the aforesaid protesting notary public, did serve due notice,

in the form prescribed by law, of the foregoing protest for { non-acceptance / non-payment } of the { bill / note } thereby protested upon { P. Q., / C. D., } the { drawer / endorsers } personally, on the day of (*or*, at his residence, office *or* usual place of business) in , on the day of ; (*or*, by depositing such notice, directed to the said { C. D., / P. Q., } at , in His Majesty's post office in on the day of , and prepaying the postage thereon).

In testimony whereof, I have, on the last mentioned day and year, at aforesaid, signed these presents.

A. B.,
Notary Public.

ADDITIONAL FORMS AND PRECEDENTS.

1. Noting for non-acceptance of a bill:—

Ottawa, Ont.
May, 1915.

$100.00.

Sixty days after date, pay to the order of A. B. the sum of One hundred dollars.

Value received and charge to the account of

C. D.

To E. F.

St. John, N.B.

Endorsements.

A. B.
Alliance Bank.

On the day of May, A.D. 1915, the above bill was, by me, at the request of the Bank of New Brunswick, presented for acceptance to E. F., the drawee, at his office in the City of St. John, and I received for

answer: "I have no account with C. D. and will not accept," or words to that effect.

The said bill is, therefore, noted for non-acceptance.

G. H.,
Notary Public.

St. John, in the Province of New Brunswick, the day of May, A.D. 1915.

Due notice of the above was by me served upon C. D., the drawer, and A. B. and Alliance Bank, the endorsers, respectively, by depositing such notices directed to each of them respectively at Ottawa, Ontario, in His Majesty's post office, in the City of St. John aforesaid, on the day of May, A.D. 1915, and prepaying the postage thereon.

G. H.,
Notary Public.

St. John, in the Province of New Brunswick, the day of May, A.D. 1915.

2. Notarial notices of the above Noting for non-acceptance:—

(a) To Drawer:

St. John, N.B., May , 1915.

To C. D.,
at Ottawa, Ont.

Sir:

Your bill of exchange for $100, dated at Ottawa, Ont., the day of May, 1915, upon E. F., in favor of A. B., payable sixty days after date, was this day, at the request of the Bank of New Brunswick, duly noted by me for non-acceptance.

G. H.,
Notary Public.

(b) To Endorser, who is payee named in the bill:

St. John, N.B., May , 1915.

To A. B.,
at Ottawa, Ont.

Sir:

Mr. C. D.'s bill of exchange for $100, dated at Ottawa, Ont., the day of May,

1915, upon E. F., in your favor, payable sixty days after date, and by you endorsed, was this day, at the request of the Bank of New Brunswick, duly noted by me for non-acceptance.

G. H.,
Notary Public.

(c) To Endorser, who is not the payee named in the bill:

St. John, N.B., May , 1915.

To Alliance Bank,
at Ottawa, Ont.

Sirs:

Mr. C. D.'s bill of exchange for $100, dated at Ottawa, Ont., the 1st day of May, 1915, upon E. F., in favor of A. B., payable sixty days after date, and by you endorsed, was this day, at the request of the Bank of New Brunswick, duly noted by me for non-acceptance.

G. H.,
Notary Public.

3. PROTEST FOR NON-ACCEPTANCE OF A BILL.

(*Copy of bill and endorsements as in Form 1.*)

On this day of May, in the year 1915, I, G. H., Notary Public for the Province of New Brunswick, dwelling at St. John, in the Province of New Brunswick aforesaid, at the request of the Bank of New Brunswick, did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the drawer thereof at his office in St. John aforesaid, and, there speaking to his clerk, did demand acceptance thereof; unto which demand he answered: "We cannot accept this bill."

Wherefore, I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the drawer and endorsers of the said bill, and all other parties thereto or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of acceptance of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

G. H.,
Notary Public.

(Notarial Seal.)

And afterwards, I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-acceptance of the bill thereby protested upon C. D., the drawer, and A. B. and Alliance Bank, the endorsers, respectively, by depositing such notices directed to C. D., A. B. and Alliance Bank, respectively, at Ottawa, Ontario, in His Majesty's Post Office in St. John, New Brunswick, on the day of , and prepaying the postage thereon.

In testimony whereof, I have, on the last-mentioned day and year, at St. John aforesaid, signed these presents.

G. H.,
Notary Public.

(Notarial Seal.)

4. NOTARIAL NOTICES OF THE ABOVE PROTEST FOR NON-ACCEPTANCE.

(a) To Drawer:

St. John, N.B., May , 1915.

To C. D.,
at Ottawa, Ont.

Sir:

Your bill of exchange for $100.00, dated at Ottawa, Ont., the day of May, 1915, upon E. F., in favor of A. B., payable sixty days after date, was this day, at the request of the Bank of New Brunswick, duly protested by me for non-acceptance.

G. H.,
Notary Public.

(b) To Endorser, who is payee named in the bill:

St. John, N.B., May , 1915.

To A. B.,
at Ottawa, Ont.

