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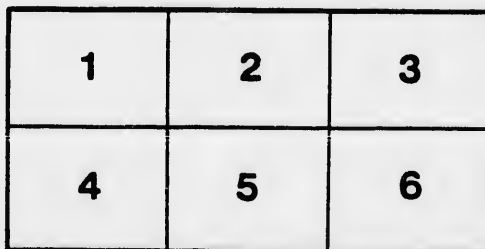
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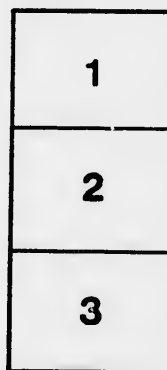
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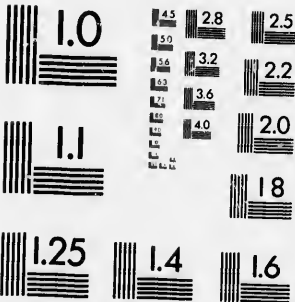
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EDITED BY
J. WEBSTER HANCOCK, LL. B.

BARRISTER-AT-LAW, BERLIN, C. W.

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P R E F A C E.

THE voluminous and costly works of the great English conveyancers contain so little that is needed in ordinary practice on this continent, that the Editor of the present work determined to prepare a manuscript volume for his own use, comprising such forms, such notices of conveyancing principles, and such portions of Canadian Statutes as seemed most likely to be of use in a country office in Canada.

How the MSS. eventually got into the hands of an American publisher it is not necessary to say, since the sole object of this preface is to vouch for the authenticity and original intention of the work.

It is not to be hoped that *no* errors have escaped detection in going through the press; and the Editor will be sincerely obliged to any reader who will be kind enough to point out mistakes with a view to future correction. It *is* hoped, however, that on the whole this volume will be found a useful contribution to the literature of a laborious and honorable profession.

J. WEBSTER HANCOCK.

BERLIN, C. W., *April 10th*, 1861.

PREP

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CONTENTS.

PREFACE,	PAGE 3
----------------	-----------

CHAPTER I.—AGREEMENTS FOR PURCHASE AND SALE,—OF TITLE.

NOTES.—Interest of Purchase Money.—The Abstract.—The Doubtful Title to Part.—Errors in Description.—Custody of Deeds.—Fixtures.—Purchaser's Employment of Vendor's Solicitor.—Profit and Loss accruing after Contract.—Policies of Assurance.—Shares.—Shipping.—Conditions of Sale.—The Contract.—Special Clauses.—Vendor's Lien.—Purchaser in Possession.—Purchase money Invested.—Dower.—Infancy.—Liquidated Damages,	11
FORMS.—Sale of a Freehold Estate.—Clauses.—Sale by Way of Lease.—Liquidated Damages.—Agreements; for Building a House; Rebuilding a Mill; Purchase of Leasehold, Property, &c.—To sell and assign Bond and Mortgage.—For Plasterer's and Bricklayer's Work.—Charter Party.—Statute respecting Written Promises and Acknowledgments of Liability,	24

CHAPTER II.—ARBITRATION.

NOTES,	56
FORMS.—Agreement of Reference in Writing.—Order of Reference to, at Nisi Prius.—Arbitration Bond.—General Submission to Arbitration.—Special Submission.—Award.—Award by an Umpire.—Award by Referees.—Release to be Executed by Party to an Arbitration, when required in the Award.—Arbitration Clauses,	59

CHAPTER III.—OF SALES BY AUCTION.

NOTES.—Of Sales by Private Contract.—Statute of Frauds,	71
FORMS.—Conditions of Sale.—Conditions of Title.—Preparation of Abstract.—Sixty years' Title.—Ancient Documents.—Reversionary Interests.—	

CHAPTER III.—Continued.

	Page.
Leaseholds.—Untechnical Words.—Wills.—Debts and Legacies.—Decrees.—The Abstract.—Indemnity.—Right to Demand Completion.—Specific Performance.—Mis-description.—Evidence of Title.—Deeds Destroyed.—Recitals.—Expense of Proofs.—Prior defect in Title.—Wills.—Inadequate Price.—Indemnity.—Sales under Decree.—Possession.—Rents and Profits.—Neglect to Pay.—Release.—Production of Deed.—Leases of Modern Date.—Of Conveyance to Purchaser.—Execution and Attestation.—Assignment of Leaseholds.—FORMS OF DEEDS OF CONVEYANCE.—Clauses in Deeds of Conveyance.—Statute respecting Short Forms of Conveyance.—Statute respecting Real Property.—Statute respecting the Conveyance of Real Estate by Married Women,	77

CHAPTER IV.—OF SECURITIES.

NOTES.—Power to Sell.—Equitable Mortgages.—Deeds.—Deposit.—Reconveyance.—Covenants.—Release from Sale.—Mortgages of Entailed Property.—Mortgage of an Equity of Redemption.—Mortgage of Estates for Life.—Mortgages of Leaseholds.—Bond Debts,	179
FORMS OF MORTGAGES.—Clauses in Mortgages.—Statute respecting Mortgages of Real Estate,	190

CHAPTER V.—OF CONVEYANCING SECURITIES.

NOTES.—Bonds.—Warrants of Attorney.—Post Obit Bonds.—Transfer of Mortgages.—Redemption and Reconveyance of Mortgaged Estates.—Remedies of the Mortgagee.—Redeemable Annuities,	239
FORMS.—Bonds.—Post Obit Bond.—Assignment of Leasehold.—Assignment of Policy of Assurance.—Assignments.—Transfer,	251

CHAPTER VI.—OF SECURITIES.

Bills of Sale.—Chattel Mortgages.—Confession of Judgment.—Statute for the Relief of Insolvent Debtors, which is to be called the Indigent Debtor's Act.—Statute to Regulate the Procedure of the Superior Courts of Common Law and of the County Courts, known as and in all Proceedings may be cited as The Common Law Procedure Act,	303
FORMS.—Bill of Sale.—Chattel Mortgages.—Confession of Judgment.—Warrant of Attorney.—Bonds.—Composition Deeds,	308

CHAPTER VII.—LEASES AND AGREEMENTS FOR LEASES.

	Page.
NOTES.—Premises of a Lease.—Covenants.—Provisoes.—Attornments, . . .	326
FORMS.—Covenants in Leases.—Statute respecting Short Forms of Leases,	336

CHAPTER VIII.—LANDLORD AND TENANT.

FORMS,	369
------------------	-----

CHAPTER IX.—MARRIAGE ARTICLES.

NOTES.—Marriage Settlements.—Directions.—Post Nuptial and Voluntary Settlements.—Separation Deeds,	385
FORMS.—Marriage Articles.—Settlement of an Estate in contemplation of Marriage.—Agreement for Settlement, before Marriage.—Jointure in Lieu of Dower.—Settlement of Real Estate on Marriage.—Settlement, on Marriage, of Money to arise from Real Estate conveyed to Trustees by a Deed of even Date in Trust for Sale.—Settlement of Personality.—Settlement, on Marriage, of Real Estate upon the Husband and Wife successively for Life, with Remainder to the Children of the Marriage, as the Husband and Wife, or the Survivor, shall Appoint; and in Default, in equal Shares in tail as Tenants in Common, with Cross Remainders.—Powers of Management during Minorities, of Leasing, and of Sale and Exchange.—Appointment on Marriage of a Reversionary Life Estate in Personality to an intended Husband.—Appointment of new Trustees of a Marriage Settlement.—Appointment by Deed.—Appointment by Writing.—Disclaimer under a Settlement.—Articles of Separation,	394

CHAPTER X.—PARTNERSHIP DEEDS.

NOTES.—Dissolution of Partnership and winding up.—Deeds of Composition,	421
FORMS.—Articles of Copartnership.—Of Partnership between three Persons, with unequal Division of Profits.—Between two Farmers, with equal Division of Profits.—To Renew a Partnership by Indorsement.—Partnership Deed.—Assignment of Partnership Property by one Partner to another, to Determine the Partnership.—Dissolution of Partnership between two Partners, one continuing the Business.—Agreement of Dissolution, to be Indorsed on the Partnership Deed.—Gazette notice of Dissolution.—Notice of Dissolution.—Notice of Expulsion from Partnership.—Testatum Clause,	427

Page.

Deeds De-
—Wills,—
—cession,—
of Deed,
Execution
s of Cox-
ng Short
atuto re-
77

—Recon-
nd Prop-
ates for
179
g Mort-
190

nsfer of
ates—
239
sign-
251

to for
igent
perior
in all
303
nt.—
308

LAW

CHAPTER XI.—WILLS.

	PAGE.
NOTES.—Wills of Chattels.—The Residuary Clause.—Heir.—Death without Issue.—Joint Tenancy.—Estates tail.—Cross Remainders.—Entails.—Protectors of Settlements.—Long Term.—Annuity.—Accumulation.—Legacy in Trust.—Conditions as to Marriage.—Residuary Clause.—Marriage with Consent.—In Terrorem.—Election.—Bar of Dower.—Conditions.—Restraints.—Provisoes.—Debts.—Charges on Realty.—Rents and Profits.—Trusts and Powers of Sale.—Leasehold and Personal Securities.—Trusts for Accumulation.—Annuitant.—Alienation.—Implied Trusts.—Hotelpot.—Abatement of Legacies and Marshaling of Assets.—The Appointment of Executors.—Probate.—Guardians.—Codicils.—Execution and Attestation,	413
FORMS.—Will of Real and Personal Estate, for the benefit of the Testator's Wife and Children.—Will of a Person giving all his Property to his Wife, and appointing her Executrix.—Gifts not in Settlement.—All Testator's property to wife.—All testator's property to wife, with legacies to children.—Legacies and Annuities to testator's brothers and sisters.—Residue to one brother.—Special Devises and Bequests.—Residue to testator's nephew.—Realty and Personalty, Trusts of the whole for sister for life, and afterward for her adult children absolutely.—Will of a married woman appointing an absolute interest in Personalty to her husband, with legacies to other persons, under the usual Settlement Power in default of children.—Will of a married woman appointing a Life Estate in Personalty to her husband.—Will of husband appointing Life Estate in Personalty to wife.—Will of Personalty, very special.—Will.—Specific Devise of Realty.—Specific Bequest of Books, Furniture to furnish a residence for Testator's Wife, Pictures, and Articles of Vertu.—Annuity to Wife, Deducting her Life Interest under other Settled Property.—Legacy of § in Trust for a Son and Daughter of Testator, not advanced by him; Residue, as to One Moiety to Two Advanced Children absolutely; as to the other Moiety to the Two Children not advanced, the Daughter's Interest in the Legacy and Residue being settled upon Herself and her Children.—Appointment by a wife of Personal Estate settled upon her by a Marriage Contract; to take effect on her decease.—Condition that the Obligor shall suffer his intended wife to make a Will.—Provision for Children born after the execution of a Will.—Devise of an Annuity.—Will of Real and Personal Estate; <i>Short Form</i> .—Codicil appointing a new Trustee.—Codicil appointing a Trustee and Executor in the place of a deceased Trustee and Executor appointed by the testator's Will.—Codicil appointing a Trustee and Executor in the place of one deceased.—Power to postpone the Sale of Real Estate.—Power to grant Leases.—Trustees may permit investments to remain unconverted.—Power to change Securities.—Trustees' Power in winding up the affairs.	

NOTES
—A
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FORMS
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FORMS.
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CHAPTER XI.—Continued.

—Power to appoint new Trustees.—Trustees' disbursements to be paid.—Yearly produce to be deemed the Income.—Wife's dower.—Hotelpot Clause.—Sums advanced to children, to be deducted from their Legacies.—Advancement Clause.—Maintenance Clause.—Clause to be inserted in Wills, as to Trust Estates and Estates held in Mortgage.—Statute respecting the Surrogate Courts.—Statute respecting the Registration of Deeds, Wills, Judgments, Decrees in Chancery, and other Instruments,	PAGE. 494
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------

CHAPTER XII.—DECLARATIONS OF USES AND TRUSTS.

NOTICES.—Deeds of Disclaimer and Renunciation by Executors and Trustees.—Appointments on Exercise of Powers.—Partition Deeds.—Partition under direction of the Court of Chancery.—Releases.—Indemnities.—Guaranties,	526
FORMS.—Memorandum as to the ownership of money advanced on Mortgage.—Disclaimer of Trusts and Executorship of a Will.—Release for a partition of Freeholds.—Partition Disclaimer under a Will.—Equitable Release, by Covenant, of a Rent Charge, on the Sale of part of the lands charged.—Release of all demands.—Special Release.—Release by Creditor named in an Assignment.—Release of part of Mortgaged premises.—Release of a Legacy.—Release general of all demands.—Release from one Joint Tenant to another.—Release of Power.—Release to a Guardian.—Release of a Trust,	535

CHAPTER XIII.—POWERS OF ATTORNEY.

FORMS.—General Power of Attorney.—Power of Attorney to receive Debts.—Power of Attorney to manage and sell Estates.—Revocation of a Power of Attorney.—Grant of right of way for horses, carriages, and cattle; variation where the grant is limited to a foot way only.—Grant of a right of way to a Mine for a term of twenty-one years.—Release of a right of way from the Grantee to the Grantor.—Appointment of a Jointure in exercise of a Power limited by a Will.—Clause that present Appointment shall not prevent any future Appointment when the power is not exhausted by the previous Form.—Hotelpot Clause.—Declaration of Trust.—Power of Revocation.—Release from Legatee to Executor.—Release by Ward to Guardian.—Mutual Release between Partners,	547
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

BILLS OF EXCHANGE, DRAFTS, NOTES, &c.

	PAGE.
FORMS.—Set of Foreign Bills of Exchange.—Ordinary Bill of Exchange or Draft at a certain time after Sight.—Bill or Draft at a certain time after Date.—Cheek or Draft on a Bank.—Note not negotiable.—Note negotiable by indorsement.—Note negotiable without indorsement.—Joint negotiable Note, payable at a Bank.—Negotiable Note payable in Merchandise.—Negotiable Note on demand.—Note on demand, with interest from date, not negotiable.—Due-Bill.—Order for Money.—Order to sell merchandise.—Order to deliver goods.—Receipt in full.—Receipt on account.—Receipt for a special purpose.—Receipt when money is paid by a third person.—Receipt of Interest to be indorsed on a Bond.—Receipt in full for a special account,.....	565
INDEX,	579

AGRI

1.
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 Order to sell
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 d.—Receipt
 565
 579

CONVEYANCING.

CHAPTER I.

AGREEMENTS FOR PURCHASE AND SALE.—OF TITLE.

NOTES.

1. *Titles*, if good, may be *safe* to hold by without danger of eviction or disturbance; or they may be *absolutely good*. The first are frequently accepted by a *willing purchaser*, who has set his mind upon a particular property; but, without there are special reasons for foregoing the right, a purchaser is entitled to require a *marketable title*, good against all the world, and such as he may always set up as a defence in an action of ejection, or *compel* any future purchaser to accept.

2. *Deeds in the hands of a mortgagee*.—A mortgagee is entitled to the deeds, and if a mortgagor wishes to dispose of his interest in the mortgaged property, or to make it the subject of a further charge, he cannot compel the mortgagee either to permit an inspection of the deeds or to furnish an abstract of them. Professional courtesy will generally grant a request for inspection; but, if there is no abstract already prepared, the mortgagee's solicitor may insist on his right of preparing it at the cost of the vendor, who must also defray all expenses, if any, which are incurred in the production and inspection of the deeds and other documents of title. *If the mortgagee should refuse inspection and abstract*, the only remedy of the mortgagor is to pay off the mortgage, and then call upon the mortgagee to deliver up the deeds, which he will be compelled to do. If, however, the mortgage term has not yet expired, it may not be easy to induce the mortgagee to accept payment and discharge the mortgage; but inconveniences of this kind may be prevented by inserting in the mortgage-deed a clause to the effect that, in the event of any contract being entered into for the sale or further disposition of the property, the mortgagee will produce the deeds and grant extracts or abstracts of them.

3. *The purchaser of a term in leasehold property* has a right to call for the inspection of the title of the original lessor, without the

AGREEMENTS FOR PURCHASE AND SALE.

contract expressly stipulate that he shall not do so; and if it is not produced by the vendor, being demanded, the purchaser may rescind the contract.

4. *Limited interests* may sometimes be sold much more advantageously with the concurrence of the other parties interested; as, for example, the concurrence of the reversioner where the party wishing to sell is only tenant for life, or *vice versa*. This, therefore, is a point which should always be carefully considered.

5. *Incumbrances* which are *matters of conveyance*, such as mortgages, crown debts, judgments, decrees, *lis pendens*, debts, portions, legacies, and outstanding legal estates, are no objection to a title, because it is always in the vendor's power to get them in; but incumbrances which are *matters of title* are a fatal defect, without the concurrence of the other parties can be obtained, such as executory devises, conditional limitations, conditions at common law, remainders not barrable, as remainders under a settlement which are supported by a protector, leases, jointures, dower, courtesy, annuities and rent charges, forfeitures and powers. The concurrence of the other parties may cure these defects, except in the case of executory devises or executory limitations over, to take place after an estate in *fee simple*; for such limitations, being in the nature of executory devises, cannot be defeated by any act of the parties claiming the preceding estate in *fee simple*, though it is otherwise when the limitation over is to arise after an *estate tail*, unless there be a protector to the settlement who refuses his consent. If property is to be sold subject to incumbrances, they must be *clearly* set forth, so that the purchaser cannot possibly be misled; for otherwise, if they are *matters of title*, the purchaser may rescind the contract and cannot be compelled to take the property with any amount of compensation; while as to incumbrances, which are *matters of conveyance*, though they afford no ground for vacating a sale, the vendor will be compelled to discharge them; and, if there be no express stipulation to the contrary, he cannot oblige the purchaser to take the property subject to those charges by allowing him an adequate compensation for them.

6. *Right of entry*, for the purpose of *working mines*, is not barred by simple non-user; for the statute of limitations does not apply to cases of want of actual possession by the plaintiff, but to cases where he has been out of and another in possession, whether adverse or not, for the prescribed time.

7. *Unusual covenants* in a lease should be set out particularly in the contract of sale. Of this kind is a covenant *not to assign without license*; for although this covenant is frequently introduced into leases, it is not, therefore, recognized as a *common* or *usual* covenant.

8. *Payment of interest on the purchase money* is frequently matter of express stipulation in case the sale is not completed at the ap-

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pointed time, and to this is usually added a proviso that such pay-
ment of interest shall not give the purchaser any right of entry on
the purchased property until the whole of the purchased money is
paid. If the delay arises from the vendor's own fault, he will not
be entitled to *interest* under such a clause, though it seems that,
where the vendor is not guilty of vexatious conduct, or gross
delay, or any unfair dealing, the purchaser must pay interest from
the time mentioned in such clause, and not from the time when
a good title was first shown. Where there are no express condi-
tions, *the rule is* that the purchaser shall pay interest on the pur-
chase money, and be entitled to the rents and profits of the prem-
ises, from the time at which the purchase was appointed to be com-
pleted; but, where the delay is caused by the vendor, or the pur-
chase money has lain unproductive in the hands of the purchaser,
of which the vendor had notice, or where the interest exceeds the
amount of the rent and profits, the rule does not apply; and, to
prevent a purchaser from availing himself of these exceptions, it is
sometimes added at the end of the clause, stipulating that the pur-
chaser shall pay interest on his unpaid purchase money, "and which
"interest shall be so paid as aforesaid, notwithstanding the pur-
"chaser shall not be entitled to the possession, or the purchase
"money shall have remained unproductive in his hands without pro-
"ducing interest, and although the vendor shall have express notice
"that such purchase money is so lying unproductive as aforesaid."

9. *The time for delivery of abstract and making requisitions* should
always be specified in the contract of sale; for though, in the ab-
sence of express stipulations, a "reasonable time" will be presumed,
still it is doubtful what time may be considered reasonable, and
therefore it is advisable to state a time. This is usually done by a
clause to this effect: "That the vendor will, at his own expense, with-
"in the space of one month from the day of sale, deliver abstracts
"of title to the respective purchasers, (or *purchaser* as the case may
"be,) or to their (or *his*,) solicitors, (or *solicitor*,) and deduce a good
"title thereto, subject to the conditions; and each of the said pur-
"chasers (or the *purchaser*, as the case may be,) shall, within *such a*
"*time* next after the delivery of such abstract, signify in writing to
"the vendor's solicitor their his or her objection to or requisition on
"the title as deduced by such abstract; and that, in default of such
"requisition being so made within the appointed time, the purchasers
"(or *purchaser*,) shall be considered as having accepted the title un-
"conditionally;" to which should be further added that "every such
"objection or requisition, not made or taken in writing within such
"period, shall be considered as waived; and in this respect that
"*time shall be considered of the essence of the contract.*"

10. *Where the title is doubtful* the vendor should also insert a
clause in substance as follows: "That in case any purchaser or pur-

DOUBTFUL TITLE TO PART.—ERRORS IN DESCRIPTION.

“chaser, or their his or her solicitor, shall object to the title, the vendor shall be at liberty, if he shall so think fit, by notice under his hand, to vacate the sale, and thereupon such sale shall be absolutely null and void to all intents and purposes whatsoever; and the purchaser shall be repaid his deposit money, but without interest, and all reasonable expenses sustained by him in respect of the sale, and each contracting party shall be placed in the same situation as if no agreement had ever been made, unless the purchaser shall, within *some specified* time, (as fourteen or twenty-one days,) consent to accept the title unconditionally; and that such right of the vendor to annul the sale shall not be considered as waived, or in any manner affected, by any negotiation as to such objection or requisition, or attempt to obviate such objection, or to comply with any such requisition, or to remedy any defect that may be objected to.” Without some such express stipulation in the conditions of sale as is contained in the latter part of this clause, an attempt to answer objections or requisitions made by the purchaser would be considered to waive the vendor's right to rescind the contract.

11. *Where the title is doubtful as to some portion of the property* the vendor should stipulate that his inability to show a good title to the property, or to any one or part of any one of the lots, (when it is sold in lots,) shall not vitiate the contract with regard to the other portion or lots to which he is able to make a good title; but that the contract shall, nevertheless, be carried into effect *pro tanto*, and a proportionate abatement allowed out of the purchase money as compensation, the amount of which shall be settled by the award of two referees or their umpire, in the usual manner.

12. *Error in description* may annul the sale without proper precautions be taken, and therefore it is advisable to stipulate that no error in the description, either in the quantity of the property sold, or of the extent of the vendor's interest therein, shall have that effect; but that the purchaser shall be allowed compensation to the extent that he shall have been prejudiced thereby, the amount of which is to be settled by arbitration, in the usual way; but this clause will only protect a vendor against unintentional errors, and not against fraudulent or willful misdescription; nor, if the error be *considerable*, though quite unintentional, will it have that effect.

13. *Expence of comparing deeds with abstract.*—It is usual to provide “That the purchaser shall be at the expence of comparing the title-deeds, wills, and other documents and evidences of title—whether of record or not, and whether in the possession of the vendor or not—with the abstract; the vendor engaging to furnish such abstract, and to inform the purchaser when and where such deeds, wills, documents, or other evidences of title, if of record, were proved and recorded, and where and with whom such of the

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"title-deeds and other evidences of title as are not of record and not in the custody of the vendor are to be found, in order that they may be so produced and compared."

14. *When trustees sell* they should say that, "as the vendors sell in the character of trustees, and take no beneficial interest in the property, the purchasers shall not require them to enter into any further covenants for title, except the usual covenant by vendors that they have done no act to incumber."

15. *When the title-deeds are not to be delivered to the purchaser* there should be an express stipulation that they are to be retained, either by the vendor or some other purchaser. As a general rule, where there are several purchasers, the *largest* purchaser is entitled to the custody of the deeds; but it is better to state clearly whether the largest purchaser *in extent of property*, or the largest in *amount of price*, is to have the custody.

16. *When the vendor is to retain the deeds*, the condition of sale generally stipulate that he is to retain *such* of the deeds, &c., as relate also to other property belonging to him of greater value, on his delivering attested copies and entering into the usual covenant for their production.

17. *When the largest purchaser is to have the custody of the deeds*, &c., it should be stipulated that he is to have them delivered to him upon his entering into the usual covenant for their production; and that the other purchasers shall be entitled to attested copies of them; and, unless the latter are to be supplied at the vendor's expence, it must be so expressly stated in the condition.

18. *When fixtures are to be sold separately from the freehold*, it should be said "that the fixtures mentioned and set forth in the schedule hereunto annexed shall be taken by the purchaser at a valuation, the amount of which (if disputed,) shall be determined by the award of two referees or their umpire, in manner above mentioned;" and a schedule containing the particulars of the fixtures should be attached to the conditions of sale.

19. *When the conveyance will be executed* should also be stated, and at whose expence it is to be done. In the absence of express stipulation, the *purchaser* is to defray the costs, and *his solicitor* is entitled to prepare and tender the conveyance to the vendor and other necessary parties for execution; but the expences of the execution are borne by the vendor.

In some localities it has become the practice for the *vendor's solicitor* to prepare the conveyance, which often leads to the vendor's solicitor being the only one employed. This is *very injurious* to the interests of the *purchaser*, and so indeed is the simple act of allowing the vendor's solicitor merely to prepare the conveyance; because, by so doing, the purchaser adopts him as *his agent*, and thereby becomes fixed with *notice of all incumbrances* affecting the purchased

PURCHASER'S EMPLOYMENT OF VENDOR'S SOLICITOR.

property to which the vendor's agent is privy; for notice to an agent is, in the eye of the law, equivalent to notice to the principal (in this case the *purchaser*) himself, and thus the purchaser may lose the benefit of the equitable protection afforded to purchasers for valuable consideration *without notice*, in every case in which the vendor's solicitor is cognizant of any incumbrance. Nor is this the only objection to employing the vendor's solicitor; for even if the vendor were to be guilty of any *fraud* in the conduct of the sale, to which such solicitor was privy, the purchaser, notwithstanding his *own* ignorance of the transaction, will nevertheless be bound by it.

20. *Power to the vendor to rescind, contract, and resell the premises* on purchaser failing to comply with the conditions is usually the last clause, which also enables the vendor to retain the deposit, and to recover the amount of any loss he may incur on a resale, from the intended purchaser, as liquidated damages. This is an important clause for the vendor; because it not only has the effect of giving him a *lien* on the estate for the purchase money, but also enables him to recover the amount of any *deficiency* incurred by him on a resale in case of the purchaser failing to comply with the conditions, while, at the same time, he will be allowed to retain any *increase of price* for his own benefit.

21. *A short form of contract* should be indorsed upon or attached to the conditions of sale, to be signed by the vendor and purchaser, or their agents, and then the whole together form one entire contract.

22. *As to leaseholds*, the clauses are much the same; but in that to supply an abstract, unless the vendor is able to procure his lessor's title, he ought, as before remarked, expressly to stipulate that he shall *not* be required to do so.

23. *Power to rescind the contract* in case the purchaser objects to the title should be reserved; and that, if the title is approved, the vendor will assign the premises on payment of the remainder of the purchase money.

24. *That all outgoings are to be discharged* by vendor up to a certain time is usually next stipulated; and, where the vendor is also the original lessee, it is sometimes stipulated that the purchaser shall enter into a bond or deed of covenant to indemnify the vendor from all liabilities on account of the rent and covenants of the lease; but in point of fact a vendor is entitled to such an indemnity, whether expressly stipulated for or not.

25. *Power for vendor to rescind the contract* is usually the last clause, as in the case of freeholds, [see section 20;] but sometimes it is also stipulated that the lessee shall not require any other evidence of the payment of rents, and observance and performance of the covenants in the original lease of the premises, on the lessee's part,

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PROFIT AND LOSS ACCRUING AFTER CONTRACT.

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26. *As to the ages of lives* in a lease determinable on lives, it should be said "That the ages of the several parties for whose lives the lease is holden are believed to be correctly stated in the particulars, but are not warranted to be so; and that the purchaser shall take the statement in the existing leases of the ages of such lives as conclusive evidence of those ages respectively;" and it is sometimes stipulated that the purchaser shall not be entitled to any compensation, or to rescind the contract, in case any, or even all, of the lives upon which the lease is determinable shall happen to drop between the time of signing the contract and that appointed for the completion of the purchase.

27. *Purchaser must abide by all the profits or losses* that may accrue to the property after the contract is signed, and a stipulation to that effect is inserted rather with a view of preventing disputes than from any actual necessity; because the purchaser is the *equitable owner* of the property, *from the time he signs the contract*, and therefore he must abide the chance of all profit or loss that may accrue to the property from that time to the time of the execution of the conveyance. This rule is like a two-edged sword, which cuts both ways. If the subject-matter of sale be houses which are *all burnt down*, or an estate determinable on lives which *all drop off* prior to the conveyance, the purchaser is no less bound to pay the purchase money than if the property had remained in precisely the same state as when he signed the contract; and so, *on the other hand*, if he were to contract for the purchase of a reversionary interest, and all the preceding estates were to determine prior to the time for executing the conveyance; or if the consideration is an annuity for the life of the vendor, and he die before any payment of the annuity becomes due; the purchaser will be entitled to a specific performance of the contract, although in the first case he acquire a different and more valuable estate and interest in the property than he contracted to buy, and in the second case he gets the property without paying any consideration whatever for it; and this equitable rule accords with the rule of the civil law, that the purchaser should benefit by the accretion to the estate before the conveyance, *nam et commodum ejus esse debet ejus periculum est*. The only way to prevent this consequence, on either hand, is by express stipulation in the contract; but,

28. *If vendor cannot confer a good title*, or has done any act which entitles a purchaser to *wave* the contract, the purchaser will not be bound to fulfill it, notwithstanding the subsequent destruction of the property, and indeed without any reference to the state and condition of the property, one way or the other.

POLICIES OF ASSURANCE.—SHARES.—SHIPPING.

29. *Disputes should be referred to arbitration*, and such reference provided for by a special clause.

30. *Policies of assurance should be sold subject to the condition* "That the certificate of baptism, or registry of birth, shall be considered conclusive evidence of the age of the party whose life is assured; and that the vendor shall not be required to furnish any further evidence of the validity of the policy than the solemn declaration of the assured that when the policy was effected he was in a good state of health, and that he has done no act where-
"by the policy can be vacated or prejudiced; and also the production of the receipt for the last premium due."

31. *Shares in public companies should be sold with due reference to the act of parliament for regulating the company, and the conditions should be pinned accordingly.*

32. *Sales and transfers of interests in shipping are regulated by 8 Vic., Cap. V., if the vessels are of more than fifteen tons; and the terms are usually* That the owners of the ship or vessel (setting out the name of the vessel, her port of registry, and measurement of tons,) cause her to be offered for sale on the following conditions:—

That the owners agree that the last bidder shall be the purchaser; that he shall immediately pay down some specified portion of the purchase money, (as one-fourth for instance,) and the residue within some certain specified time after the sale, or at the time of the delivery of the bill of sale, whichever may first happen, and also some specified sum (as ten dollars,) to the broker, to bind the bargain; also that, on payment of the remainder of the purchase money, a bill of sale shall be made out to the purchaser at his own expence, and the vessel with all belonging to her delivered according to the inventory, but that the inventory will be made good as to quantity only.

It is also usual to say "That the vessel and stores shall be taken with all faults, without any allowance for defects," and this condition will protect the vendor against any latent defects, unless he has used some trick or artifice to conceal them from the purchaser, or employed some means to prevent him from detecting them, or made some fraudulent misstatement as to the real condition of the vessel; for, if the vendor has done any of these things, he will not be protected by the mere statement in the conditions that the property is to be purchased "with all faults;" but the purchaser may, in such case, avoid the sale, or insist that a sufficient deduction shall be made out of the purchase money to compensate him for the defects so concealed; for the rule is that such a condition shall protect the vendor against all faults, but not against all frauds.

33. *Power to rescind the sale on non-compliance with the terms of the contract by the purchaser is then provided, as "that, if the*

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CONDITIONS OF SALE.

"purchaser makes default i. payment of the remainder of the purchase money, the deposit shall be forfeited, and the vendors be at liberty to resell the vessel; that neither the broker nor any of the present owners shall be accountable for the deposit money so forfeited, and that the purchasers so neglecting shall be liable for all losses which may accrue thereby." The ship is also declared to be at the risk of the purchaser immediately after he shall be put in possession of her.

34. *Sales of goods*, as household furniture and other effects, are usually under the condition that the highest bidder shall be the purchaser; that, if any dispute arise as to which is the highest bidder, the lot shall be put up again; that no less than a certain specified advance shall be made at each bidding; that the purchasers shall give their names and places of abode, if required, and pay down a deposit, in default of which the lots will be again put up and resold; that the lots shall be taken with all faults, at the purchaser's expence, within some specified time, (as within two days after the sale;) and the remainder of the purchase money to be absolutely paid on or before the delivery of the goods.

35. *Sales by private contract* should be under conditions of agreement as carefully drawn as where the sale is by public auction. The agreement should commence with the date, name, and description of the parties, by which the one binds himself and his representatives to the other party and his representatives, for the due performance of the contract.

36. *If an agent makes the agreement*, it should be said that he acts in that capacity; as—

"By A. B., of, &c., his attorney (or agent) lawfully appointed in that behalf." And if the agreement is entered into by the agent for the purchaser, he should be described as—

"By C. D., of, &c., his attorney (or agent) lawfully constituted for that purpose."

37. *The contract* should state the agreement of the vendor to sell the property to the purchaser, with a description of the property, which must be accurately drawn, for a willful misdescription in this respect will be equally fatal in a contract as in conditions of sale; and, if the property is to be sold subject to any *leases or other existing charges or incumbrances*, they should be correctly set out, and it is usual for the vendor to insert a clause by which he undertakes to deduce a good title, and to convey on approval of the title. Next will follow an agreement on the part of the purchaser to pay the purchase money on the execution of the conveyance; and, if a *deposit* has been paid, the amount of it should be mentioned; the vendor and purchaser should then enter into a mutual agreement with each other for the due observance of their respective parts of the contract, the terms of

THE CONTRACT.

which are usually similar to those contained in conditions of sale, for example: by whom *expenses* of disentailing deeds, acknowledgments of married women, the incidental expenses attending the production of title-deeds, getting in of outstanding legal estates, obtaining probate or letters of administration, all of which would otherwise fall upon a *vendor*, are to be defrayed; but it is usual to agree that they *shall* all be paid for by him. Next follows a stipulation that *recitals* contained in ancient documents shall be *conclusive evidence* of the recited facts, and that all doubts respecting *title*, or identity, or boundaries of property, not appearing on the deeds, shall be removed by a declaration or by affidavit; and then the clause as to the *preparation of the purchase-deed*, which generally follows the usual practice by directing that it shall be done by the solicitor of the purchaser, and be settled and approved of on the part of the vendor and purchaser by their respective solicitors; and last comes the clause for *rescinding the contract*. This may be in two forms, namely, *either* so as to give the purchaser power to rescind the contract in case the vendor shall fail to produce a good title within the time specified in the contract; *or* it may authorize the vendor to do so upon the purchaser's failing to perform his part of the agreement; *or* the vendor may be empowered to vacate the sale in case the purchaser shall object to the title, or require any evidence respecting it which the vendor may be unable or unwilling to supply. It may also make *time* of the essence of the contract at the option of either the vendor or the purchaser, which it has been decided may now be made binding in equity as well as at law.

A clause authorizing the purchaser to rescind the sale in case the vendor shall fail to make a good title to *the whole of the premises* is sometimes very important; because it may be the chief object of the purchaser to obtain *that very portion of the property* to which the vendor is unable to make a good title; for though the vendor might not be able to compel the completion of the sale of property to every part of which he could not give title, and especially if the one to which he could not give title were essential to the enjoyment of the rest, still it is more prudent for the purchaser's solicitor to insist upon a clause of this kind in the contract where he has the slightest ground for supposing that such a question may be likely to arise. The clause might be to the following effect:—

“But it is nevertheless agreed that if the said (*vendor*) shall fail to make a good title, at the time hereinbefore appointed, to the whole of the premises hereby contracted for, or the same shall contain a lesser quantity than (*a certain specified number of*) statute measure; or in case the said premises, or any portion of them, shall not prove to be of freehold tenure; then, for all, any, or

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SPECIAL CLAUSES.—VENDOR'S LIEN.

"either of the causes aforesaid, the said (*purchaser*) shall be at full liberty to rescind the contract, which from then-forth shall be null and void to all interests and purposes whatsoever."

38. *Special clauses* of other tenor may be required to meet some particular circumstances connected with the title, and they may follow the more usual clauses above mentioned, as that the whole or some part of the purchase money shall be an *annuity*; or that some part of the said money shall remain secured upon a mortgage of the premises; or that it shall be paid by installments; or by bills of exchange, or promissory notes; or be secured by bond; or that, until payment is made, the purchaser shall pay interest on it, for which the vendor is to have a *lien* on the purchased property, the purchaser, in the mean time, to be let into the possession and receipt of the rents and profits of the estate; although, independently of any express agreement, a vendor who delivers possession of the estate to a purchaser has always a *lien* upon it for the amount of his unpaid purchase money, not only as against the purchaser himself, and his representatives, and all persons claiming as volunteers under him, but even against purchasers for valuable consideration, where it can be shown that they had *notice* that the purchase money was unpaid. It will, indeed, be *otherwise* in the case of purchasers without such notice, whose estate under the purchase-deed will supersede the vendor's *lien* upon the lands; but to have this operation the estate must be *actually conveyed*, for between equal equities the rule is *qui prior est tempore potior est jure*, and therefore a subsequent purchaser, who has not obtained a conveyance of the legal estate, cannot postpone the vendor's *lien*.

As between the immediate vendor and purchaser, it will make no difference to the *lien* of the vendor whether the estate is merely contracted for or actually conveyed, but the *lien* will equally attach in either case; nor will it make any difference if the full amount of the consideration money is expressed to have been *paid* in the body of the deed, and the *receipt* duly indorsed, signed, and *witnessed*.

39. *The purchaser* has a *lien* also on the property where he pays his money before the property has been regularly conveyed to him, or the contract is rescinded either from the inability of the vendor to confer a good title or any other sufficient cause; except where the contract is of such an illegal or immoral nature that a court of equity would not enforce its specific performance.

40. *The vendor's lien* will be destroyed if he takes a distinct and independent security for his purchase money, as for example a *mortgage* of part of the lands sold, or of other lands; for such acts will show that the vendor placed no reliance on his equitable *lien*, but abandoned it for a security of another kind; but a mere personal security, as a *bond*, will not have this effect, nor will a bill of exchange, promissory note, or the like; for in any such cases the vend-

PURCHASER IN POSSESSION.—PURCHASE MONEY INVESTED.

or's *lien* will continue so long as such securities remain undischarged; nor will the circumstance of the vendee becoming a bankrupt in any way affect the vendor's lien on the property. There is, however, *one exception* to the general rule as to the effect on the vendor's lien of taking personal security from the purchaser. A *pledge of stock* has been held to discharge the vendor's lien.

Again, if the purchaser *borrow*s part of the purchase money and pays it to the vendor, leaving the rest unpaid, and the conveyance is made to the purchaser, stating the transaction and giving thereon security to the vendor, the concurrence of the vendor will preclude him from any lien for the remainder of the purchase money, if not against the purchaser certainly against the mortgagee.

41. *Payment of interest on purchase money* is commonly made matter of special agreement in sales by private contract.

42. *Where payment of purchase money is postponed and purchaser let into possession meanwhile*, a cautious vendor, notwithstanding the stipulation mentioned in section 8, added to his equitable lien upon the property, may object to allow the purchase money to remain during the interval in the hands or under the control of the purchaser; and, on the other hand, the purchaser may be equally unwilling to pay it over to the vendor until he has shown a good title, and made an actual conveyance of the property in pursuance of the terms of the contract; and when such objections are raised, they may, with the concurrence of both parties, be set at rest by extending the clause first mentioned in section 8 a little further, so as to invest the money in the names of mutual trustees both of the vendor and purchaser, and enable them to invest the money and pay the interest to the vendor, from the time when the purchaser is let into possession until the completion of the contract; or, in case of such contract being rescinded by default of the vendor in not showing a good title, or from any other sufficient cause, to repay the principal but *without interest* to the purchaser, thus:—

“But if the completion of the purchase shall be delayed for any cause, beyond the day of , it is hereby mutually agreed that the said purchase money, or sum of \$, shall be invested in (*here state the kind of security*), the names of two trustees—one to be nominated by and on behalf of the said (*vendor*), and the other by and on behalf of the said (*purchaser*)—which said trustees shall stand possessed of the said (*securities*), and shall receive the annual (*or other*) interest or proceeds thereof, and pay over the same to the said (*vendor*), until the completion of the said contract; the said (*purchaser*) to be let into the possession and receipt of the rents and profits of the said premises, from the time his said purchase money shall have been so invested, as aforesaid; and, upon the completion of the said contract, the said trustees shall transfer the said (*securities*) unto and into the

remain undiscovered a bankruptcy. There is the effect on the purchaser. A vendor's lien.

purchase money and the conveyance giving thereon will preclude purchase money, if not otherwise.

commonly made contract. and purchaser notwithstanding equitable lien purchase money to control of the may be equally shown a good in pursuance of the are raised, set at rest by title further, so as both of the the money and the purchaser is set; or, in case or in not showing to repay the

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“name of the said (*vendor*), for his own absolute use and benefit, or otherwise dispose of the same as he shall direct; but if the said contract should be rescinded, either on account of the said (*vendor*) being unable to confer a good title, or for any other sufficient cause, then the said trustees shall immediately, upon the said purchaser's delivering up the possession of the said premises, transfer the said (*securities*) unto and into the name of the said (*purchaser*), for his own absolute use and benefit, or otherwise dispose of the same as he shall direct, who shall from thenceforth be entitled to all future interest (or proceeds) to accrue due thereon; but all interest (or proceeds) previously received shall be retained by the said (*vendor*); the said (*purchaser*) to be also entitled to retain all rents and profits of the said premises received by him up to the time upon such contract being rescinded as aforesaid.”

43. Where the wife's title to dower is not released it may be agreed that one-third the purchase money shall be paid to trustees, to be invested in manner stated in the previous section, and to be paid over with the accumulations to the vendor in the event of his surviving his wife, or to be repaid with all the accumulations to the purchaser in case the vendor should happen to die in her life-time without having been able to get her to release her claim.

44. Infancy of some of the conveying parties might give occasion for an arrangement of a similar kind, by which the purchaser may be allowed to retain some portion of the purchase money until such parties attain their majority and duly execute the conveyance.

45. Liquidated damages are sometimes stipulated for, though very rarely in conditions of sale, by which each of the contracting parties binds himself to the other for the payment of a certain sum, to secure the due performance of his part of the contract; and whenever this is done, provided the clause is accurately worded, the entire sum specified may be recovered by action, without any power for the jury to reduce the amount, nor will a court of equity interpose for that purpose; but the clause must be so framed that no doubt can be raised upon its construction, whether a penalty is meant or a sum in liquidation of damages. If it can be construed as a penalty, the jury may assess the damages according to the actual damage sustained; but if a certain specified sum is agreed to be paid for liquidated damages, that precise sum is evidence for the jury, and they are bound to assess the damages accordingly, without reference to the actual injury sustained by the breach of the contract.

46. Payment of penalty or liquidated damages does not release the parties from the contract. They are still bound to carry it out, and have not the option, by paying or tendering the penalty, to be released from the performance.

47. The entire agreement should be reduced to writing, and nothing

AGREEMENTS FOR PURCHASE AND SALE.

left on the understanding that it will be carried into effect in the same manner as if embodied in the agreement. If the negotiation is carried on by *letters*, it should be so done that the terms proposed in the letters may be construed as *treaty only*, and not as an actual contract, until the whole terms are finally arranged and concluded. Without this *precaution*, a contract may be established through the medium of letters only, although the writer may not have so intended, but have looked for the execution of a more formal agreement. Some important terms, which ought to have formed part of the agreement, may not be contained in the letters, but that will make no difference.

FORMS.

48. AGREEMENT for the SALE of a FREEHOLD ESTATE.

ARTICLES OF AGREEMENT entered into this day of , 18 , between (*vendor*), of, &c., for himself, his heirs, executors, and administrators, of the one part, and (*purchaser*), of, &c., for himself, his heirs, executors, and administrators, of the other part.

(1.) The said (*vendor*) doth hereby agree with the said (*purchaser*) to sell to him the said (*purchaser*) the fee simple and inheritance, free from all incumbrances, of and in (*all*), &c. (*Here describe the property*.) And also that he, the said (*vendor*), will, at his own expence, within one calendar month from the date hereof, deliver an abstract of title of the said premises to the said (*purchaser*), or his solicitor, and deduce a good title thereto, subject to the conditions and stipulations hereinafter contained. And if the solicitor of the said (*purchaser*) shall approve of the said title, the said (*vendor*), or his heirs, and all necessary parties, will, on or before the day of next, on receiving from the said (*purchaser*), his heirs, executors, administrators, or assigns, the sum of £ , at the costs of the said (*purchaser*), his executors, administrators, or assigns, as hereinafter mentioned, execute a proper conveyance, and all other necessary assurances for effectually conveying and assuring the fee simple and inheritance of the said (*property*) and premises, with their appurtenances, unto the said (*purchaser*), his heirs, appointees, or assigns, free from all incumbrances, with the usual and proper covenants for title, freedom from incumbrances, and for further assurance.

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AGREEMENTS FOR PURCHASE AND SALE.

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(2.) In *consideration* whereof the said (*purchaser*) doth hereby agree with the said (*vendor*.) that he, the said (*purchaser*.) his executors or administrators, will, on or before the _____ day of _____ next, upon the execution and perfecting of such conveyance and assurances as aforesaid, pay unto the said (*vendor*.) his executors, administrators, or assigns, the said sum of \$ _____, the full purchase money of the said (*property*) and premises.

(3.) AND IT IS HEREBY MUTUALLY AGREED, by and between the said (*vendor*) and (*purchaser*.) that the expence of all disentailing deeds, of acknowledgments of married women, covenants for the production of title-deeds, [as also the conveyance, assignment, or surrender of any outstanding estate, term, or interest, and the obtaining of any probate or letters of administration, shall be borne by the said (*vendor*.)]

(4.) That recitals of descents, births, marriages, and deaths, pay-ments of monies, heirships, intestacies, devises, vestings of terms of years, and all other facts, of what nature or kind soever, contained in deeds or wills, twenty years old or upward, shall be deemed sufficient evidence of such facts respectively; and where any doubt or question shall exist or arise, on account of any property having been conveyed under a defective description, or any fences having been removed, or other evidence of seisin, or identity, or of boundaries, not afforded on the face of the deeds, an affidavit of undisturbed possession, or receipts of the rents for twenty years and upward, according to the title deduced, or of the identity of the premises, shall, in any case not especially provided for by this contract, be deemed sufficient evidence of evidence.

(5.) That the deed of conveyance of the said (*here describe the property*) and premises shall be prepared by the solicitor of, and at the expense of, the said (*purchaser*.) and such conveyance shall be settled and approved of, on the part of the said (*vendor*) and (*purchaser*.) by their respective counsel or solicitors, and each of them, the said (*vendor*) and (*purchaser*.) shall pay the respective costs of his own solicitor and counsel.

AND LASTLY, that, if the said (*vendor*) shall not deliver his abstract of title to the said (*purchaser*.) his heirs, or assigns, within the space of one calendar month from the date hereof, or shall not deduce a good marketable title to the said (*property*) and premises, and every part of the same, before the _____ day of _____ next, as the case may be, this present contract shall, at the option of the said (*purchaser*.) his heirs or assigns, be utterly void, to all intents and purposes whatsoever, and the jurisdiction of equity wholly barred; it being the true intent and meaning of the parties hereto, that, in the event aforesaid, the performance or execution of this agreement shall not be enforced against the said (*purchaser*) in any court of equity, notwithstanding any rule, if such rule there be,

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that time cannot be made of the essence of a contract, or any other rule or maxim whatsoever.

In witness whereof the said parties have hereunto set their hands, the day and year first above written.

SIGNED in presence of }
E. F. }

A. B.
C. D.

CLAUSES.

49. POWER for VENDOR to ANNUL the SALE in case the PURCHASER OBJECTS to the TITLE.

That, in case the purchaser shall object to the title, the vendor shall be at liberty to annul the sale on returning the deposit to the purchaser, without interest, and paying all reasonable expences incurred by the purchaser in respect of such contract.

50. ANOTHER FORM.

That, in case the purchaser or purchasers, or their, his, or her solicitor, shall object to the title in manner above provided, the vendor shall be at liberty, if he shall think fit, by notice in writing under his hand, to vacate the sale, and thereupon such sale shall be absolutely null and void, to all intents and purposes whatsoever; and the purchaser shall be repaid his deposit money, but without interest, and all reasonable expences sustained by him in respect of such sale; and each contracting party shall be placed in the same situation as if no agreement had ever been made, unless the purchaser shall, within fourteen days next after the receipt of such notice from the vendor, agree to accept the title unconditionally; and such right of the vendor to annul the sale as aforesaid shall not be considered as waived, or in any manner affected, by any negotiation as to such objection or requisition, or attempt to obviate such objection, or to comply with such requisition, or to remedy any defect that may be objected to.

51. DEFECT in the TITLE in PART of the LANDS shall not ANNUL the CONTRACT as to the REST.

That, if it should appear that a good title cannot be made to some of the lots, or to some part of the lands comprised in any lot

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CLAUSES IN AGREEMENTS FOR PURCHASE AND SALE.

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or lots, this shall not annul the sale in respect of any other lot or lots, or of the other part of any lot or lots, to some portion of which a good title cannot be made; but the contract shall be carried into effect as to the residue of the lots, or property comprised in such lot or lots, to some portion of which a good title cannot be made, and a proportionable reduction made in the purchase money, to be fixed by two referees, or their umpire, chosen as aforesaid, whose decision shall be final and conclusive on all parties.

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52. *That MISTAKE in the DESCRIPTION shall not ANNUL the SALE.*

The number of acres are believed to be correctly stated, but are not warranted to be so; but, should any error appear to have been made therein, to the prejudice of the purchaser, or any error in the description of the property, or of the vendor's interest therein, such error shall not annul the sale, but the purchaser shall accept such compensation as shall be fixed by the award of two referees, or their umpire, chosen as aforesaid.

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53. *PURCHASER to be at the EXPENSE of COMPARING the TITLE-DEEDS, &c.*

That the said (*purchaser*) shall be at the expense of comparing the title-deeds, wills, and evidences of title, whether of record or not, and whether in the possession of the said (*vendor*) or not, with the abstract; the said (*vendor*) engaging to furnish an abstract thereof, and to acquaint the said (*purchaser*) when and where such wills, or evidences of title on record, were proved and recorded, and with whom such title-deeds as are not in the custody of the said (*vendor*) are, and may be so compared; and that the expense of all attested or other copies of such deeds, wills, or other evidences of title, which the said (*purchaser*) shall require, shall be furnished him at his own costs.

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54. *If the PURCHASER is to be at the EXPENSE of getting in OUTSTANDING ESTATES.*

But the conveyance, assignment, or surrender of any outstanding estate, term, or interest, and the obtaining of any probate or letters of administration, or any document required for evidencing the title thereof, shall be prepared or obtained by the solicitor of the said (*vendor*), at the expense of the said (*purchaser*).

CLAUSES IN AGREEMENTS FOR PURCHASE AND SALE.

55. INCUMBRANCES to be DISCHARGED by the VENDOR PRIOR to the CONVEYANCE.

That all incumbrances to which the said premises, or any of them, may be subject, shall be discharged by and at the expense of the said (*vendor*), and the same premises effectually released therefrom previously to the conveyance to the said (*purchaser*;) which said release or discharge of incumbrances shall be effected by a separate and distinct assurance or assurances, and be prepared by the solicitor of, and at the expense of, the said (*vendor*), and be approved of by the solicitor of, and at the expense of, the said (*purchaser*;) but the expenses of such execution shall be borne by the said (*vendor*).

56. That PURCHASER shall be let into POSSESSION and RECEIPT of the RENTS and PROFITS.

That possession of the said premises shall be delivered to the said (*purchaser*) from the _____ day of _____, from which time he shall be entitled to receive the rents and profits thereof; all outgoings in respect of the same premises, up to the said _____ day of _____, to be discharged by the said (*vendor*).

57. UNDERTAKING by the VENDOR that his TENANTS shall deliver up PEACEABLE POSSESSION.

That the said (*vendor*) doth hereby undertake and agree with the said (*purchaser*.) that sufficient notices have been served upon the several tenants of the said premises to quit the possession thereof on the _____ day of _____ next; on which day such tenants shall and will be compelled to deliver up peaceable possession of the same premises accordingly.

58. That VENDOR will ASSIGN upon APPROVAL of TITLE and PAYMENT of REMAINDER of PURCHASE MONEY.

That if the purchaser's solicitor shall approve of the title, the vendor, and all necessary parties, will, on receiving the remainder of the purchase money, assign or otherwise effectually assure the said (*here give a short description of the property*.) unto the purchaser for all the residue of the said term, free from all incumbrances, excepting the rents, covenants, conditions, provisoes, stipu-

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CLAUSES IN AGREEMENTS FOR PURCHASE AND SALE.

...lations, and agreements, reserved and contained in the original lease of the said premises; the purchaser at his own expense to prepare and tender such assignment to the vendor and other parties for execution, but the expense of execution to be borne by the vendor.

59. The VENDOR to DISCHARGE all OUTGOINGS up to a CERTAIN PERIOD.

That the vendor will pay all rents, taxes, assessments, and all other outgoings for the said premises, up to the day of next.

60. PROVIDED that PAYMENT of INTEREST shall not give the PURCHASER any RIGHT of ENTRY.

But if the completion of the purchase shall be delayed, by any cause whatever, beyond the said day of , the respective purchasers in, Provided that this clause shall not be construed to respect of whose lots any such delay give to any purchaser a right of entry on any lot or lots shall occur, shall pay interest at until actual payment of his purchase money. the rate of for every by the year from that day.

61. If SUBJECT to a LEASE for LIVES.

Excepting a certain indenture of lease, bearing date the 29th day of September, 1811, whereby a certain portion of the said premises, called (insert a short description of the demised premises,) were demised by J. S., Esq., to A. B., yeoman, for the term of ninety-nine years, determinable on three lives, one of whom only is now living, at the yearly rent of , payable half-yearly, at and .

62. Where PROPERTY is SOLD SUBJECT to SEVERAL LEASES.

Excepting such leases, not exceeding the term of years, or any lesser term, as the said (vendor) may have already granted of the said premises, or of some part thereof, at the full improved rents, reserved to be made payable yearly, or more frequently, during the continuance of the estates granted by the same leases, respectively.

U. W. O. LAW

CLAUSES IN AGREEMENTS FOR PURCHASE AND SALE.

63. DISPUTES *are to be* REFERRED *to* ARBITRATION.

And it is hereby lastly agreed, that in case any dispute shall arise between the said parties thereto, relating to the sale of the said timber, or to the compensation to be made for injury or damage done in felling, cutting down, grubbing up, and carrying away the same, or any clause, matter, or thing herein contained, the same shall be finally determined by two indifferent persons, one to be chosen by each of the said parties; and if such two persons shall not agree, an umpire previously chosen by them shall decide, and his decision shall be conclusive on all parties; and in case either of the said parties shall neglect or fail to appoint a referee within seven days after request in writing by the other party, then the referee by the other party may proceed alone, and his award shall be conclusive on all parties.

64. CLAUSE *whereby the* PARTIES BIND THEMSELVES *in* LIQUIDATED DAMAGES *for* DUE PERFORMANCE *of the* AGREEMENT.

And for the due performance of the several agreements herein contained on, their respective parts, each of them the said parties hereto bindeth himself, his heirs, executors, and administrators, to the other of them, his executors, administrators, and assigns, in the sum of \$ _____, by way of liquidated damages, and not by way of penalty.

65. *The* VENDOR *to* CONVEY *the* PREMISES *on* PAYMENT *of* PURCHASE MONEY.

That, upon payment of the purchase money at the time herein before appointed, the vendor and all necessary parties will convey the premises to the purchaser; the purchaser at his own expense to prepare and tender the conveyance to the vendor, and other necessary parties for execution; but the expenses of the execution to be borne by the vendor.

66. STIPULATION *that the* PURCHASER *of the* LARGEST AMOUNT *in* VALUE *shall have the* TITLE-DEEDS.

That the purchaser of the largest amount in value shall be entitled to the title-deeds, which are to be delivered over to him on the completion of the purchase, upon his entering into the usual covenant for their production; but any purchaser, upon the completion of his

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CLAUSES IN AGREEMENTS FOR PURCHASE AND SALE.

purchase, shall be entitled, at his own expense, to attested copies of all or any of such deeds, but no part of such expense is to be borne by the vendor.

67. *The VENDOR to RETAIN TITLE-DEEDS upon ENTERING into COVENANT for their PRODUCTION.*

That such of the title-deeds, writings, and muniments of title, relating to the said premises, as shall relate also to other property of the vendor of equal or greater value, shall be retained by him, on his entering into the usual covenant to be prepared, at his own expense, to produce the original; but such covenant shall become void, if the vendor shall afterward sell the premises retained by him, or any portion of the same, and deliver the said deeds, writings, and muniments of title to the purchaser thereof, and procure such purchase to enter into the same or the like covenants.

68. *AGREEMENT for SALE of LAND.—VENDEE to ENTER.—IMPEACHMENT of WASTE.—TIME of the ESSENCE.*

ARTICLES OF AGREEMENT, made this day of , in the year of our Lord one thousand eight hundred and , between A. B., of , of the first part, and C. D., of , of the second part.

Whereas the said part of the first part ha agreed to sell to the part of the second part, and the part of the second part ha agreed to purchase of and from the said part of the first part, ALL AND SINGULAR, th certain tract or parcel of land, being composed of , together with all the privileges and appurtenances thereto belonging, for the price or sum of , payable in manner and on the days and times hereinafter mentioned, that is to say: (*Here state the times of payment.*)

NOW IT IS HEREBY AGREED between the parties aforesaid in manner following, that is to say: The said part of the second part, for sel , heirs, executors, and administrators, do covenant, promise, and agree, to and with the said part of the first part, heirs, executors, administrators, and assigns, that he or they shall and will pay, or cause to be paid, to the said part of the first part, heirs, executors, administrators, or assigns, the said sum of money, together with the interest thereon, on the days and times and in manner above mentioned; and also will pay and discharge all taxes, rates, and assessments wherewith the said land may be rated or charged, from and after this date. In consideration whereof, and on payment of the said sum of money, with interest as aforesaid, in manner aforesaid, the said part of

AGREEMENTS.—SALE BY WAY OF LEASE.

the first part do, for self, heirs, executors, administrators, and assigns, covenant, promise, and agree, to and with the said part of the second part, heirs, executors, administrators, or assigns, to convey and assure, or cause to be conveyed and assured, to the said part of the second part, heirs and assigns, by a good and sufficient deed, in fee simple, with the usual covenants of warranty, the said piece or parcel of land, with the appurtenances, freed and discharged from all incumbrances, and will suffer and permit the said part of the second part, heirs and assigns, to occupy and enjoy the same, until default be made in the payment of the said sum of money, or any part thereof, on the days and times and in manner above mentioned; *subject*, nevertheless, to impeachment for voluntary or permissive waste. AND it is expressly understood that *time* is to be considered of the essence of this agreement, and that, unless the payments are punctually made, the said part of the first part, his heirs or assigns, shall be at liberty to resell the said land.

IN WITNESS WHEREOF, the said parties have hereto set their hands and seals, the day and year first above mentioned.

SIGNED and SEALED
in presence of

A. B. [SEAL]
C. D. [SEAL]

69. *Clause which may be inserted after the last clause in 68.*

AND ALSO THAT, in case of default in payment of any part of the said purchase money or interest, as above provided, for three months after the same shall become due, the whole amount of the said purchase money shall thereupon become due and payable, and be recoverable by the said party of the first part, his executors, administrators, and assigns.

70. PENAL CLAUSE.

AND for the due performance of this agreement, the said parties bind themselves, each to the other, in the penal sum of

71. AGREEMENT for SALE by way of LEASE, reserving PURCHASE MONEY as RENT.

Re-entry on Default.—Power of Sale.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , between A. B., of , and C. D., of

WHEREAS, the said C. D. hath contracted with the said A. B. for the purchase of the absolute inheritance in fee simple, of and

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AGREEMENTS.—SALE BY WAY OF LEASE.

IN ALL AND SINGULAR, the land, tenements, hereditaments, and premises herein after mentioned to be hereby demised, for the sum of _____, to be paid on the days and times and in manner following, that is to say: _____ AND WHEREAS the said parties are willing and desirous that the said C. D. shall go into the immediate possession and occupation of the said premises, and receive a conveyance of the fee simple and inheritance thereof, so soon as the said principal sum shall be fully paid and satisfied on the days and times and in manner aforesaid, (all and singular other the covenants and agreements herein after contained, on the part and behalf of the said C. D., his executors, administrators, and assigns, having been well and truly paid, performed, fulfilled, and kept,) and that in the meantime the lawful interest on the said principal sum should be reserved and paid as rent issuing out of the said land, tenements, hereditaments, and premises hereby demised:—

NOW THEREFORE THIS INDENTURE WITNESSETH, that in consideration of the premises, and of the rents, covenants, and agreements herein after reserved and contained, and which, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, are to be paid, done, and performed, he, the said A. B., Dorn by these presents demise, lease, set, and to firm let, unto the said C. D., his executors, administrators, and assigns, ALL AND SINGULAR, (*description*) with the appurtenances thereunto belonging, or in any wise appertaining.

To hold the said premises, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, for and during and unto the full end and term of _____ years from thence next ensuing, and fully to be completed and ended. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown, YIELDING AND PAYING therefor, yearly and every year during the said term, unto the said A. B., his heirs, executors, administrators, and assigns, the yearly rent or sum of _____, of lawful money of Canada, in even and equal yearly payments, on the _____ day of _____, and _____ day of _____, in each and every year during the said term, without any deduction, defalcation, or abatement whatsoever; the first payment of the said rent hereby reserved to be made on the _____ day of _____, one thousand eight hundred and _____.

PROVIDED ALWAYS, NEVERTHELESS, that on payment of any installment or installments of the said principal sum, according to the covenant herein after contained for payment thereof, the said rent hereby reserved shall from thenceforth be proportionably reduced, so as at no time to exceed the annual interest of _____ per cent. on such part of the said principal sum as shall from time to time remain due and owing

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AGREEMENTS.—SALE BY WAY OF LEASE.

after the payment of such installment or installments respectively:

AND PROVIDED ALWAYS ALSO that, if the said yearly rent, or the said principal sum of money, or any part of either respectively, shall at any time or times hereafter be unpaid by the space of thirty days next after any of the days on which the same ought to be paid, as hereby provided; Or if the said C. D., his executors, administrators, or assigns, or any of them, shall at any time assign, set over, demise, or underlease the said demised premises, or any part thereof, or in any other manner part with the possession of the same, to any person or persons whomsoever, for all or any part of the said demised term, without the special license or consent of the said party of the first part, his heirs or assigns, first had in writing under his hand and seal; Or if the said C. D., or any one acting under or claiming from him, shall at any time during the continuance of these presents commit or suffer to be committed any waste or destruction to any of the timber upon the said land, for any other purpose whatsoever than bringing the land into cultivation; THEN, and in any and every of the said cases, it shall be lawful for the said A. B., his heirs or assigns, into the said demised premises, or any part thereof, in the name of the whole to re-enter, and out of the same to eject the said C. D., his executors, administrators, and assigns, and the same to have again, repossess, and enjoy, as in his and their first and former estate; and from the time of any such re-entry by the said A. B., his heirs or assigns the said term hereby demised, or so much thereof as shall be then unexpired, and these presents, and every clause, matter, and thing herein contained, shall cease and determine, and forever thereafter be null and void, to all intents and purposes whatsoever.

AND the said C. D. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, THAT he, the said C. D., his heirs, executors, administrators, and assigns, or some of them, will pay or cause to be paid unto the said party of the first part, his heirs, executors, administrators, or assigns, the said yearly rent, on the days and times and in manner herein before mentioned for payment thereof.

AND ALSO THAT HE, the said C. D., his heirs, executors, administrators, or assigns, or some of them, will, during the said term hereby demised, pay, do, and perform all taxes, rates, levies, charges, rents, assessments, statute labor, or other imposition whatever, lawfully charged or to be charged, whether the same be now due or shall hereafter become due, on the said demised premises, on the said rent, or on the said principal sum of money, or on any part thereof, or on any person or persons in respect thereof, or of any part thereof;

AND ALSO THAT HE, the said C. D., his executors, administrators, or assigns, or any of them, shall not nor will, at any time or times during the said term hereby demised, assign or set over, underlet or under-

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AGREEMENTS.—SALE BY WAY OF LEASE.

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lease the said demised premises, or any part thereof, or in any other manner part with the possession of the same, or any part thereof, during any part of the said demised term, without such special license and consent as is herein before specified;

AND ALSO THAT HE, the said C. D., or any one acting under or claiming from him, shall not, at any time during the continuance of these presents, commit, or suffer to be committed, any waste or destruction to any of the timber upon the same land, for any other purpose than bringing the land into cultivation;

AND ALSO THAT HE, the said C. D., his heirs, executors, administrators, or assigns, or some of them, will well and truly pay, or cause to be paid, unto the said A. B., his heirs, executors, administrators, or assigns, the sum of _____, on the days and times and in manner particularly herein before mentioned.

AND the said A. B., born hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his executors, administrators, and assigns, THAT, upon the due and faithful payment, performance, and fulfillment, by the said C. D., his executors, administrators, or assigns, of all and singular the covenants and agreements herein contained, and which, on the part and behalf of the said C. D., his executors, administrators, and assigns, are to be paid, done, and performed, he, the said A. B., his heirs or assigns, will, at the expiration or other sooner determination of the said term hereby demised, upon and at the request of the said C. D., his executors, administrators, or assigns, but at the proper costs and charges of the said C. D., his executors, administrators, or assigns, well and sufficiently convey and assure, or cause to be well and sufficiently conveyed and assured, unto the said C. D. and his heirs, in fee simple absolute, or to such person or persons, his, her, or their heirs, as the said party of the second part, his executors, administrators, or assigns, shall nominate and appoint, and to such uses as he or they shall direct, *all and singular* the said premises hereby demised, FREE, and discharged of and from all *dower*, right, or claim of *dower*, whether then already vested or as yet inchoate, and of and from all other incumbrances whatsoever, and with the usual covenants of warranty against the grantor or grantors, and all persons lawfully claiming by, through, or under him, her, them, or any of them. For good title free from incumbrances, For right to convey, and For quiet enjoyment, AND for further assurance: Bt that the said A. B., his heirs or assigns, shall not be bound to give copies of any of the title-deeds, documents, or muniments, pertaining to or connected with the said land and premises, or to covenant for the production of the said title-deeds, documents, or muniments, or any of them. (*Instead of the covenant for re-entry may be inserted a power of sale on default, or both may stand together, and then may follow:*)

U. W. O. LAW

AGREEMENTS.—LIQUIDATED DAMAGES.

AND it is also expressly agreed, between the said parties hereto, that the said C. D., or those claiming by or under him, shall be answerable to the said A. B., his heirs or assigns, for any deficiency which may happen to be produced by such resale between the sum then due and to become due, under these presents, to the said A. B., his heirs or assigns, and the proceeds of such resale;

AND it is further agreed that the receipt of the said A. B., his heirs, executors, administrators, or assigns, shall be a full acquittance to the purchaser or purchasers at such resale, and that they shall in no manner be accountable to the said C. D., or any one claiming by, through, or under him, for or in respect of any thing whatsoever connected with the said land.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED

by the said A. B.,
in the presence of
E. F.

A. B. [SEAL.]

SIGNED, SEALED, AND DELIVERED

by the said C. D.,
in the presence of
G. H.

C. D. [SEAL.]

72. GENERAL FORM of AGREEMENT, with FIXED DAMAGES
in CASE of BREACH.

THIS AGREEMENT, made the _____ day of _____, one thousand eight hundred and _____, by and between A. B., of the _____ of _____, in the county of _____, (state occupation) of the first part, and C. D., of _____, (state occupation,) of the second part, witnesseth:

(1.) The said C. D. covenants and agrees, with the party of the first part, to (state the subject-matter of the agreement.)

(2.) AND the said A. B. covenants and agrees to pay unto the said C. D., for the same, the sum of _____ dollars of lawful money of the Province of Canada, as follows: the sum of _____ dollars on the day of _____, 18____, and the sum of _____ dollars on the day of _____, 18____, with interest at the rate of _____ per cent. on the whole amount outstanding, and at the time of each payment.

(3.) AND for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the penal sum of _____ dollars, as liquidated damages, and not by way of penalty, to be paid by the failing party.

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AGREEMENTS.

IN WITNESS WHEREOF, 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 }
 G. H. } A. B. [SEAL.]
 C. D. [SEAL.]

73. AGREEMENT for the SALE and PURCHASE of PERSONAL PROPERTY.

THIS AGREEMENT, by and between A. B., of the _____ of _____, and C. D., of the _____ of _____, made the _____ day of _____, &c., witnesseth:—

(1.) THAT the said C. D., for the consideration herein after contained, and to be performed by the said A. B., hereby agrees to deliver to the said A. B., at his warehouse [or shop,] in the _____ of _____, three hundred bushels of wheat, [or two hundred barrels of pork, as the case may be,] of good merchantable quality, on or before the _____ day of _____, 18 _____.

(2.) AND the said A. B., in consideration thereof, hereby agrees to pay to the said C. D. the sum of one dollar for each and every bushel of the said wheat, [or barrels of pork,] immediately upon the completion of the delivery thereof.

SIGNED in presence of }
 E. F. } A. B.
 C. D.

74. AGREEMENT for BUILDING a HOUSE.

THIS AGREEMENT for building, made the _____ day of _____, one thousand eight hundred and _____, by and between A. B., of _____, (state occupation,) of the first part, and C. D., of _____, (state occupation,) of the second part, witnesseth:—

(1.) THAT the said C. D. covenants and agrees with the said A. B., to make, erect, build, and finish, in a good, substantial, and workmanlike manner, on the vacant lot of the said A. B., situate in _____ street, in the _____ of _____, a dwelling-house, agreeably to the draft, plan, and specification hereunto annexed, of good substantial materials, (if the materials are to be furnished by A. B., say: of such materials as the said A. B. shall find or provide for the same,) by the _____ day of _____ next.

(2.) AND the said A. B. covenants and agrees to pay unto the said C. D., for the same, the sum of _____ dollars, lawful money of Canada, as follows: the sum of _____ dollars in thirty days from the date hereof, and the remaining sum of _____ dollars when the

AGREEMENTS.

said dwelling-house shall be completely finished. (*If necessary, add: And also that he will furnish and procure the necessary materials for the said work, in such reasonable quantities, and at such reasonable time or times, as the said C. D. shall require.*)

(3.) AND, for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the penal sum of dollars, as liquidated damages, and not by way of penalty, to be paid by the failing party.

IN WITNESS, &c., (*as in n. 72.*)

75. AGREEMENT for REBUILDING MILLS.

THIS AGREEMENT, made the _____ day of, &c., between A. B., of _____, (*state occupation.*) of the first part, and C. D., of _____, (*state occupation.*) of the second part, witnesseth:—

(1.) THAT the said A. B., for the consideration herein after mentioned, doth covenant and agree with the said C. D., that he will, on or before the _____ day of _____ next, well and sufficiently rebuild, or cause to be rebuilt, the mills of the said C. D., situate in the _____ in the _____ of _____, with such materials (*if the workmen are employed by C. D., insert: and workmen to be employed under him,*) as the said C. D. shall find and provide for the same; AND THAT he, the said A. B., will not absent himself, nor depart from the work and rebuilding aforesaid, without leave of the said C. D.; AND THAT, if he should absent himself without leave, he will pay to the said C. D. the sum of _____ dollars for every day of such absence, to be stopped and deducted from the wages becoming due to the said A. B., as herein after provided.

(2.) AND the said C. D., in consideration of the premises, doth covenant and agree, with the said A. B., to pay to the said A. B. the sum of _____ dollars, [*or for all such time as he shall be employed in the work of rebuilding aforesaid, weekly and every week, the sum of _____ dollars, and so in proportion for a less time than a week; and, in addition thereto, the sum of _____ dollars on the completion of the work and rebuilding aforesaid.*]

IN WITNESS, &c., (*as in n. 72.*)

76. AGREEMENT for the PURCHASE of LEASEHOLD PROPERTY.

ARTICLES OF AGREEMENT, entered into this _____ day of _____, 18 _____, between (*vendor*) of, &c., for himself, his executors, and

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AGREEMENTS.

administrators, of the one part, and (*purchaser*) of, &c., for himself, his executors and administrators, of the other part.

(1.) The said (*vendor*), in consideration of the sum of \$ _____ doth hereby agree with the said (*purchaser*), to sell to him, the said (*purchaser*), all his, the said (*vendor's*) estate, term and interest of, and in ALL, (*here describe the property*), for the residue of an absolute term of ninety-nine years from the _____ day of _____, 18 _____, granted and created by a certain indenture dated on that day, and made between (*lessor*) of the one part and (*lessee*) of the other part, subject to the rents, covenants, conditions, provisoes, stipulations, and agreements, therein contained, on the part of the lessee, to be paid, observed, and performed.

(2.) AND ALSO that the said (*vendor*) will, at his own expense, within one calendar month from the date hereof, deliver unto the said (*purchaser*), or his solicitor, an abstract of the said indenture of lease, and all subsequent deeds and writings relating to the title of the said premises; but the said (*vendor*) shall not be required to produce his lessor's title, nor to furnish any abstract thereof, nor any other evidence of title to the said premises, anterior to the said indenture of the _____ day of _____, whereby the said term was granted or created.

(3.) AND, if the solicitor of the said (*purchaser*) shall approve of the title, the said (*vendor*) will, on receiving the said purchase money, and with the concurrence of all necessary parties, and at the costs of the said (*purchaser*), assign or otherwise effectually assure the said (*property*) unto the said (*purchaser*), or as he shall appoint, for all the residue of the said term, free from all incumbrances, except the rents, covenants, conditions, provisoes, stipulations, and agreements, so as aforesaid reserved and contained in the original lease of the said premises.

(4.) That the said (*vendor*) will pay, satisfy, and discharge all rents, taxes, assessments, and all other outgoings, for the said premises, up to the _____ day of _____ next.

(5.) And the said (*purchaser*) hereby agrees to pay the sum of \$ _____, and also will, in the said deed or assignment to him, if thereunto required by the said (*vendor*), enter into a covenant thenceforth to pay the rent, and perform the covenants reserved and contained in the said indenture of lease, and to indemnify the said (*vendor*) therefrom.

(6.) And also shall and will, if thereunto required by the said (*vendor*), execute a duplicate or counterpart of the said deed or covenant or a bond, in a sufficient penalty, for payment and performance of the said rents, covenants, conditions, provisoes, stipulations, and agreements; the same duplicate or counterpart, cove-

U. W. O. LAW

AGREEMENTS.

nant or bond, to be prepared by and at the expense of the said (vendor.)

AS WITNESS OUR HANDS, } A. B. (Vendor.)
 WITNESS: } C. D. (Purchaser.)

77. AGREEMENT to sell STOCK in a GROCER'S SHOP.

Liquidated Damages.

THIS AGREEMENT, made the _____ day of _____, in the year 1845, between A. B., of _____, (state occupation,) and C. D., of _____, (state occupation,) witnesseth:—

THAT the said A. B., for the consideration herein after mentioned, agrees to sell to the said C. D., and the said C. D. agrees to buy of the said A. B., all the stock of goods and groceries, wares and merchandise, belonging to the said A. B., and now being in the shop occupied by him, at the corner of _____ street, in the village of _____, together with the furniture and fixtures thereunto appertaining, and also all the oats, hams, cheese, potatoes, and produce, of every name and nature, bought or contracted for by the said A. B., and intended for sale in the said shop.