Sir:

Mr. C. D.'s bill of exchange for $100.00, dated at Ottawa, Ont., the day of

May, 1915, upon E. F., in your favor, payable sixty days after date, and by you endorsed, was this day, at the request of the Bank of New Brunswick, duly protested by me for non-acceptance.

G. H.,
Notary Public.

(c) To Endorser, who is not the payee named in the bill:

St. John, N.B., May , 1915.

To Alliance Bank,
at Ottawa, Ont.

Sirs:

Mr. C. D.'s bill of exchange for $100.00, dated at Ottawa, Ont., the 1st day of May, 1915, upon E. F., in favor of A. B., payable sixty days after date, and by you endorsed, was this day, at the request of the Bank of New Brunswick, duly protested by me for non-acceptance.

G. H.,
Notary Public.

5. NOTING FOR NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.

Ottawa, Ont., May , 1915.

$100.00. Sixty days after date, pay to the order of A. B., the sum of One hundred dollars.

E. F.

Accepted, payable at the Bank of New Brunswick, St. John, N.B. May 10th 1915 E. F.

Value received and charge to the account of C. D.

To E. F.
St. John, N.B.

Endorsements.

A. B.,
Alliance Bank.

On this day of May, A.D. 1915, the above bill was by me, at the request of the Bank of New Brunswick, presented for payment to E. F., the acceptor thereof, at the Bank of New Brunswick, at St. John, N.B., being the stated place where the said bill is payable, and I received for answer:

"No funds to meet the bill," or words to that effect.

The said bill is, therefore, noted for non-payment.

G. H.,
Notary Public.

St. John, in the Province of New Brunswick, the day of May, 1915.

Due notice, etc. (*as in Form 1*).

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6. NOTARIAL NOTICES OF THE ABOVE NOTING FOR NON-PAYMENT.

The notices are as in Form 2, using the word "non-payment" instead of "non-acceptance."

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7. PROTEST FOR NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.

(*Copy of bill and endorsements as in Form 5.*)

On this day of May, in the year 1915, I, G. H., Notary Public for the Province of New Brunswick, dwelling at St.

John, in the Province of New Brunswick, did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the acceptor thereof, at the Bank of New Brunswick, St. John, N.B., being the stated place where the said bill is payable, and there speaking to the Teller of the said Bank, did demand payment of the said bill; unto which demand he answered "No funds to meet it," or words to that effect.

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers of the said bill, and all other parties thereto or therein concerned, for all exchange, re-exchange, costs, damages and interest, present and to come, for want of payment of the said bill.

All of which I attest by my signature.

G. H.,
Notary Public.

(Notarial Seal.)

And, afterwards, I, the aforesaid protesting Notary Public, did serve due notice

in the form prescribed by law, of the foregoing protest for non-payment of the bill thereby protested upon C. D., the drawer, and A. B. and Alliance Bank, the endorsers, respectively, by depositing such notices directed to C. D., A. B., and Alliance Bank, respectively, at Ottawa, Ontario, in His Majesty's Post Office, in St. John, N.B., on the day of and prepaying postage thereon.

In testimony whereof, I have, on the last-mentioned day and year, at St. John aforesaid, signed these presents.
(Notarial Seal.)

G. H.,
Notary Public.

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8. NOTARIAL NOTICES OF THE ABOVE PROTEST FOR NON-PAYMENT.

The notices are as in Form 2, using the word "protested" instead of "noted," and "non-payment" instead of "non-acceptance."

9. NOTING FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

Ottawa, Ont., May , 1915.

$100.00.

Sixty days after date, pay to the order of A. B. the sum of One hundred dollars.

Value received and charge to the account of

C. D.

To E. F.,
20 N. St.,
St. John, N.B.

Endorsements.

A. B.
I. J.

On this day of May, A.D. 1915, the above bill was, by me, at the request of K. L., presented for payment to E. F., the acceptor thereof, at 20 N. Street, St. John, N.B., being the address of the said E. F. given in the said bill, and I received for answer: "I cannot pay this bill to-day," or words to that effect.

The said bill is, therefore, noted for non-payment.

G. H.

St. John, in the Province of New Brunswick, the day of May, 1915.

Due notice, etc. (*as in Form 1*).

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10. NOTARIAL NOTICES OF THE ABOVE NOTING FOR NON-PAYMENT.

The notices are in Form 2, using the words "at the request of I. J.," instead of "at the request of the Bank of New Brunswick," and "non-payment," instead of "non-acceptance."

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11. PROTEST FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(*Copy of bill and endorsements, as in Form 9.*)

On this day of May, in the year 1915, I, G. H., Notary Public for the Pro-

vince of New Brunswick, dwelling at St. John, in the Province of New Brunswick aforesaid, at the request of K. L., did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the acceptor thereof, at 20 N. Street, in St. John, N.B., being the address of E. F. given on the said bill,[1] and, speaking to his wife, did demand payment thereof, unto which demand she answered: "Mr. J. is out of town and I have no money to pay it," or words to that effect.

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers of the said bill, and other parties thereto or therein concerned, for all exchange, re-exchange and all costs, damages and interest, present and to come, for want of payment of the said bill.

[1] *Or* at his residence, office, or usual place of business, according to the circumstances and in accordance with the rules for presentment for payment found elsewhere in this chapter.

All of which I attest by my signature.
(Protested in duplicate.)

G. H.,
Notary Public.

(Notarial Seal.)

And afterwards, etc. (*as in Form 7*).

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12. NOTARIAL NOTICES OF THE ABOVE PROTEST FOR NON-PAYMENT.

The notices are as in Form 2, using the words "protested" instead of "noted" and "non-payment" instead of "non-acceptance."

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13. PROTEST OF A BILL FOR BETTER SECURITY.

(*Copy of bill and endorsements.*)

On this day of , in the year 1915, I, Notary Public, etc., at the request of (*holder or bearer*) of aforesaid, did exhibit the original bill of

exchange whereof a true copy is above written, unto (*acceptor*) the person on whom the said bill is drawn, and whose acceptance appears thereon, at his office, in the City of , and, speaking to his clerk, there did demand security for the payment thereof when the same should become payable, in consequence of the said (*acceptor*) having suspended payment, unto which demand he answered: "Security cannot be given."

Wherefore I, the said Notary, at the request aforesaid, have protested and by these presents do protest against the acceptor, drawer and endorsers of the said bill, and other parties thereto or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of better security for the payment of the said bill when due.

All of which I attest by my signature.

G. H.,
Notary Public.

(Notarial Seal.)

And afterwards I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for want of better security for the payment of the said bill thereby protested when due upon , the drawer, and and , the endorsers, by depositing such notices directed to the said at and the said and the said at in His Majesty's Post Office in on the day of , 19 , and prepaying postage thereon.

In testimony whereof I have, on the last-mentioned day and year at aforesaid, signed these presents.

G. H.,
Notary Public.

(Notarial Seal.)

14. NOTING FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

$100.00. Halifax, N.S., May , 1915.

Three months after date, I promise to pay A. B. or order at the Crown Bank, Toronto, Ont., the sum of one hundred dollars.

Value received.

C. D.

Endorsement.

A. B.

On the day of May, A.D. 1915, the above note was, by me, at the request of E. F., presented for payment to C. D., the promisor, at the Crown Bank, Toronto, Ont., being the stated place where the said note is payable, and I received for answer: "No funds."

The said note is, therefore, noted for non-payment.

G. H.,
Notary Public.

Toronto, in the Province of Ontario, the day of May, 1915.

15. NOTARIAL NOTICES OF THE ABOVE NOTING FOR NON-PAYMENT.

(a) To Endorser, who is the payee named in the note.

Toronto, Ont.,
May , 1915.

To A. B.,
at Toronto, Ontario.

Sir:

Mr. C. D.'s promissory note for $100, dated at Halifax, N.S., the day of May, 1915, payable three months after date to you or order, and endorsed by you, was this day, at the request of E. F., duly noted by me for non-payment.

G. H.,
Notary Public.

(b) To Endorser, who is not payee named in the note.

When there is an endorser on the note who is not the payee, the notice to him should be in the foregoing form, the words "A. B. or order" being used instead of "you or order."

16. PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(*Copy of note and endorsement as in Form 14.*)

On this day of May, A.D. 1915, I, G. H., Notary Public for the Province of Ontario, dwelling at Toronto, in the Province of Ontario aforesaid, at the request of E. F., did exhibit the original promissory note, whereof a true copy is above written, unto C. D., the promisor, at the Crown Bank, Toronto, Ont., being the stated place where the said note is payable, and there, speaking to the Teller of the said Bank, did demand payment of the said note, unto which he answered: "No funds to pay it," or words to that effect.

Wherefore I, the said Notary, at the request aforesaid, have protested and by these presents do protest against the promisor and endorser of the said note and all other parties thereto or therein concerned, for all costs, damages and interest, present

and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

G. H.,
Notary Public.

(Notarial Seal.)

And afterwards I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-payment of the note thereby protested, upon A. B., the endorser, by depositing such notice, directed to the said A. B., at Toronto, Ontario, in His Majesty's Post Office in Toronto aforesaid, on the day of May, A.D. 1915, and prepaying the postage thereon.

In testimony whereof I have, on the last-mentioned day and year, at Toronto aforesaid, signed these presents.

G. H.,
Notary Public.

(Notarial Seal.)

17. NOTARIAL NOTICES OF THE ABOVE PROTEST FOR NON-PAYMENT.

The notices are as in the Form 15, using the word " protested " instead of " noted."

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18. NOTING FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

Halifax, N.S., May , 1915.

$100.00.

Three months after date, I promise to pay A. B. or order the sum of one hundred dollars.

Value received.

C. D.

Endorsement.

A. B.

On the day of May, A.D. 1915, the above note was, by me, at the request of E. F., presented for payment to C. D., the promisor, personally in the City of Halifax, and I received for answer: " I never made the note and refuse to pay it."

The said note is, therefore, noted for non-payment.

G. H.,
Notary Public.

Halifax, in the Province of Nova Scotia, the day of May, 1915.