The said stock of goods and groceries, wares and merchandise, are to be charged to the said C. D., at the original cost, without including transportation expenses; and deduction is to be made for any depreciation in value, on account of damage, wear, or tear: the furniture and fixtures are to be charged their fair cash value; and, if the parties hereto cannot agree as to such valuation, and as to such deduction as aforesaid, the same shall be determined by the appraisal of E. F., G. H., and I. J., of _____, aforesaid, or a majority of them. The oats, hams, cheese, potatoes, and produce are to be charged their original cost. An inventory is to be completed by the said A. B., within ten days from the date hereof, and the property above specified delivered over to the said C. D. immediately thereupon.

IN CONSIDERATION of the premises, the said C. D. agrees to execute and deliver to the said A. B., as and for the purchase money of the above mentioned property, and in full payment therefor, his promissory note or notes, in such several sums as the said A. B. shall direct, payable at six months after date, at the _____ Bank, with interest. (If necessary, add: and indorsed by L. M., of _____, aforesaid.)

AND the said A. B. further covenants and agrees, with the said C. D., that he will not, at any time hereafter, engage, directly or indirectly, or concern himself, in carrying on or conducting the grocery business, either as principal or agent, within one mile of the premises now occupied by him as aforesaid for such purpose.

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AGREEMENTS.

AND it is expressly understood that the stipulations aforesaid are to apply to, and to bind, the heirs, executors, and administrators of the respective parties; and, in case of failure, the parties bind themselves, each unto the other, in the sum of _____ dollars, as liquidated damages, to be paid by the failing party.

SIGNED, &c., (as in n. 73.)

78. AGREEMENT to CULTIVATE LAND on SHARES.

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____, and C. D., of _____, witnesseth:—

(1.) THAT the said A. B. agrees that he will break up, properly fit, and sow with wheat, all that field belonging to the said C. D., lying immediately north of the dwelling-house and garden of the said C. D., in the town of _____, aforesaid, and containing twenty acres or thereabouts, on or before the twenty-fifth day of September next;

(2.) THAT, when the said crop, to be sown as aforesaid, shall be in fit condition, he will cut, harvest, and safely house it in the barn or barns of the said C. D.; AND THAT he will properly thresh and clean the same, and deliver one-half of the wheat, being the produce thereof, to the said C. D., at the granary near his dwelling-house, as aforesaid, on or before the _____ day of _____, in the year 18 _____.

(3.) IT IS UNDERSTOOD between the parties, that one-half of the seed-wheat is to be found by the said C. D.; THAT the said A. B. is to perform all the work and labor necessary in the premises, or cause it to be done; AND THAT the straw is to be equally divided between the parties, within ten days after the crop of wheat shall have been threshed, as aforesaid.

SIGNED, &c., (as in n. 73.)

79. AGREEMENT to SELL the COPYRIGHT in a BOOK.

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____, and C. D., of _____, bookseller and publisher, witnesseth:—

THAT the said A. B. agrees to sell, and does hereby sell, to the said C. D., all his copyright, title, interest, and property in and to a certain book, written and compiled by the said A. B., entitled (*give the title of the book at length.*) and entered and copyright secured by the said A. B., according to act of parliament, on the _____ day of _____, in the year _____.

AND the said A. B. also agrees to prepare and furnish a fair copy of the said work to the printer, to be employed by the said C. D., and to superintend the printing, and correct the proof there-

AGREEMENTS.

of; PROVIDED, HOWEVER, that it shall be printed in the of _____, aforesaid.

IN CONSIDERATION WHEREOF, the said C. D. agrees to pay unto the said A. B. the sum of _____ dollars, on the _____ day of _____ next.

IT IS UNDERSTOOD between the aforesaid parties that the first edition of the work, to be printed as aforesaid, shall not exceed _____ copies; AND THAT, if the said C. D. shall, at any future time, determine to publish another edition of the said work, he shall pay to the said A. B., in addition to the sum agreed to be paid, as aforesaid, the sum of _____ dollars for each and every subsequent edition, not exceeding _____ copies of the same, to be due and payable immediately upon the issue thereof.

IN WITNESS, &c., (*as in n. 72.*)

80. AGREEMENT to SELL and ASSIGN BOND and MORTGAGE.

WHEREAS A. B., of the town of _____, in the county of _____ and Province of Canada, and M., his wife, on the first day of May, one thousand eight hundred and _____, did execute a certain indenture of mortgage, and a bond bearing even date therewith, to C. D., of the town of _____, in the county of _____, which said mortgage, and the bond accompanying the same, were executed for the purpose of securing the payment of the sum of _____ dollars, in _____ years from the day of _____ (then) instant, with interest half-yearly, from the last day aforesaid; and which said mortgage was recorded in the office of the Registrar of the county of _____, on the day of _____, by memorial number _____;

NOW THEREFORE, this agreement, made between C. D., aforesaid, of the first part, and E. F., of the town of _____, and county of _____, witnesseth: THAT the said C. D., for the considerations herein after mentioned, doth covenant and agree, with the said E. F., to sell, transfer, assign, and set over unto the said E. F., the indenture of mortgage above described, and the bond accompanying the same, whenever the payments herein after mentioned, to be made by the said E. F. to the said C. D., shall be fully made and completed: TOGETHER with power for the said C. D., his executors, administrators, and assigns, to sue and give receipts for the said principal money, and all interest due and to accrue due thereon, in the name of the said A. B., his executors and administrators.

To HOLD the said bond and mortgage, and all the moneys due or to become due thereon, and all the estate and interest conveyed by the said mortgage, in and to the lands therein described, unto the said E. F., his heirs, executors, administrators, and assigns, respectively, from the time of the completion of such sale, transfer, and assignment, as aforesaid.

AND the said E. F. shall pay unto the said A. B. the sum of _____ dollars, with interest, [_____ thousand _____ hundred _____ dollars and _____ cents] on the day of _____ next.

AND the said E. F. shall pay unto the said A. B. the sum of _____ dollars, with interest, [_____ thousand _____ hundred _____ dollars and _____ cents] on the day of _____ next.

AND the said E. F. shall pay unto the said A. B. the sum of _____ dollars, with interest, [_____ thousand _____ hundred _____ dollars and _____ cents] on the day of _____ next.

AND the said E. F. shall pay unto the said A. B. the sum of _____ dollars, with interest, [_____ thousand _____ hundred _____ dollars and _____ cents] on the day of _____ next.

AND ALSO the said E. F. shall pay unto the said A. B. the sum of _____ dollars, with interest, [_____ thousand _____ hundred _____ dollars and _____ cents] on the day of _____ next.

IN WITNESS whereof, the said E. F. has hereunto set his hand and seal, this _____ day of _____, 18____.

SIGNED,

81. AGREEMENT

THIS AGREEMENT made between the said E. F., of the town of _____, and county of _____, and the said A. B., of the town of _____, and county of _____, witnesseth: THAT the said E. F., for the considerations herein after mentioned, doth covenant and agree, with the said A. B., to sell, transfer, assign, and set over unto the said A. B., the indenture of mortgage above described, and the bond accompanying the same, whenever the payments herein after mentioned, to be made by the said A. B. to the said E. F., shall be fully made and completed: TOGETHER with power for the said E. F., his executors, administrators, and assigns, to sue and give receipts for the said principal money, and all interest due and to accrue due thereon, in the name of the said C. D., his executors and administrators.

To HOLD the said bond and mortgage, and all the moneys due or to become due thereon, and all the estate and interest conveyed by the said mortgage, in and to the lands therein described, unto the said E. F., his heirs, executors, administrators, and assigns, respectively, from the time of the completion of such sale, transfer, and assignment, as aforesaid.

IN WITNESS whereof, the said E. F. has hereunto set his hand and seal, this _____ day of _____, 18____.

SIGNED,

AGREEMENTS.

the said A. B., for each and every share of such stock, the average cash market price of the same, for and during twenty days preceding the _____ day of _____, aforesaid, to be determined by the sales made at the board of brokers in the city of Montreal, (or otherwise, according to the terms of the agreement.)

IN WITNESS, &c., (as in n. 80.)

82. AGREEMENT to FREIGHT SLOOP or BOAT.

THIS AGREEMENT, made the _____ day of _____, between John Lawrence, Edward Simmonds, and Thomas Ray, trading under the name, style, and firm of Lawrence, Simmonds & Co., and herein after so designated, factors and commission merchants of the city of _____, of the first part, and C. D., owner and master of the sloop [or boat] Empire, of the second part, witnesseth:—

THAT the said Lawrence, Simmonds & Co. hereby covenant with the said C. D., that they will lade and freight the aforesaid sloop [or boat] Empire, for and during the ensuing season of navigation, to commence on the _____ day of _____ instant, where the said sloop [or boat] is to be in readiness to receive her first lading, at the dock of the said Lawrence, Simmonds & Co., [or at Pier No. _____] in the city of _____, aforesaid, as well on her upward trips from the said city of _____ to the city of _____, and the intermediate ports, as on her return trips from _____ to _____; AND THAT they will pay to the said C. D. for carrying the same, on the delivery of each and every cargo in a safe and sound condition, as herein after mentioned, at and after the following rates of compensation, viz.:—

FOR UP FREIGHT.

Salt,	—	cents per bushel.
Merchandise,	—	do. hundred.
Household Furniture,	—	do. do.
Coal,	—	dollars per ton.
&c., &c.		

FOR DOWN FREIGHT.

Flour,	—	cents per barrel.
Pork,	—	do. do.
Hay,	—	dollars per ton.
Wheat and Corn,	—	cents per bushel.
Butter,	—	do. do. firkin.
Staves and Heading,	—	do. thousand.
&c., &c.		

AND the said C. D., in consideration of the premises, hereby covenants, with the said Lawrence, Simmonds & Co., that he will

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AGREEMENTS.

safely carry all such lading and freight as he may or shall receive from the said Lawrence, Simmonds & Co., and deliver the same in as good and sound condition as when so received, according to the respective bills of lading to be furnished to him by the said Lawrence, Simmonds & Co., or their agents; THAT he will pay all costs and charges of transportation, including towage and wharfage, (*insert toll, if necessary;*) THAT he will regularly ply between _____ and _____, and the intermediate ports, with his sloop [or boat] as aforesaid, during the entire season of navigation above mentioned; AND THAT he will not occupy more than _____ days, unless hindered or delayed by some unavoidable accident, in making either an upward or downward trip.

IT IS ALSO FURTHER UNDERSTOOD AND AGREED, between the parties, that all lading and freight shall be delivered to the said C. D., at his sloop, [or boat,] and that he shall discharge the same, on the dock, at his own cost and charge; THAT the said Lawrence, Simmonds & Co. shall not, at any time, require the said C. D. to carry or convey, on his sloop, [or boat,] any timber, or lumber, [staves and heading excepted,] any carts, cars, or vehicles, of any description whatever; or any horses, mules, cattle, swine, or animals of any name or nature; and that all the aforesaid conditions and stipulations shall be binding upon the heirs, executors, administrators, and survivors of the respective parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their names, the day and year above written.

In presence of }

L. S. & Co.
C. D.

83. AGREEMENT respecting PARTY WALL.

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____, and C. D., of _____, witnesseth:—

THAT, WHEREAS the said A. B. is the owner of the lot and shop known as number _____, on the south side of King street, in the city of Toronto; and the said C. D. is the owner of the lot adjoining the same, on the east side thereof, on which last mentioned lot the said C. D. is about to erect a building:—

NOW, THEREFORE, the said A. B., in consideration of the sum of _____ dollars, to him in hand paid, the receipt whereof is hereby acknowledged, doth, for himself, his heirs, executors, administrators, and assigns, covenant, grant, promise, and agree, to and with the said C. D., his heirs, executors, administrators, and assigns, that he, the said C. D., his heirs and assigns, shall and may, in the erection of the premises about to be built, as aforesaid, freely and lawfully, but in a workmanlike manner, make use of the easterly

AGREEMENTS.

gable-end wall of the said A. B., or so much thereof as the said C. D., his heirs or assigns, may desire, as a party wall, to be continued and used as such forever.

AND the said A. B. and C. D. do hereby mutually covenant and agree, for and with themselves and their respective heirs and assigns, that, if it shall hereafter become necessary to repair or rebuild the whole or any portion of the said party wall, the expense of such repairing or rebuilding shall be borne equally by the said A. B. and C. D., their respective heirs and assigns, as to so much and such portion of the said wall as the said C. D., his heirs and assigns shall or may use for the purposes aforesaid; AND THAT, whenever the said party wall, or any portion thereof, shall be rebuilt, it shall be erected on the same spot where it now stands, and be of the same size, and the same or similar materials, and of like quality, with the present wall.

AND FURTHER, it is mutually understood and agreed, between the aforesaid parties, that this agreement shall be perpetual, and at all times be construed into a *covenant running with the land*; and that no part of the fee of the soil upon which the wall of the said A. B., above described, now stands, shall pass to, or be vested in, the said C. D., his heirs and assigns, in or by these presents.

IN WITNESS, &c., (*as in n. 80.*)

84. CONTRACT *with BUILDERS for the ERECTION of TWO DWELLING-HOUSES.*

AGREEMENT made this _____ day of _____, between A. B., of, &c., and C. D., of, &c., of the one part, and E. F., of, &c., of the other part, as follows:—

(1.) The said A. B. and C. D., shall, in consideration of \$ _____, to be paid to them by the said E. F., as herein after mentioned, forthwith, at their own cost, build and complete, fit for a tenant's occupation, upon the piece of ground described in the first schedule hereto, two dwelling-houses, with the out-buildings, fencing, and other works appearing by the elevation plans and specification, signed by the said A. B. and C. D., and annexed as the second schedule hereto; such buildings to be pursuant to the elevation, plans, and specification aforesaid, and to be in all respects to the satisfaction of X. Y., the surveyor of the said E. F.

(2.) The said A. B. and C. D. shall, at their own cost, make good all damage to adjoining property consequent upon such building as aforesaid, and cart away all rubbish and superfluous earth; AND shall, at the like cost, keep the said buildings (until possession thereof is delivered to the said E. F.,) insured against fire, in § _____

AGREEMENTS.

in the office, and deliver the policy and receipt for the current premium thereon to the said E. F.; the moneys recovered under such insurance being applied in reinstating the premises under the direction of the said X. Y., and the said A. B. and C. D. making good any deficiency.

(3.) The said dwelling-houses shall be covered in by the day of , and the whole of the buildings completed by the day of ; the said E. F. being entitled to receive, as liquidated damages, (and retain in the first instance, out of any moneys payable by him, under this agreement,) \$ for every week, after the said day of , during which the said buildings shall continue incomplete, or unfit in any respect for a tenant's occupation, and also \$ for every week, after the said day of and up to the said day of , during which either of the said dwelling-houses shall continue not covered in.

(4.) The said X. Y. may require the said A. B. and C. D. to dismiss workmen, to replace materials with others of a better quality, and to employ additional workmen and material. In event of their omitting to do so for days after his written requisition to that effect, he may, in his option, either hire any additional workmen, [and purchase any additional or other materials,] or discharge the said A. B. and C. D., and employ any other person or persons to complete the said buildings; the expenses under this clause being retained by the said E. F., out of any moneys payable by him under this agreement: *Provided*, (1.) That, in the event of the discharge of the said A. B. and C. D., by virtue of this clause, any balance due to them under this agreement shall not be deemed payable until the end of one calendar month after completion of the buildings, or the expiration of six calendar months from such discharge, whichever shall first happen; (2.) That all material brought upon the ground, and not disapproved of by the said X. Y., shall be deemed the property of the said E. F., and be used in the said buildings.

(5.) The said E. F. shall pay to the said A. B. and C. D. the said sum of \$ [without interest,] by installments of \$ each, for every \$ of work which the said X. Y. shall certify to have been executed under this agreement, such installments to be payable within one week from the date of every such certificate.

(6.) The said A. B. and C. D. shall execute the said works with such variations as the said E. F. shall in writing require, the charges for the same being referred to the said X. Y., whose decision thereon shall conclude all parties hereto: *Provided*, (1.) That no day-work shall be included in the charges under this clause, unless a written account thereof shall have been delivered to the said X. Y., by the end of the week when the same was performed; (2.) That no variation under this clause shall avoid or [excepting to the ex-

AGREEMENTS.

tent of the time occupied, or outlay incurred therein,] vary this agreement.

(7.) If the said X. Y. shall die, the said E. F. may appoint any other person in his place, who shall be deemed the surveyor of the said E. F., for all purposes of this agreement, as if such person's name had been herein inserted throughout, instead of that of the said X. Y.

IN WITNESS, &c., (as in n. 80.)

85. AGREEMENT for making FLOUR-BARRELS.

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____, (state occupation,) of the first part, and C. D., of _____, (state occupation,) of the second part, witnesseth:—

THAT the said A. B., for the consideration herein after mentioned, agrees to make, or cause to be made, for the said C. D., at the cooperage of the said C. D., in the town of _____, two thousand good, hard, well-seasoned flour-barrels; the staves and heading to be of white oak timber, and the hoops of black ash, either round or square, as the said C. D. shall direct. The materials are to be furnished by the said A. B., at his own proper cost and charge, and he is to have the free and uninterrupted use of the tools in the shop of the said C. D., as aforesaid, without paying any thing for the same.

IN CONSIDERATION WHEREOF, the said C. D. agrees to pay to the said A. B. the sum of thirty cents for each and every of the said two thousand barrels; such payment to be made as often as the said A. B. shall have completed one hundred barrels, in the proper proportion, for the same.

SIGNED in presence of } A. B.
E. F. } C. D.

86. AGREEMENT with a CLERK or WORKMAN.

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____, in the county of _____, and C. D., of _____, in the county of _____, witnesseth:—

THAT the said C. D. covenants and agrees faithfully, truly, and diligently to write [or work] for the said A. B., as his clerk, [or journeyman,] in the office [or shop] of the said A. B., at aforesaid, in his business [or profession] of a _____, from the day of _____ instant, for and during the space of _____ years.

IN CONSIDERATION of which service, so to be performed, the said A. B. covenants and agrees to pay to the said C. D. the sum of _____ dollars annually, in four equal quarterly payments.

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87. AGREEMENT

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L. M.

88. AGREEMENT

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____, in the county of _____, and C. D., of _____, in the county of _____, witnesseth:—

THAT the said C. D. covenants and agrees faithfully, truly, and diligently to perform, and perform, workmanlike said A. B., all and plasterer ing-house on the city of _____, annexed; AND the materials to be furnished for the best advantage of said work on the _____.

AND the said C. D. covenants and agrees to furnish and provide at such time of the said C. D. servants in and

AGREEMENTS.

AND it is understood and agreed, between the aforesaid parties, that the death of either of them occurring prior to the expiration of the said term of _____ years, this agreement shall thereupon terminate.
 SIGNED, &c., (as in n. 85.)

87. AGREEMENT to SUBSCRIBE to RAISE MONEY to BUILD a CHURCH.

WE, the undersigned, do hereby severally promise and agree to pay to A. B., C. D., and E. F., the trustees of the _____ Society in the town of _____, the sums set opposite to our respective names, on demand, (or as the terms of payment may be,) for the purpose of building a church or place of worship for the said society in the town of _____, aforesaid. AND we request the said trustees to contract for the building of such church or place of worship, and to build the same, and to apply the sums of money hereto subscribed in payment therefor.

WITNESS our hands, this _____ day of _____, _____.

NAMES.	AMOUNT.
G. H.	\$100.00.
L. M.	75.00.

88. AGREEMENT for PLASTERER'S and BRICKLAYER'S WORK.

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and C. D., of _____ of _____, in the county of _____, witnesseth:—

THAT the said C. D., for the consideration herein after mentioned, promises and agrees, to and with the said A. B., that he will do and perform, by himself or persons in his employ, in a good and workmanlike manner, and with materials to be furnished by the said A. B., all the work to be done and performed by the bricklayer and plasterer in and about the erecting and building a new dwelling-house on the vacant lot of the said A. B., on _____ street, in the city of _____, according to the plans and specifications hereto annexed; AND ALSO that he will use the utmost care in working up the materials to be furnished by the said A. B., as aforesaid, to the best advantage for the said A. B., and that he will complete the said work on or before the _____ day of _____ next.

AND the said A. B., in consideration of the premises, agrees to furnish and provide good and sufficient materials for the said work, at such time or times as the said C. D. may request; AND to pay the said C. D. for all such work as shall be performed by him or his servants in and about the said new dwelling-house, ornamental.

AGREEMENTS.

work excepted, on the completion of the same, at and after the rate of _____ per yard of three feet square, and the sum of _____ dollars for all the ornamental work done or performed in and about the said dwelling-house—it being expressly understood and agreed, that no extra charge is to be demanded or allowed for corners, arches, jams, joints, fire-places, or any other kind of work not strictly ornamental, but all the work is to be measured as plain, except the ornamental work to be paid for, as aforesaid, in gross.

SIGNED in presence of } A. B.
E. F. } C. D.

89. AGREEMENT of PURCHASER by his AGENT at AUCTION SALE.

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and E. F., of _____, in the county of _____, by C. D., his agent, witnesseth:—

THAT, WHEREAS the said A. B. hath this day become the purchaser, at public auction, of the following described property, viz., all that piece or parcel of land, &c., (*describe the premises sold,*) at the consideration price of _____ dollars; and the said A. B. hath also paid to the said E. F., by the said C. D., his agent as aforesaid, the sum of _____ dollars, part and parcel of the purchase money of the said premises:

NOW, THEREFORE, the said A. B. agrees to pay the remaining sum of _____ dollars unto the said E. F., his agent or attorney, on the _____ day of _____ next, and the said E. F., by his agent as aforesaid, agrees that he, the said E. F., will execute and deliver to the said A. B. a good and sufficient conveyance, with the usual covenants, for the premises above described, immediately upon the payment of the said sum of _____ dollars last above mentioned.

IN WITNESS, &c., (*as in n. 80.*) A. B. [SEAL]
C. D. [SEAL]
By his agent, E. F. [SEAL]

90. AGREEMENT to SELL and DELIVER CORD-WOOD, or STONE.

THIS AGREEMENT, made the _____ day of _____, between A. B., of _____, (*state occupation,*) and C. D., of _____, (*state occupation,*) witnesseth:—

THAT the said A. B., for the consideration herein after mentioned, agrees to sell to the said C. D. five hundred cords of seasoned maple and beech cord-wood, and to deliver and securely pile the same, on the berm bank of the Welland Canal, immediately east of _____ bridge, in the town of _____, [*or one thousand*

AGREEMENTS.

perches of good quarry-stone, suitable for building, and to deliver and cord the same, on the south side of the vacant lot of the said C. D., situate on street, in the village of ,] on or before the day of next.

IN CONSIDERATION WHEREOF, the said C. D. agrees to pay to the said A. B. the sum of for each and every cord of wood, [or perch of stone,] as aforesaid, upon the final and complete delivery thereof.

SIGNED in presence of }
 A. B. }
 E. F. }
 A. B.
 C. D.

91. CHARTER PARTY.

THIS CHARTER PARTY, made and agreed upon the day of , in the year of our Lord 18 , between A. B., of , master and owner of the ship or vessel called , of the burthen of of the one part, and C. D., of , of the other part, witnesseth :—

THAT the said A. B., for the consideration herein after mentioned, hath granted and to freight letten, and by these presents doth grant and to freight let, unto the said C. D., his executors, administrators, and assigns, the whole tonnage of the hold, stem, sheets, and half-deck of the said ship or vessel, from the port of to the port of , in a voyage to be made with the said ship, in the manner following, [that is to say:] the said A. B. is to sail the first fair wind and weather that shall happen next after the day of , or before the day of next, from the said port of , with the goods and merchandises of the said C. D., his factors or assigns, on board, to aforesaid, where the said ship is to be delivered and discharged of her said cargo, within fifteen days next after her arrival at the end of the said voyage.

IN CONSIDERATION WHEREOF, the said C. D., for himself, his heirs, executors, and administrators, doth covenant with the said A. B., his executors, administrators, and assigns, and every of them, by these presents, that he the said C. D., his executors, administrators, factors, or assigns, will pay, or cause to be paid, unto the said A. B., his executors, administrators, and assigns, for the freight of the said ship or goods, the sum of , [or thus: 20 dollars a ton for loading or unloading and taking in goods at and ports,] within one and twenty days after the said ship's arrival, and goods discharged at aforesaid, for the end of the voyage; and also will pay for demurrage, if any shall be, by the default of him, the said C. D., his factors or assigns, the sum of two dollars a day, daily and every day, as the same shall grow due.

AND the said A. B., for himself, his heirs, executors, and administrators, doth covenant with the said C. D., his executors, administrators, and assigns, and every of them, by these presents, that the

U. W. O. LAW

AGREEMENTS.

said ship or vessel shall be ready at the said port of _____, at _____ wharf, to take in goods, by the said _____ day of _____ next coming; and that, within ten days after the said ship shall be ready at the said wharf, as aforesaid, the said C. D. doth promise and agree to have his goods ready and put on board of said ship, in order that she may proceed on her said voyage.

AND the said A. B. doth also covenant with the said C. D., his executors, administrators, and assigns, that the said ship or vessel now is, and at all times during the said voyage shall be, at the best endeavor of the said A. B., his executors and administrators, at his and their own proper costs and charges, in all things made and kept stiff, staunch, and strong, and well furnished, and provided as well with men and mariners, sufficient and able to sail, guide, and govern the said ship, as with all manner of rigging, boats, tackle, apparel, furniture, provision, and appurtenances, fitting and necessary for the said men and mariners, and for the said ship, during the voyage aforesaid.

IN WITNESS, &c., (as in n. 80.)

92. ARTICLES of CLERKSHIP to an ATTORNEY.

ARTICLES of AGREEMENT made the _____ day of _____, one thousand eight hundred and _____, between A. B., of _____, gentleman, one of the attorneys of Her Majesty's courts of Queen's Bench and Common Pleas for Upper Canada, and a solicitor of the court of Chancery, of the one part, and C. D., of _____, and E. F., son of the said C. D., of the other part, witnesseth:—

THAT the said E. F., of his own free will, and by and with the consent and approbation of the said C. D., doth, by these presents, place and bind himself clerk to the said A. B., to serve him, from the day of the date hereof, for, and during, and until the full end and term of _____ years, from hence next ensuing, and fully to be complete and ended.

AND the said C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors, administrators, and assigns, that the said E. F. shall well, and faithfully, and diligently serve the said A. B., as his clerk, in the practice or profession of an attorney at law and solicitor in Chancery, from the day of the date hereof, for, and during, and unto the full end of the said term of _____ years.

AND that he, the said E. F., shall not, at any time during such term, cancel, obliterate, injure, spoil, destroy, waste, embezzle, spend, or make away with, any of the books, papers, writings, documents, moneys, chattels, or other property of the said A. B., his executors, administrators, or assigns, or his partner or partners, or any of his

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AGREEMENTS.

clients or employers; *and that*, in case the said E. F. shall act contrary to the last mentioned covenant, or if the said A. B., his executors, administrators, or assigns, or his partner or partners, shall sustain or suffer any loss or damage by the misbehavior, neglect, or improper conduct of the said E. F., the said C. D., his heirs, executors, or administrators, will indemnify the said A. B., and make good and reimburse him the amount or value thereof.

AND FURTHER, that the said E. F. shall at all times keep the secrets of the said A. B., and his partner or partners, and will, at all times during the said term, readily and cheerfully obey and execute his or their lawful and reasonable commands, and shall not depart or absent himself from the service or employ of the said A. B., at any time during the said term, without his consent first had and obtained, and shall, from time to time, and at all times during the said term, conduct himself with all true diligence, honesty, and sobriety.

AND the said E. F. doth hereby, for himself, covenant with the said A. B., his executors, administrators, and assigns, that he, the said E. F., will truly, honestly, and diligently serve the said A. B., at all times, for and during the said term, as a faithful clerk ought to do, in all things whatsoever, in the manner above specified.

IN CONSIDERATION WHEREOF, and of five shillings of lawful money, by the said C. D., to the said A. B., paid at or before the sealing and delivery of these presents [the receipt whereof is hereby acknowledged,] the said A. B., for himself, his heirs, executors, and administrators, doth covenant with the said C. D., his executors and administrators, that he, the said A. B., will accept and take the said E. F. as his clerk, and also that he, the said A. B., will, by the best ways and means he may or can, and to the utmost of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the said E. F. in the said practice or profession of an attorney at law and solicitor in Chancery, which he, the said A. B., now doth, or shall at any time during the said term, use or practice; and also will, at the expiration of the said term, use his best means and endeavors, at the request, costs, and charges of the said C. D. and E. F., or either of them, to cause and procure him, the said E. F., to be admitted and sworn an attorney of Her Majesty's said courts of Queen's Bench and Common Pleas, or either of them, and a solicitor of the court of Chancery, or any other of Her Majesty's courts of law or equity for Upper Canada, provided the said E. F. shall have well, faithfully, and diligently served his said intended clerkship.

IN WITNESS WHEREOF, the parties aforesaid have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED
in presence of
G. H.

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

STATUTE RESPECTING WRITTEN PROMISES.

Revised Statutes, 1859, CAP. XLII., p. 460.

93. AN ACT respecting WRITTEN PROMISES and ACKNOWLEDGMENTS of LIABILITY.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

(1.) This act shall operate and apply retrospectively to the first day of January, one thousand eight hundred and fifty-two, as well as prospectively, and shall be construed as if it had been passed on the said first day of January, one thousand eight hundred and fifty-two. 13, 14 V., c. 61, s. 8.

Act to apply on and from the 1st January, 1852.

(2.) In all actions: 1. Of account, and upon the case other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants. 2. In all actions on simple contract, or of debt grounded upon any lending or contract without specialty, and in all actions of debt for arrearages of rent, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the act, passed in England in the twenty-first year of the reign of King James the First, respecting such actions as aforesaid, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing to be signed by the party chargeable thereby. 13, 14 V., c. 61, s. 1.

Written memorandum required to take the ease out of statute.

(3.) Where there are two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator shall lose the benefit of the said act, so as to be chargeable in respect or by reason only of any written acknowledgment or promise, made and signed by any other or others of them, or by reason of any payment of any principal or interest made by any other or others of them. 13, 14 V., c. 61, s. 1.

Case of two or more joint contractors.

(4.) In actions commenced against two or more such joint contractors, executors, or administrators, if it appears at the trial, or otherwise, that the plaintiff, though barred by the said act of King James the First, or by this act, as to one or more of such joint contractors, or executors, or administrators, is nevertheless entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment, prom-

Where plaintiff may be barred as to one or more defendants but not as to all.

Indorsement &c., made by the payee not to take a note, &c., out of the statute.

Statute to a ; to set-off

As to ratification of promise made during non-age.

As to representation regarding the character, credit, &c., of a third party

Statute of frauds extended to contracts for goods to be delivered at a future time.

Act to apply on and from the 1st January, 1852.

Written memorandum required to take the case out of statute.

Case of two or more joint contractors.

Where plaintiff may be served as to one or more defendants but not as to all.

STATUTE RESPECTING WRITTEN PROMISES.

ise, or payment, as aforesaid, judgment shall be given and costs allowed for the plaintiff, as to such defendant or defendants against whom he may recover, and for the other defendant or defendants against the plaintiff. 13, 14 V., c. 61, s. 1.

* * * * *

Indorsement, &c, made by the payee not to take a note, &c, out of the statute.

(7.) No indorsement or memorandum of any payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment has been made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the said statute of King James. 13, 14 V., c. 61, s. 3.

Statute to apply to set-off.

(8.) The said act of King James and this act shall apply to the case of any debt on simple contract, or of the nature herein before mentioned, alleged by way of set-off on the part of any defendant, either by plea, notice, or otherwise. 13, 14 V., c. 61, s. 4.

As to ratification of promise made during non-age.

(9.) No action shall be maintained whereby to charge any person upon any promise, made after full age, to pay any debt contracted during infancy, or upon any ratification, after full age, of any promise or simple contract made during infancy, unless such promise or ratification be made by some writing, signed by the party to be charged therewith. 13, 14 V., c. 61, s. 5.

As to representation regarding the character, credit, &c, of a third party.

(10.) No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain money, goods, or credit thereupon, unless such representation or assurance be made in writing, signed by the party to be charged therewith. 13, 14 V., c. 61, s. 6.

Statute of frauds extended to contracts for goods to be delivered at a future time.

(11.) The seventeenth section of an act passed in England, in the twenty-ninth year of the reign of King Charles the Second, intituled, *An act for the prevention of frauds and perjuries*, shall extend to all contracts for the sale of goods of the value of ten pounds currency and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery. 13, 14 V., c. 61, s. 7.

U. W. O. LAW

CHAPTER II.
ARBITRATION.

NOTES.

94. As a general rule, any matters in difference may be referred to arbitration which do not involve a criminal charge.

If an action is pending, the cause may be referred, by consent of the parties, any time before trial by a judge's order or rule of court, and at the trial by an order of *nisi prius*.

Sometimes also the matter in dispute on a rule may be referred.

An attorney has an implied power to refer his client's cause to arbitration, unless expressly prohibited; but the client has a remedy against him if he acts in an improvident manner. Some doubt has, however, been lately cast upon this power of attorney.

A barrister also has power to bind his client in the same way. [Though the decision in *Swinfen v. Swinfen*, where counsel compounded a cause at the trial, without consent of his client, which composition was overruled, may raise a question as to the right to refer without such consent.]

Care should be taken to reserve to the arbitrator the powers of a judge at *nisi prius* as to costs, amendment, &c.

A *parol* agreement to refer cannot be made a rule of court and enforced, though an action may lie for not agreeing to refer.

One partner has no power to bind another by a deed of submission.

Differences between A on one side and B and C on the other mean "jointly and severally."

A clause may be inserted that the *death* of either party shall not revoke the submission.

The effect of *submission* or agreement to refer may be to *oust the jurisdiction* of courts of law, and it is quite legal for parties to do so, and in many cases the court will stay proceedings if an action is brought.

A *submission* may be made a rule of court, though the *proceedings* under it have been void.

An order of reference made by a judge may be made a *rule of court*; but neither a submission nor a judge's order of reference is usually made a rule of court until it becomes necessary to *enforce* or *set aside the award*.

An arbitrator has no power to *alter* the terms of the submission; but the parties may, by consent, revoke or alter it *before it is made a rule of court*.

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ARBITRATION.

95. If there is a default of an arbitrator, either party may apply to a judge to appoint one.

Revocation is express or implied. Application to rescind is too late after the award is made. The authority of any arbitrator or umpire, appointed by or in pursuance of a rule of court or judges, or order of *nisi prius*, in any action brought—or, in pursuance of any submission to reference containing an *agreement* that such submission shall be made, a *rule of any court* of record—is not revocable, except by leave of *the court* by which such rule or order *may* or shall be made, or by leave of a judge; and the arbitrator or umpire may proceed, notwithstanding any revocation otherwise made.

Death of either party before award made is an implied revocation, though a verdict were taken subject to the award; but a special clause may prevent this consequence, as said above.

Marriage before award made is also a revocation; but not bankruptcy or insolvency.

The proceedings are usually similar to those in a trial at *nisi prius*; but the arbitrator has a large discretion.

All the arbitrators must attend and hear the evidence, and one cannot *delegate* his authority to another.

If *one side* only be heard, the award will be set aside.

An arbitrator has an implied power to take evidence *on oath*, or receive affirmations, as at *nisi prius*, and if he does so the witness is indictable for perjury; but he is not *bound* to examine on oath, unless by express terms of the submission or order of reference.

If a witness will not attend *voluntarily*, he may be *compelled* by the court of which the submission is, or is to be made, a rule, and the order is absolute in the first instance.

The arbitrator cannot *enlarge the time* for making the award if a time is expressly limited, and no power of enlargement given; but, if the parties *know* that an enlargement has been irregularly made and still *go on*, neither of them can afterward set aside the award on that ground.

The arbitrator is *functus officio* when he has made his award within the time limited.

96. An *umpire* may be appointed, under a power to the arbitrators, any time after the time limited for the award and *before* the time limited for the umpirage to be made; but the appointment of an umpire *by chance* is in general bad, and the umpirage and award may be set aside, unless the parties, with full knowledge of the circumstances, consent to it.

A *slight disagreement* between the arbitrators will warrant the appointment of an umpire.

An umpire *entirely supersedes* the arbitrators as judges of the matter, and in general they cannot decide *half* the case and refer the *other half* to an umpire, unless expressly so empowered.

If one umpire refuses to act, another may be appointed.

ARBITRATION.

The umpire must *re examine the witnesses*; for, if he do not, his award will be set aside, unless both parties agree to waive such re-examination.

An umpire may enlarge the time, as arbitrators do.

97. *The award* must be in strict pursuance of the submission; and it cannot be made after the arbitrator's functions are at an end.

A *parol* award is not bad; but the award is better, and more usually made in writing.

An award that "A. or B. shall not do an act" is bad. So an award "that the costs of making the submission a rule of court shall be paid by the party disobeying it" is bad. To award payment at a future day certain is good; but not "to find a surety," and the award must bear on the face of it that *all* the matters in difference have been decided.

When the submission may be made a rule of court, the award, or any part thereof, may be in the form of a *special case* for the opinion of the court.

The arbitrator cannot order payment of *costs* without express power in the submission; but, if a *cause* is referred, he has power as to costs of the *cause*, though not of the *reference*, unless such costs are to abide the event, in which case each must pay his own costs, without every thing is decided in favor of one party; and, though he ought not to fix his own fee by the award, he has a lien upon it for a reasonable sum, which may be examined on taxation.

The award is generally *signed* by the arbitrator, in presence of attesting witnesses; and *all* the arbitrators should sign in presence of each other, without express power be given to a less number to make the award.

An award is *published* when it is executed and notice given to the parties by the arbitrator that they may have the award on payment of the expenses. After publication, the arbitrator cannot *alter* any material part of the award without consent of the parties.

A mistake in point of law, unless apparent on the face of an award, will not vitiate it, especially if it may be implied that the parties intended to refer both law and fact.

Where the submission cannot be made a rule of court, the court has no power to set aside the award. The only remedy in this case is by action.