Due notice of the above was, by me, served upon A. B., the endorser, by depositing such notice, directed to him at Toronto, Ontario, in His Majesty's Post Office, in the City of Halifax, on the day of May, A.D. 1915, and prepaying the postage thereon.

G. H.,
Notary Public.

Halifax, in the Province of Nova Scotia, the day of May, 1915.

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19. NOTARIAL NOTICES OF THE ABOVE NOTING FOR NON-PAYMENT.

The notices are as in Form 15, "Halifax, N.S." instead of "Toronto, Ont.," being named as the place of noting.

20. PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(Copy of note and endorsements as in Form 18.)

On this day of May, in the year 1915, I, G. H., Notary Public for the Province of Nova Scotia, dwelling at Halifax, in the Province of Nova Scotia aforesaid, at the request of E. F., did exhibit the original promissory note, whereof a true copy is above written, unto C. D., the promisor, personally in Halifax aforesaid,[1] and speaking to himself, did demand payment thereof, unto which demand he answered: "I never made the note and refuse to pay it."

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorser of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest,

[1] *Or* at his office, residence, or usual place of business, according to the circumstances and the rules of presentment set out elsewhere in this chapter.

present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

G. H.,
Notary Public.

(Notarial Seal.)

And afterwards I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-payment of the note thereby protested, upon A. B., the endorser, by depositing such notice, directed to the said A. B., at Toronto, Ontario, in His Majesty's Post Office at Halifax aforesaid, on the day of May, A.D. 1915, and prepaying the postage thereon.

In testimony whereof I have, on the last-mentioned day and year, at Halifax aforesaid, signed these presents.

G. H.,
Notary Public.

(Notarial Seal.)

21. NOTARIAL NOTICES OF THE ABOVE PROTEST FOR NON-PAYMENT.

The notices are as in Form 15, the words "protested" being used instead of "noted," and "Halifax, N.S.," being named as the place of protest instead of "Toronto, Ont."

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22. PROTEST FOR NON-PAYMENT OF A BANK CHEQUE.

Fredericton, N.B., May , 1915.

The Farmers' Bank.

Pay to A. B. or order the sum of one hundred ($\frac{00}{100}$) dollars.

$100.00.

C. D.

Endorsement.

A. B.

On this day of May, in the year 1915, I, G. H., Notary Public for the Province of New Brunswick, dwelling at Fredericton, in the Province of New Brunswick aforesaid, at the request of the Maritime

Bank, did exhibit the original bank cheque, whereof a true copy is above written unto the Farmers' Bank, the drawee thereof, at the office of the said Bank, at Number 35 F. Street, in Fredericton aforesaid, and there, speaking to a clerk of the said Bank, did demand payment of the said bank cheque, unto which demand he answered: "C. D. has no account at this Bank."

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents, do protest against the drawer and endorser of the said bank cheque, and all other parties thereto or therein concerned, for all exchange, re-exchange, costs, damages and interest present and to come, for want of payment of the said cheque.

All of which I attest by my signature.

(Protested in duplicate.)

G. H.,
Notary Public.

(Notarial Seal.)

And afterwards I, the aforesaid protesting Notary Public, did serve due notice, in

the form prescribed by law, of the foregoing protest for non-payment of the cheque thereby protested, upon C. D., the drawer, and A. B., the endorser, by depositing such notices, directed to the said C. D. and A. B. at Fredericton, N.B., and Hamilton, Ont., respectively in His Majesty's Post Office, in Fredericton, N.B., on the day of May, 1915, and prepaying the postage thereon.

In testimony whereof I have, on the last-mentioned day and year at Fredericton aforesaid, signed these presents.

G. H.,
Notary Public.

(Notarial Seal.)

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23. NOTARIAL NOTICES OF THE ABOVE PROTEST FOR NON-PAYMENT.

The notices follow the same form as those used in protesting bills of exchange, the words "bill of exchange," of course, being changed to "cheque."

24. PROTEST OF BILL FOR NON-ACCEPTANCE WHEN PRESENTMENT IS MADE THROUGH POST OFFICE.

(*Copy of bill and endorsements.*)

On this day of , in the year 19 , before me, G. H., Notary Public for the Province of , dwelling at , in the Province of aforesaid, appeared A. B., holder of the bill of exchange, whereof a true copy is above written, and producing to me the said original bill, declared that he had demanded acceptance of the same by C. D., the drawee thereof, by presentment to the said C. D., through the post office at the address (*state address*) written on the said bill and that he, the said A. B., had this day received back the said bill, through the post office, unaccepted, together with a letter from the said C. D., which the said A. B. also produced to me, and wherein the said C. D. unto the said demand, answered: "(*copy as much of the letter as constitutes the refusal to accept*)."

Wherefore I, etc. (*usual form*).

25. PROTEST OF BILL FOR NON-ACCEPTANCE OR NON-PAYMENT WHEN, AFTER THE EXERCISE OF DUE DILIGENCE, PRESENTMENT CANNOT BE EFFECTED.

(*Copy of bill and endorsements.*)

On this day of , in the year 19 , I, G. H., Notary Public for the Province of , dwelling at , in the Province of aforesaid, at the request of A. B., holder of the original bill of exchange, whereof a true copy is above written, did make and cause to be made diligent and careful search and inquiries at the Post Office, the Bank of and other places and quarters in the City of , and no person at any of the said places was able to inform me where the said C. D. resides and I could, therefore, not obtain acceptance (*or* payment) of the said bill.

Wherefore, etc. (*usual form*).

26. PROTEST OF A BILL FOR NON-PAYMENT WHERE THE ORIGINAL IS LOST OR DESTROYED AND A COPY IS PRESENTED FOR PAYMENT.

(*Copy of bill and endorsements or written particulars.*)

On this day of , in the year 19 , I, G. H., Notary Public for the Province of , dwelling at , in the Province of aforesaid, at the request of A. B., did exhibit a copy (*or* written particulars) of the original bill of exchange which has been lost (*or* destroyed) unto C. D., the acceptor thereof, etc. (*proceed in the usual form*).

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27. NOTARIAL ACT OF HONOR ON ACCEPTANCE WRITTEN AT THE FOOT OF THE PROTEST.

Afterwards, on the same day, month and year, before me, the said Notary, personally came and appeared Mr. J. K., of this City, merchant, who declared he was ready and

would accept the said bill of exchange now under protest, for the honor and account of Mr. L. M., the drawer (*as the case may be*), holding him, the said drawer thereof, and all others concerned always obliged to him, the said appearer for reimbursement, in due form of law.

Which I attest.

G. H.,
Notary Public.

(Notarial Seal.)

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28. NOTARIAL ACT OF HONOR ON PAYMENT.

On the day of , one thousand nine hundred and , I, , Notary Public for the Province of , dwelling at the , in the said Province, do hereby certify that the original bill of exchange for five hundred dollars annexed to the protest thereof on the other side hereof written, was this day

exhibited to C. D., of , agent, who declared before me that he would pay the amount of the said bill and protest charges for the honor of A. B., the last endorser thereof, holding the drawer and endorsers thereof and all other persons responsible to him, the said C. D., for the said sum and for all interest, damages and expenses. I have, therefore, granted this notarial act of honor accordingly.

Which I attest.

G. H.,
Notary Public.

Principal $100.00.
Notarial charges.

(Notarial Seal.)

Received the day of , 19 , from C. D. the sum of dollars and cents ($), the amount of the said bill and notarial charges thereon.

29. ENDORSEMENT OF NOTARY'S FEES, ETC., ON PROTESTS.

The notary's charges should always be endorsed on the protest. A table of the fees will be found elsewhere in this work. The backing of a protest may be endorsed in form similar to the following:—

Protest,
Bill of Exchange,
A. B., Drawer.

Amount of Bill $
Protest Fees

$

CHAPTER XXI.

Ship Protests.

One of the duties of notaries who practise at seaport places is the noting and making of ship protests.

When a ship is compelled to put into a port through storms at sea, accident, or damage to the ship or its cargo, it is customary for the master, and, in some of the more serious cases, also the mate and one or more of the crew, to go before a notary public and have a protest or an entry of protest made, for the purpose of showing that the delay in entering the port, or the damage, was caused, not by any negligence on the part of the master or crew of the ship, but by the storm or accident. The protest may be made in the first instance, or simply a note or entry of protest which may, when and if occasion demands, be extended to a regular protest by the same or some other notary.

The primary object of a ship protest is to found a claim against underwriters. In the *Santa Anna*,[1] Dr. Lushington said: "Protests are important for this purpose, and this only: to state the damage which has occurred, and that it has taken place for the sake of supporting a claim against underwriters; not that the owner of the ship would be debarred from claiming against the underwriters, but, of course, unless it is stated in the protest, suspicion arises that it did not occur." Protests do, however, serve other purposes. In many countries a master's protest, when authenticated by the notary, is received as conclusive evidence of the facts stated in it, though this is not so under English law. The protest, however, is nearly always given credence by underwriters, merchants and others in adjusting claims, because it is a declaration or narrative of the particulars of the voyage, of the storms or bad weather met with by the ship and of the course of conduct which the master took in the emerg-

[1] 32 L. J. P. M. & A. 198.

ency, made immediately after the happening of the events detailed in it, when the facts are fresh in mind. In the United States, in some jurisdictions, the protest, if made within twenty-four hours after the ship is moored, is held to be competent evidence for the owner.

The entry or note of protest is in substance only a notice of the master's intention to protest, should the extended protest afterwards become necessary. To serve its purpose, it should be made as soon as possible after the arrival of the ship in port, and, if made later than twenty-four hours after the arrival, should contain a brief statement of the cause of delay in making it. The same is, of course, true of the protest itself when made in the first instance.

There is no particular form in which either the entry of protest or the protest itself should be made. They must bear the correct date and they should contain the name of the ship, its tonnage, the name of the master, the port and date of departure, the port to which it is bound, the nature of

the cargo with which it is laden, and then a narrative in chronological order of the facts upon which the protest is based. The entry of protest should conclude with some words to the effect that the master by the entry gives notice of his intention to protest and the extended protest made afterwards should mention the noting.