The essence of arbitration is that it is *voluntary*; and therefore no court or judge can force parties to adopt it, unless litigation has begun by issuing a writ of summons, in which case the court or judge may direct an arbitration and also may remit the matters referred, or any of them, to the reconsideration of the arbitrator.

For the law and practice of arbitration see Revised Statutes, 1850, Cap. XIX., p. 163, §§ 109 to 113; Cap. XXII., pp. 227 to 234, §§ 162 to 186.

98. FOR

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98. FORM of AGREEMENT of REFERENCE in WRITING.

MEMORANDUM of agreement made this _____, between A. B., of _____, of the one part, and C. D., of _____, of the other part.

WHEREAS certain disputes and differences have arisen between the parties hereto, and it is desirable to refer the same to arbitration, as after mentioned. Now therefore it is hereby agreed by and between the parties hereto to refer, and the parties hereto do hereby refer, all matters in difference between them to the award, order, arbitrament, final end, and determination of A. B., of _____, so that he make and publish his award of and concerning the same, ready to be delivered to us or either of us, or, if we or either of us shall be dead before the making of the same, to our respective personal representatives requiring the same, on or before the _____ day of _____, or such further day as the said arbitrator may, from time to time, enlarge the time for making his said award, by writing under his hand indorsed on this agreement.

AND it is hereby further agreed that the said arbitrator may, by his said award, order and determine what he shall think fit to be done by us respecting the said matters of difference; and that the *costs* either of of the said reference and award shall be in the discretion of the said arbitrator, who may award by whom, to whom, and in what manner, the same shall be paid.

AND each of the said parties hereto agrees with the other to stand to, abide by, obey, perform, fulfill, and keep the said award, so to be made and published as aforesaid.

AND it is further agreed, that it shall be in the discretion of the said arbitrator to examine the parties, either or both of them, and that the witnesses in the reference, and the parties, if examined, shall be examined on oath; and that the said parties respectively shall produce before the said arbitrator all such books, deeds, papers, documents, and writings in his custody, power, or control, relating to the matters referred, as the said arbitrator shall think fit to require; and that the said parties respectively shall do all other acts necessary to enable the said arbitrator to make his award herein, and that neither of them shall willfully and wrongfully do, or cause to be done, any act to delay or prevent the arbitrator from making his said award, otherwise he shall pay to the other such costs as the arbitrator may in writing declare to be reasonable. And it is further agreed, that the said arbitrator may proceed in the said reference *ex parte*, if either of the said parties refuse or neglect to attend before him, after having received due notice, and without reasonable excuse.

ARBITRATION.

AND each of the said parties hereto agrees with the other that he will not bring or prosecute any action or suit in any court of law or equity against the said arbitrator, for or in respect of the matters in pursuance of this agreement.

AND it is hereby further agreed, that this agreement shall be made a rule of Her Majesty's court of _____, and further, that, in the event of either of the said parties disputing the validity of the said award, or moving the said court of _____, or any other court, to set the same, or any part thereof, aside, or in any other event, the said court of _____ shall have power at any time, and from time to time, to remit the matters hereby referred, or any or either of them, to the reconsideration and redetermination of the said arbitrator, and with, upon, and subject to such directions, powers, and terms, as to the said court may seem proper.

IN WITNESS WHEREOF, the said parties have herenunto set their hands the day and year first above written.

WITNESS: W. W.

A. B.
C. D.

99. FORM of MEMORANDUM by ATTORNEY.

Title of Court } I hereby certify that W. W., of _____, is a
and Cause. } necessary witness in the matter submitted to refer-
ence in this cause, and that it is necessary that
he should attend at the chambers of A. A., Esq., situate No. _____,
the arbitrator appointed in this cause, on _____ next, at _____ o'clock
in the morning, at which time and place the arbitrator has appointed
a meeting herein, and that he should produce to the said arbit-
rator, at the time and place aforesaid, the following documents, to
wit, &c.

DATED, &c.

P. A.,

Attorney for the above named A. B, [or C. D.]

100. FORM of AFFIDAVIT of EXECUTION of REFERENCE.

In the Q. B., [or "C. P."]

I, P. W., of _____, make oath and say, that on _____ I was
present and did then see C. D. duly execute the agreement herenunto
annexed, marked A., and that the said C. D. did, in my presence,
subscribe his name thereto, and that the name C. D., at the foot
thereof, is the proper handwriting of the said C. D., and that the
name P. W., subscribed thereto, as witness thereof, is my own
handwriting.

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ARBITRATION.

101. FORM of AFFIDAVIT of EXECUTION of AWARD.

that I did, on _____, see A. A., of _____, sign and publish his award, exhibited to me at the time of swearing this, my affidavit, and marked A., and that the name A. A., subscribed thereto, is the proper handwriting of the said A. A., and that the name P. A., subscribed thereto as a witness attesting the execution of the said award, is my own handwriting.

102. FORM of AFFIDAVIT VERIFYING a COPY of AWARD.

that I, on _____, received from D. A., the attorney for the above named C. D., a copy of the award made by A. A., in the matter above mentioned, and which said copy of the said award is hereto annexed, marked A., and which said award was taken up, and is now in the possession of the said D. A., as attorney aforesaid, or of the said C. D., as I verily believe.

103. FORM of AFFIDAVIT of DUE ENLARGEMENT.

that the time for making the said award was, on _____, duly enlarged to _____, by the writing under the hand of the said A. A., indorsed on the said _____, and that the name A. A., subscribed thereto, is the proper handwriting of the said A. A., and I further say that the said award was made and published on _____, and within the enlarged time for making and publishing the same.

104. ARBITRATION—ORDER of REFERENCE to, at NISI PRIUS.

to wit:—At the sittings of Nisi Prius, held at _____, in _____, and for the said _____, on _____, the _____ day of _____, in the _____ year of the reign of our Sovereign Lady the Queen, and in the year of our Lord one thousand eight hundred and _____, before the honorable _____, assigned to hold the assizes in and for the said _____, between _____ plaintiff vs. _____ defendant.

It is ORDERED by the court, by and with the consent of the parties, their counsel and attorneys, that _____ to the award, order, arbitrament, final end, and determination of _____, to whom all matters in difference are hereby referred, so as the said arbitrator _____ do make and publish _____ award in writing of and concerning the matters hereby referred, ready to be delivered to the

ARBITRATION.

said parties, or either of them, or, if they, or either of them, shall be dead before the making of the said award, to their respective personal representatives requiring the same, on or before the day of next, ensuing the date of this order; with liberty to the said arbitrator under hand in writing, at the foot, or on the back hereof, or hereunto annexed, to enlarge the time for making the said award, and that the said parties shall, on their respective parts, in all things stand to, abide by, obey, perform, fulfill, and keep the award, order, arbitrament, final end, and determination of the said arbitrator, so to be made and published as aforesaid.

AND IT IS ALSO ORDERED, by and with such consent as aforesaid, that the costs of the said cause

AND IT IS LIKEWISE ORDERED, by and with such consent as aforesaid, that respectively shall be examined upon oath, to be sworn by the said arbitrator, or before a commissioner empowered to take affidavits in Her Majesty's court of Queen's Bench in and for the Province of Upper Canada.

AND IT IS ALSO ORDERED, by and with such consent, that the said parties shall produce, before the said arbitrator, all such books, deeds, papers, and writings, in their or either of their custody or power, relating to the said matters in difference, as the said arbitrator shall think fit to require.

AND IT IS LIKEWISE ORDERED, by and with such consent as aforesaid, that neither the plaintiff nor defendant shall prosecute or bring any action or suit, in any court of law or equity, against each other, of and concerning the premises in question so as aforesaid referred.

AND IT IS FURTHER ORDERED, by and with such consent as aforesaid, that if either party shall, by affected delay, or otherwise, willfully prevent the said arbitrator from making an award, he shall pay such costs to the other as the said court of shall think reasonable and just.

AND LASTLY, IT IS ORDERED, by and with such consent as aforesaid, that the said court may be prayed that this order may be made a rule of the same court.

105. ARBITRATION BOND.

KNOW ALL MEN, That of , held and firmly bound to of , in the sum of , of lawful money of Canada. to be paid to the said , or to certain attorney, executors, administrators, or assigns, for which payment, to be well and truly made, bind heirs, executors, and administrators, forever firmly by these presents.

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SEALED with seal. DATED this day of , in the year of our Lord one thousand eight hundred and

WHEREAS disputes and differences have arisen, and are now pending between the above bounden and the said touching and concerning

AND WHEREAS the above bounden and the said have agreed to refer such disputes and differences, as well as all actions, suits, controversies, accounts, reckonings, matters, and things, in any wise relating thereto, to the award, arbitrament, and determination of arbitrators, nominated, appointed, and chosen as well by and on the part and behalf of the above bounden as of the said, and who have consented and agreed to accept the burthen of the said arbitration.

NOW, THE CONDITION of the above written bond or obligation is such that, if the above bounden do and shall well and truly submit to, abide by, and perform the award, arbitrament, and determination of the said arbitrators, so nominated, appointed, and chosen as aforesaid, touching and concerning the matters in dispute between the above bounden and the said, and so referred to them, the said arbitrators as aforesaid [provided such award be made in writing, under the hands and seals of the said arbitrators, ready to be delivered to the said parties, or such of them as shall apply for the same, on or before the day of , in the year of our Lord one thousand eight hundred and] THEN this obligation shall be void, otherwise to be and remain in full force and virtue.

AND the said obligor hereby consents and agrees that this bond of submission, and the award to be made thereunder, shall and may be made a rule of court of any of the superior courts of this province.

SIGNED, SEALED, AND DELIVERED }
in the presence of }
E. F. }

A. B. [SEAL.]
C. D. [SEAL.]

106. GENERAL SUBMISSION to ARBITRATION.

WHEREAS differences have existed, and are now existing and pending, between A. B., of township, in the county of , and Province of Canada, and C. D., of the city of , and county of , in said Province, (state occupation,) in relation to divers subjects of controversy and dispute:—

Now, THEREFORE, we, the undersigned A. B. and C. D., aforesaid, do hereby mutually covenant and agree, with each other, that E. F., L. M., and S. T., of, &c., or any two of them, shall arbitrate, award, order, judge, and determine of and concern-

ARBITRATION.

ing all and all manner of actions, cause and causes of actions, suits, controversies, claims, and demands whatsoever, now pending, existing, or held by and between us, the said parties: AND we do further mutually covenant and agree, with each other, (as in n. 108, from the * to the end.)

107. SHORT FORM of GENERAL SUBMISSION, with PENALTY.

WE, the undersigned, hereby mutually agree to submit all our matters in difference, of every name or nature, to the award and determination of E. F., L. M., and S. T., (state place of residence and occupation,) for them to hear and determine the same, and make their award of them, or of a majority of them, in writing, on or before the day of next.

AND, for the full performance of the said award, we bind ourselves, severally and respectively, our several and respective heirs, executors, and administrators, each to the other of them respectively, in the penal sum of \$ of lawful money of Canada, firmly by these presents.

WITNESS our hands and seals, this day of , 18 .
SIGNED, &c., (as in n. 102.)

108. SPECIAL SUBMISSION.

WHEREAS a controversy is now existing and pending between A. B., of the township of , and Province of Canada, (state occupation,) and C. D., of the township of , and Province of Canada, (state occupation,) in relation to an exchange of horses made by and between the said parties, at the town of , aforesaid, on the day of last past: (or other matter in difference, as the case may be.)

NOW, THEREFORE, we, the said, A. B. and C. D., do hereby submit the said controversy to the arbitration of E. F., L. M., and S. T., of , or any two of them; and we do mutually covenant and agree with each other, * that the award to be made by the said arbitrators, or any two of them, shall, in all things, by us and each of us, be well and faithfully kept and observed:

PROVIDED, HOWEVER, that the said award be made in writing, under the hands of the said E. F., L. M., and S. T., or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on the day of next; and this submission, and the award thereunder, may be made a rule of court of Queen's Bench or Common Pleas at Toronto.

WITNESS our hands and seals, this day of , A. D. 18 .

In presence of)
G. H.)

A. B. [SEAL]
C. D. [SEAL]

109. AGREEMENT

AND it is the judgment of the County Court that the award to be made in the above matters in difference be made as follows: insert here:

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ARBITRATION.

109. AGREEMENT for JUDGMENT, to be inserted in the SUBMISSION, if necessary.

AND it is hereby further agreed, between the said parties, that judgment in the court of Queen's Bench or Common Pleas, [or County Court of the county of _____,] may be signed upon the award to be made pursuant to this submission, to the end that all matters in controversy between them (if the submission be special, insert here: in that behalf,) shall be finally concluded.

110. CONDITION of BOND on a SPECIAL SUBMISSION.

THE CONDITION of the above obligation is such: That, if the above bounden A. B. shall well and truly submit to the decision of E. F., L. M., and S. T., named, selected, and chosen arbitrators, as well by and on the part and behalf of the said A. B. as of the said C. D., between whom a controversy exists, to hear all the proofs and allegations of the parties of and concerning (here state the subject of controversy,) and all matters relating thereto; so that the award of the said arbitrators be made, &c., (as in n. 111.)

111. SHORT ARBITRATION BOND.—Each party to have a COUNTERPART.

KNOW ALL MEN by these presents: That I, A. B., of the town of _____, in the county of _____, and province of Canada, (state occupation,) am held and firmly bound unto C. D., of the town of _____, in the county of _____, and Province aforesaid, in the sum of _____ dollars, of lawful money of the Province of Canada, to be paid to the said C. D., or to his certain attorney, executors, administrators, or assigns; for which payment, to be well and truly made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

SEALED with my seal. DATED the _____ day of _____, one thousand eight hundred and _____

THE CONDITION of this obligation is such: That, if the above bounden A. B. shall well and truly submit to the decision and perform the award of E. F., L. M., and S. T., named, nominated, and chosen arbitrators, as well by and on the part and behalf of the said A. B. as of the said C. D., to arbitrate, award, order, and determine, of and concerning all and all manner of actions, cause and

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U. W. O. LAW

ARBITRATION.

causes of actions, suits, controversies, claims, and demands, whatsoever, now depending, existing, or held, by and between the said A. B. and the said C. D.; so that the said award be made in writing, under the hands of the said E. F., L. M., and S. T., or any two of them, and ready to be delivered to the said parties, or such of them as shall desire the same, on or before the _____ day of _____, one thousand eight hundred and _____; THEN this obligation to be void, otherwise to remain in full force and virtue. (*Where there is no submission in writing, separate from the bond, the latter clause in n. 112, may be inserted here.**)

SIGNED AND SEALED } in presence of } G. H. }	A. B. [SEAL.] C. D. [SEAL.]
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112. CLAUSE making the SUBMISSION a RULE of COURT.

(N. B.—In order to empower the arbitrators to *compel* witnesses to attend and give evidence, it is necessary to make the submission a rule of court, by motion in term; and, when so made a rule of court, subpoenas will then issue out of the same court, in case of need, to compel attendance.)

*“AND it is hereby agreed, by and between the said parties, that these presents, and the submission hereby made of the said matters in controversy, shall be made a rule of Her Majesty’s court of Queen’s Bench or Common Pleas at Toronto, to the end that the said parties in difference shall be finally concluded by the said arbitration, by these presents intended, pursuant to the statute in that case provided.”

113. NOTICE to ARBITRATORS of their APPOINTMENT.

To E. F., L. M., and S. T., (*insert occupation and residence.*)

You are hereby notified, that you have been nominated and chosen arbitrators, as well on the part and behalf of the undersigned A. B., of the town of _____, county of _____, and Province of Canada, as of C. D., of the town of _____, county of _____, and Province of Canada, also undersigned, to arbitrate, award, &c., (*as in the submission or bond, specifying the time within which the award must be made;*) and you are requested to meet the said parties at the house of O. R., in the town of _____, aforesaid, on the day of _____, at ten o’clock in the forenoon of that day, for the purpose of fixing upon a time and place when and where the proofs and allegations of the said parties shall be heard. Dated the _____ day of, &c.

Yours, &c.,

A. B.
C. D.

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ARBITRATION.

114. NOTICE of HEARING for OPPOSITE PARTY.

Is the matter of an arbitration, of and concerning certain matters in difference between A. B., of the one part, and C. D., of the other part.

Sir: You will please take notice that a hearing in the matter above specified will be had before the arbitrators, at the of , on the day of . Dated the

day of . Yours, &c., E. F. } Arbitrators. L. M. } S. T. }

A. B. [SEAL.] C. D. [SEAL.]

115. AWARD.

To ALL TO WHOM THESE PRESENTS SHALL COME, of whom they may concern:—

Send greeting, E. F., L. M., and S. T., to whom were submitted, as arbitrators, the matters in controversy existing between A. B., of the town of , county of , and Province of Canada, and C. D., of the town of , county of , and province aforesaid, (state occupation of each party,) as by their submission in writing, [or by the condition of their respective bonds of submission, executed by the said parties, respectively, each to the other,] and bearing date the day of , one thousand eight hundred and , more fully appears.

Now, THEREFORE, KNOW YE, that we, the arbitrators mentioned in the said submission, [or bonds,] having been first duly sworn according to law, and having heard the proofs and allegations of the parties, and examined the matters of controversy by them submitted, do make this award in writing; that is to say: the said C. D. shall make, execute, and deliver, to the said A. B., on or before the day of instant, a good and sufficient assignment of a certain bond and mortgage, executed on the day of , 18 , by , to the said C. D.; and the said A. B. shall pay, or cause to be paid, to the said C. D., the sum of dollars, immediately upon the execution and delivery of the said assignment; [or, The said C. D. shall pay, or cause to be paid, to the said A. B., the sum of dollars, within ten days from the date hereof, in full payment, discharge, and satisfaction of and for all moneys, debts, and demands, due or owing from him, the said C. D., to the said A. B.; or, The said C. D. shall henceforth forever cease to prosecute a certain suit commenced by him against the said A. B., in the court of Queen's Bench, now pending and undetermined in the said court; and the said A. B. shall pay, or cause to be paid, to the said C. D., on or before the day of

of COURT. compel witnesses the submission made a rule of court, in case of said parties, that the said matters justice's court of the end that the by the said ar the statute in

POINTMENT. (residence.) inated and che the undersigned and Province of of , and award, &c., (as which the award said parties at on the at day, for the here the proofs Dated the A. B. C. D.

U. W. O. LAW

ARBITRATION.

, the sum of _____ dollars, in full satisfaction of the costs, charges, and expenses incurred by the said C. D., in and about the prosecution of his suit, as aforesaid.]

AND we do further award, adjudge, and decree, that the said A. B. and C. D. shall and do, within ten days next ensuing the date hereof, seal and execute unto each other mutual and general releases of all actions, cause and causes of action, suits, controversies, claims, and demands, whatsoever, for or by reason of any matter, cause, or thing, from the beginning of the world down to the date of the said bonds of arbitration, [or the said submission.]

IN WITNESS WHEREOF we have hereunto subscribed these presents, this _____ day of _____, one thousand eight hundred and _____

In the presence of }
G. H.

E. F.
L. M.
S. T.

116. AWARD *by an UMPIRE.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, T. U., of _____, yeoman, sends greeting.

WHEREAS P. Q., of _____, of the one part, and A. B. and C. D., of _____, of the other part, have mutually entered into, and reciprocally executed, bonds or obligations to each other, bearing date the _____ day of _____, respectively, conditioned that the said parties should in all things well and truly stand to, abide, observe, perform, fulfill, and keep the award, final end, and determination of R. S., of _____, and B. W., of _____, arbitrators, indifferently chosen by the said parties, of and concerning all and all manner of action and actions, cause and causes of action, suits, bills, bonds, &c., (*reciting the condition of the bond*;) AND WHEREAS the said R. S. and B. W. met upon the said arbitration, and did not make their award between the said parties by the time limited in and by the conditions of the said bonds, and in pursuance of the said bonds, have chosen and appointed me as umpire, to settle and determine the matters in difference:

NOW KNOW YE, that I, the said J. P., the umpire named and chosen as aforesaid, having taken upon me the burthen of the said arbitration, and having heard and examined the said parties, and their respective witnesses, proofs, and allegations on both sides of and concerning the said disputes and differences between them, and fully considered the same, and the matters to me referred, Do make this my award and umpirage, in manner following; *that is to say*: [I do award and order that the said P. Q., his executors or administrators, do and shall, on the _____ day of _____, between the hours of _____ and _____ in the forenoon, at the house known, &c., pay, or cause to be paid, unto the said A. B. and C. D., the sum of _____ in full, for

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ARBITRATION.

their damages and costs in a certain action, lately commenced by them, against the said P. Q., and also for the costs of and occasioned by the said reference; and, upon payment of the said sum of _____, I do award and direct, that the said parties shall duly execute and deliver to each other mutual releases in writing of all and every action and actions, cause and causes of action, damages, claims, and demands, whatsoever, subsisting or depending between them, on or before the said _____ day of _____ last.

IN WITNESS, &c., (as in n. 115.)

117. AWARD by REFEREES.

Short Form.

WE, the undersigned, referees appointed by the within rule of court, [or by the within agreement of submission,] having notified and met the parties, and heard their several allegations, proofs, and arguments, and duly considered the same, do award and determine that the within named A. B. shall recover of the within named C. D. the sum of _____, together with the costs of suit, to be taxed by the court, and the costs of this reference, which last amount to the sum of _____, and that the same shall be in full of all matters within referred to us.

IN WITNESS, &c., (as in n. 115.)

E. F.

118. RELEASE to be executed by PARTY to an ARBITRATION, when required in the AWARD.

KNOW ALL MEN by these presents: That I, A. B., of the _____ of _____, for and in consideration of the sum of one dollar to me in hand paid by C. D., of _____, and in pursuance of an award made by E. F., L. M., and S. T., arbitrators between us the said A. B. and C. D., and bearing date the _____ day of _____, one thousand eight hundred and _____, do hereby release and forever discharge the said C. D., his heirs, executors, and administrators, of and from all actions, cause and causes of action, suits, controversies, claims, and demands, whatsoever, for or by reason of any matter, cause, or thing, from the beginning of the world down to the _____ day of _____, one thousand eight hundred and _____.

(Insert the date of the bonds of arbitration or of the submission.)
IN WITNESS WHEREOF, I have hereunto put my hand and seal, this _____ day of _____, one thousand eight hundred and _____.

In the presence of }
G. H. }

A. B. [SEAL]

U. W. O. LAW

ARBITRATION.

119. ARBITRATION CLAUSES.

THAT any dispute which shall arise between the said and , or between either of them, and the executors, administrators, or assigns of the other of them, or between their respective executors, administrators, or assigns, touching the construction of these presents, or any thing herein contained, or any account, valuation, appraisement, or division of assets, debts, or liabilities, or any other thing in any wise relating to the said copartnership, or the trade, business, or affairs thereof, [or to the premises, as the case may be,] shall be referred to the arbitration of three indifferent persons, one to be chosen by each of the parties disputing, within one calendar month after either of them shall have made to the other a requisition to that effect, and the third by the two persons first chosen, within one calendar month after they shall have been themselves chosen.

120.

THAT, if either of the parties disputing shall, in writing, require the other of them to refer the dispute to arbitration, and to name an arbitrator, and if the party to whom such requisition is made shall, for one calendar month after such requisition, neglect or refuse to comply therewith, or shall name a person who shall neglect or refuse to act as arbitrator, it shall be lawful for the person chosen arbitrator on behalf of the party making such a requisition, by writing under his hand, to appoint some person to act as arbitrator on behalf of the other party, and such two persons shall name the third arbitrator.

121.

THAT the parties disputing, and all persons claiming through them, respectively, shall, if required by the arbitrators, or any two of them, attend personally, and submit to be examined relative to the matters or things referred to arbitration, and produce to and deposit with the arbitrators, or any two of them, all deeds, letters, papers, writings, and evidence relative thereto, and do all other things which the arbitrators, or any two of them, shall require.

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CHAPTER III.
OF SALES BY AUCTION.

NOTES.

122. *A right to bid once at an auction sale* is often reserved by the vendor in the conditions; but this will not authorize him to appoint a *puffer* to screw up the price, and if he does so the purchaser may rescind the contract altogether; and, where a sale is advertised to be "*without reserve*," if any one bids on behalf of the vendor, then also the purchaser may rescind the contract. Nor can a vendor employ *more than one* person to bid for him; for, if he do, it will be considered as puffing, and vitiate the sale accordingly.

123. *If purchaser disparage the property*, in order to deter others from competing with him at the sale, he will not only be disabled from compelling specific performance of the contract or maintaining an action for its non-performance, but will be himself liable to an action for the slander of the vendor's title.

124. *A valid sale at auction* may be completed by knocking down the hammer when goods only are sold; but, in the sale of real estate, no binding contract is made, within the meaning of the statute of frauds (29 Car., ii., c. 3,) until the auctioneer has attached his signature to the conditions, which, as the lawfully authorized agent of both parties, he is capable of doing, without any appointment in writing. The usual practice is, as we have before remarked, to have a *short form of contract* attached to the conditions of sale, which, when signed by the necessary parties, becomes embodied with the terms of the conditions, and the whole forms one entire contract. This is the proper and most regular course of proceeding; but a *simple entry* of the purchaser's name by the auctioneer, referring to the lot for which he bids, will be a sufficient signing on behalf of the purchaser to be binding on him, as will also the auctioneer's signature to a receipt for the deposit, if it refers sufficiently to the contracting parties and to the property sold, or to the conditions, so as to show the nature of the contract.

125. *A bidding may be retracted* any time before the hammer falls, either by word or gesture; but, whichever it be, it must be *decisive*, and readily understood; for otherwise it will be only like a mere mental reservation and amount to nothing, but the bidder will still be held to his bargain.

126. *A condition that biddings shall not be retracted* is invalid.

SALES BY AUCTION.

127. A deposit is usually stipulated for in the conditions of sale, and that it shall be paid either into the hands of the auctioneer or of the vendor's agent; but, in case of the sale of real property, the more usual practice is to direct that the deposit be paid to the vendor's agent. If paid to the auctioneer, he is considered as holding it as a stakeholder, both for the vendor and the purchaser; and, if he pays it over to the vendor without the direction of the purchaser, he becomes personally responsible for its return in case the title should prove defective. Under such circumstances the auctioneer may support an action against the vendor for the recovery of the money so paid to him; but he will not be entitled to recover the costs of defending an action brought by the purchaser for the recovery of it, unless the vendor himself has authorized the defense.

128. Disputes as to paying over deposit are best prevented by providing, in the conditions of sale, that it shall be paid into the hands of the agent of the vendor; but, in the absence of any express provision to that effect, the auctioneer and [every depository] has the power, in case both vendor and purchaser claim the deposit, to protect himself, under the statutes of interpleader, 7 Vic., c. 30; 9 Vic., c. 56; 20 Vic., c. 57; (see Revised Statutes, Cap. XXIX., p. 339;) or he may obtain an injunction in equity on paying the deposit into court; but, to do this, he must pay in the full amount of the deposit—for, should he insist upon retaining out of it his own commission, or any other claims to which he may consider himself entitled, he will thereby debar himself from all equitable assistance. Nor can an auctioneer protect himself under the interpleader acts, where he sells the property by private contract, after the auction is over, although it be sold subject to the conditions of sale.

129. Interest on the deposit is not generally payable by the auctioneer, because he is in the position of a stakeholder, and therefore bound to produce the money at any time it may be called for; nor, it seems, will it make any difference if the vendor were [without the purchaser's concurrence,] to give the auctioneer notice to invest the money in government securities, and although interest may actually have been made of it. But the auctioneer will be liable to pay interest on the deposit if;

1st. The contract has been rescinded by failure of the condition, and

2d. If a demand of the deposit has been made, and he has refused to return it; though even then, according to the opinion expressed by Borough J., in *Curling v. Shuttleworth*, (9 Bing., 134.) it must be proved that the auctioneer actually made interest of the money.

The better plan therefore is, where some time must necessarily elapse before the purchase is completed, for the parties to arrange that the deposit shall be paid-in to some bankers, who will allow interest for it as long as it is in their possession.

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SALES BY AUCTION.

130. *Auctioneer is personally liable* if, without the authority of his employer, he gives credit to the purchaser for the deposit or any other moneys in respect of the purchase, and will be bound to make good any loss incurred thereby; and he will also be responsible for any securities which he may take from the purchaser—such as bills of exchange, promissory notes, or the like; nor has he any authority, under common conditions, to receive *more money* than the amount of the deposit.

131. *The auctioneer is personally liable* also if he do not name his principal and it should turn out that he has not the means of fulfilling his contract. He must also be careful to give his *own name*; as the act 8 Vic., c. 15, expressly directs the auctioneer, under a penalty of £20, to suspend or affix.

132. *If the auctioneer becomes insolvent* during the progress of the sale, the loss must be borne by the *vendor*, whose agent he properly is for every purpose connected with the auction, and appointed by him for the very purpose; for, as far as the *purchaser* is concerned, an auctioneer can only be considered as having a kind of special authority to sign the purchaser's name to the bidding. In every other respect the auctioneer is the agent of the *vendor* by whom he is selected, under whose authority he acts, and who alone can be supposed to have any confidence in him.

133. *An auctioneer is paid for his services* either by special contract between him and the vendor or, in the absence of such contract, by a fair *quantum meruit* for his services, which will be determined by the usage of trade; but, if the payment is dependent upon a contingency, it cannot be recovered until the contingency actually takes place.

134. *An auctioneer has a lien on the deposit* if he conducts the business *properly*, and not on the deposit only, but on any goods or effects of the vendor in his possession, for his commission and expenses; but, if he is *negligent*, so as to cause injury to his employer, he will be entitled to no remuneration whatever for his services.

135. *The statute of fraud* does not apply to sales under a decree, because they are a judicial act, and therefore such sales will be enforced, although the buyer should omit to sign his name to the bidding-paper attached to the conditions of sale.

Of SALES by PRIVATE CONTRACT.

Requisites which Constitute a Valid Claim.

136. *All agreements for the sale of real estate* are required by the statute of frauds to be in writing, signed by the party to be charged, or by some other person by him thereunto lawfully authorized.

STATUTE OF FRAUDS.

137. *Interests in lands within the statute of frauds* are numerous. For example, an agreement which confers the vesture of land for a limited time and for a given purpose—as the sale of a crop of mowing-grass, or of the next year's growth of hops, also timber, and the produce of fruit-trees, as apples and the like, and also of such fixtures as the tenant may not remove, but which descend with the land to the heir; but such things as are *fructus industriales*, such as potatoes or turnips in the ground, growing crops of corn, and the like, and also fixtures of such kind as the tenant may remove, are not within the 4th section of the statute, although they are all clearly within the 17th section, which requires either an acceptance of some part of the goods, or something given in earnest to bind the bargain, or some note or memorandum in writing, signed by the party to be charged, or by his agent thereunto lawfully authorized, in all cases where the price is above £10; and such sales will consequently be invalid unless the terms prescribed in the 17th section of the statute are duly complied with.

138. *Shares of railway shares* are not within the 4th section of the statute; but shares in a *mining company* are within that section, and so also is the right of drawing water from a well.

139. An *unwritten agreement*, if actually executed, may be supported both at law and in equity, and courts of equity do not require the actual *completion* of the contract to take it out of the statute; for they consider *part performance* sufficient for that purpose, because then the evidence of the bargain does not rest merely upon words, but upon acts actually done.

140. *As to what is such a part performance*, it appears that where a purchaser, on a verbal agreement, is *let into possession* of the property *by the vendor*, that will take the case out of the statute, and be binding both on the vendor and the purchaser; but a simple act of entry, *without the permission of the vendor*, will amount to nothing; neither will a continuance in possession by a tenant after the expiration of his tenancy, unless the landlord accept an additional rent, or rent payable in a different manner than that reserved in the lease, in which case it seems that the landlord would be bound to answer whether such a rent was accepted as a holding from year to year, or upon what other terms.

141. *Part performance*, to support an agreement, must be such acts as could be done for *no other purpose* than to carry out the contract, and the terms of the agreement itself must be shown. Therefore preliminary matters—such as delivery of abstracts, or draft of conveyance, or employing surveyors to look over the estate and value the property—are not sufficient; because such acts are merely introductory or auxiliary to an agreement, and not part performance of it.

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STATUTE OF FRAUDS.

statute. Great fluctuation of opinion did prevail upon this point; but the law is at length finally settled.

143. *When several lots* are sold to the same purchaser, a performance as to *one* of the lots will only take the agreement out of the statute so far as that particular lot is concerned, but will in no wise affect the rest of the lots.

144. *Sales by auction* and proceedings in bankruptcy are within the statute; but sales under a decree or order of court of equity are not so, as we remarked before.

145. *Representatives* are bound by the same acts which bind the party concurring in them.

146. *Specific performance* will not be decreed upon the ground of part performance of the contract, unless it be clearly shown what the terms of the contract were. The mere act of expending money, however large the sum, will not be evidence of the duration of interest contemplated by the parties; nor does the fact of one being let into possession afford any proof either of the price agreed upon or of the quantity of interest intended to pass, where the agreement itself is silent on those points.

147. *Confession of the agreement*, made by a defendant in his answer, has been considered as not falling within the mischiefs which the statute was intended to prevent, and therefore *specific performance* has been decreed thereon; but *not* where the defendant sets up the statute as a bar. If, however, a defendant does not insist upon the statute when he admits the agreement, he will not be allowed to do so in answer to an amended bill.

148. *What instruments comply with the statute of frauds* is often a question to be carefully settled. There are five requisites for this under the 4th section of the statute:—

- (1.) The contract must be in writing.
- (2.) It must contain the names both of vendor and purchaser.
- (3.) It must contain a description of the property.
- (4.) It must state the price to be paid for it.
- (5.) It must be signed by the party to be bound by it, or by his agent thereunto lawfully authorized.

Without every one of these five requisites the contract cannot be supported.

149. *As to what note or writing is sufficient* the statute does not particularly define, by giving any particular form. Even a receipt for the purchase money has been held to constitute a valid contract within the statute. The note or writing need not be contemporaneous; for, if it be adopted afterward, that is sufficient, and parol is admissible to show the different writing referred to. Therefore an indorsement by the defendant on the draft of a lease which had been perused and altered by his own attorney, in the following terms: "I hereby request Mr. Shippey to endeavor to let the prem-

CONDITIONS OF SALE.

who, on account of bodily weakness or other infirmity, is unable to sign his name.

It seems, also, that where a *printed signature* is done by a party's directions, it will be a signing by a lawfully authorized agent, within the meaning of the statute; but stamping an instrument with a *seal* is not sufficient.

153. *Signing as a witness* will be a sufficient signature, and bind the party so signing, if he is aware of the nature of the instrument; but not so if he *did not know* what the instrument contained; nor will the circumstance of his having so signed afford any *evidence* of his knowledge of the nature of the instrument, since it is the frequent practice for persons to sign their names as witnesses to agreements and other writings without the slightest knowledge of their purport or contents.

154. An agent, if lawfully authorized, may bind his principal under the 4th section of the statute, and it is not necessary that his appointment to do so should be in *writing*, although this is expressly required by the *first* and *third* sections, which relate to leases and other uncertain interests in lands; but, although the agent's signature is binding on his principal, the signature of his *clerk* will not have that effect, though the principal may give him special authority if he pleases, or such authority may be implied from subsequent acquiescence in his acts.

155. *If the other party do not sign*, still the signature of the party to be charged will bind *him*; but, if one only of the parties be bound, he may *require* the other party to signify in writing his assent or dissent to the contract, and, unless this be acceded to, *he will be at liberty to rescind the contract.*

FORMS.

156. CONDITIONS of SALE of FREEHOLD PREMISES.

(1.) That the highest bidder shall be the purchaser; that no person shall advance less than \$_____ at any bidding, or retract his or her bidding; and, if any dispute shall arise between the bidders, the premises shall be put up again at the last bidding.

(2.) That the purchaser shall, immediately upon the lot being knocked down to him, pay to Mr. A. B., the vendor's agent, a deposit at the rate of _____ per cent., and sign an agreement to pay the rest of the purchase money on the _____ day of _____ next, at

CONDITIONS OF SALE.

the office of the said A. B., at C _____, at which time the purchase is to be completed.

(3.) That the vendor will, within one calendar month from the day of sale, at his own expense, deliver to the purchaser, or his solicitor, an abstract of title of the said premises, and deduce a good and unincumbered title thereto; and the purchaser shall, within twenty-one days next after the delivery of such abstract, signify in writing to the vendor, or his solicitor, his objections or requisitions to the title, if any, and, in default of so doing, shall be considered to have accepted the title unconditionally.

(4.) That the vendor shall bear the expense of all disentailing deeds, as also any acknowledgments of married women, that may be necessary for perfecting the title; but the expense of the conveyance, assignment, or surrender of any outstanding estate, term, or interest, or of obtaining any probate or letters of administration, shall be borne by the purchaser, as also the expense of comparing title-deeds and other documents, and also of all attested and other copies, and covenants for the production of title-deeds; and the recitals of descents, births, marriages, deaths, payments of money, heirships, intestacies, devises, vesting of terms, and other facts contained in deeds, or wills of twenty years old and upward, shall be deemed sufficient evidence of the facts and documents therein recited.

(5.) That, in case the purchaser shall object to the title, the vendor shall be at liberty to annul the sale on returning the deposit to the purchaser, without interest, and paying all reasonable expenses incurred by the purchaser in respect of such contract.

(6.) That, upon payment of the purchase money at the time herein before appointed, the vendor and all necessary parties will convey the premises to the purchaser; the purchaser, at his own expense, to prepare and tender the conveyance to the vendor and other necessary parties for execution; but the expenses of the execution to be borne by the vendor.

(7.) That the purchaser shall take, at a fair valuation, all timber, trees, standells, tellors, and pollards, as well of oak, elm, beech, fir, and sycamore as of every other description whatsoever, and although not strictly considered timber, according to the custom of the country, [except apple and other fruit-trees,] now growing on the premises, down to the value of twenty cents a stick, inclusive; and, in case of any disagreement, the value shall be fixed by the award of two referees, one to be chosen by the vendor and the other by the purchaser; and, if such referees cannot agree, they are to call in an umpire, whose decision shall be final; and, in case either party shall refuse to name a referee, the referee of the other party may proceed alone, and his determination shall be conclusive on all parties.