The entry of protest is made on the ship's register and is signed by the master and certified by the notary public. The notary should keep a copy. When a protest is made, the original is kept by the notary and certified copies should be given or mailed to the master, the owner, and, when the protest is made against any particular person, to such person.

Besides protests against storms and accident, there are also frequently made protests against the conduct of particular parties having business dealings with the ship, for the purpose of exculpating the master when differences arise and complaints may be made against him.

FORMS.

CANADA,
PROVINCE OF
COUNTY OF

To wit:

Entry of protest.

On this day of , in the year of our Lord one thousand nine hundred and , personally came and appeared before me, a Notary Public, by lawful authority duly appointed in and for the Province of and residing and practising at , in the County of , and the said Province of , Thomas Smith, master of the steamship (or vessel) Flora, of the Port of , of the burthen of tons, by register measurement or thereabouts, , which sailed from on the day of last bound for , laden with a cargo of , and put into on this day of , ; but fearing damage from heavy gales, etc., and against stranding on the Ridge, where the said ship

remained for about a day, and tons of her said cargo were discharged to lighten the ship and were taken on again when she floated, which the said Master fears has been damaged, the said Master hereby gives notice of his intention to protest, and causes this note or minute of all and singular the premises to be entered in this register.

(Sgd.) Thomas Smith,
Master.

(Sgd.) Alfred Brown,
Notary Public.

(Notary's Seal.)

CANADA,
PROVINCE OF
COUNTY OF

Beginning of extended protest.

To wit:

Be it known and made manifest to all to whom these presents shall come, that on the day of , in the year of our Lord one thousand nine hundred and , personally came and appeared before me, a Notary Public, by lawful authority duly

appointed in and for the Province of , and residing and practising at , in the County of , and the said Province of , Thomas Smith, Master of the vessel Flora, of the Port of , of the burthen of tons, , by register measurements or thereabouts, which sailed from , on the day of , last bound for , laden with a cargo of , and noted a protest in my office upon arrival of his said vessel at aforesaid against heavy gales, etc., and against stranding on Ridge, where the said ship remained for about a day, and tons were discharged to lighten the ship and were taken on again when she floated, which the said Master feared to have been damaged. Afterwards on this day of , etc., before me, the said Notary Public, again appeared the said Thomas Smith, and required of me to extend his protest noted as aforesaid, and who did solemnly declare and state as follows:—

CANADA,
PROVINCE OF
COUNTY OF

Protest made in the first instance.

To wit:

Be it known and made manifest to all to whom these presents shall come, that on the first day of , in the year of our Lord one thousand nine hundred and , personally came and appeared before me, a Notary Public, by lawful authority duly appointed in and for the Province of , and residing and practising at , in the County of , and the said Province of , Thomas Smith, Master of the vessel Flora, of the Port of , of the burthen of tons, by register measurement or thereabouts, which sailed from on the day of , last bound for , laden with a cargo of , who did solemnly declare and state as follows:—

That this appearer and the crew of the said ship set sail in her from ,

on last bound for ,
laden with a cargo of .

That they proceeded on their said voyage with fine weather and variable winds, with occasional rain, until when near , in latitude , longitude , they had heavy gales from the north-east; at about eight o'clock p.m., with darkness coming on, the vessel plunging in heavy seas, lost her rudder; the vessel was running towards land on the , and when the said rudder was lost, the sails were immediately lowered to prevent grounding.

That the said vessel drifted with the wind in a north-easterly direction, until half-past ten on the said night, and finally stranded on Ridge, latitude , longitude .

That on morning, the weather moderated and they were sighted by a fishing boat from Harbor, and tug boats were obtained, and they were obliged, in order to lighten the ship and for the safety and preservation of the vessel, crew

and cargo, to discharge into the said tugs tons of the cargo.

That the said vessel was floated with high tide at seven o'clock p.m., on , and the said tons of cargo were taken on again, and they were towed into Harbor, in order to have the rudder replaced, where they arrived and anchored at eight-thirty p.m.

Wherefore this appearer protests, as well on his own behalf as on behalf of the owners, freighters, officers and crew, and I, the said Notary Public, at his request, do by these presents also publicly and solemnly protest against all and singular the premises, and against all gales of wind, high seas, stranding, etc., facts, incidents and occurrences aforesaid, and against all and every accident and against all persons whom it doth, shall or may concern, to the end that all loss, damage, detriment, cost and expense that have arisen, or shall or may arise by reason thereof, or which the insurer or insurers of the said vessel or her cargo, is or are liable to pay or make contribution or

average, may be borne by those to whom the same may of right appertain, such loss, etc., having occurred by reason of the perils of navigation and not by reason of the negligence, misconduct or want of skill of this appearer nor of any of the crew.

Whereof an act being required of me, the said Notary Public, I have granted these presents under my hand and seal, to serve and avail as need or occasion may require.

In testimonium veritatis.

A. B.
A Notary Public.

(Notarial Seal.)

I, Thomas Smith, Master of the vessel Flora before mentioned, do solemnly declare that the contents of the foregoing protest are true and correct, and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

Thomas Smith,
Master.

Declared before me
at , the day of ,
A.D. 19 .

A. B.,
Notary Public.

(Notarial Seal.)

CANADA.
PROVINCE OF
COUNTY OF

Certificate attached to copy of protest.

To wit:

I, A. B., a Notary Public, by lawful authority appointed in and for the Province of and residing and practising at , in the County of , and the said Province of , do hereby certify that the paper writing hereunto annexed is a true and correct copy of the protest of Thomas Smith, the thereinnamed Master of the vessel Flora, bearing date the day of , instant, and made and declared before me, said paper

writing having been by me carefully examined and compared with said original protest.

In faith and testimony whereof I have hereunto subscribed my name and affixed my official seal, at aforesaid, on this day of . A.D. 19 .

A. B.,
A Notary Public.

(Notarial Seal.)

CHAPTER XXII.

Oaths and Affidavits, &c.

In taking affidavits little formality is required of the notary, but the oath should be administered in a reverent manner, however.

In the case of *Curry* v. *The King*,[1] the Supreme Court of Canada gave a decision based on English cases, that it is unnecessary for a deponent to kiss the Bible or to hold it in his hand. In that case the Chief Justice said: "It is now admitted to be the absolute right of every person in the English Courts to be sworn for every purpose in Scotch form without the use of any book and without any question being asked. It may be open to question whether it is not better as a matter of public policy for our Courts and other persons administering oaths to adhere to the time-honored custom of swearing witnesses upon the Bible or

[1] 41 S. C. R. 532.

Testament in all cases except those where the witness or party claims to have conscientious objections to swearing in that mode or form. But we think, however that may be, that where no such objection is raised and the oath is taken voluntarily by a person with uplifted hand and calling God to witness the truth of his evidence or statements, it would be alike a mocking of justice and a disregard of the common law as we understand it to allow such a person in an indictment for perjury to escape on the sole ground that he took the oath without being sworn on the Bible or New Testament."

The deponent should stand up. If the Bible is used it should be held by the deponent in the right hand and raised to touch the lips, or it may be merely held in the right hand. Male deponents excepting Hebrews should uncover their heads. This is unnecessary in the swearing of women, and the Hebrew does not usually recognize the oath as binding upon his conscience unless his head is covered. It is often thought when a person is being sworn with the Bible in

hand that the glove should be removed from the hand holding it, so that there should be nothing whatever between the book and the flesh of the person holding it, but this is unnecessary, and it has been said by English Judges more than once that it is not ungloved hand, but the reverence with which an oath is taken, that makes it binding.

It has often been wondered whether it is necessary for the notary taking an affidavit to read it or have it read to the deponent to ascertain whether the deponent understands its nature and contents. It is the practice, however, not to do so and the better opinion seems to be that it is unnecessary except in the case of illiterates and blind persons.

The affidavit is signed by the deponent and the oath taken before the notary. The usual form of oath administered to the deponent of an affidavit is as follows:

"Is this your name and handwriting" (pointing to the signature).

"You do swear that the contents of this your affidavit are true? So help you God."

When there is an exhibit to the affidavit, the notary should add:

"Is this the document referred to in your affidavit?"

The form of jurat is usually set out in the statute or rules of the Court under which the affidavit is made. In nearly all cases, however, the jurat is in the following form:

"Sworn to at in the County (or district) of this day of 19 before me,

A.B.
A Notary Public.

(Seal.)

Occasionally more than one deponent must be sworn to the same affidavit. In such cases if the deponents are sworn individually before different notaries or on different days there must be a separate jurat for each deponent and the name of the deponent swearing must appear in each. If the deponents are both sworn at the same time the oath is put as follows:

"Is that your name and handwriting?" (To each separately naming him and pointing to the signature.)

"(To all) You do severally swear that the contents of this your affidavit are true. So help you God.

"The jurat, when the deponents are sworn at the same time, commences "Sworn by both (or all) of the above-named deponents."

When an affidavit is to be sworn by an illiterate or blind person, it should first be read over to the deponent by the notary or some other person in his presence, and the signature or mark should be made in the presence of the notary.

The notary should then put the oath as follows:

"Did you perfectly understand the affidavit which has been read over to you?

"Is this your name and handwriting?" (or, if he has made his mark, "Is C.D. your name").

"You do swear that the contents of this your affidavit are true. So help you God."

The jurat to an affidavit as above would read:

Sworn to, &c., before me, I having first truly, distinctly and audibly read over the contents of this affidavit to the deponent (if the deponent is blind add "he being blind." If there are exhibits add—"and explained the nature and effect of the exhibits therein referred to) who appeared perfectly to understand the same and made his signature (or mark) thereto in my presence.

The mark should be made thus, the notary having written the deponent's name,

his the mark
"C. X D." or "C. X D."
mark of

If the deponent be physically incapable of signing his name, the form of jurat may be: "Before me, the deponent having made his mark to this affidavit in my presence, he being physically incapacitated from writing his name (*or* without the deponent affixing hereto any signature or mark, he being physically incapable of doing so).