(8.) That the purchaser shall be bound to pay the purchase money in the several instalments, such instalments, such instalments, or their interest, shall be borne by the purchaser.

(9.) Last and not least, the vendor, who is the estate in and to the premises, shall be bound to pay all damages, costs, and expenses of the purchaser.

157. A S

I, (purchaser) of the County of Canada, do hereby certify that I have received the purchase price of \$ _____ of the said (vendor) and I, the said (vendor), do hereby agree to do further agree

AS WITNESS

WITNESS:

E. F.

158. VENDOR

That the vendor of the premises above described, do hereby certify that the purchase price of \$ _____ has been paid to me, and that I have received the purchase price of \$ _____ of the said (purchaser) and I, the said (purchaser), do hereby agree to do further agree

CONTRACT OF PURCHASE AND SALE.

(8.) The number of acres are believed to be correctly stated, but are not warranted to be so; but, should any error appear to have been made therein, to the prejudice of the purchaser, or any error in the description of the property, or of the vendor's interest therein, such error shall not annul the sale, but the purchaser shall accept such compensation as shall be fixed by the award of two referees, or their umpire, chosen as aforesaid.

(9.) Lastly, that, if the purchaser shall fail to comply with the above conditions, his deposit shall be absolutely forfeited to the vendor, who shall immediately thereupon be at liberty to resell the estate in any way he may think proper; and any deficiency he may incur by such second sale, together with all incidental expenses, shall be borne by the defaulter at this present sale, which, in case of non-payment, may be recoverable by the vendor as liquidated damages, without his tendering any previous conveyance to the purchaser.

157. A SHORT FORM of CONTRACT to be ANNEXED to
CONDITIONS.

I, (*purchaser*), of _____, in the county of _____, and Province of Canada, Esqr., hereby acknowledge that I have this day become the purchaser of the above mentioned premises, at the price of \$ _____, part of which I have paid to A. B., the agent of the said (*vendor*), by way of deposit, and \$ _____, the remainder, I agree to pay at the time and place appointed by these conditions; and I, the said A. B., as agent for the said (*vendor*), also admit that I have received the said sum of \$ _____ by way of deposit; and do further agree in all other respects to fulfill the same conditions.

AS WITNESS our hands, this _____ day of _____, 18 _____.

C. D., (*purchaser*) A. B., as agent to (*vendor*).

WITNESS:
E. F.

158. VENDOR to DELIVER ABSTRACT, but NOT to be required
to PRODUCE LESSOR'S TITLE.

That the vendor will, within one calendar month from the day of sale, deliver unto the purchaser, or his solicitor, an abstract of the indenture of lease of the said premises, and of all subsequent deeds and writings relating thereto; but the vendor shall not be required to produce his lessor's title, nor to furnish any abstract

CONDITIONS OF SALE.

thereof, nor any other evidence of the title prior to the said indenture of lease; and the purchaser shall, within twenty-one days next after the delivery of such abstract, signify in writing to the vendor, or his solicitor, his objections or requisitions, if any, to the title, and, in default thereof, shall be considered to have accepted the title unconditionally.

159. CONSTRUCTIVE NOTICE of COVENANTS.

It seems that a person who contracts for an underlease will be held to have constructive notice of at least all the usual covenants of the original lease, and perhaps of all covenants, whether usual or unusual.

160. CONDITIONS of TITLE.

A purchaser of freeholds has a right to require a title commencing at least *sixty years* before the date of his conveyance, if the land has been so long granted by the Crown.

161. DISTINCTION *between an EXCEPTION and a RESERVATION.*

It is to be observed that, although the words "*except*" and "*reserved*" are frequently conjoined, yet an exception and a reservation are things *totally different*. An *exception* must be *part* of the thing granted, and of a thing *in esse* at the time of the grant; but a *reservation* must be of some *new thing* created out of the thing granted. Thus an exception may be of a house, or a close of land comprised in the property granted, or of trees generally, or specified trees, while a reservation is of a rent or a right of way.

162. CONDITIONS of SALE of LEASEHOLD PREMISES.

CONDITIONS OF AN AUCTION, held on the _____ day of _____ 18____, at _____, in the county of _____, by Mr. D. A. W., (licensed auctioneer,) for selling, on behalf of (vendor,) Esqr., the free simple of (describe the property,) situate in _____ aforesaid.

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FORMS.

son shall advance less than \$ _____ at any bidding, or retract his or her bidding; and, if any dispute shall arise between the bidders, the premises shall be put up again at the last bidding.

(2.) That the purchaser shall, immediately upon the lot being knocked down to him, pay to Mr. A. B., the vendor's agent, a deposit at the rate of _____ per cent., and sign an agreement to pay the rest of the purchase money on the _____ day of _____ next, at the offices of the said A. B., at C _____, at which time the purchase is to be completed.

(3.) That the vendor will, within one calendar month from the day of sale, deliver unto the purchaser, or his solicitor, an abstract of the indenture of lease of the said premises, and of all subsequent deeds and writings relating thereto; but the vendor shall not be required to produce his lessor's title, nor to furnish any abstract thereof, nor any other evidence of the title, prior to the said indenture of lease; and the purchaser shall, within twenty-one days next after the delivery of such abstract, signify in writing to the vendor, or his solicitor, his objections or requisitions, if any, to the title, and, in default thereof, shall be considered to have accepted the title unconditionally.

(4.) That, in case the purchaser shall object to the title, the vendor shall be at liberty to annul the sale on returning the deposit to the purchaser, without interest, and paying all reasonable expenses incurred by the purchaser in respect of such contract.

(5.) That, if the purchaser's solicitor shall approve of the title, the vendor, and all necessary parties, will, on receiving the remainder of the purchase money, assign or otherwise effectually assure the said (*short description of the property.*) unto the purchaser for all the residue of the said term, free from all incumbrances, excepting the rents, covenants, conditions, provisoes, stipulations, and agreements, reserved and contained in the original lease of the said premises; the purchaser at his own expense to prepare and tender such assignment to the vendor and other parties for execution; but the expense of execution to be borne by the vendor.

(6.) That the vendor will pay all rents, taxes, assessments, and all other outgoings for the said premises, up to the _____ day of _____ next.

As to ABSTRACT of TITLE.

163. Vendor's solicitor prepares the abstract for the purchaser according to the present rule, and the vendor pays for it, except where the sale is to a public company, established by act of parliament; for then, if there be no special agreement to the contrary, the company pay for the abstract. In all other cases a purchaser

PREPARATION OF ABSTRACT.—SIXTY YEARS' TITLE.

can insist, as a matter of right, that the vendor shall furnish him with an abstract free of expense, even although he may have agreed to accept the title; and, even if one *tenant in common* buys of another, he has the same right.

164. *Less than sixty years* is not sufficient to carry a title back, if the lands have been so long granted by the Crown; and this rule is not so affected by the statute of limitations (4 Will., 4 c., 1,) as to be safely neglected. That statute makes sixty years a better security than it was before, by shortening the time within which suits may be instituted; but it does not take away the ground of the rule, which is founded on the duration of life, nor the objection that the conveying parties might have been mere tenants for life, or that there might be subsisting equitable rights as between trustees and *cestuis que trust*.

165. *Even sixty years* is not sufficient in all cases; because a document of that date may derive its validity from some previous instrument, as where such document operates as the execution of a *power* limited by some previous deed or will, or if it be a *settlement* made in pursuance of *marriage articles*, for then the articles also must be abstracted to show that the settlement was made in accordance with them; and, where the first abstracted document contains any recitals which raise doubt or question as to the construction, effect, or operation of any of the earlier documents, the purchaser has a right to have so much of the prior title abstracted as will be sufficient to remove the objection; but, if an instrument creating a power is *lost* and cannot be produced, evidence of *possession* may be sufficient to raise the presumption that the power was exercised in strict conformity with the limitations of the original deed or will.

166. *The root of the title* is best found in the deed of conveyance to the *first purchaser*, as affording the strongest presumption that the title was good at that time; but, when that cannot be had, the next best root is a *will*, or some settlement made by a person acting as absolute owner of the fee, for either of these, with possession consistent with the evidence of title, furnish the like presumption of good title, and such presumption is much strengthened if there has been a frequent change of ownership without any adverse claim.

A lease is not a good root of title to an estate in fee where the vendor has the means of showing any earlier documents of title; for, where a lease is relied on, it will not be sufficient to prove that it is a valid instrument, but it must also be shown that the lessee had actual possession under it.

167. *A purchaser has no right* to call for an abstract of any documents prior to the date that would give a good root to the title; still he may require the production of every document relating to the title, *however ancient such document may be*.

168. *If early documents are lost or destroyed* the vendor must be

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ANCIENT DOCUMENTS.—REVERSIONARY INTERESTS.

able to prove their contents and execution; but, where there are *no documents of title*, it will be sufficient to prove such long uninterrupted possession, enjoyment, and dealing with the property as may afford a reasonable presumption that there is an absolute title in fee simple.

169. A *pedigree*, authenticated by such evidence as would support the title in case of adverse claim, should accompany the abstract in every case where the title depends upon descent.

170. *As to reversionary interests*.—Title to these must be carried back, in every case, to the time of their creation, however distant that may be; and it must also be shown that the possession has been enjoyed conformably with the instrument creating the reversion.

171. *As to ancient terms of years*, it will be sufficient to abstract the original deed creating the term and a sixty years' title to the possession, omitting the intermediate assignments; and, where there has been a possession for sixty years, it seems that the loss of the deed creating the term itself will not invalidate the title.

172. *Lessor's title* in sales of *leasehold* must be shown, and the vendor's title abstracted and traced back to the same period as in the case of a sale of freehold; and it must appear that the freehold has been enjoyed since the demise, conformably with the earlier title.

173. *As to a renewed lease*, granted in consideration of the surrender of a former lease, such former lease should be abstracted, in order to show that the parties had not only a legal title but an equitable right to surrender and accept a new lease, respectively. If ancient, the title should be carried back sixty years, at least; but, if the original lease is less than sixty years old, then the title should be traced up to the deed of such grant.

174. A *double abstract* will be necessary as to *leaseholds* or *mines*, where they form a distinct title from the freehold; one to show the title of the lessor or grantor, and the other that of the lessee or grantee of the mines.

175. *The documents should be abstracted* in the order of their dates, or of their execution when of the same date.

176. *Every document* that can in any way affect the property should be abstracted; for the vendor's solicitor is *personally liable* if he keeps back any document or suppresses any incumbrance by which the true nature and real state of the title may be revealed, so that he must notice judgments and all other subsisting charges upon the property.

177. *In leaseholds*, the lessor's title, the original lease, and mesue assignments must be abstracted, and the rent and all outgoings must be set out. Any burdensome covenants must be *fully* given, and common covenants *shortly*.

LEASEHOLDS.—UNTECHNICAL WORDS.

178. *Recitals* should be abstracted with sufficient fullness to show their whole purport.

179. *The testatum clause* should state the nature of the consideration; and, if there be any peculiarity in the manner of payment, it should be set out fully.

180. *The granting clause* should contain every word of conveyance which the deed contains; and, if there are *distinct* granting clauses, each should be abstracted in its order; and, where the conveyance is made at the request or by the direction of a *particular person*, or by a party in a *particular character*, [as heir, executor, trustee, &c.,] it should be so said; and, if the conveyance is in execution of a *power*, the reference to the power should be inserted, and the *mode* in which it was directed to be exercised.

181. *Parcels and exceptions* should be copied *verbatim*.

182. *The habendum* should be *verbatim*; but beginning, "*To hold, &c.*"

183. *The reddendum* should be given briefly, except when the rent is payable in a particular manner; for in that case it should be fully stated.

184. *Untechnical words* of limitations should be copied *verbatim*; and the same of words which convey an estate only by implication.

185. *Trusts and powers*, if they have arisen or are intended to be exercised, should be abstracted fully; but if trusts have never arisen or have been effectually defeated, and if powers have not been exercised or are barren, relinquished or incapable of taking effect, or if they are in their nature immaterial to the title, it will be sufficient simply to refer to them.

186. *Clauses of indemnity* should be fully abstracted where the trusts or powers have been carried out.

187. *Proviso for redemption* should be abstracted in full.

188. *Usual covenants* may be brief; *special covenants* should be full.

189. *Attestation and memorandum of receipt clauses* should state who executed the deed; and, if any party named in it *omitted* to execute, that should be stated. If the execution were in any *particular manner*, that also should appear; and so if any *acts* were required to be done to give validity to the deed, [as the acknowledgment of a married woman under the 2 Victoria, chap. vi.,] such of those facts as have taken place should always be mentioned, and, if the lands have been duly registered, that should appear. If the receipt of the consideration money is indorsed, signed, and witnessed, according to the modern practice, now universally adopted, those facts should be mentioned.

190. *The date of the will*, and not the time when it was proved, should be set opposite to the commencement of the will, in the outer margin of the abstract. A *will* must be *more fully* abstracted than a deed, and every term or expression that can in any way

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WILLS.—DEBTS AND LEGACIES.—DECREES.

affect the property should be quoted, and all conditions and provisos of modification, and every special matter concerning the premises, should be accurately stated.

191. *Debts and legacies* charged on land need not be set out; because, where real estate is charged with debts, the devisee may always sell, in order to pay them: and, unless such debts are *specified* and *scheduled*, the purchaser is exonerated from seeing to the application of the purchase money; but, if such debts are *scheduled*, or even *specifically mentioned*, in the will, the purchaser will be *responsible for the application* of the purchase money, and must see that it is applied in liquidation of these charges, unless the will contains an express clause, *which all well-drawn wills do contain*, exonerating the purchasers from seeing to the application of the purchase moneys.

192. *Leaseholds sold by executors* do not come under the rule mentioned in section 125, if the property is sold by *executors* in that character; because executors have, by law, power to convert the personal estate of their testator into money for the purpose of paying his debts, in the application of which a purchaser has no right to interfere, and therefore the purchaser has only to do with the liquidation of charges upon the property which are *independent of the will*, as mortgages or other charges thereon anterior to the will.

193. *Probate* should be set out at the foot of the will, stating the court in which, and the parties by whom, it was proved, and the date of such probate.

194. *If the executors have declined to act*, or any of them, the fact should be stated; and, if renunciation was made by deed or any other instrument, the same should be abstracted. The *registration of the will* should be stated.

195. *A private act of parliament* relating to the title should be briefly abstracted. Little more than a mere reference to the act itself will be sufficient, but a printed copy of it should be sent with the abstract.

196. *Judgments* must be abstracted by the vendor's solicitor in the same manner as any other charge upon the property.

197. *Decrees or decretal orders*, which affect the property in any way, should be abstracted; and, if there has been a reference to the master upon any point relating to the title, his report, and the order or decree thereon, should be stated.

198. *Letters of administration* should be set out, with date, in the margin; and it should be said whether they were *general* or *special*, out of what court, and to whom, they were granted.

199. *Matters of fact*, as marriages, &c., should be in the order in which they occurred, with certificates, if any, by which such facts are authenticated, with their dates.

THE ABSTRACT.

200. *Descents* should be proved by an authenticated pedigree, containing the names of the parties, the dates of their birth, marriage, and death, and the respective ages at which they died; all which should be copied *verbatim*. It is well also to insert the name of the place of burial.

201. *Seizin* may sometimes be shown by extracts from old leases, by payment of taxes, or by other evidence of ownership, which should accompany the abstract.

202. *Cancellation, alteration, or erasure of documents*, or any fact connected with the title, should not be omitted to be noticed simply because such fact will not invalidate it. It is now settled law that *cancellation* of a deed does not *annul* it, or *restore the estate* to the former owner; but still a fact of this kind should be noticed in the abstract, nor should a disclosure be withheld because it might prejudice the title. Therefore, if an *alteration* or *erasure* was made in any instrument after its execution, that fact should be mentioned with all its circumstances, since a *fraudulent* alteration by the person *taking under the deed* would vitiate his interest. Such alteration by a *stranger* will not *now* prevent a deed from having its original effect, when it can be plainly shown what that effect was; and, to do this, the mutilated instrument may be given in evidence, and *parol* admitted to show what portions have been altered or erased, and what words were contained in such altered or erased parts; but, if satisfactory evidence cannot be had to show the original contents of the instrument, the *old rule* will apply, and the instrument will be void; or, more correctly, it will be void for *uncertainty*.

In *Doe ex dem Tatham v. Gattamore*, 17 L. T. Rep., 74, it was held that an erasure or interlineation appearing on the face of a deed is to be presumed, unless the contrary be shown, to have been made at the time of the execution of the deed.

203. *The conclusion of the abstract* may properly state whether the vendor is married, and contain a statement of all matters relative to the legal character and station of every party interested in the property, which do not appear on the face of the abstract, to enable the peruser to ascertain with precision every thing connected with the title, and to point out the best mode of assurance to the purchaser, without the necessity of calling for any further information.

204. *Delivery of the abstract* by vendor's solicitor should be at the appointed time, if a time was appointed, for default in such case would, at law, authorize the purchaser to annul the contract, and in *equity* also, where time is made of the essence of the contract; but, if there is no stipulation to that effect, the purchaser will not be released from his contract by such non-delivery, if he neglects to *apply* for the abstract within a reasonable time *before* the day appointed for its delivery, or if, when it is afterwards ten-

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THE ABSTRACT.

dered to him, he does not object to receive it on account of the delay. And, if the vendor does not deliver the abstract, when pressed by the purchaser to do so, the latter may avoid the contract, *even in equity*, as soon as the time fixed for its completion has elapsed.

Where *no time* is fixed, the abstract should be delivered in a convenient time; but, as it is not settled what time may be called convenient, the best way is to use diligence and avoid any unnecessary loss of time.

A note of the *time* when the abstract is actually delivered should always be made.

205. *Demand of abstract* should always be made on the part of the purchaser, as his part of the due diligence to be exercised in the matter; for, if no demand be made for a long period, even when no particular time is fixed for delivery of the abstract, that may in some cases be such *laches* as may be ground for rescinding the contract. (*Harrington v. Wheeler*, 4 Ves., 686.)

206. *If non-delivery is relied on*, the abstract should not be received when tendered, or, if sent by post or otherwise, it should be returned unperused as soon as possible; but, if the purchaser is *willing* to complete the purchase, if it can be done by the appointed time, the abstract may be received *without prejudice* to the purchaser's right to rescind the contract, if, on examining the title, it is discovered to be impossible to complete the contract by the time agreed, or by some other specified period.

207. *Perusal of the abstract* by the solicitor of the purchaser must be with reference to the following points:—

- (1.) To see that the title is carried back far enough.
- (2.) To discover the legal operation of the various instruments, as well as the *capacity* of the parties; bearing in mind that the *very same terms*, when used in different instruments, have a *different force* and operation: for example, a limitation "to A. and his heirs, to the use of B., his heirs and assigns," if in a deed of *grant and release*, will vest the *legal estate* in B.; but in a deed of *bargain and sale*, or of *appointment* executing a *power*, such a limitation will only give B. an *equitable estate*; and many terms, which in a *will* are capable of passing an estate in *fee simple*, will pass a mere *life interest* when contained in a deed. And the same remark applies to property of *different tenures*; for the words which would pass only a life interest or an estate tail in *freehold*, will often pass an absolute interest in *leasehold* or other personal property, (*Bennett v. Leucknor*, Roll, Rep., 356; *Crawford v. Trotter*, 4 Mad. Rep., 360; but see *Forth v. Chapman*, 1 P. Wms., 663, and *observations thereon*, 1 Hughes' Pract. Sales, 2d edit., 321.) and the same words may pass a different interest accordingly as they relate to an *equitable* or a *legal estate*, (*Papillon v. Voise*, 2 P. Wms., 471.) or where applied to persons

THE ABSTRACT.

standing in a particular degree of relationship to each other, (*Morgan v. Griffiths*, Cow., 234.)

(3.) That there is a clear deduction both of the *legal* and the *equitable* estate.

(4.) That all *particular estates* are either determined or capable of being conveyed to the purchaser, or otherwise disposed of, so as to enable the vendor to confer a good and unimpeachable title, in pursuance of the terms of the contract.

(5.) To ascertain if there are any *charges* or *incumbrances* affecting the property, and, if so, whether the vendor can discharge them; in other words, whether they are matters of *title* or of *conveyance* only.

(6.) To see whether the *parcels* are the same in each instrument as were comprised in former documents, for, if the identity is not sufficiently disclosed by the abstract, it must be authenticated by extrinsic evidence, such as payment of taxes, &c.; for, when such outgoings are made without any variation, except in the change of the owner's name, it may be presumed that all is right.

208. *Analysis of abstract* will assist investigation, thus:—

1796, 3 and 4 June, Indres of Le. and Rele. Rele. A. B., conveyed to C. D., in fee.

1800, Oct. 7, C. D. devises to F. F. in fee.

1801, Nov. 10, testator died.

1802, Jan'y. 17, will proved in surrogate office, &c.

1803, 1st and 2d March, E. F. conveys to I. H., in fee, to uses to bar dower.

1805, May 12, I. H. mortgages in fee to J. L., by appointment; and so on.

209. *Documents omitted* which are necessary to elucidate the title should, on a review of the analysis, be now demanded; and also, where such documents are simply *mentioned* or *referred* to in the recitals, their production should be insisted on. This is often necessary where persons seized in fee have left *wills* in which they have *not disposed of the property in question*. In such case the will itself, or a probate copy, should be produced, to ascertain that it contains no words of *general devise* sufficient to pass such property.

210. *Marriage settlements*.—Inquiry should be made whether any of the owners of the property executed a marriage settlement; and, if so, its production should be required, in order to ascertain whether the property is in any way affected by it, and nothing should be taken for granted where proper evidence can be had.

211. *Bare statements* of any fact affecting the title should never be relied on, but proper evidence should be required.

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212. *Requisitions* are properly inserted in the margin of the abstract: for example, for letters of administration, as evidence of intestacy; for office-copies of wills, to prove the appointment of executors and probate by them; for certificates of marriages, births, or burials, when such facts are necessary to establish a pedigree, or any other fact affecting the title; for powers of attorney under which any deeds purport to be executed, and proof that the principal was living at the time the power was executed; whether deeds have been registered; whether such as required the acknowledgment of a married woman were duly acknowledged; whether the terms of a power have been strictly complied with; whether a will was properly attested [according to the statute,] and signed by the testator in the right place; and this, whether the will were made under a power or not.

213. *Extraordinary acts* should be inquired into; as, where a deed was delivered as an *escrow*, full inquiries should be made in order to ascertain that every condition has been performed, and that the second delivery has taken place.

214. *The whole abstract* should be read before any requisitions are made in the margin.

215. *Are these the only matters objected to or the only requisitions to be insisted on?* is a very proper question for the vendor's solicitor before he proceeds to remove and to answer such as are made, for in many cases the other party, merely to spin out the time, will continue to raise frivolous objections, that he may be enabled in the mean time to raise money, or to find a sub-purchaser for the property; and hence the propriety of the vendor reserving a right to rescind the contract in case the purchaser objects to the title, or makes requisitions which it is not convenient to comply with.

216. *Approval of title as it appears in the abstract* does not waive objections otherwise disclosed.

217. *If all objections are waived except one*, the removal of that one will be so absolutely necessary that the waiver of the rest will be construed as *conditional* thereon; and, if it be not removed on a bill filed against the purchaser for specific performance, he will be entitled to a general reference of title. (*Le Sturgeon v. Martino*, 3 Myl. and Kee, 255.)

218. *Purchaser may require a title*, not only free from incumbrances, but *from doubt or suspicion*; nor will any extent of *indemnity* alter this rule.

219. *Indemnity* for a doubtful title cannot be claimed by purchaser. He must take the title *as it stands*, or rescind the contract.

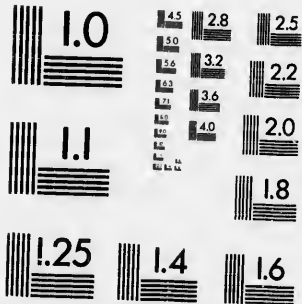
220. *Defect in quantity* may be matter of compensation, and so also as to the *term of tenure*, and the contract may be enforced.

221. *Right to demand completion of the contract* is sometimes in



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INDEMNITY.—RIGHT TO DEMAND COMPLETION.

the purchaser only, but *scilicet* never in the *vendor* only: *e. g.*, a purchaser may demand specific performance with compensation where the *vendor* contracts to sell in *fee simple*, and has only *a term of years*; or to dispose of an entirety, when, in fact, he can only confer title to a proportionate part; or an underlease, where the contract was for a lease; and so on. Nor can a *vendor* avoid this consequence, though he himself were *deceived* as to the true nature of the property; nor can he in any such case call upon the purchaser to complete the contract on similar terms; and so, where an estate is subject to a *right of entry* for the purpose of working mines, the purchaser may claim compensation, and the *vendor* cannot get clear by offering to waive the contract and place the purchaser *in statu quo*. (*Seaman v. Vandreu*, 16 Ves., 323.)

222. *The rule as to compensation*, as laid down by Lord Eldon, is that, wherever the *vendor* has not the interest which he pretended, "the purchaser may generally, but not universally, take what he can get, with compensation for what he cannot have;" but there are *exceptions*:—

(1.) Where the right which the *vendor* cannot confer is incapable of pecuniary valuation, as the right of *sporting*; and where the lands lie *dispersed*, instead of being in a *ring fence*, it is doubtful whether compensation can be claimed, though a purchaser may certainly rescind the contract on that ground. (*Fewster v. Turner*, 6 Jur., 144.)

(2.) Where, when the contract was made, the purchaser *knew* that the *vendor* could not execute the agreement; for then it will be presumed to have been executed under a mistake, and the *vendor* cannot insist on specific performance, even as to the interest to which the *vendor* is actually entitled.

(3.) Where a *vendor* who has only a *partial interest* contracts to sell the *fee*, and where his conveying the interest which he really has would injure other parties who are interested in the property, but not parties to the contract—*e. g.*, tenant for life, without impeachment of waste, with reversion in fee, after an estate to his sons in tail male—and with full knowledge of the nature of his title contracted to sell the estate as owner to a purchaser who was ignorant of the true state of the title. Afterwards the *vendor* wished to rescind the contract, and the court refused to decree specific performance. (*Thomas v. Denny*, 1 Kee, 729.)

(4.) Where the purchaser has been guilty of willful misrepresentation, as in a treaty of exchange, by saying that the tenants are willing, when they are not; for *fraud* vitiates the contract *in toto*.

223. *The form of compensation* is usually by an abatement in money, but sometimes otherwise; *e. g.*, where, on a sale of woodlands, the value of the timber was correctly given, but the land was

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SPECIFIC PERFORMANCE.—MISDESCRIPTION.

twenty-six acres less than the quantity named, compensation was allowed for twenty-six acres of wood-land, *minus* the wood.

224. *Vendor may enforce specific performance*, with compensation :

(1.) In certain cases where the property has been misdescribed as to its extent ;

(2.) Where he can only make a title to a portion of the property ;

(3.) Where he has not the interest or power of disposition over that which he pretended to sell.

225. *Misdescription as to extent* ; as where the terms used are "more or less," or as "containing by estimation so many acres." Such terms have been held sufficient to cover a deficiency of five out of forty-one acres, but *not* of one hundred out of three hundred and forty-nine, nor of two acres in two closes stated to be *according to a specified plan*, 8 A., 4 R., 4 P., nor will such terms protect a vendor who makes a misstatement fraudulently.

226. Title to a *portion* only will usually enable the vendor to claim specific performance with compensation, but *not* if the portion to which he cannot confer title were the *chief object* of the purchaser ; and, where an estate is sold *in lots*, and the vendor cannot make a good title to the whole, the purchaser will be released if the lots are complicated together so that the possession of each is essential to the enjoyment of the whole, but not otherwise. The question is, "whether the part to which title cannot be made is material to the enjoyment of the rest."

227. *Where he has not the interest which he pretended to sell* ; if it be a term of years, a *small* deficiency in the *number of years* will be ground of compensation, and the contract may be enforced by the vendor ; but not so if the *deficiency be great*, for then equity will even assist the purchaser to recover back his deposit ; and, if the interest is in its nature uncertain, as a lease determinable on lives, if the vendor represent the lives as being healthy, when he knows that in fact they are not, he cannot enforce specific performance by the purchaser.

EVIDENCE OF TITLE.

228. *The rules of evidence* among conveyancers are less stringent than those of courts of law, and are usually satisfied by such proof as affords reasonable belief that the requisite evidence exists, and can be procured when wanted; *e. g.*, where a court of law requires a *will* itself to be produced, conveyancers are satisfied with the *probate*. Again, a court of law may require the testimony of the attesting witness to prove a deed, which conveyancers never do, unless there be some reason to doubt the genuineness of the witnesses' signature, and even then it would be incumbent on the purchaser to show reasonable grounds for the doubt.

229. *Stricter proof of matters of fact* is sometimes required by conveyancers than by a court of law; *e. g.*, if a man goes abroad, and is not heard of for a period of seven years, the presumption of law is that he is *dead*; but conveyancers never admit such presumption in matters of title, because that would be contrary to the rights of parties beyond seas, [or out of the province,] reserved by statute.

230. *Presumption of death without issue* is raised at law on ground more slender than conveyancers are satisfied with.

231. *Execution of a deed* is taken to be genuine if the names of the parties are placed to the seals, and the names of the witnesses to the clauses of attestation; and, if a deed has its sea's cut off, evidence may be given that it was originally sealed.

232. *The execution of powers* is taken to be sufficient if it appear to be done in the presence of the *number of witnesses* prescribed by the terms of the power; and, where the witnesses are to be "*credible witnesses*," it is *not* the practice to require any *evidence of their credibility*.

233. *Instruments themselves must be produced*, if in existence; but, if they are lost or destroyed, *copies* which would be evidence at law, with proof that the *originals* were duly executed and delivered, will be sufficient; but, unless such execution and delivery are proved, the purchaser may annul the contract.

Every vendor is bound to furnish the purchaser with the means of asserting his title, and defending his possession, and the title-deeds are the ordinary and primary means for this purpose. If primary means do not exist, secondary means may suffice; but if the abstract duly and fully prove the contents of a deed, it yet remains to prove that the deed itself was duly executed and delivered, and if that proof fails the purchaser is discharged.

234. *Powers of attorney* must be produced whenever a deed has been executed under such power, and proof must be given that the principal was living when the power was executed.

235. *Examined copies of memorials* of registered deeds are

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DEEDS DESTROYED.—RECITALS.

secondary evidence of the deed as against parties to it, and others claiming under them, but *semble* not as against strangers.

236. *Deeds destroyed by fire or other accident.*—This evil may be cured to a great extent if such deed were recently executed, and by parties who are still living, by their concurring in the conveyance to the purchaser; and a vendor, who was a party to the destroyed deed, may be compelled to do this, or to execute a new conveyance to the party claiming under it, in case the latter still continues to retain possession of the property.

237. *The recital of a deed* is evidence of its existence, and operates as an estoppel against all *parties* executing the deed containing the recital and those who claim under them; but it is no evidence of the contents or effect of the deed beyond what its name or nature necessarily imply, unless proof be given of its loss or destruction.

238. *Loss of mesne assignments* of leasehold may be made good by the recitals of them.

239. *Registration* is properly proved by the signature of the registrar, or his deputy.

240. *Proceedings in courts of law and equity* are proved either by exemplifications under the seal of the court, or authenticated by the signature of the judges in cases where the court has no seal; and proof of such seal or signature is rendered unnecessary by statute.

241. *Office-copies*, made by an officer of a court under its authority, have always been held sufficient by conveyancers; though, strictly speaking, they are only evidence in the causes or matters to which they belong.

242. *Grants from the crown*, if the original is lost, are proved by exemplifications of the patents from the crown lands office.

243. *Private acts of parliament* are sufficiently proved by a copy printed by the queen's printers, and such copy should accompany the abstract when necessary.

244. *Executorship* is proved by an office-copy, or by the probate of the will.

245. *Intestacy* as to personalty is proved by letters of administration, and as to real property, such letters or probate of a will not affecting the land in question or putting the heir to his election to abide by the terms of the will, or renounce all benefit under it.

246. *Births, marriages, and deaths.*—As to marriages, the 33 Geo., iii., c. 5, and subsequent statutes, require that they should be registered by the clerk of the peace of the county in which the marriage took place; but by 20 Vic., c. 3, every clergyman, duly licensed by the governor-general, may perform the marriage service, and is bound to keep a record of the same in a book, of which he is to make an annual transcript, beginning on the first February, 1859, and con-

EVIDENCE OF TITLE.

taining the registries of marriages performed by him for the year ending thirty-first December preceding, and record the same in the registry office of the city or county in which he officiates, and such registration, or a certificate thereof, is evidence of the marriages, respectively.

As to births and deaths, there is yet no such registration in this province, but it is probable that they also will be shortly under similar regulations: meanwhile, they are proved by evidence of relatives, by reputation among neighbors, by family archives, as family bibles, &c.

The traditional declarations of deceased members of a family as to such facts are generally received as evidence *after the death of those persons*, in the absence of better proof; but, before accepting such evidence, proof should be had that diligent and fruitless search has been made in the registers, if any, where such facts are officially recorded.

Entries in the family bible are admissible as evidence.

247. *Probate or letters of administration* are proof of *death* to conveyancers; and, where such probate, &c., has been *acted on*, a purchaser will have no right to a certificate of death or burial.

248. *Death without issue* is proved negatively, either by a statutory declaration by relations or others well acquainted with the party or circumstances may prove it; *e. g.*, as that he never was married, that issue is never mentioned in wills and other documents in which issue, if existing, would naturally be mentioned. The descent of property, or of titles of dignity, may also prove no other claimant to have been in existence.

249. *Legitimacy* is presumed if a child is born in wedlock; and, therefore, proof of marriage, and of the birth during the lifetime of the father, or within the period of gestation afterward, will be sufficient where no dispute has ever arisen on the subject.

250. *Annuities and rent charges* are proved to have been duly paid by the *last receipt* from the party entitled to receive them.

251. *Title derived through an heir* must be proved by ascertaining that he was seized of the property, either actually or constructively. *Actual entry* to vest the seizin may be made by the heir himself, or some one for him as his guardian; and entry even by a *stranger* for an infant has been held sufficient. *Constructive acquisition* may be inferred from acts of ownership over the property, as by receiving the rents and profits; and even from continued possession by the tenant of the ancestor, under a lease, by statute or by eligit, without any actual receipt of the rent or entry by him on the premises.

252. *Seizin of incorporeal hereditaments* is proved by acts of ownership.

253. *Original wills* cannot be demanded, nor can a purchaser

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EXPENSE OF PROOFS.—PRIOR DEFECT IN TITLE.

insist on verifying the abstract therewith at the vendor's expense, if the probate is ready for inspection.

254. *Probate* is the best evidence as to *personally* even in a court of law; but it must be ascertained that the will was made in conformity with the statute.

If probate is lost, an official copy, or the original, will be equally satisfactory.

255. *The vendor is bound to produce all documents*—*not in the abstract*, without express stipulation to the contrary, whether they are in his possession or not, and without any reference to the right of the purchaser to have them delivered to him on completion of the purchase; but this only applies to such documents as are usually handed over to him, and not to records or wills, of which office-extracts, probates, and copies, are all which the purchaser can claim.

256. *Expense of such production* must be borne by the vendor, but this does not generally apply to attested copies of instruments of record; for, where the vendor has not the instrument itself, and cannot procure it, he is bound to obtain an attested copy, and the purchaser will be entitled to it on completion of the purchase, unless the vendor retains other estates under the same title.

257. *Unnecessary expenses* in comparing documents with the abstract are not chargeable to the vendor.

258. *Comparison of documents* with abstract should always include the ascertaining that every conveying party named in a deed has put his hand and seal to it, and that each execution has been duly attested, and that, when necessary, the *receipt clause* is indorsed, signed, and witnessed; also, if the terms of a *power* require an appointment to be executed before a certain number of witnesses, or in any other *special* manner, it should be seen that those terms are strictly complied with.

259. *Proof of execution* of documents cannot be demanded by the purchaser.

260. *Acknowledgment of married women* must be ascertained to be in conformity with the statute. It should also be shown that the women were of *full age*, for a *minor*, although a married woman, cannot make a valid acknowledgment.

261. *The nature of the tenancy* should be inquired into whenever the property is the occupation of a tenant; for otherwise the purchaser will be considered to have implied notice of the title—notice of a *tenancy* being construed as implied notice of the *terms* upon which the premises are holden.

262. *If the title* is not required by the agreement to be *carried back* beyond a certain period, that will not prevent the purchaser from showing that, from defect before that period, the vendor cannot confer a marketable title.

EVIDENCE OF TITLE.

263. *Purchaser should not act as owner of the estate* until satisfied of the validity of the title.

264. *Prosecuting the treaty*, after discovery that the estate is only leasehold when a freehold was contracted for, will be a waiver of the objection, and specific performance *with compensation* may be enforced.

265. *Taking possession* as a waiver of objections to the title will depend upon the mode by which such possession is acquired. If purchaser enters without consent of vendor he will be considered to have approved of the title, but not so, generally, if it is done with the vendor's approval, or in pursuance of the terms of the contract, except the purchaser do such acts of possession as deprive him of all right to have his objections removed.

A memorandum under the hand of the vendor that the purchaser's taking possession shall not be construed as a waiver of objections to the title, or as a ground for calling upon him to pay the purchase money before the title is perfected, and a conveyance executed in terms of the contract should be required.

266. *Counsel's approval of the title* does not bind the purchaser.

267. *If vendor's solicitor denies there are incumbrances* when incumbrances exist he is *personally liable*; this question, therefore, should always be put; and so, if the purchaser *suspects* that any one has a claim on the property, he should ask such person, and state, at the same time, that he intends to buy the property. If, then, such person denies that he has an incumbrance, equity will not permit him to enforce it against the purchaser.

268. *Trustees* should always be inquired of as to incumbrances, when an equitable estate or interest is the matter in treaty; and, if they make a false statement, equity will compel them to make good any loss of the purchaser which was caused by it.

269. *Judgments* to be binding must now, by statute 20 Vic., cap. 57, be re-registered every three years. The search, therefore, need not go back beyond that time, and it must be borne in mind that judgments bind *leaseholds* by statute in the same manner as freeholds, though formerly they were only bound from the time the execution was put into the sheriff's hands. If search is not made for judgments, the purchaser's solicitor will be personally liable, and his client may recover the amount of them in an action at law.

270. *Vendor has no right* to call upon the purchaser to accept a conveyance, until he has discharged *all* incumbrances; and, if they are of such a nature that he cannot discharge them, the purchaser will be entitled to all his *costs* from the vendor, including that of the conveyance, if one is prepared, and whether the search is made before or after such preparation.

271. *Judgments against a mortgagor* after the mortgage are

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charges upon the moneys arising from a sale under a power contained in the mortgage-deed, and the mortgagee will be bound to apply them in discharging all such judgments of which he has notice.

272. *Judgments and crown-debts against mortgages who have been paid* caused great inconvenience by continuing to bind the lands, when conveyed to purchasers, or to other mortgagees. This inconvenience was remedied in England by the 18 Vic., c. 15, which releases the lands so conveyed. In Upper Canada, the 9 Vic., c. 34, § 24, makes a discharge of mortgage operate as a reconveyance of the "original estate of the mortgagor." Perhaps this *alone* would not release the lands from such incumbrances; but, as it is settled law here that a mortgagee in fee has no interest in the mortgaged lands which is saleable under a *fi fa* lands, we may safely conclude that such incumbrances do not attach, and that the "original estate" is, *quoad* any acts of the mortgage, released by a statutory discharge in its original state, free from [his] incumbrances.

273. *Tenant in tail* is bound by judgments, and also the *issue* in tail, and the *remainder-man* where the entail may be barred without the consent of the protector.

274. *Lis pendens* binds land after a certificate by the registrar, or deputy registrar of the court, is registered in the registry office of the county in which the land is situate. The form of certificate prescribed by the statute is:—

"I certify that, in a suit or proceeding in chancery, between A. B. and C. D., some title or interest is called in question in the following land, (*describing it*.) 18 Vic., c. 127, § 3; 20 Vic., c. 56, § 9."

275. *Wills* should be registered, and a purchaser may insist upon this being done; for otherwise a *bona fide* purchaser, without notice of the will, might gain precedence against a devisee under the will by registering his conveyance.

276. *Inadequate price* is not generally a sufficient ground for resisting specific performance either by vendor or purchaser, except where fraudulent misrepresentation caused the inadequacy, or the inadequacy is so gross as to be itself evidence of fraud.

277. *Imperfect title with indemnity* is sometimes accepted; and, when that is done, the objections should be clearly stated, and the terms of acceptance should be such as will cover them all.

278. *Vendor may rescind the contract* when the purchaser, by his own laches, has lost the right to specific performance. Hence, where time is of the essence of the contract, breach by the purchaser will entitle the vendor to annul the sale, dispose of the property as he pleases, and proceed against the purchaser for the breach.

When time is not made of the essence of the contract in the original agreement, it is not settled whether any *subsequent acts* can make it so.

279. *The abstract itself* is the property of the purchaser, if the contract is fulfilled; but, if it is rescinded, it reverts to the vendor, and meanwhile the purchaser may retain it for investigation of the title and preparation of the conveyance; and, even if the purchaser reject the title, he may retain the abstract until the dispute is finally settled.

280. *Counsel's opinion* on title vests in the vendor if the contract be rescinded, but only on the ground that he has *paid* for it; and, if he will not pay for it, the purchaser may keep it, or erase it.

281. *Costs* are paid by the vendor if the contract is rescinded because he fails to make a good title.

282. *Sales under a decree of the court of Chancery* are under similar rules as to delivery of the abstract; and, if vendor does not deliver it in the time specified, an order may be obtained on motion by notice, or on application in chambers.

It is important to see that *all* persons who are necessary conveying parties are before the court; for, if the purchaser's solicitor take a title which a decree in an imperfect suit does not protect, he must take the consequences.

283. *Error in the decree* will entitle the purchaser to abandon the contract, even though the parties are proceeding to rectify the error; and, if objections arise which cannot be disposed of out of court, the purchaser's solicitor should apply to a judge in chambers, and the vendor will be required to remove them, or to argue them in open court.

284. *Reference to conveying counsel* as to such matters is authorized in England by 15 and 16 Vic., c. 80, § 40, and has superseded the former practice of referring them to the master; but any party may object to his opinion, and then the point in dispute will be disposed of by the court or a judge, according to the nature of the case.

285. *Application to take possession without prejudice* to the right to object to the title may be made, but a purchaser will not be allowed to pay in his purchase money *without accepting the title*, where there are any special circumstances to induce the court, as for the purpose of preventing the accrual of interest, and such payment can only be made under an order of the court, for which purpose a summons must be taken out and served on the opposite party. Then vendor's solicitor only is entitled to appear and see that the amount of money paid in, and the time when possession is sought, is correctly set out.

286. *When the estate is sold subject to incumbrances* the purchaser should, after notice given, apply to the court for leave to pay them off; but, if the incumbrances do not appear in the report, *semble* that the purchaser will not be allowed to apply part of the money in paying them off, if any of the parties *refuse* or are incompetent to consent.

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NEGLECT TO PAY.—RESALE.—PRODUCTION OF DEED.

287. *If there are two or more purchasers* of one lot, the whole purchase money must be paid in together; and on such payment the purchaser is entitled to possession, and to rents and profits, and may enforce the order to deliver the same after due service thereof.

288. *When possession is refused by a defendant*, duly served with a copy of the decree, and demand of possession also duly made, an affidavit of service of decree, and of such demand and non-compliance, must be filed, and thereon, if the court sees fit, an order to deliver possession will issue.

289. *Rents and profits* are allowed to the purchaser of fee simple estates, by rule of the court of Chancery, from the quarter-day preceding the payment of the purchase money, except in mines, where the rents, &c., are only allowed from the commencement of the month in which he purchased, on paying the purchase money in the course of that month.

290. *If payment be delayed* by purchaser, without any fault of vendor, he will be entitled to no rents and profits whatever prior to such payment.

291. *When mortgagee purchases equity of redemption* of his mortgage, and his principal and interest up to the last quarter-day exceed the purchase money, the mortgagee will be let into possession from the preceding quarter-day.

292. *If a life annuity* is the matter of purchase, the purchaser will be entitled to receive it from the time he could have confirmed the report absolutely, and he pays interest from that time.

293. *If purchaser neglects to pay* in due time, payment at a time stated will be enforced by the court, with costs of application; but, if the purchaser does not appear to have the means of paying, the court may order a resale, and that the former purchaser pay the expenses arising from the non-completion of the purchase, and of the application to the court thereon, together with any deficiency of price upon such second sale, and the vendor may retain any increase of price then obtained; but the vendor may hold the purchaser to his contract, and the court, on application, will order him to pay within a given time, or stand committed.

294. *If purchaser takes possession*, even with consent of the vendors, the court will compel immediate payment, for the court only can give this permission; and not only so, but the purchaser will be forced to take the title as he found it.

295. *The production of title-deeds* will not, in general, be compelled at law, unless the party who holds them is trustee for the defendant; and, in equity, deeds will not be taken from a purchaser for valuable consideration, though he have no title to the estate; but a jointress will be ordered to give up her jointure-deed, and the other title-deeds, on having her jointure confirmed by the person

U. W. O. LAW

LEASES OF MODERN DATE.

entitled in remainder or reversion; and the same rule is said to apply to a *dowress*.

296. *As to leases of modern date, between thirty and forty years old.*—If a contract be made for the sale of leasehold property unconditionally, without stipulation in terms on the part of the vendor that he means to sell *his interest* only in the residue of the term, and that he will not warrant his lessor's title, he is bound to show, to the satisfaction of the purchaser, that *his lessor*, or the original grantor of the term, was entitled to grant the lease. He cannot, otherwise, oblige the purchaser to complete the contract of purchase. (Lord C. B. Richards, in *Pavis v. Rayer*, 9 Price, 488.) Whether even sixty years' undisturbed possession is sufficient to place the lessor's title *beyond dispute* is not absolutely settled as matter of judicial decision; but the practice of conveyancers is clearly against making any requisition upon such a title beyond that period.

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Of CONVEYANCE to PURCHASER.

297. *Purchaser's solicitor* is entitled to prepare the conveyance, and the whole *costs* must be defrayed by purchaser, except any extra expenses occasioned by outstanding estates which have to be got in, or by incumbrances being included in it which it is necessary to discharge. For these the vendor must pay.

298. *Fair draft* should be sent to vendor's solicitor, for inspection, and, if approved, the latter should return it, with a memorandum of approval, signed by him, at the foot of the draft; but, if he makes any alterations in it, he should say so in such memorandum, and they are to be made in *red ink*.

299. *The mode of conveyance* is at the option of the purchaser.

300. *Modes of conveyance of freehold*.—1. Feoffments; 2. Release at common law; 3. Lease and release; 4. Bargain and sale; 5. Appointment; 6. Deed of grant and release; 7. Exchange. Some of which are now matter of *history* rather than of *practice*.

The ancient feoffment, with livery of seizin, has now no greater effect than a modern deed of grant and release, and will soon probably, fall out of use altogether.

Release at common law may be:—

(1.) By way of enlargement; as where a remainder-man releases to the particular tenants in possession.

(2.) By way of passing an estate; as where one coparcener or joint tenant releases to another.

(3.) By way of passing a right; as where a disseizee releases to a disseisor.

(4.) By way of extinguishment; as where tenant for life makes a greater estate than he is warranted in granting, and the reversioner releases to the grantee.

(5.) By way of entry and feoffment; as where a disseizor releases to one or two disseizees.

301. *Actual possession* was essential to a *common law release*, and its inconvenience led to the mode of assurance by *lease and release*; *e. g.*, first a common law lease was granted and perfected by entry, and then a release was given to the releasee. The objection to this was that, without actual possession prior to the release, the freehold did not pass; but this difficulty was obviated by substituting a bargain and sale for a year under the statute of uses instead of the common law release. The statute transferred the use into possession, and the release thus became effectual to pass the freehold; and hence the two instruments, bargain and sale for a year and

A DEED OF GRANT AND RELEASE.

release, formed together but one assurance, and, though the bargain and sale was always dated the day before the release, they were, in fact, executed at the same time.

302. *A bargain and sale* is a real contract founded upon a pecuniary or valuable consideration for the passing of real estates under the statutes of uses. Before that statute a *contract* for the sale of land raised a use, but an *actual conveyance* was necessary in order to convert it into a legal estate. The statute transfers the seizin of the vendor to the use of purchaser, who is thereby seized of the legal estate without any further conveyance.

It is important to note that, by a rule of equity, a *use* cannot be limited *on a use*; and therefore *ulterior uses* to arise out of the seizin of the bargainee are *void* as such, though good as *trusts* in equity. Hence it follows that a *power of appointment*, capable of passing the legal estate, cannot be created by deed of bargain and sale.

303. *Conveyances by way of appointment* are inconvenient for two reasons:—

(1.) Because there is danger of their not being executed in strict conformity with the terms of the power.

(2.) Because it is at least doubtful whether the covenants for title, entered into with a vendor, will run with the land.

The first objection may be obviated by care; the second is not so easily removed, and the reason is because the purchaser comes in under the deed, *creating the power*, and not under the party exercising it. Such purchaser, therefore, claims under a title paramount to and independent of his appointor; and consequently, for want of privity of estate, the appointee cannot claim the benefit of covenants entered into with the donee of the power.

304. *A deed of grant and release* is therefore now the usual conveyance from a vendor to a purchaser. In England, by the 8 and 9 Vic., c. 136, all corporeal tenements and hereditaments are declared, as far as regards the conveyance of the immediate freehold thereof, to lie in *grant* as well as in *livery*. Prior to that enactment, deeds of grant could pass only incorporeal hereditaments, and other privileges arising out of real property, as rights of way, the use of light, water-courses, and the like.

The Canadian statute, 14 and 15 Vic., c. 71, assimilates the law of Canada in this respect to the law of England.

305. *An exchange* at common law is a mutual grant of equal interests, the one in consideration of the other, and can only be made between *two parties*, although such parties may consist of any number of persons. Actual entry was essential to the operation of such an exchange. A deed was not necessary, except the subject lay in grant or in different counties; but the English act, 8 and 9 Vic., c. 106, makes a deed necessary. Exchanges, however, are now rare

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CONVEYANCE TO PURCHASER.

as a mode of assurance, but sometimes the same object is accomplished by mutual releases, the one being expressed to be made in consideration of the other instead of making each a pecuniary consideration for the whole value.

306. *The assurance now in use to bar entails* is by deed, and any instrument capable of conveying real property from one party to another will be effectual; but, where any uses are intended to arise out of the seizin of the party to whom the property is conveyed for the purpose of barring the entail, a deed of bargain and sale would be improper, because, though it would bar the entail, it would vest the use in the bargainee, and all limitations to arise out of his seizin would be mere equitable estates. *The best instrument*, therefore, is a simple *grant and release*; care being taken to omit the words "*bargain, sell*," so that no question can arise whether it may operate as a bargain and sale.

307. *Disentailing assurances* and conveyances to purchasers are often contained in the same deed; but, if only *part* of the land is conveyed, the vendor may wish to bar the entail of that part also which he retains, and if so the whole should be barred by a distinct deed.

The *costs* of disentailing assurances are borne by the vendor. *Scem-ble*, also, that a purchaser has a right to *insist* upon the entail being barred by an assurance *distinct* from the purchase-deed; for he has a fair right to object to any unnecessary exposure of his title in a public office.

308. *Leasehold estates* are usually passed by a deed of *assignment* of the whole term. Sometimes it is done by way of *demise or underlease*, which reserves only a small reversion, as the last week or day; but, if the lease is for *lives only*, it is then a *freehold interest*, and is conveyed in the same manner as other freehold property.

309. *The order in which the parties should be placed* in the deed is:—

- 1st. The granting parties who have legal estates;
- 2d. Those who have equitable estates;
- 3d. Those to whom the legal estate is to be conveyed;
- 4th. Those who are to take equitable estates, if they are made parties to the deed. But any error in the arrangement of the parties at the beginning of the deed will not affect its validity in the slightest degree, and even the *omission of the name* of any of the grantees in this part of the deed will not prevent them from taking under it.

310. *Persons whose concurrence is not essential* are sometimes made parties, either to give greater force, security, or *indemnity* to the purchaser than he would otherwise acquire. As where lands are devised to trustees upon trust, to pay debts and legacies when the heir and legatees are often, and the creditors sometimes, made

CONCURRENCE OF MORTGAGOR.—ESSENTIAL PARTIES.

parties to the conveyance, though not actually essential parties; because, unless the debts are *scheduled* or *specified*, or the charges are *particularized*, the receipts of the trustees are a sufficient indemnity to purchasers, and exonerate them from all responsibility as to the application of the purchase money, whether or not there be an express clause in the will to that effect; but, if there be no such clause, and the debts and charges are scheduled and particularized, then the creditors, or the parties entitled to the charges under the will, must either be made parties in order to release their claims upon the property, or the purchaser will be bound to see to the application of the purchase money.

311. *Concurrence of the mortgagor* in a sale, under a power or trust for sale, was once thought to be essential, but the contrary is now settled law, so that a purchaser under such power or trust has no right to insist upon the mortgagor being made a party, *even where there is an express covenant on his part to concur in the sale*, (*Clay v. Sharp*, 18 Vesey, 436; *Corder v. Morgan*, *ib.*, 344;) and *semble* that, if a purchaser should refuse specific performance without such concurrence, it would be decreed against him *with costs*. Nor is the concurrence of a *dower trustee* in any way necessary; so that, in modern practice, he is usually left out of the conveyance altogether.

312. *The parties really essential* vary with the circumstances; *e. g.*, if the vendor dies between the signing of the contract and the completion of the purchase, his *heir* and also *personal representatives* must be parties—the former to convey the legal estate which is vested in him, and the latter to acknowledge the receipt of purchase money and release all claims in respect of the same.

Again, where by the terms of a power or trust, or under the provisions of any act of parliament, the consent of any particular person is required, *that person* must be made a concurring party to the conveyance. And so if property, to which there is a *protector*, is sold with his consent, *he* should be either a party to the conveyance to the purchaser or to the disentailing deed.

Again, where an equity of redemption is sold, the *mortgagee* is sometimes made a party and enters into a covenant for the production of the title-deeds, but this is a *purely voluntary act* on his part, and neither vendor nor purchaser can compel him to join; but, if he is made a party, he ought to have *express notice* of the purchase from the solicitor of the purchaser.

Again, *trustees and administrators* have a *joint* power and authority, which they cannot exercise *separately*, and therefore they must *all* be made concurring parties whenever they have any estate or interest to convey or to release to a purchaser; but it is not so with *executors*, for they take both a *joint* and *several* interest in the tes-

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ADMINISTRATORS.—RECITAL OF POWERS.

tator's personal estate, so that a disposition of any one of them is binding on the rest. (Dy., 33; 1 Eq. Ca. Abr., 319.)

The power of disposition is as absolute in administrators as in executors; but they must *all* concur, and their power extends to all the testator's goods, chattels, and effects, whether real or personal, so that a person is not bound to see to the application of his purchase money, even if the term is charged with particularized debts, or the term itself is specifically bequeathed; because all the testator's personal estate is subject, in the first instance, to the payment of his debts, and therefore his personal representatives may assign all the property so sold, with any obligation devolving upon the purchaser to see to the application of the purchase money. (See also 237.)

313. *Recitals* are not essential where the purchaser is to have the title-deeds; but, when they are not to be delivered to the purchaser, or when such as are delivered over do not sufficiently disclose the whole facts and circumstances of the title, those facts and circumstances should be set out in the conveyance.

314. *In a conveyance by appointment*, the instrument creating the power should be recited, and so whenever the operation of the purchase-deed is derived from *any other* instrument. The power, however, need not always be recited in the part of the deed where recitals are usually inserted; but, where brevity is desirable, it may be recited in the testatum clause: *e. g.*,

"The said A. B., in consideration, &c., in exercise of a power limited to him by a certain indenture, dated, &c. (*setting out the names of the parties.*) doth by this present deed appoint, &c."

It is unnecessary to recite more than will show that the intended exercise of the power is warranted by it; and therefore the uses, in default of appointment, need not be named. It will suffice to say:

"And, in default of such appointment to certain uses, [*or upon certain trusts, as the case may be.*] as in the now reciting indenture, [*will, or other instrument,*] are limited and declared."

315. *If the power of appointment is limited to two or more persons*, and extended to the survivors or survivor of them, and if one dies before the exercise or exhaustion of the power, and the survivors or survivor desire to exercise it, not only the creation of the power should be recited, but also the death of the deceased donee, by which the power became vested in the survivors or survivor, and that no joint appointment was ever made, or so made as to conclude a further exercise of the power.

316. *If vendor is seized in fee*, that fact may be recited, or recitals omitted altogether; but, whenever there are outstanding legal estates, or the property is subject to a mortgage or other incumbrance, the recital should show how such estates or incumbrances were cre-

ated, and the relation in which the conveying parties stand to each other respecting them.

317. *If trustees convey* and have power to *give receipts*, such power should be recited, but not the trusts of the purchase money; but, where trustees have no such power, and the purchasers are, from the nature of the trusts, bound to see to the application of the purchase money, such trusts should be recited, and the parties beneficially interested in the purchase money should be made *parties to the conveyance*, in order to release their claims upon the property; and in all cases it will be proper to recite so much of the instrument creating the trust as will disclose an effectual authority in the trustees to convey to the purchaser.

318. *If consent* is necessary, by particular persons or in a particular manner, such consent and that it has been given in the manner prescribed should be recited.

319. *The order of the recitals* is usually according to the *dates* of the documents; but, where *distinct transactions* are to be stated, it is better to recite the whole of one before beginning to recite another.

320. *How to recite deeds*.—If the party has the original deeds, and can depend upon the recitals of them, it is better to recite them as such; but, if he neither has the originals nor can depend upon the recitals, they should be recited as recited deeds. Note also that there is a difference between the recital of an *instrument* and the recital of its *effect*. In the first case the words of the instrument should be strictly quoted, in the last they may be varied.

321. *The effect created by the words employed* is sometimes preferable in a recital to the *words themselves*, as in a will where strict technical words have not been used to create the estate; e. g., if testator devises lands to A. for life, with remainder to his first and other sons in tail, in words sufficient to create those estates, though not in technical language, it is better to state the *effect* than the *words* of the devise; for, if the effect of their supposed construction is recited, all parties who execute the deed will be thereby *estopped* from denying that the estate was devised as set forth in the recital; whereas, if the exact words were recited, the parties would be equally estopped from denying their legal import and operation.

322. *Recitals only estop parties to the deed*, and those who claim under them; but, if supported by long and uninterrupted possession, and if they relate to facts within the knowledge of the parties, and especially if time and place are mentioned, recitals may often be depended upon; but no general rule can be laid down.

323. *Identification of parcels* is sometimes effected by inserting the recitals of former deeds, which also show the course through which they have been transmitted; and this sometimes discloses facts which do not otherwise appear—such as descent from ancestor

ON OR ABOUT.—EXPRESSED TO BE MADE.—CONSIDERATION.

to heir. A short form of recital, after the description of the parcels, will, however, effectually do this; as,

"All which said hereditaments and premises were formerly the estate and inheritance of A. B., who died intestate, and thereupon descended from him to R. B., his nephew and heir at law, who devised the same to C. D., &c., &c."

Or,
"All which said hereditaments, &c., were formerly the inheritance of A. B., to whom the said premises were conveyed by indenture, dated the day of , one thousand , and made between (*parties*) and the said A. B., by indenture dated the day of , one thousand and made between (*parties*) conveyed the same &c., &c."

324. *Recital of date* is usually in the words "*on or about*" such a date; but such precaution is unnecessary. And so it is said that the recited instrument is "*expressed to be made*" between the several parties; which expressions are proper when the object is to provide against the possible event that *all* the parties did not in fact execute the deed—as where a dower trustee was made a party, but never called upon to execute the deed; and so when any of the parties named in the deed *refused* to execute it—as where a trustee disclaims a trust estate intended to be vested in him. In this case the deed of disclaimer reciting the trust should state it as a deed expressed to have been made between the intended grantors and the trustee who refuses to accept the estate.

325. *In assignments of leasehold property*, held for a term of years, it is usual to recite the deed creating the term; but, where there have been several assignments, it is also usual to omit the mesne assignments and recite only the last assignment to the assignors in the deed.

326. *Unusual or burdensome covenants* should always be recited as *not to assign without license*; not to carry on *certain trades* on the premises, &c.

327. *Testatum and granting clause* contain a statement of the consideration of the conveyance, and the operative words which convey the property to the purchaser.

By the common law no consideration was necessary to the validity of any conveyance, except it were a deed of bargain and sale; still, whenever a pecuniary consideration was paid, it was advisable to set it out in the deed, not to shew that it had been paid, but to rebut the presumption of a resulting use or trust as well as to disclose that it was not a mere voluntary conveyance, which, as against creditors and subsequent purchasers, would be a totally void instrument.

328. *Statement that consideration is paid* when in the body of the deed is conclusive at law, because a party executing a deed is

RECEIPT CLAUSE.—OPERATIVE WORDS.

estopped from denying the truth of the facts therein set forth; but the receipt *indorsed* has not this operation, because it is not under seal; but, *in equity*, neither the acknowledgment in the body of the deed nor the indorsed receipt will prevent a vendor from showing that the purchase money has not in reality been paid.

329. *In disentailing assurances* merely to bar an entail, and where no consideration is paid, it is not usual to mention even a nominal consideration; and this is proper whenever it is intended to resettle the property under the statute of uses, to prevent a question as to whether the deed operates as a bargain and sale. The proper way is to say merely that the assurance is for the purpose of barring the entail.

330. *Payment of the consideration* should be expressed more fully when there is actual payment than where the payment is nominal. Thus, where the vendor receives the purchase money, and his trustee receives nothing, the testatum clause should say:—

“That, in consideration of the sum of (*purchase money*), to the said (*vendor*) paid by the said (*purchaser*), on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release and forever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns; and also, in consideration of the sum of five shillings to the said (*trustee*), at the time aforesaid, paid by the said (*purchaser*), the receipt of which is hereby acknowledged, &c., &c.”

331. OPERATIVE WORDS, (*for general remarks on, see Index*).—*Grant, bargain, sell, alien, release, ratify, and confirm* were the operative words in a conveyance by lease and release; but, since corporeal hereditaments now lie in grant, as well as livery, the word “*grant*” is strictly proper in every conveyance of real property, whether corporeal or incorporeal, without the addition of any other operative words, and is an essential term which ought to be inserted, as well in conveyances by trustees and others, who take dry legal estates, as by vendors who take a beneficial interest in the property.

Bargain and sell may safely and properly be omitted in any instrument to which those terms are, strictly speaking, inapplicable.

Alien has in modern practice, given way to the better word “*convey*,” which seems peculiarly applicable to conveyances by trustees who are seized of dry legal estates, but take no beneficial interest in the property.

Release should always be inserted in assurances, by way of release.

Ratify and confirm are synonymous, and the latter alone is sufficient. The object of it is to give effect to a conveyance which would not operate as a release for want of *privity* between the lessor and releasee; but, where it is intended to operate as an enlargement of a preceding estate, the same *privity* is necessary to

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OPERATIVE WORDS.—CONFIRM.—APPOINT.—RELEASE.

give effect to a confirmation as to a release. The word "*confirm*" may also be employed to ratify the acts of *other* conveying parties, or as an estoppel against parties whose estate in the property is now vested in the other granting parties, and where the mortgagor concurs in a conveyance by the mortgagee. It will also make a *voidable* estate *good*, but will have no operation upon an estate which is actually void.

332. *The nature of the interest or claim to be conveyed or released* must therefore be considered in the choice of operative words.

If rights or claims are to be *relinquished*, the proper words are "*remit, release, and quit claim*," but any *one* of them will have precisely the same force and operation; where a lesser estate, as a lease or term of years, is to be *surrendered*, the proper words are "*surrender and yield up*," but the term "*assign*" would produce exactly the same effect and merge the term in the immediate reversion, and hence it is usual, when a *term* is intended to be so merged, to add the word "*assign*" to the other operative words.

333. *Where the conveyance is by appointment*, the words are "*direct, limit, and appoint*," or simply "*appoint*."

The words *appoint and release* are sometimes joined together; but this is irregular, and sometimes materially wrong.

If *brevity* is desired, this form will suffice:—

"In exercise of the power limited to him by the said herein before recited indenture, *Doth* by this present deed irrevocably appoint that the hereditaments and premises herein after described shall, from henceforth, be to the uses herein after declared; and, by way of further assurance, *Doth*, by these presents, grant, release, and confirm unto the said (*purchaser*,) and his heirs, *All, &c.*"

But the usual practice is to have *two* testament clauses, of which the first sets out the consideration, and that the vendor in exercise of the power appoints that the property shall henceforth be to the uses therein after declared.

The second states that, for the consideration aforesaid, the vendor grants, releases, and confirms, &c.

334. *In disentailing assurances* the proper operative words are "grant and release," or "grant, release, and convey," but *not* "bargain and sell."

335. *When there are several conveying parties*, it is usual to say that they convey "according to their respective estates and interests;" *e. g.*, if the heir and executors of a deceased mortgagee convey to a purchaser under a power of sale contained in the mortgage, the deed should say that, in consideration of (*the purchase money*,) paid to the executors, and of a nominal pecuniary consideration paid to the heir, the heir, in respect only of his legal estate as heir at law of the mortgagee, doth "*grant, release, and convey*," and the executors do "*remit, release, and quit claim*;" and, if the

owner of the equity of redemption concurs, he should "*grant, release, ratify, and confirm.*"

336. *Where mortgagee and mortgagor concur*, the way in which the purchase money is *apportioned* should be correctly set out, and it should be stated that payment by the purchaser to the mortgagee is made by the mortgagor's direction.

337. *Trustees* usually qualify their conveyances by such words as "*as such trustees as aforesaid,*" or "*according to their estates and interests as such trustees,*" &c.; but this is not necessary when their character appears on the face of the conveyance, and they merely covenant that they have done no act to encumber the property.

338. *The past tense* is improper except in a *feoffment*, which operates from the time of possession by livery of seizin, and of which the deed is an evidence. "*HABIT granted and infeoffid,*" and by the then presents "*Doni confirm,*" &c., is proper and *true*; but where nothing *has* passed until the execution of the deed, the past tense should be omitted.

339. *The granting clause* should convey the property direct to the purchaser; but, where any parties take by way of use or trust, the grant should be made to the releasee to uses.

It has long been the universal practice, in conveying estates in fee-simple to a party direct, or to a releasee to uses, to annex *words of limitation* to the grants; but this is not essential where there is an *habendum*, because, in point of law, it is the office of the premises to name the grantee and describe the parcels, and of the *habendum* to limit the uses or estates which are to be taken under the deed.

340. *When the purchaser himself is a granting party*, who has a *partial interest* in the property, and buys the remainder—as when a mortgagee buys the equity of redemption—if the property is to be *limited to uses*, both mortgagor and mortgagee must concur in conveying the mortgaged premises to a trustee to uses, and such uses should be limited to arise out of his seizin.

So, if one *joint tenant* buys the share of his co-tenant, and the conveyance is to be merely in fee, a simple release without any *habendum* is sufficient; and this is the correct mode also in the *surrender of estates for years*, or other limited estates, which are intended to merge in the reversion; but, if it is designed to prevent *dower* from attaching, by the severance of a joint tenancy, then *both* the joint tenants must concur in the conveyance of the whole property to a trustee, to hold to him and his heirs, to the uses to be limited to bar the right of dower.

341. *In disentailing assurances*, a conveyance may be made with the protector's consent, without such protector parting with his interest. Thus, where he who takes the preceding life-estate is the protector of the settlement, and is willing to concur in the conveyance by the next immediate tenant in tail, but wishes to retain his

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DISENTAILING DEEDS.—DISTINCT PARCELS.

own life-interest, the testatum clause should say that the tenant in tail, with the consent of the protector, "as such protector as aforesaid," grants, &c.; but the protector *himself* should neither grant, release, convey, nor confirm, but his name should be inserted as to the first part of the conveyance which should be said to be made with his consent, and then his hand and seal, being affixed to the deed, will be conclusive evidence of his consent, which is all that is essential so far as the protector is concerned.

342. *The parcels* should be very clearly described, both as to what are intended to be conveyed and what [if any] are intended to be reserved. Equity will indeed rectify an error of omission, or decree a conveyance where *more* has been inserted than was contracted for; but this is an equity which only attaches between vendor and purchaser, and their representatives, and does *not* extend to remaindermen or to issue in tail.

The description should correspond with that in *former deeds* so far as to show the identity of the lands throughout the title, unless the property has been divided into parcels.

343. *Distinct parcels under different titles* conveyed in the same deed may be described in the order in which they occur in the recitals: e. g., 1st. "All, &c.," and then, after describing the parcels, may be added "all which said hereditaments and premises are comprised in, and described by, the said herein before recited indenture," &c.; 2d. "All, &c.," referring to the recital relating to it; and so on.

But, where the parcels are very numerous, it is better to insert each class in a distinct schedule, or in distinct sections of a general schedule, and then the grant must be by words of reference to the schedule: e. g., "All, &c.," comprised and described in the 1st, 2d, 3d, or 4th sections of the schedule hereto annexed.

344. *The general words* are best in the body of the deed, in same form as if the parcels had been there fully described, instead of being in schedules; and speaking generally the single word "*appurtenances*" will comprehend all that is included in the long string of words usually employed.

345. *The reversion clause* is now most usually omitted.

346. *The all-estate clause*, though still retained, is not necessary, and is, in fact, not applicable to some assurances, as to feoffments, and to assurances which are to pass only particular estates; but the *habendum* will control it, if improperly inserted, by expressing the actual interest the grantee is to take.

347. *The all-deeds clause* is not necessary to entitle the purchaser to have the documents of title delivered to him when the contract is completed, since they pass as incidental to the purchase, unless the vendor *retains* part of the estate, or has entered into qualified covenants for their production to a third person. Except in such cases, trover will lie for their recovery.

EXCEPTIONS.—HABENDUM.—USES.—COVENANTS.

348. *Exceptions* must be of such things as a party may lawfully retain, and must be part of a thing previously granted, and not some other thing; nor an inseparable incident thereof. It must be part of an *entire* thing; and, therefore, if one grant Blackacre and Whiteacre, except Whiteacre, this would be to except the whole of a particular thing, and would fail.

349. *The habendum* is not essential to any deed, and in some it ought to be omitted, as in a *deed of appointment*, in execution of a *power*, and in deeds operating by way of *extinguishment*, and not of enlargement.

When the habendum is *repugnant* to the granting clause, the latter will prevail, but if the limitations may stand together, so that both may operate, they will not be considered as repugnant; *e. g.* if a man grant to A. B., and his heirs, habendum to him, and the heirs of his body, the grantee will take an estate tail with a fee simple expectant thereon; and, as all grants are taken most strongly *against the grantor*, if he limit no estate in the granting clause, and an estate is limited in the *habendum*, the latter will stand good. So, if a small estate be given in the granting part and a larger in the habendum, the habendum will prevail, but *not vice versa*.

350. *Uses should always be declared*, even where the conveyance is direct to the purchaser, although this is not absolutely necessary in order to vest the use in him where he pays any consideration for the property.

If the purchaser is to take simply in fee, the limitation should be to him, and his heirs, *to the use* of him, his heirs, and assigns; but, when any uses are to arise out of the seizin of the grantee, then that part of the clause which limits the use to him must be left out, otherwise the legal use will vest in him, and the other uses to arise out of his seizin will be mere equitable estates.

351. *When there are uses to bar dower*, the lands are limited to such uses as the purchaser shall appoint; and, in default of appointment to the use of the purchaser for life, with a limitation to a dower trustee, during the life of and in trust for the purchaser, with the ultimate limitation to the purchaser in fee.

352. *Covenants*.—Vendor can only be required to enter into qualified covenants: *viz.*,

- (1.) That, notwithstanding any act done by him, he is seized in fee;
- (2.) That he has good right to convey;
- (3.) For quiet enjoyment by the purchaser;
- (4.) For freedom from incumbrances created by vendor, or persons claiming through or under him;
- (5.) For further assurance. But, where the vendor takes *by descent*, or through a *will*, the purchaser is entitled to have these covenants extended to the acts of the vendor's *ancestors* or *testators*; and,

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COVENANTS.—EXECUTION AND ATTESTATION.

where the conveyance is under a power, there should be a covenant that the power is good, valid, and subsisting.

The *first* covenant above named is most usually omitted, being in fact implied in the *second*.

The covenant for *further assurance* runs with the land like the covenants for title; but *semble* it does not entitle the purchaser to call for the production of title-deeds, but only to a further assurance by way of conveyance, (*Hallett v. Middleton*, 1 Russ., 243.) and to the production of the title-deeds, if the vendor retains them. Where a husband cannot defeat the claim of his wife without her concurrence, a covenant is often inserted that she shall duly acknowledge the deed. The husband alone covenants.

Parties having *no beneficial* interest can only be required to covenant that they have done no act to incumber; but all parties having a *beneficial* interest may be required to give the usual qualified covenants.

353. *Mortgagor* selling *equity of redemption* is entitled to a covenant of *indemnity* from the purchaser against the mortgage-debt.

354. *Covenants which run with the land* should be made in conformity with the *habendum*; so that, if the limitation is to J. S., and his heirs, to the use of A. B., his heirs and assigns, J. S. will be the covenantee, though his seizin is divested the moment it takes place.

EXECUTION and ATTESTATION.

355. *Signing* is not essential to a deed, but *sealing* is essential. It is immaterial what *kind* of seal is employed, so that it will admit of an impression.

356. *Delivery* is essential to a deed; and the usual form is, "I deliver this as my act and deed." Where it is *conditional*, the deed is an *escrow* until the condition is performed.

357. *Execution by attorney* should be: "A. B., by C. D., his attorney," and delivery should be as the act and deed of A. B.

358. *The indorsement* of a deed has no actual operation upon it. 359. *Married women*, who are conveying parties, must execute the deed, and also acknowledge the same, and a certificate thereof, under 2 Vic., c. 6, must be indorsed on the deed. (*See the statute.*)

The costs of this acknowledgment are paid by the married vendor.

360. *The largest purchaser*, where there are several, is entitled to the title-deeds; but the others can demand a covenant for the production of such as relate to their purchase, and also to have attested or other copies, extracts, or abstracts, at their own expense.

361. *Purchaser may apply purchase money* to pay off incumbrances, but he cannot retain any as an indemnity against a contin-

MESNE ASSIGNMENTS.—LIABILITY, ETC.

gent *charge* for which he has agreed to accept the vendor's covenant.

ASSIGNMENT of LEASEHOLDS.

362. *Assignments*, not being an interest which might have been created without writing, are made void at law, under the English statute, 8 and 9 Vic., c. 106, unless made by *deed*, and a similar enactment is contained in the Canadian statute, 14 and 15 Vic., c. 7, § 4; but equity will, notwithstanding, support a mere note in writing, if duly signed.

363. *Mesne assignments*, except the last, to the party who is to pass the legal estate in the premises, are not usually recited.

Where brevity is desired, this form, at the end of the granting clause, may suffice:—

"All which said premises were by indenture dated the _____ day of _____, made between (*lessor*), of the one part, and (*lessee*), of the other part, demised by the said (*lessor*) to the (*lessee*) from thenceforth for an absolute term of ninety-nine years; and the same premises, by virtue of divers mesne assignments, and ultimately by an indenture, dated the _____ day of _____, made between A. B., of the one part, and the (*present assignor*), of the other part, became vested in the (*present assignor*) for all the unexpired residue of the said term."

364. *Burdensome covenants* in the lease should be recited; and so, if the legal estate is outstanding in any way, the mortgage or other deed should be recited.

365. *If license to assign* be necessary, the lessor should be made a party; and so, if the lease has a covenant for renewal, that should be recited, and the terms of it.

366. *The operative word "assign"* is the strongest and most apt, but "transfer" or "set over" will have the same effect. "Bargain and sell" are not applicable, except in an original demise, where it is intended to transfer the actual possession under the statute of uses, which does not apply to the assignment of a term.