Where a deponent is deaf and dumb, the notary before swearing should question such person in writing as to the name and signature, pointing to the same, and then show him the oath in writing. The notary should point to each word and as he proceeds in administering the oath and the deponent should be made to kiss the book. The jurat may be in the usual form.

Any person objecting to being sworn on the ground that he has no religious belief or that the taking of an oath is contrary to his religious belief, is permitted to make his solemn affirmation instead, and this usually applies to the proof of execution of instruments, as well as to affidavits for use in the Courts. The affirmation should be as follows:—I, A. B., do solemnly, sincerely and truly declare and affirm that the contents of this affirmation are true. Jurats and certificates may be varied by using the words "solemnly affirmed," instead of "sworn to" and "made oath."

By virtue of the Canada Evidence Act,[2] notaries, among other functionaries, are

[2] 1906, R. S. Can., ch. 145, sec. 36.

empowered to receive solemn declarations of persons made voluntarily, in attestation of the execution of any writing, deed or instrument, or the truth of any fact, or of any account rendered in writing. These declarations cannot be used in the Courts for any purpose for which an affidavit or affirmation is required, but are intended to cover matters which are not part of a judicial proceeding.

The following form is given by the Statute and must be strictly adhered to:—

I, A. B., do solemnly declare that (state the fact or facts declared to), and I make this solemn declaration, conscientiously believing the same to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

Declared before me , at , the day of , A.D. 19 .

(Notarial Seal.)

A Notary Public for the Province of .

In taking a declaration, the notary asks: "Is that your name and handwriting?" And then: "You do solemnly and sincerely declare that the contents of this, your declaration, are true."

Affidavits, affirmations or declarations required by insurance companies authorized to do business in Canada in regard to any loss of, or injury to, person, property or life which is insured may be taken before a notary public, and a notary cannot refuse to take such affidavit, affirmation or declaration.[3]

[3] Can. Evidence Act, 1906, R. S. Can., ch. 145, sec. 37.

APPENDIX.

Notarial Fees.

In one jurisdiction only dealt with by this work has statutory provision been made for the notary's fees of office. In New Brunswick the Table of Costs and Fees [1] provides the following schedule:—

Taking acknowledgment or proof of execution of deed or other instrument for registration and certificate, the same fees as are payable to the Registrar of Deeds for like services.

Noting protest relating to ship, vessel or cargo..	$5 00
Drawing protest or other papers, per folio.....	20
Certificate and seal thereto.....	1 00
Presentment and noting of bill of exchange or promissory note for non-acceptance or non-payment	50
Protest of note or bill of exchange when made, including presentment, notary and notice..	1 00

As to the fees for taking acknowledgment in New Brunswick, the Registry Act [2] provides:—The fee for taking and certifying acknowledgments or proof (as the case may be) within the province shall be sixty

[1] 1903 Con. Stat. of N. B., ch. 188, Part XXI.

[2] 1903 Con. Stat. of N. B., ch. 151, sec. 52, Part C.

cents for one person and twenty cents for each additional person whose name is included in the same certificate.

The Bills of Exchange Act contains the following section respecting notary's charges for protesting, etc.:

124. The expenses of noting and protesting any bill [3] and the postage thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon.

(2) Notaries may charge the fees in each province heretofore allowed them.

The following tariff adapted from MacLaren on Bills [4] is generally accepted as setting forth the correct charges to be made under that provision of the Bills of Exchange Act:

Alberta, Saskatchewan, Yukon and North-West Territories—

For noting or protest	$2 00
For each notice	50

And postage in addition.

British Columbia—

For noting or protest and notices	2 50

And postage in addition.

Manitoba—

For noting or protest	1 00
For each notice	50

And postage in addition.

[3] "Bill" includes note and cheque as used in this section

[4] 4th ed., 305.

New Brunswick—

(Vide the New Brunswick Table of Costs and Fees, *supra*.[5])

In addition the notary charges the postage.

Nova Scotia—

For noting or protesting bills or notes of $40 or upwards drawn or made within the province upon or in favor of any person in the province	$ 50
And for each notice	25
In all other cases for the noting or protest, including notices	2 50

Postage additional in all cases.

Ontario—

For noting or protest	50
For every notice	25

And postage in addition.

Prince Edward Island—

Tariff similar to that in Nova Scotia.

In all other matters notaries must be guided by what under the circumstances seem reasonable charges to make, and in many cases the amount is a matter of agreement between the notary and his client. In taking affidavits and doing other acts which may be done by other functionaries also, the notary should be governed by the scale of fees, if any, provided by statute for such functionaries. For example, in taking an affidavit within the province for use in Court where

[5] P. 449.

the notary's seal is not required, the notary should charge the same fee as is allowed commissioners for taking affidavits, usually twenty cents.

When, however, an affidavit is made outside the province and the seal is necessary, the sum of one dollar is usually charged. For noting and making ships' protests, from five dollars upwards, according to the length of the document, would not be unreasonable. Ten cents per folio is the usual charge for copies of documents.

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