367. *The all-estate clause* is proper where the assignor really intends to assign all his estate and interest, and therefore that clause is not proper in an *underlease*.

368. *The all-deeds clause* is also usual.

369. *The usual covenants* for both vendor and purchaser will be found in the forms which follow. Whenever the vendor is the original lessee, he is entitled to a *covenant of indemnity* against the rents and covenants contained in the lease, and this is very important, for otherwise he is liable for them, during the whole term, even though the lessor *conveys the licence as his tenant*; but it is not necessary to an assignee vendor, because he is only liable for breach of covenant while he is in possession.

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DISENTAILING ASSURANCES.

370. *Recitals* are not generally necessary in disentailing deeds, nor need any consideration be expressed.

371. *Where the protector consents*, in a distinct deed, a recital is necessary; and, when such consent is in the disentailing deed, it should be shown in what manner the protector was constituted.

372. *Where the bar is without consent of the protector.*—See form creating a base fee.

373. *Where the base fee is created in a conveyance to a purchaser*, the property is conveyed directly to the purchaser.

374. *Right of dower* attaches on estates tail in possession, and therefore the wife's concurrence is necessary.

375. *If entail is barred by tenant for life and remainderman.*—See the form.

REMEDIES at LAW.

376. *If either party fails or refuses to perform the contract*, the other has a remedy:—

(1) By action at law for damages;

(2) By suit in equity for specific performance. And, by the common law procedure act, the superior courts of law may, *except in replevin or ejectment*, issue a peremptory *mandamus*, commanding defendant to fulfill the contract, whether as to personal or real property; and an injunction may also be obtained to prevent repetition or continuance of breach.

377. *A vendor* may maintain an action for use and occupation, if the purchaser was let into possession, but only from the time when the contract went off without default of vendor; and, if he is prevented from selling the property by his title being slandered, he has an *action on the case* for consequential damages, and his right of action will not be taken away by an agreement that the purchaser shall *forfeit his deposit* as liquidated damages. (*Iccley v. Greer*, 6 Nev. and Man., 467.)

378. *Ejectment* cannot be brought against a purchaser let into possession by vendor without previous notice.

379. *Purchaser's remedies* are an action on the contract; for money had and received to recover the deposit; assumpsit on debt, where the parties are bound in liquidated damages; on moneys by way of penalty for default; and on covenant, where the agreement is under seal.

380. *Satisfaction* accepted by plaintiff, or damages recovered in another action, are good defenses, and so also is the statute of limitations.

381. *That purchaser was not ready with his money* is no defense, if vendor is unable to make a good title on the day fixed.

WRITTEN CONTRACT.—SPECIFIC PERFORMANCE.

382. *Contract for a good title* means good both at law and in equity.

383. *Matter of title and matter of conveyance* are not distinguished in courts of law, but default in either is a breach of covenant to deduce a good title in fee.

384. *If purchaser die* when a cause of action has arisen, his personal representatives, and not the heir, must maintain it.

385. *A written contract* is not necessary to support an action for money had and received, where a deposit has been paid; and such action should be brought against the auctioneer, not against the vendor, because the auctioneer is agent for both parties.

386. *Tender of a conveyance* is not necessary where vendor is unable to complete the contract. (*Seward v. Willcock*, 5 East., 198.)

387. *Courts of equity* are not deprived of concurrent jurisdiction by the common law procedure act, and they are preferable in cases where the validity of the title of real property is likely to come into question; because, if that is the *only* matter in dispute, the cause need not be brought to a hearing, but the court, on motion, will direct an inquiry thereon, even before defendant has filed his answer.

388. The parties may also, by consent, instead of filing a bill for specific performance, state a *special case* for the opinion of the court, and, in case of need, the court will grant an injunction to restrain the commission of waste or injury; but the court has no jurisdiction, upon a special case, to decree specific performance, nor to make binding declarations of future right.

389. *A written contract* is necessary to support a bill for specific performance, and it must be certain, just, and fair in all its parts, and capable of being *completely* performed; but there are three exceptions to this.

- (1.) Where the sale is under a decree.
- (2.) Where the agreement is confessed.
- (3.) Where there has been part performance.

390. *Where the condition of a bond* is the only evidence of a contract, equity will support it as an agreement, and not suffer the obligor to escape from specific performance by paying the penalty.

391. *Costs* in equity are always discretionary with the court, though, generally speaking, they will fall on the losing party; but a vendor has been refused costs where the purchaser's objection to the title, although overruled, was held to have been *fairly* taken. (*Thorpe v. Freese*, 4 Mad., 466.)

Either party, resorting to a court of law where equity is against him, will be fixed with the costs of the action.

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392. CONVEYANCE *in FEE* by a VENDOR seized *in FEE*, his WIFE releasing her DOWER.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, (vendor,) and D. B., his wife, of the one part, and C. D., of _____ of _____, in the county of _____, and Province of Canada, _____, (purchaser,) a bachelor, of the other part, witnesseth:—

THAT, in consideration of the sum of one thousand dollars, to the said A. B. this day paid by the said C. D., for the purchase of the hereditaments intended to be hereby granted, [the receipt whereof the said A. B. doth hereby acknowledge,] he, the said A. B., doth hereby grant, and she, the said D. B., for the purpose of releasing her right of *dower* therein, doth hereby release unto the said C. D., his heirs and assigns, ALL AND SINGULAR (*parcels*.) TOGETHER with all ways, lights, sewers, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments, or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof, or appurtenant thereto. AND all the estate and interest of the said A. B. and D. B. in the said premises, to HOLD the said premises unto the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns.

AND the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B., or any of his ancestors, done, or knowingly suffered, they, the said A. B. and D. B., now have power to grant and release all and singular the said premises unto and to the use of the said C. D., his heirs and assigns, free from incumbrances.

AND that the said A. B., and his heirs, and every other person lawfully or equitably claiming through or in trust for him, or any of his ancestors, will, at all times, at the cost of the said C. D., his heirs or assigns, execute and do all such assurances and acts, for further or better assuring all or any of the said premises to the use of the said C. D., his heirs and assigns, as by him or them shall be reasonably required.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first mentioned.

SIGNED, SEALED, AND DELIVERED, }
in presence of
E. F.

A. B. [SEAL.]
D. B. [SEAL.]

FORMS.

RECEIVED, on the day of the date of the above [or within] indenture, the sum of ONE THOUSAND DOLLARS, being the full amount of the consideration therein mentioned.

SIGNED in presence of }
E. F. }

A. B.

MEM.—This receipt-clause, or one of similar purport, should never be omitted in any transfer for a pecuniary consideration; the receipt in the body of the indenture, though under seal, being looked upon rather as a customary form than as conclusive evidence of payment. Therefore, without this receipt is subscribed or indorsed, a subsequent purchaser may have to inquire whether a vendor's lien on the land is still subsisting.

393. *Another Form.*

THIS INDENTURE, &c., between A. B., &c., (*husband*), and (*christian name*) his wife, of the one part, and C. D., of, &c., (*purchaser*), of the other part, witnesseth as follows:—

(1.) In consideration of \$, paid to the said A. B. by the said C. D., the said A. B. grants, and the said C. B., with his concurrence hereby testified, and in order to extinguish her dower, grants and disposes of unto the said C. D., and his heirs, the hereditaments, consisting of and being ALL AND SINGULAR, &c., with their legal or usual appurtenances.

(2.) The said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B. and C. B., or either of them, done or knowingly suffered, they, or one of them, are, or is, entitled to execute this grant of the premises free from incumbrances; AND that they, and every person claiming under or in trust for them, will, at the cost of the said C. D., his heirs and assigns, do all acts required for perfecting such grant.

IN WITNESS, &c., (*as in n. 392.*)

394. CONVEYANCE in FEE of FREEHOLDS, without BAR of DOWER.

THIS INDENTURE, made the day of , between A. B., of , (*vendor*), of the one part, and C. D., of , (*purchaser*), of the other part, witnesseth as follows:—

(1.) The said A. B., in consideration of \$, paid to him by the said C. D., grants unto the said C. D., and his heirs, ALL AND SINGULAR, (*here describe the property*), with their legal or usual appurtenances.

FORMS.

(2.) The said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B. done, or knowingly suffered, he is entitled to execute this grant of the premises, free from incumbrances; AND that he, and every person claiming under or in trust for him, will, at the cost of the said C. D., his heirs and assigns, do all acts required for perfecting such grant.

IN WITNESS, &c., (as in n. 392.)

395. CONVEYANCE of FREEHOLDS.

Where the Premises are Described in a Schedule.

THIS INDENTURE, made the _____ day of _____, 185____, between A. B., of _____, in the county of _____, and Province of Canada, Esqr., of the one part, and C. D., of _____, in the county of _____, and province aforesaid, Esqr., of the other part, witnesseth as follows:—

(1.) The said A. B., in consideration of \$ _____, paid to him by the said C. D., grants unto the said C. D., and his heirs, the hereditaments described in the schedule hereto, with their legal or usual appurtenances.

(2.) The said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that, notwithstanding any thing done, or knowingly suffered, by the said A. B., he is entitled to execute this grant of the premises, free from incumbrances; AND that he, and every person claiming under or in trust for him, will, at the cost of the said C. D., his heirs and assigns, do all acts required for perfecting such grant.

IN WITNESS WHEREOF, &c., (as in n. 392.)

THE SCHEDULE to which the foregoing indenture refers, in which the premises thereby granted are particularly described; viz., "ALL AND SINGULAR," &c., &c.

Also, [if a second parcel,] all that, &c.; and so on.

396. DEED of BARGAIN and SALE.

Short Form under Statute.

THIS INDENTURE, made the _____ day of _____, one thousand eight hundred and _____, in pursuance of the act to facilitate the conveyance of real property, between _____, of the first part, _____, wife of the said party of the first part, of the second part, and _____, of the third part, witnesseth:—

FORMS.

THAT, in consideration of _____, of lawful money of Canada, now paid by the said party of the third part to the said party of the first part, [the receipt whereof is hereby by him acknowledged,] he, the said party of the first part, doth grant unto the said party of the third part, _____ heirs and assigns, forever, ALL AND SINGULAR, th_____ certain parcel or tract of land, and premises, situate, lying, and being in the, &c.

TO HAVE AND TO HOLD, unto the said party of the third part, _____ heirs, and assigns, to and for _____, and their sole and only use forever. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the crown. (*And subject, also, to the payment of a mortgage made by the party of the first part to the party of the third part, for securing the sum of _____, bearing date the _____ day of _____, one thousand eight hundred and _____.*)

THE said party of the first part covenants with the said party of the third part, that he has the right to convey the said lands to the said party of the third part, notwithstanding any act of the said party of the first part. AND that the said party of the third part shall have quiet possession of the said lands, free from all incumbrances. AND that the said party of the first part will execute such further assurances of the said lands as may be requisite. AND that he will produce the title-deeds enumerated hereunder, and allow copies to be made of them, at the expense of the said party of the third part. AND that the said party of the first part has done no act to incumber the said lands. AND the said party of the first part releases to the said party of the third part all his claims upon the said lands. AND the said party of the second part, wife of the said party of the first part, hereby bars her dower in the said lands.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals.

SIGNED, SEALED, AND DELIVERED, in the presence of, &c.

RECEIVED, on the date of this indenture, the sum of _____, of lawful money of Canada, being the full consideration herein mentioned.

WITNESS :

397. CONVEYANCE *by APPOINTMENT and GRANT in FEE.*

THIS INDENTURE, made, &c., between A. B., of _____, (*vendor*), of the one part, and C. D., of _____, (*purchaser*), of the other part, witnesseth:—

THAT, in consideration of the sum of \$ _____, to the said A. B. this day paid by the said C. D., for the purchase of the hereditaments intended to be hereby appointed and granted, [the receipt

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whereof the said A. B. doth hereby acknowledge,] he, the said A. B., in exercise of a power given him by an indenture dated the _____ day of _____, and expressed to be made between (*parties,*) and of every other power enabling him in this behalf, doth hereby direct, limit, and appoint that ALL THOSE, the _____, and hereditaments herein after mentioned, and intended to be hereby granted, with the appurtenances, as herein after mentioned, shall henceforth go and remain TO THE USE of the said C. D., his heirs and assigns.

AND THIS INDENTURE ALSO WITNESSETH that, for the consideration aforesaid, he, the said A. B., doth hereby grant unto the said C. D., his heirs and assigns, ALL THOSE (*description of the property,*) TOGETHER with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof or appurtenant thereto, and all the estate and interest of the said A. B. in the said premises, TO HOLD the said premises unto the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns.

AND the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B. done, or knowingly suffered, he, the said A. B., now hath power to appoint and grant ALL AND SINGULAR the said premises to the use of the said C. D., his heirs and assigns, free from incumbrances.

AND THAT he, the said A. B., and his heirs, and every other person lawfully or equitably claiming through or in trust for him, will, at all times, at the cost of the said C. D., his heirs or assigns, execute and do all such assurances and acts, for further or better assurance all or any of the said premises to the use of the said C. D., his heirs and assigns, as by him or them shall be reasonably required.

IN WITNESS WHEREOF, &c.,

N. B.—Though usual, it is not necessary to specify the particular mode of assurance. The form in the text is sufficient, and the limitations may, with sufficient accuracy, be said to be by that instrument alone which contains the limitations. The phrase "expressed to be" made may be omitted when it is known that the instrument was executed by all parties.

In exercising a power, it is best to take the operative words given in the power. The power supposed in the text requires no formalities; but, in exercising a power which *does* require formalities, it is unnecessary to follow the usual course of making the witnessing part describe the intended mode of execution. Nothing is gained by it; for, if the attestation is wrong, the right description in the deed will not rectify the mistake. The directions as to the execution of the deed may be written as a marginal note.

FORMS.

Unless there be any reason [as there very seldom is,] to suppose that the power has been *extinguished*, the conveyance may be by appointment alone, omitting the second witnessing part and the words "and granted." This course should always be adopted if the power is *recent* in its creation, as when a mortgage is made immediately after the conveyance, or the like. There may, however, be an objection to it when the power is *not recent* in its creation; for, if the appointor has made a lease which has taken effect out of his estate, the reversion taken by the appointee is not the reversion immediately expectant on the lease to which the rent and covenants are incident. There is no substantial objection, when the property is limited to uses to bar dower in favor of the vendor, to taking the conveyance from him, (*as in n. 392.*) [omitting the wife,] either reciting or not reciting his title; for the conveyance of his estates will extinguish the power, or preclude him from exercising it. The usual objection to this method is that it leaves untouched the estate of the trustee; but this estate cannot be considered of more importance than that of trustees to preserve contingent remainders, and the latter is never got in. The advantages of omitting the appointment are that the deed is shortened, and the question as to the rent and covenants of a lease granted out of the vendor's estate is got rid of.

398. CONVEYANCE *by* APPOINTMENT *and* GRANT *to* USES *to* BAR DOWER.

THIS INDENTURE, made, &c., between A. B., of _____, (*vendor*), of the first part, C. D., of _____, (*purchaser*), of the second part, and E. F., of _____, (*trustee*), of the third part, witnesseth:—

THAT, in consideration of the sum of \$ _____, to the said A. B. this day paid by the said C. D., for the purchase of the hereditaments intended to be hereby appointed and granted, [the receipt whereof the said A. B. doth hereby acknowledge,] he, the said A. B., in exercise of a power given him by an indenture dated the _____ day of _____, and expressed to be made between (*parties*), and of every other power enabling him in his behalf, doth hereby direct, limit, and appoint that ALL THOSE, the _____ and hereditaments herein after mentioned, and intended to be hereby granted, with the appurtenances, as herein after mentioned, shall henceforth go and remain to the uses herein after limited.

AND THIS INDENTURE ALSO WITNESSETH that, for the consideration aforesaid, he, the said A. B., doth hereby grant, unto the said C. D., and his heirs, ALL THOSE, &c., (*here insert a description of the property.*) TOGETHER with all ways, water-courses, rights, privileges,

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And it is hereby agreed and declared that the direction, limitation, and appointment, and the grant herein before contained, shall respectively operate and enure to such uses, for such estates, and in such manner, as the said C. D. shall by any deed or deeds appoint; and, in default of and until such appointment, and so far as no such appointment shall extend, to the use of the said C. D., and his assigns, during his life, without impeachment of waste; and, after the determination of that estate by any means in his lifetime, to the use of the said E. F., and his heirs, during the life of the said C. D., in trust for him and his assigns; and, after the determination of that estate, to the use of the said C. D., his heirs and assigns, forever.

And the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B. done, or knowingly suffered, he, the said A. B., now hath power to appoint and grant ALL AND SINGULAR the said premises to the uses and in manner aforesaid, free from incumbrances.

And that the said A. B., and his heirs, and every other person lawfully or equitably claiming through or in trust for him, will, at all times, at the cost of the said C. D., his heirs, appointees, or assigns, execute and do all such assurances and acts, for further or better assuring all or any of the said premises to the uses and in manner aforesaid, as by the said C. D., his heirs, appointees, or assigns, shall be reasonably required.

IN WITNESS WHEREOF, &c.

399. CONVEYANCE *under a POWER of SALE in a SETTLEMENT.*

THIS INDENTURE, made, &c., between A. B., of _____, and C. D., of _____, (*vendors, donees of the power of sale,*) of the first part, E. F., of _____, (*tenant for life, whose consent is required to the exercise of the power of sale.*) of the second part, and G. H., of _____, (*purchaser,*) of the third part, witnesseth:—

WHEREAS, by an indenture dated the _____ day of _____, and expressed to be made between (*parties,*) [being a settlement

FORMS.

made in consideration of the marriage shortly afterward solemnized between the said _____ and _____, divers hereditaments, including the hereditament intended to be hereby appointed, were limited to certain uses; and by the said indenture it was provided that (*recite literally the power to sell, to revoke the old and appoint new uses, and to give receipts to purchasers; or proceed thus, with variations according to circumstances:*) it should be lawful for the said A. B. and C. D., with the consent of the said E. F., to be testified by a writing under his hand and seal, to sell the hereditaments thereby limited, or any of them, and, for the purpose of effectuating such sale, with the consent aforesaid, to revoke the uses thereby declared of the hereditaments so sold, and to appoint the same to the purchasers, or as they should direct; and it was thereby also declared that the receipts of the said A. B. and C. D. for the purchase money should be sufficient discharges to purchasers.

AND, WHEREAS the said A. B. and C. D., in exercise of the said power of sale, and with the consent of the said E. F., have agreed with the said G. H. for the sale to him of the said hereditaments intended to be hereby appointed, and the inheritance thereof in fee simple in possession, free from incumbrances, for the sum of \$ _____;

NOW THIS INDENTURE WITNESSETH that, for effectuating the said sale, and in consideration of the said sum of \$ _____, to the said A. B. and C. D. this day paid by the said G. H., [the receipt whereof the said A. B. and C. D. do hereby acknowledge,] and in exercise of the said power given them by the herein before recited indenture, and of every other power enabling them in this behalf, they, the said A. B. and C. D., with the consent of the said E. F., do hereby revoke all the uses by the herein before recited indenture limited, so far as relates to the hereditaments intended to be hereby appointed, and do hereby direct, limit, and appoint that (*description of the property*), TOGETHER with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments, or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof or appurtenant thereto, shall henceforth go, remain, and be to the USE of the said G. H., his heirs and assigns.

AND EACH of them, the said A. B. and C. D., so far as relates to his own acts, doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., his heirs and assigns, that they, the said A. B. and C. D. respectively, have not done, or knowingly suffered, any thing whereby they are prevented from exercising, in manner herein before appearing, the power herein before expressed to be exercised, or whereby the said premises, herein before expressed to be appointed, or any part thereof, are, is, or can be impeached, incumbered, or affected in title or otherwise.

AND the said E. F. doth hereby, for himself, his heirs, executors,

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and administrators, covenant with the said G. H., his heirs and assigns, that, notwithstanding any thing by him the said E. F., or any of his ancestors, done or knowingly suffered, the said A. B. and C. D. now have full power, with the consent of the said E. F., to appoint ALL AND SINGULAR the said premises TO THE USE of the said G. H., his heirs and assigns, free from incumbrances; AND THAT he, the said E. F., and every other person lawfully or equitably claiming through or in trust for him, or any of his ancestors, will, at all times, execute and do all such assurances and acts for further and better assuring all or any of the said premises TO THE USE of the said G. H., his heirs and assigns, as by him or them shall be reasonably required.

IN WITNESS WHEREOF, &c., (*as in n. 400.*)

400. CONVEYANCE of WIFE'S FREEHOLDS *in fee.*

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between A. B., (*husband,*) of _____, and B. B., his wife, of the one part, and C. D., (*purchaser,*) of _____, of the other part, witnesseth as follows:—

(1.) In consideration of \$ _____, paid to the said A. B. by the said C. D., the said A. B. grants, and the said B. B., with his concurrence hereby testified, grants and disposes of unto the said C. D., and his heirs, the hereditaments described in the schedule hereto, with their legal or usual appurtenances, (*or ALL AND SINGULAR, &c., describing the property by notes and bounds, or otherwise.*)

(2.) The said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B. and B. B., or either of them, done or knowingly suffered, they are, or one of them is, entitled to execute this grant of the premises, free from incumbrances; and that they, and every person claiming under or in trust for them, will, at the cost of the said C. D., his heirs and assigns, do all acts required for perfecting this grant.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED, AND DELIVERED, }
 in presence of }
 E. F. } A. J. [SEAL.]
 B. B. [SEAL.]

This deed must be acknowledged by the wife, in manner prescribed by the Canadian statute, 2 Vic., c. 6, s. 2; but a married woman's *leaseholds* pass by her husband's assignment alone.

FORMS.

401. CONVEYANCE of a LIFE ESTATE in FREEHOLDS.

THIS INDENTURE, &c., between A. B., of _____, (*vendor*), of the one part, and C. D., of _____, (*purchaser*), of the other part, witnesseth as follows:—

(1.) The said A. B., in consideration of \$ _____, paid to him by the said C. D., grants unto the said C. D., his executors and administrators, the hereditaments described in the schedule hereto, with their legal or usual appurtenances, during the life estate limited to the said A. B., without impeachment of waste by the marriage settlement [dated, &c.,] of the said A. B. with his late wife _____, formerly _____, spinster.

(2.) The said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B., [or his ancestors,] done or knowingly suffered, he is entitled to execute this grant of the premises free from incumbrances; and that he, and every person claiming under or in trust for him, [or his ancestors,] shall, at the cost of the said C. D., his heirs and assigns, do all acts required for perfecting such grant.

IN WITNESS, &c., (*as in n. 400.*)

402. CONVEYANCE by MORTGAGOR and MORTGAGEE.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada _____, (*mortgagee*), of the first part, C. D., of _____, (*mortgagor and vendor*), a widower, of the second part, and E. F., of _____, a bachelor, (*purchaser*), of the third part.

WHEREAS, by an indenture dated the _____ day of _____, and expressed to be made between the said C. D., of the one part, and the said A. B., of the other part, in consideration of the sum of \$ _____, by the said A. B. paid to the said C. D., the said C. D. did grant to the said A. B., his heirs and assigns, the hereditaments intended to be hereby granted, TO HOLD the same UNTO and TO THE USE of the said A. B., his heirs and assigns, subject to a proviso, in the indenture now in recital contained, for redemption of the same premises, on payment by the said C. D., his heirs, executors, administrators, or assigns, unto the said A. B., his executors, administrators, or assigns, of the sum of \$ _____, with interest for the same, after the rate and at the time therein mentioned;

AND WHEREAS the said C. D. has agreed with the said E. F. for the sale to him of the said hereditaments, and the inheritance thereof

FORMS.

in fee simple in possession, free from incumbrances, for the sum of § ;

AND WHEREAS the said sum of § is now owing to the said A. B., but all interest for the same has been paid up to the date of these presents, and it has been agreed that the said sum of § shall be paid off out of the said purchase money, and that the said A. B. shall join in these presents in the manner herein after appearing;

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreements, and in consideration of the sum of § to the said A. B. this day paid by the said E. F., at the request of the said C. D., [the receipt whereof the said A. B. doth hereby acknowledge,] and of the sum of § to the said C. D. this day paid by the said E. F., [the payment and receipt respectively of which said sums of § and §, making together the said purchase money of §, the said C. D. doth hereby acknowledge,] he, the said A. B., by the direction of the said C. D., doth hereby grant and confirm unto the said E. F., and his heirs, ALL AND SINGULAR, (*parcels*.) TOGETHER with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof or appurtenant thereto, and all the estate and interest of the said A. B. and C. D. in the said premises; TO HOLD the said premises UNTO the said E. F., his heirs and assigns, TO THE USE of the said E. F., his heirs and assigns, discharged from the said sum of §, and all interest for the same, and all claims under or by virtue of the said indenture of the day of

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F., his heirs and assigns, that he, the said A. B., hath not done, or knowingly suffered, any thing whereby the said premises, or any part thereof, are, is, or can be, impeached, incumbered, or affected, in title or otherwise.

AND THE SAID C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F., his heirs and assigns, that, notwithstanding any thing by the said C. D., or any of his ancestors, done or knowingly suffered, they, the said A. B. and C. D., now have power to grant ALL AND SINGULAR the said premises UNTO and TO THE USE of the said E. F., his heirs and assigns, free from incumbrances; AND THAT he, the said C. D., and his heirs, and every other person lawfully or equitably claiming through or in trust for him, or any of his ancestors, will, at all times, at the cost of the said E. F., his heirs or assigns, execute and do all such acts for further or better assuring all or any of the said

U. W. O. LAW

FORMS.

premises TO THE USE of the said E. F., his heirs and assigns, as by him or them shall be reasonably required.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, the day and year first mentioned.

SIGNED, SEALED, AND DELIVERED, }
 in presence of } A. B. [SEAL.]
 D. F. } C. D. [SEAL.]

403. CONVEYANCE by the HEIRS and EXECUTORS of a MORTGAGEE on a SALE, under a POWER of SALE.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____, (*heir at law of mortgagee*,) of the first part, C. D., of _____, and E. F., of _____, (*executors of mortgagee and vendors*,) of the second part, and G. H., of _____, (*purchaser*,) of the third part.

WHEREAS, by an indenture of mortgage, dated the _____ day of _____, and expressed to be made between Z. Y., of _____, (*mortgagor*,) of the one part, and S. Y., his wife, of the second part, and the late J. K., of the city of Toronto, in the county of York, Esquire, deceased, of the third part, (*mortgagee*,) in consideration of the sum of _____ by the said J. K. paid to the said Z. Y., the said Z. Y. did grant unto the said J. K., his heirs and assigns, the hereditaments intended to be hereby granted. To HOLD the same unto and TO THE USE of the said J. K., his heirs and assigns, subject to a proviso, in the indenture now in recital contained, for redemption of the same premises, on payment by the said Z. Y., his heirs, executors, administrators, or assigns, unto the said J. K., his executors, administrators, or assigns, of the sum of _____ with interest for the same, after the rate and at the time therein mentioned. (*Recite, also, the power to sell; the proviso that the receipt of the mortgage should be a discharge; and the clause exempting the purchaser from seeing to the events having happened on which the power arises.* LITERALLY, *from the mortgage referred to; or, proceed thus:*)—“AND it was by the said indenture provided, that it should be lawful for the said (*mortgagee*,) his executors, administrators, or assigns, in certain events, to sell and dispose of the said hereditaments, and that, on a sale by the executors or administrators of the said (*mortgagee*,) the heirs of the said (*mortgagee*,) should convey the legal estate as the said executors or administrators should direct, and that the receipt of the said (*mortgagee*,) his heirs or administrators, should be a sufficient discharge to the purchaser, and that the sale should be good, as to a purchaser, whether the events

FORMS.

had or had not happened on which the power of sale was to arise, and notwithstanding any impropriety or irregularity in the sale;”

AND WHEREAS the said (mortgagee,) duly made and executed his last will, dated the _____ day of _____, and thereby appointed the said C. D. and E. F. executors thereof, but did not thereby devise the legal estate in the said hereditaments and died leaving the said A. B. his heir at law, and without having revoked or altered his said will, and the same was proved by the said C. D. and E. F., in the _____ court of _____, on the _____ day of _____;

AND WHEREAS the said C. D. and E. F., in exercise of the said power of sale, have agreed with the said G. H. for the sale to him of the said hereditaments and the inheritance thereof in fee simple in possession, free from incumbrances, for the sum of \$ _____;

NOW THIS INDENTURE WITNESSETH that, for effectuating the said sale, and in consideration of the sum of \$ _____, to the said C. D. and E. F. this day paid by the said G. H., [the receipt whereof the said C. D. and E. F. do hereby acknowledge,] he, the said A. B., by the direction of the said C. D. and E. F., doth hereby grant, and they, the said C. D. and E. F., do hereby release, unto the said G. H. and his heirs, ALL AND SINGULAR (parcels,) TOGETHER with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof or appurtenant thereto; AND all the estate and interest of the said A. B., C. D., and E. F., in the said premises, to HOLD the said premises unto the said G. H., his heirs and assigns, TO THE USE of the said G. H., his heirs and assigns, discharged from the said sum of \$ _____, and all interest for the same, and all equity of redemption, and claims under or by virtue of the said indenture of the _____ day of _____

AND EACH of them, the said A. B., C. D., and E. F., so far as relates to his own acts, doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., his heirs and assigns, that they, the said A. B., C. D., and E. F., respectively, have not done or knowingly suffered any thing whereby the said premises, or any part thereof, are, is, or can be impeached, incumbered, or affected, in title or otherwise.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year above mentioned.

SIGNED, SEALED, AND DELIVERED, }
in presence of }
G. A. }

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

J. W. O. LAW

FORMS.

404. CONVEYANCE *by a MORTGAGOR and MORTGAGEE to the PURCHASER in fee; PART of the PURCHASE MONEY being paid to the MORTGAGEE in SATISFACTION of his DEBT, the WIFE of MORTGAGOR joins to RELEASE her DOWER.*

THIS INDENTURE, made the _____ day of _____, between A. B., of _____, (mortgagee,) of the first part, C. D., of _____, (venditor,) and E. D., his wife, of the second part, and G. H., of _____, (purchaser,) of the third part.

WHEREAS, by an indenture bearing date the _____ day of _____, and made between the said C. D., of the one part, and the said A. B., of the other part, in consideration of the sum of \$1000 to the said C. D. paid by the said A. B., the messuages, tenements, lands, and hereditaments herein after described, and intended to be hereby assured, and their appurtenances, were granted and conveyed by the said C. D. UNTO and TO THE USE of the said A. B., his heirs and assigns, subject nevertheless to the proviso therein contained for the redemption of the said hereditaments and premises, on payment by the said C. D., his heirs, executors, or administrators, unto the said A. B., his executors, administrators, or assigns, of the sum of \$1000, together with interest thereon, after the rate of 6 per cent. per annum, on the _____ day of _____, then next ensuing;

AND WHEREAS the said C. D. hath contracted and agreed with the said G. H., for the absolute sale to him of the messuages, tenements, lands, and hereditaments herein after particularly described, and intended to be hereby assured, with the appurtenances, and the freehold inheritance thereof, in fee simple in possession, free from all incumbrances, at or for the price or sum of \$2000 :

AND WHEREAS the said sum of \$1000 is still due and owing on the security of the said recited indenture of the _____ day of _____, but all interest for the same has been paid up to the day of the date of these presents; AND WHEREAS upon the treaty for the said purchase it was agreed that the said sum of \$1000 should be paid to the said A. B., out of the said purchase money or sum of \$2000 ;

NOW THIS INDENTURE WITNESSETH that, in pursuance and performance of the said agreement, and in consideration of the sum of \$1000, on or immediately before the execution of these presents to the said A. B. in hand well and truly paid by the said G. H., at the request and by the direction of the said C. D., [testified by his being a party to and executing these presents,] the receipt of which said sum of \$1000 the said A. B. doth hereby acknowledge, and declare the same to be in full satisfaction and discharge of all principal moneys and interest due and owing on the security of the said recited indenture of the _____ day of _____, and of

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and from the same, and every part thereof, doth acquit, release, and discharge as well the said C. D., his heirs, executors, and administrators, as also the said G. H., his heirs, executors, administrators, and every of them, forever by these presents; and also in consideration of the sum of \$1000 to the said C. D. at the same time paid by the said G. H., the payment and receipt of which said several sums of \$1000 and \$1000 [making together the sum of \$2000,] he, the said C. D., doth hereby acknowledge, and of and discharge the said G. H., his heirs, executors, administrators, and assigns, forever by these presents: He, the said A. B., at the request and by the direction of the said C. D., by these presents doth grant and convey, and the said C. D. by these presents doth grant, convey, and confirm, and the said E. D., with the privity and concurrence of the said C. D., [testified by his being a party to and executing these presents,] doth by these presents release unto the said G. H., and his heirs, her dower and right of dower in ALL, &c., *(description of the property.)*

TOGETHER with all ways, water-courses, liberties, privileges, easements, profits, commodities, emoluments, and appurtenances, whatsoever, to the said hereditaments and premises hereby assured or expressed, or intended so to be, or any of them, or any part thereof, belonging or in any wise appertaining: AND ALL THE ESTATE, right, title, interest, inheritance, use, trust, possession, possibility, property, claim, and demand, whatsoever, both at law and in equity, of them the said A. B., C. D., and E. D., in, to, out of, or upon the same premises, and every part thereof. To HOLD the said messuages, tenements, lands, hereditaments, and ALL AND SINGULAR other the premises hereby assured or expressed, or intended so to be, with their appurtenances, unto the said G. H., his heirs and assigns, forever, absolutely freed and discharged from the said mortgage sum of \$1000, and all interest for the same.

AND the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., his heirs and assigns, that he, the said A. B., hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing, whereby, or by reason or means whereof, he is in any wise prevented from assuring the said hereditaments and premises hereby assured UNTO and TO THE USE of the said G. H., his heirs and assigns, in manner aforesaid, or whereby, or by reason or means whereof, the said hereditaments and premises, or any of them, or any part or parts thereof, are, is, can, shall, or may be in any wise impeached, charged, affected, or incumbered, in title, estate, or otherwise howsoever.

AND the said C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., his heirs and as-

FORMS.

signs, that, notwithstanding any act, deed, matter, or thing by him, the said C. D., or by any person or persons claiming from, under, or in trust for him, made, done, omitted, committed, executed, or knowingly or willingly suffered, to the contrary, they, the said C. D., and E. D., and A. B., or some of them, now have in themselves good right and absolute authority to convey the said hereditaments and premises, hereby assured or expressed, or intended so to be, with their appurtenances, UNTO and TO THE USE of the said G. H., his heirs and assigns, in manner aforesaid.

AND THAT it shall be lawful for the said G. H., his heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to HOLD, possess, and enjoy the said hereditaments and premises, hereby assured or expressed, or intended so to be, with their appurtenances, and receive the rents and profits thereof, and of every part thereof, to and for his and their own benefit, without any lawful let, suit, trouble, eviction, claim, or demand, whatsoever, of or by him, the said C. D., and his heirs, or the said E. D., or the said A. B., or his heirs, or by any other person or persons lawfully claiming or to claim by, from, or under, or in trust for them, or any of them. AND that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and forever discharged, or otherwise, by the said C. D., his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all estates, titles, troubles, charges, debts, and incumbrances, whatsoever, either already or to be herein after had, made, executed, occasioned, or suffered by the said C. D., or his heirs, or the said E. F., or the said A. B., or his heirs, or by any person or persons lawfully claiming or to claim by, from, or under, or in trust for them, or any of them.

AND further, that he, the said C. D., and his heirs, and the said E. F., and the said A. B., and his heirs, and all and every other person and persons having or claiming, or who shall or may have or claim, any estate, right, title, or interest, at law or in equity, in, to, or out of the said hereditaments and premises, hereby assured or expressed, or intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for him, the said C. D., or his heirs, or the said E. F., or the said A. B., or his heirs, shall and will, from time to time, and at all times hereafter, upon the reasonable request and at the costs and charges of the said G. H., his heirs or assigns, make and perfect, or cause to be made and perfected, all such further and other lawful and reasonable acts, deeds, things, devises, and assurances in the law, whatsoever, for the further, better, more perfectly, and absolutely appointing, conveying, and assuring of the said hereditaments and premises, hereby assured or expressed, or intended so to be, and every part thereof, with their appurtenances, UNTO and TO THE USE of the said G. H., his heirs and assigns, in

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manner aforesaid, and according to the true intent and meaning of these presents, as by the said G. II., his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required.

IN WITNESS, &c.

405. CONVEYANCE of FREEHOLDS and ASSIGNMENT of LEASEHOLDS to PURCHASER.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____, (vendor,) of the one part, and C. D., of _____, (purchaser,) of the other part, witnesseth:—

THAT WHEREAS, by an indenture of lease, dated the _____ day of _____, and made between (parties,) ALL, &c., (description of the leasehold property,) with their respective appurtenances, were demised to the said A. B., his executors, administrators, and assigns, for the term of thirty years from the _____ day of _____, at the yearly rent of § _____, and under and subject to the covenants and conditions therein contained, and on the part of the lessee, his executors, administrators, and assigns to be observed and performed;

AND WHEREAS the said A. B. hath agreed with the said C. D., for the absolute sale to him of the freehold hereditaments and premises herein after described, and intended to be hereby granted and assured, and the freehold and inheritance thereof in fee simple in possession, free from incumbrances, and of the leasehold premises comprised in the said recited indenture of lease, for the residue of the said term of thirty years, subject to the rent, covenants, and conditions aforesaid, at or for the price or sum of § _____;

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the sum of § _____ to the said A. B. paid by the said C. D., on or immediately before the execution of these presents, [the receipt whereof he, the said A. B., doth hereby acknowledge,] he, the said A. B., doth hereby grant unto the said C. D., his heirs and assigns, ALL, &c., (description of the freehold property.)

TOGETHER WITH ALL AND SINGULAR the houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, fences, ditches, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, and appurtenances, whatsoever, to the said hereditaments and premises hereby assured or expressed, or intended so to be, or any of them, or any part thereof belonging or in any wise appertaining. AND ALL THE ESTATE and interest of him, the said A. B., in and to the said hereditaments and premises, and every part thereof, to hold the said hereditaments and premises

FORMS.

UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns.

AND THIS INDENTURE ALSO WITNESSETH that, in pursuance and performance of the aforesaid agreement in this behalf, and for the consideration aforesaid, he, the said A. B., doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT the said messuage or tenement, hereditaments, and premises comprised in and demised by the said indenture of lease of the

day of _____, with their rights, easements, and appurtenances, AND ALL THE ESTATE and interest of the said A. B. in or out of the said premises hereby assigned, and every part thereof, TO HOLD the said messuage or tenement, hereditaments, and premises, hereby assigned, unto the said C. D., his executors, administrators, and assigns, for all the residue of the said term of thirty years, at the rent and under and subject to the covenants and conditions by and in the said lease reserved and contained, and hereafter, on the part of the lessee, his executors, administrators, and assigns, to be paid, observed, and performed.

AND the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs, executors, administrators, and assigns, respectively, that, notwithstanding any act or thing by the said A. B. done, or knowingly or willingly suffered, to the contrary, the said indenture of lease is a good and effectual lease of the said hereditaments and premises hereby assigned, and every part thereof, for the said term of thirty years, and has not become void or voidable, and that the rent, covenants, conditions, and agreements, in the said lease reserved and contained, have, on the tenant's or lessee's part, been duly paid, observed, and performed, up to the date of these presents.

AND THAT, for and notwithstanding any such act or thing as aforesaid, he, the said A. B., now hath full power to grant the said hereditaments and premises herein before granted, or expressed so to be, unto the said C. D., his heirs and assigns, in manner aforesaid, free from all incumbrances, and to assign the said premises, hereby assigned, or expressed so to be, with their appurtenances, unto the said C. D., his executors, administrators, and assigns, for and during the residue of the said term of thirty years, subject as in manner aforesaid.

AND THAT it shall be lawful for the said C. D., his heirs and assigns, as to the said freehold hereditaments and premises, at all times hereafter, and for the said C. D., his executors, administrators, and assigns, as to the said leasehold premises, at all times hereafter, during the said term of thirty years, quietly TO HOLD and enjoy the same freehold and leasehold hereditaments and premises, respectively, with their appurtenances, and to receive the rents and profits thereof, and of every part thereof, to and for his and their own use,

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without any claim or demand whatsoever of or by the said A. B., his heirs, executors, or administrators, or any person or persons claiming under or in trust for him, them, or any of them.

AND THAT free from all incumbrances, [save and except as to the said leasehold premises, the rent, covenants, and agreements, by and in the said recited indenture of lease reserved, and on the tenant's or lessee's part, to be observed and performed.]

AND THAT the said A. B., his heirs, executors, and administrators, and all other persons claiming any estate, right, title, or interest, at law or in equity, in, to, or out of the said freehold and leasehold hereditaments and premises, respectively, or any of them, or under or in trust for the said A. B., his heirs, executors, or administrators, will, at all times, upon the request and at the costs of the said C. D., his heirs, executors, administrators, or assigns, make and perfect all such further acts and assurances for the further and more perfectly assuring of the said freehold hereditaments and premises unto the said C. D., his heirs and assigns, and the said leasehold premises unto the said C. D., his executors, administrators, and assigns, for the remainder then to come of the said term of thirty years, as by the said C. D., his heirs, executors, administrators, or assigns, or his or their counsel, shall be required and advised.

AND the said C. D. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors and administrators, that the said C. D., his heirs, executors, administrators, and assigns, will henceforth, during the said term of thirty years, duly and punctually pay the said yearly rent of \$ _____, by the said indenture of lease reserved, and will observe and perform all the covenants, conditions, and agreements in the said lease contained, and henceforth on the part of the tenant or lessee, his executors, administrators, or assigns, to be observed and performed, and will, at all times hereafter, save and keep the said A. B., his heirs, executors, and administrators, indemnified against the payment of the said rent, and the performance of the said covenants and conditions, and from and against all actions, suits, expenses, and demands, on account of the same, or in any wise relating thereto.

IN WITNESS WHEREOF, &c.

406. CONVEYANCE of an EQUITY of REDEMPTION (by INDORSEMENT) to the MORTGAGEE.

THIS INDENTURE, &c., between the within named (*mortgagor*), of the one part, and the within named (*purchaser*), of the other part, witnesseth as follows:—

(1.) In consideration of \$ _____, now due for principal and interest on the security of the within written indenture, and of \$ _____,

FORMS.

now paid to the said M. by the said P., the said M. grants unto the said P., and his heirs, the premises expressed to be granted by the within written indenture, discharged from all equity of redemption under the same indenture.

(2.) The said M., for himself, his heirs, executors, and administrators, covenants with the said P., his heirs and assigns, that, notwithstanding any thing by the said M. [or his ancestors] done or knowingly suffered, he is entitled to execute this grant of the premises, free from incumbrances, and that he, and every person claiming under or in trust for him [or his ancestors] will, at the cost of the said P., his heirs and assigns, do all acts required for perfecting such grant.

IN WITNESS, &c.

407. CONVEYANCE of FREEHOLDS by EXECUTOR, (who was also the TESTATOR'S HEIR AT LAW,) under a WILL directing a sale, but without specifying by whom the sale should be made, or blending the SALE-MONEYS and personalty.

THIS INDENTURE, &c., between A. B., of _____, of the one part, and C. D., of _____, of the other part, witnesseth as follows:—

(1.) In consideration of _____, paid by the said C. D. to the said A. B., as surviving executor of the will [dated, &c.,] of his father, X. Y., and for effectuating a sale made by him as such executor, [and also as the heir at law of his said father,] pursuant to the directions of the said will, the said A. B., as to such of the premises as are vested in him as such heir at law, GRANTS unto the said C. D., and his heirs, the hereditaments described in the schedule hereto, with their legal or usual appurtenances.

(2.) The said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs, [executors, administrators,] and assigns, that he, the said C. D., hath done or knowingly suffered nothing whereby the premises are or may be incumbered or prejudicially affected.

IN WITNESS, &c.

408. CONVEYANCE in FEE by two VENDORS of their respective MOIETIES in a DWELLING-HOUSE and PREMISES, subject to the ESTATE of a TENANT FOR LIFE. ONE of the VENDORS is a MARRIED WOMAN, and her MOIETY is settled to her SEPARATE USE. Her HUSBAND joins to convey his INTEREST in the LEGAL ESTATE.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____, (vendur of one moiety of hereditaments,) of the first part,

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C. D., of _____, and E. D., his wife, (*vendors of other moiety of hereditaments,*) of the second part, G. H., of _____, (*trustee of purchase money as to one moiety for the separate use of the said E. D.,*) of the third part, and O. P., of _____, (*purchaser,*) of the fourth part:—

WHEREAS, by an indenture dated the _____ day of _____, and made, or expressed to be made, between (*parties,*) _____

ALL AND SINGULAR the messuage, tenement, or dwelling-house, and hereditaments, herein after described, and intended to be hereby conveyed, and the appurtenances, were, for the considerations therein mentioned, duly conveyed and assured by _____ unto the said E. F. and his heirs, TO THE USE of X. Y., and her assigns, for the term of her life, without impeachment of waste, and from and after her decease, as to one undivided moiety or equal half-part of the said hereditaments and premises, TO THE USE of the said A. B., his heirs and assigns, and as to the other and remaining undivided moiety, or equal half-part of the said hereditaments and premises, TO THE USE of the said E. D., her heirs and assigns, for her sole and separate use and benefit, free from the control, debts, interference, or any engagements of her present or any future husband;

AND WHEREAS the said A. B., and the said C. D. and E. D., have contracted and agreed with the said O. P., for the sale to him of the messuage, tenement, or dwelling-house, hereditaments, and premises, herein after particularly described, and intended to be hereby assured, and the appurtenances, and the fee simple and inheritance thereof, in remainder expectant on the decease of the said X. Y., free from all incumbrances, at or for the price or sum of \$ _____, of which the sum of \$ _____ is to be paid to the said A. B., as and for the consideration money for his moiety of the said hereditaments and premises, and the sum of \$ _____, being the remainder of the said purchase money, or sum of \$ _____, is to be paid to the said G. H., to be held by him in trust, for the separate use of the said E. D., as and for the consideration money for the moiety of the said E. F. of and in the said hereditaments and premises;

NOW THIS INDENTURE WITNESSETH that, in pursuance and performance of the afore-said agreement, and in consideration of the sum of \$ _____ to the said A. B. paid by the said O. P., on or immediately before the sealing and delivery of these presents, the receipt of which said sum of \$ _____ he, the said A. B., doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and discharge the said O. P., his heirs, executors, administrators, and assigns, forever by these presents, and also in consideration of the sum of \$ _____ at the same time paid by the said O. P. to the said G. H., at the request and by the direction of the said E. D., which last mentioned sum of \$ _____ she doth hereby appoint to be held by the said G. H., in trust, for the

FORMS.

sole and separate use of her, the said E. D., the receipt of which said sum of \$ the said G. H. and E. D. do hereby respectively acknowledge, and of and from the same, and every part thereof, she, the said E. D., doth acquit, release, and discharge the said O. P., his heirs, executors, administrators, and assigns, by these presents, he, the said A. B., [as to, for, and concerning his undivided moiety or equal half-part, in fee simple in remainder, expectant on the decease of the said X. Y., of and in the hereditaments herein after described, and intended to be hereby assured,] doth, by these presents, grant, convey, and confirm, and the said C. D. and E. D., [as to, for, and concerning the remaining undivided moiety or equal half-part, in fee simple in remainder, expectant on the decease of the said X. Y., of and in the same hereditaments and the estate and interest of the said C. D. of and in such moiety or equal half-part,] and as to the said E. D., with the concurrence of her said husband, so far as the same may be requisite, testified by his being a party to and executing these presents, do, and each of them doth, by these presents, grant, release, dispose of, and confirm, unto the said O. P. and his heirs,.

ALL, &c., (*description of the property.*) TOGETHER WITH ALL AND SINGULAR the houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, fences, ditches, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, and appurtenances, whatsoever, to the said hereditaments and premises hereby assured or expressed, or intended so to be, or any of them, or any part thereof, belonging or in any wise appertaining; AND ALL THE ESTATE, right, title, interest, inheritance, use, trust, possession, possibility, property, claim, and demand, whatsoever, both at law and in equity, of them the said A. B., C. D., and E. D., in, to, out of, or upon the same premises, and every part thereof: To HOLD the said messuage, tenement, or dwelling-house, hereditaments, and ALL AND SINGULAR other the premises hereby assured or expressed, or intended so to be, and every part thereof, with their and every of their appurtenances, [subject nevertheless and without prejudice to the estate therein respectively of the said X. Y., for her own life, as aforesaid,] UNTO the said O. P. and his heirs, TO THE USE of the said O. P., his heirs and assigns, forever.

To HOLD the said premises, with the appurtenances, [subject nevertheless and without prejudice to the estate therein respectively of the said X. Y., for her own life as aforesaid] UNTO and TO THE USE of the said O. P., and his heirs.

AND THE SAID A. B., so far as respects his one undivided moiety or equal halfpart of the said hereditaments and premises, and the acts and deeds relating thereto, and not further or otherwise, and the said C. D., so far as respects the other remaining undivided moiety or equal half-part of the said her-

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editaments and premises, and the acts and deeds relating thereto, and not further or otherwise, do hereby, respectively, for themselves and for their respective heirs, executors, and administrators, covenant and agree, with the said O. P., his heirs and assigns, in manner following: [that is to say,] THAT, for and notwithstanding any act, deed, matter, or thing whatsoever, by them, the said A. B., and the said C. D., and E. D., or any of them, or by any person or persons lawfully claiming from, under, or in trust for them, or any of them, made, done, omitted, committed, executed, or knowingly or willingly suffered, to the contrary, they, the said A. B., and the said C. D., and E. D., respectively, are now seized to them and their heirs of an absolute estate of inheritance, in fee simple in possession, in the hereditaments hereby assured or expressed, or intended so to be.

AND THAT, notwithstanding any such act, deed, matter, or thing, as aforesaid, the said A. B., and the said C. D., and E. D., or some or one of them, now have or hath in themselves, or himself, or herself, good right, full power, and lawful and absolute authority to grant, bargain, sell, and convey the said hereditaments and premises, hereby assured and expressed, or intended so to be, with their appurtenances, TO THE USES and in manner aforesaid, according to the true intent and meaning of these presents; AND THAT it shall be lawful for the said O. P., his heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to have, hold, occupy, possess, and enjoy, the said hereditaments and premises, with their appurtenances, and to receive the rents and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any trouble, eviction, claim, or demand, whatsoever, of or by the said A. B., and the said C. D., and E. D., or any of them, or the heirs of them or any of them, or any other person or persons lawfully claiming or to claim by, from, or under, or in trust for them or any of them.

AND THAT free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and forever discharged, or otherwise, by the said A. B. and C. D., respectively, and their respective heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all former and other estates, titles, troubles, charges, debts, and incumbrances, whatsoever, either already or to be hereafter had, made, executed, occasioned, or suffered by the said A. B., and the said C. D., and E. D., or any of them, or any person or persons lawfully claiming or to claim by, from, or under, or in trust for them or any of them.

AND FURTHER that they, the said A. B., and the said C. D., and E. D., respectively, and their respective heirs, and all persons whosoever, claiming or to claim any estate, right, title, or interest, at law or in equity, in, to, or out of the said hereditaments and premises, or any of them or any part thereof, by, from or under, or in trust for

FORMS.

them, or any of them, or the heirs of them, or any of them, shall and will, from time to time and at all times hereafter, upon the reasonable request and at the costs and charges of the said O. P., his heirs or assigns, make and perfect, or cause to be made and perfected, all such further and other lawful and reasonable acts, deeds, things, devises, conveyances, and assurances in the law, whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring of the said hereditaments and premises, and every part thereof, with their appurtenances, unto and to the use of the said O. P., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said O. P., his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required.

IN WITNESS WHEREOF, &c.

409. RECONVEYANCE *by HEIR and EXECUTORS of a MORTGAGEE.*

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada _____, (*heir at law of mortgagee,*) of the first part, C. D., of _____, and E. F., of _____, (*executors,*) of the second part, and G. H., of _____, (*mortgagee,*) of the third part.

WHEREAS, by an indenture, dated the _____ day of _____, and expressed to be made between the said G. H., of the one part, and the said (*mortgagee,*) of the other part, in consideration of the sum of _____ dollars, by the said (*mortgagee*) paid to the said G. H., the said G. H. did grant unto the said (*mortgagee,*) his heirs and assigns, the hereditaments intended to be hereby granted. To hold the same unto and to the use of the said mortgagee, his heirs and assigns, *subject* to a proviso, in the indenture now in recital contained, for redemption of the same premises on payment by the said G. H., his heirs, executors, administrators, or assigns, unto the said (*mortgagee,*) his executors, administrators, or assigns, of the sum of _____ dollars, with interest for the same, after the rate and at the time therein mentioned;

AND WHEREAS the said (*mortgagee*) duly made and executed his last will, dated the _____ day of _____, and thereby appointed the said C. D. and E. F. executors thereof, but did not thereby devise the legal estate in the said hereditaments, and died leaving the said A. B. his heir at law, and without having revoked or altered his said will, and the same was proved by the said C. D. and E. F., in the _____ court of _____, on the _____ day of _____;

AND WHEREAS the said sum of _____ dollars is now owing to the said C. D. and E. F. on the said security, but all interest thereon

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has been paid up to the date of these presents, and the said G. H. is desirous of paying off the said sum of dollars, and of having such reconveyance as is herein after contained;

Now THIS INDENTURE WITNESSETH that, in consideration of all interest on the said sum of dollars having been paid as aforesaid, and of the sum of dollars to the said C. D. and E. F. this day paid by the said G. H., [the receipt whereof the said C. D. and E. F. do hereby acknowledge,] he, the said A. B., by the direction of the said C. D. and E. F., doth hereby grant, and they, the said C. D. and E. F., do hereby release unto the said G. H., his heirs and assigns, ALL (*parcels*) and ALL AN IN OTHER the hereditaments, by the said indenture of the day of expressed to be granted, [*or released, or appointed, or appointed and granted, &c., as the case may be,*] TOGETHER with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof, or appurtenant thereto. AND ALL THE ESTATE and interest of the said A. B., C. D., and E. F., in the said premises. To HOLD the said premises UNTO and TO THE USE of the said G. H., his heirs and assigns, discharged from the said mortgage-debt of dollars, and all interest for the same, and from all claims under the said indenture of mortgage.

AND EACH of them, the said C. D. and E. F., so far as relates to his own acts and deeds, doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., his heirs, executors, and administrators, respectively, that they, the said C. D. and E. F., respectively, have not done or knowingly suffered any thing whereby the said moneys, hereditaments, and premises, or any part thereof, respectively, are or can be impeached, innumbered, or affected, in any wise howsoever, or whereby they respectively are prevented from assigning and granting the same premises, or any part thereof, respectively, in manner aforesaid.

IN WITNESS WHEREOF, &c.

410. RECONVEYANCE of FREEHOLDS and LEASEHOLDS by HEIR and EXECUTOR of MORTGAGEE by INDORSEMENT.

THIS INDENTURE, &c., between A. B., (*heir*.) of the first part, C. D., (*executor*.) of the second part, and the within named E. F., the (*mortgagor*.) of the third part, witnesseth as follows:—

(1.) In consideration of dollars, paid by the said E. F. to the said C. D., as sole executor of the will [dated, &c.,] of the within named X. Y., in discharge of all principal and interest now due on the security of the within written indenture, the said A. B., as to

FORMS.

such of the after mentioned premises as are now vested in him, as heir at law of the said X. Y., by the direction of the said C. D., grants unto the said E. F., and his heirs, the premises granted by the within written indenture, discharged from all moneys thereby secured.

(2.) For the consideration aforesaid, the said C. D. assigns unto the said E. F., his executors and administrators, the premises assigned by the within written indenture, discharged from all moneys thereby secured, [during the subsisting residue of the within mentioned terms.]

(3.) Each of them, the said A. B. and C. D., for himself, his heirs, executors, and administrators, covenants with the said E. F., his heirs, [executors, administrators,] and assigns, that they, the said A. B. and C. D., respectively, have done or knowingly suffered nothing whereby the premises are or may be incumbered or prejudicially affected.

IN WITNESS, &c.

411. DEED of BARGAIN and SALE of LANDS.

On Sale by Mortgagee.

THIS INDENTURE, made the _____ day of _____, in the year &c., 18____, between A. B., of _____, of the one part, and C. D. of _____, of the other part.

WHEREAS E. F., of _____, did, by a certain indenture of mortgage, dated the _____ day of _____, in the year _____, for the consideration of _____, bargain and sell unto the said A. B., and to his heirs and assigns forever, all that certain, &c., (*parcels*;) TOGETHER WITH ALL AND SINGULAR the hereditaments and appurtenances thereunto belonging: To HOLD the said granted and bargained premises, with the appurtenances, UNTO and TO THE USE of the said A. B., his heirs and assigns; SUBJECT to a condition therein contained that, if the said E. F., his heirs, executors, or administrators, should pay unto the said A. B., his executors, administrators, or assigns, the sum of _____ dollars, with [lawful] interest for the same, on or before the _____ day of _____, in the year, &c.; then, and in such case, the said indenture should be void and of no effect;

AND the said E. F. did, by the said indenture, for himself, his heirs and assigns, agree with the said A. B., his heirs, executors, administrators, and assigns, that, in case it should so happen that the said sum of _____ dollars, and the interest for the same, should be due and unpaid, at the time limited for the payment thereof, in the whole or in part thereof, it should be lawful for the said A. B., his heirs or assigns, at _____ after default in such payment, to sell and dispose of the said mortgaged premises, with the appurtenances, at public auction, [or otherwise, as the case may be,] and, out of the moneys to arise from the sale thereof, to retain and keep

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the said sum of _____ dollars, and the interest, or so much thereof as might be due, together with the costs and charges of such sale or sales, rendering the overplus money, if any, to the said E. F., his heirs, executors, administrators, or assigns;

AND WHEREAS the said E. F. did not pay to the said A. B. the said sum of money, with the interest, at the time limited for payment, or at any time since; and the said A. B. hath, therefore, in pursuance of the authority so given to him as aforesaid, caused the premises to be advertised and sold at public auction, [or otherwise, as the case may be,] and the same have been knocked down to the said C. D., for _____ dollars, being the highest sum bid for the same;

NOW, THEREFORE, THIS INDENTURE WITNESSETH that the said A. B., in pursuance of the power aforesaid, and also for and in con-

412. DEED of MORTGAGED PREMISES, on FORECLOSURE by
ADVERTISEMENT.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between C. D., of _____, of the first part, and E. F., of _____, of the second part:—

WHEREAS A. B., by a certain indenture of mortgage, bearing date the _____ day of _____, one thousand eight hundred and _____, for the consideration of the sum of _____, did bargain, sell, and convey, unto C. D., his heirs and assigns, forever, all that certain piece or parcel of land, herein after particularly described, with the appurtenances, subject to a proviso, in the said indenture of mortgage contained, that the same should be void on the payment, to the said C. D., his heirs, executors, administrators, or assigns, of the sum of _____ dollars, in the manner particularly

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FORMS.

such of the after mentioned premises as are now vested in him, as heir at law of the said X. Y., by the direction of the said C. D., grants unto the said E. F., and his heirs, the premises granted by the within written indenture, discharged from all moneys thereby secured.

(2.) For the consideration aforesaid, the said C. D. assigns unto the said E. F., his executors and administrators, the premises assigned by the within written indenture, discharged from all moneys thereby secured, [during the subsisting residue of the within mentioned terms.]

(3.) Each of them, the said A. B. and C. D., for himself, his heirs, executors, and administrators, covenants with the said E. F., his heirs, [executors, administrators,] and assigns, that they, the said A. B. and C. D., respectively, have done or knowingly suffered nothing to be incumbered or prejudicially

ERRATA.

The *Forms* under Paragraph Nos. 412, -413, -414 and 415, are United States *Forms*, and should have been designated in the heading.

On Page 571, (2d on the page) the form of Negotiable Note is for use in the United States.

with the appurtenances, unto and to the use of his heirs and assigns; SUBJECT to a condition therein contained that, if the said E. F., his heirs, executors, or administrators, should pay unto the said A. B., his executors, administrators, or assigns, the sum of _____ dollars, with [lawful] interest for the same, on or before the _____ day of _____, in the year, &c.; then, and in such case, the said indenture should be void and of no effect;

AND the said E. F. did, by the said indenture, for himself, his heirs and assigns, agree with the said A. B., his heirs, executors, administrators, and assigns, that, in case it should so happen that the said sum of _____ dollars, and the interest for the same, should be due and unpaid, at the time limited for the payment thereof, in the whole or in part thereof, it should be lawful for the said A. B., his heirs or assigns, at _____ after default in such payment, to sell and dispose of the said mortgaged premises, with the appurtenances, at public auction, [or otherwise, as the case may be,] and, out of the moneys to arise from the sale thereof, to retain and keep

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the said sum of _____ dollars, and the interest, or so much thereof as might be due, together with the costs and charges of such sale or sales, rendering the overplus money, if any, to the said E. F., his heirs, executors, administrators, or assigns;

AND WHEREAS the said E. F. did not pay to the said A. B. the said sum of money, with the interest, at the time limited for payment, or at any time since; and the said A. B. hath, therefore, in pursuance of the authority so given to him as aforesaid, caused the premises to be advertised and sold at public auction, [or otherwise, as the case may be,] and the same have been knocked down to the said C. D., for _____ dollars, being the highest sum bid for the same;

NOW, THEREFORE, THIS INDENTURE WITNESSETH that the said A. B., in pursuance of the power aforesaid, and also for and in consideration of the said sum of _____ dollars, to him paid by the said C. D., [the receipt whereof is hereby acknowledged,] doth hereby grant, bargain, sell, alien, release, and confirm unto the said C. D., his heirs and assigns, all the farm, piece, or parcel of land above mentioned, together with the hereditaments and appurtenances, as the same is described and conveyed by the said indenture of mortgage; and all the estate, right, title, interest, claim, and demand, at law and in equity, of him, the said A. B., and also of the said E. F., as far as the said A. B. hath power to grant and convey the same, of, in, and to the premises, and every part and parcel thereof. To HOLD the said premises, with the appurtenances, UNTO and TO THE USE of the said C. D., his heirs and assigns.

IN WITNESS WHEREOF, &c.

412. DEED of MORTGAGED PREMISES, on FORECLOSURE by ADVERTISEMENT.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between C. D., of _____, of the first part, and E. F., of _____, of the second part:—

WHEREAS A. B., by a certain indenture of mortgage, bearing date the _____ day of _____, one thousand eight hundred and _____, for the consideration of the sum of _____, did bargain, sell, and convey, unto C. D., his heirs and assigns, forever, all that certain piece or parcel of land, herein after particularly described, with the appurtenances, subject to a proviso, in the said indenture of mortgage contained, that the same should be void on the payment, to the said C. D., his heirs, executors, administrators, or assigns, of the sum of _____ dollars, in the manner particularly

U. W. O. LAW

FORMS.

specified in the condition of a certain bond or obligation, bearing even date with the said indenture of mortgage; with a special power, in the said indenture of mortgage contained, authorizing the said C. D., his heirs, executors, administrators, or assigns, if default should be made in the payment of the said sum of money mentioned in the condition of the said bond or obligation, with the interest, or of any part thereof, to sell and dispose of the mortgaged premises, or any part thereof, at public auction; and to make and deliver to the purchaser, or purchasers, thereof a good and sufficient deed, or deeds, of conveyance in the law, for the same, in fee simple;

AND WHEREAS the said indenture of mortgage has been duly recorded according to law, as by the said indenture of mortgage, and the record thereof, and of the power therein contained, reference being thereunto had, may more fully and at large appear; (*If necessary, say: And the same hath been duly assigned to the party of the first part, by the said C. D., as by the record of the said assignment, &c., as above;*)

AND WHEREAS default having been made in the payment of the money intended to be secured by the said indenture of mortgage, the mortgaged premises, herein after particularly described, were, on the _____ day of _____, one thousand eight hundred and _____, sold at public auction, to the said party of the second part, for the sum of _____, being the highest sum bid for the same, public notice having been previously given of such sale, by advertisement, inserted and published for twelve weeks, once in each week, successively, in a public newspaper, entitled the _____, printed in the town of _____, in the county in which the mortgaged premises are situated, a copy of which advertisement was, for twelve weeks prior to the time therein specified for such sale, duly affixed on the outward door of the court-house in the town of _____, being the building in which the county courts are directed to be held; and the said party of the first part, having caused a copy of said printed notice, or advertisement, to be duly served on all persons having any claim upon the said premises, as required by the statute;

NOW, THEREFORE, THIS INDENTURE WITNESSETH that the party of the first part, for and in consideration of the sum so bid, as aforesaid, to him in hand paid by the said party of the second part, at the time of the sealing and delivery of these presents, [the receipt whereof is hereby acknowledged,] hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm, unto the said party of the second part, and to his heirs and assigns, forever, ALL (*description*) TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments, and appurtenances thereunto belonging, or any wise

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appertaining, as the same is described and conveyed, in and by the said indenture of mortgage; AND ALSO ALL THE ESTATE, right, title, interest, property, claim, and demand, whatsoever, both in law and equity, of the said A. B., as well as of the said party of the first part, of, in, and to the above described premises, with the appurtenances, as fully, to all intents and purposes, as the said party of the first part hath power and authority to grant and sell the same, by virtue of the said indenture of mortgage, and of the statute in such case made and provided, or otherwise: TO HAVE AND TO HOLD the said above mentioned and described premises, with their and every of their appurtenances, UNTO the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

IN WITNESS, &c.

413. DEED by GUARDIAN.

To ALL to whom these presents shall come: E. F., of guardian of C. B. and E. B., minors, and children of A. B., late of the, &c., deceased, sends greeting:—

WHEREAS, by an order of the court, holden at within and for the county of, in said province, on the day of, the said E. F., in his capacity of guardian, as aforesaid, was empowered to make sale of the whole of the said minors' interest, being one undivided twelfth part each, of the real estate herein after described; AND, WHEREAS the said E. F., having given the bond, and taken the oath by law required, before fixing on the time and place of sale, and also given public notice of the said sale by causing a notification thereof to be inserted and printed weeks, successively, in the newspaper called, printed at, did, the day of, cause the said minors' interest to be exposed for sale, pursuant to the said notice, by public auction, on the premises, and the same was then and there knocked down to S. T., of for the sum of dollars, he being the highest bidder therefor:

NOW KNOW YE that I, the said E. F., in my capacity of guardian, as aforesaid, by virtue of the authority aforesaid, and in consideration of the sum of dollars, to me paid by S. T., aforesaid, [the receipt whereof I hereby acknowledge,] do hereby grant, bargain, sell, and convey, unto the said S. T., his heirs and assigns, two undivided twelfth parts of a certain tract or parcel of land, situate in, bounded and described as follows, viz., (description,) being the shares of the said minors therein, with all the privileges

U. W. O. LAW

FORMS.

and appurtenances thereunto belonging: To HOLD the said premises to the said S. T., his heirs and assigns.

AND I, the said E. F., for myself, my executors, and administrators, do covenant with the said S. T., his heirs and assigns, that, in making the said sale, I have in all things observed the rules and directions of the law; and that I will, and my heirs shall, warrant and defend the above granted premises to the said S. T., his heirs and assigns, against the lawful claims and demands of the said minors, and their heirs, and all persons claiming the same by, through, or under them, or either of them.

IN WITNESS WHEREOF, I, the said E. F., have hereunto set my hand and seal, this _____ day of _____, one thousand eight hundred and _____

SIGNED, SEALED, AND DELIVERED, } E [SEAL]
in the presence of }

414. DEED by ADMINISTRATOR, EMPOWERED to SELL by SURROGATE.

To ALL to whom these presents shall come: I, A. B., of _____, in the county of _____, in the state of _____, administrator of the goods and estate which were of C. D., late of _____, &c., deceased, intestate, send greeting:—

WHEREAS, by an order of the surrogate of the county of _____, made at a probate court held at _____, within the county of _____, on the _____ day of _____ last past, I, the said A. B., was licensed and empowered to sell and pass deeds, to convey the real estate of the said C. D., herein after described; AND, WHEREAS I, the said A. B., having given public notice of the intended sale, by causing a notification thereof to be printed and inserted _____ weeks, successively, in the newspaper called the _____, printed in _____, agreeably to the order and direction of said court; and, having given the bond and taken the oath, by law in such cases required, previous to fixing upon the time and place of sale, did, on the _____ day of _____, instant, pursuant to the license and notice aforesaid, sell by public auction the real estate of the said C. D., herein after described, to E. F., of _____, in the county of _____, for the sum of _____ dollars, he being the highest bidder therefor:

NOW, THEREFORE, KNOW YE, that I, the said A. B., by virtue of the power and authority in me vested, as aforesaid, and in consideration of the aforesaid sum of _____ dollars, to me paid by the said E. F., [the receipt whereof is hereby acknowledged,] do hereby grant, bargain, sell, and convey, unto the said E. F., his

FORMS.

heirs and assigns, all (*description* :) TO HAVE AND TO HOLD the above granted premises, to the said E. F., his heirs and assigns, to his and their use and behoof, forever. And I, the said A. B., for myself, my heirs, executors, and administrators, do hereby covenant with the said E. F., his heirs and assigns, that, in pursuance of the license aforesaid, I took the oath and gave the bond by law required, and gave public notice of the said sale, as above set forth.
IN WITNESS WHEREOF, I, the said A. B., have, &c., (*as in n. 413.*)

415. EXECUTORS' DEED.

THIS INDENTURE, made the _____ day of _____, in the year _____, between E. F., of _____, and L. M., of _____, executors of the last will and testament of A. B., deceased, late of the town of _____, in the county of _____, and Province of Canada, of the first part, and C. D., of _____, of the second part, witnesseth:—

THAT the said parties of the first part, by virtue of the power and authority to them given, in and by the said last will and testament, and for and in consideration of the sum of _____ dollars, lawful moneys of Canada, to them in hand paid by the said party of the second part, [the receipt whereof is hereby acknowledged,] do by these presents grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, his heirs and assigns, all (*description* :) TOGETHER WITH ALL AND SINGULAR the hereditaments and appurtenances to the same belonging, or in any wise appertaining; AND all the estate, right, title, interest, claim, and demand, whatsoever, which the said testator had in his lifetime, and at the time of his decease, and which the said parties of the first part, or either of them, have, or hath, by virtue of the said last will and testament, or otherwise, of, in, and to the same: TO HOLD the said premises, with the appurtenances, UNTO and TO THE USE of the said C. D., his heirs and assigns. AND we, the said E. F. and L. M., do covenant with the said C. D., his heirs and assigns, that we are lawfully the executors of the last will and testament of the said A. B., and that we have not made or suffered any incumbrance on the hereby granted premises since we were appointed executors of the said A. B.; and that we have in all respects acted, in making this conveyance, in pursuance of the authority granted to us, in and by the said last will and testament of the said A. B.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, &c., (*as in n. 413.*)

SIGNED, SEALED, AND DELIVERED, }
in presence of } E. F. [SEAL]
L. M. [SEAL]

U. W. O. LAW

416. CLAUSES *in DEEDS of CONVEYANCE.*

OPERATIVE WORDS.—After the statement of the consideration, and the receipt for it, come the operative words of alienation, covenant, agreement, or otherwise, as the case may be.

In instruments of alienation it was till lately the practice to insert the operative words *twice*; first in the *perfect*, and then in the *present* tense. The practice arose from the earliest form of conveyance of freehold estate having been the charter of feoffment, which evidenced the precedent livery of seizin, whereby the estate *had actually passed*. The feoffor having *already* enfeoffed the feoffee, the charter naturally witnessed that he *had* done so, and proceeded in the present tense to *confirm the feoffment*; and this form, sensible in its original application, was till lately, and is sometimes still, senselessly applied to every instrument of alienation, without regard to the fact that no previous act of alienation has taken place. In the present work the operative words are used in the present tense only, except in the deeds of *disclaimer*, which properly give the operative words of refusal and disclaimer in the past as well as in the present tense; because the intended operation of these deeds is to preserve evidence, not merely that the donee then and thenceforth refuses the estate or office, but that he has refused it *previously* and from the time of its having been offered to him.

It has also been the fashion, till lately, to use a great number of operative words, without regard to their true meaning and application. Thus, to pass freehold hereditaments, the words "*grant, bargain, sell, alien, release, and confirm*" have been commonly used, with the addition, when the instrument was a feoffment, of *enfeoff*; to pass chattels, real and personal, "*bargain, sell, assign, transfer, set over, and confirm*" have been treated as the due complement; leases have been made by the words "*grant, bargain, sell, demise, and to farm let*"; and, in surrenders, "*bargain, sell, assign, surrender, and yield up*" have been employed. The origin of this nonsense [which the editor has not ventured to weed out entirely from the forms in the present work] was, probably, the want of knowledge, in the bulk of practitioners, of the true meaning and due application of each word, and a consequent ignorant apprehension that, if *one* word alone was used, a *wrong* one might be adopted and the right one omitted; and to this something must be added for carelessness and the general disposition of the profession to seek safety in verbosity rather than in discrimination of language. Nearly all the words used have a true and precise meaning, adapted to a particular case; and, so long as several kinds of deeds were in use, the employment of such words in their proper deeds was strictly right. Thus "*enfeoff*" was the technical and proper operative word of a *feoffment*, so long as a feoffment was in use; and "*grant*" always

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OPERATIVE WORDS.

was, and is still, the appropriate word for passing *incorporated hereditaments*, remainders, reversions, and, generally, freehold estates not lying in livery, and consequently not the subject of livery of seisin and feoffment. "*Release*" is the proper word for the conveyance of a *remainder* or *reversion* to the person in possession, and, consequently, was the commonest word of conveyance, as long as a lease and release were the commonest mode of assurance; and "*alien*" is the general term of the law for *absolutely* and *entirely* parting with an estate. The word "*confirm*" is appropriate where there has been a *previous conveyance* to the grantee of the property, and such conveyance is intended to be actually confirmed; but, in practice, the word is generally applied, without much regard to its meaning, to any conveyance by a beneficial owner.

The words "*bargain and sell*" have more than one meaning. There is the bargain and sale operating under the statute of uses, which vests the legal estate in the bargainee by force of the statute, but which requires in every case a pecuniary [though it may be nominal] consideration. The common lease for a year was a bargain and sale of this kind, which, being for less than an estate of freehold, did not require enrollment, and, by force of the statute, vested the possession in the bargainee, and rendered him capable of receiving the reversion in fee by a common law release. So a mortgage by the freeholder for a *term of years* is appropriately made by the words "*bargain and sell*," the instrument operating strictly as a bargain and sale under the statute. The words "*bargain and sell*" are also the words usually employed in the execution of *common law authorities*. Thus *executors*, having a naked power to sell real estate, convey by the words "*bargain and sell*;" such words having no effect in themselves, but merely designating the persons to whom the executors sell, and who are to take by virtue of such designation under the will. There is nothing particularly appropriate in the words "*bargain and sell*" for this purpose; but, as they are the customary words, and no other words perhaps are more apposite, it is fitting to retain them.

The words "*bargain and sell*" have no proper meaning as applied to *assignments* of chattels, real or personal, or to *surrenders*, or, generally, to any instrument, except a true bargain and sale operating under the statute of uses, or as an execution of a common law authority.

The word "*grant*" in a conveyance was at all times of the most general extent and effect, and might operate as a grant, feoffment, gift, lease, release, confirmation, surrender, covenant to stand seized, or other assurance; and, since the 14, 15 Vic., cap. 7, all corporate real hereditaments have, as regards the conveyance of the immediate freehold thereof, been deemed to lie in *grant* as well as in *livery*; so that "*grant*" is now not only the *sufficient* but the *proper* tech-

CLAUSES.—GENERAL WORDS.—RIGHT TO CONVEY.

nial word of conveyance of every freehold estate, without the addition of any other word, except "*confirm*" in those cases where the latter is either strictly appropriate or is established by a user almost equivalent.

In assignments of the owner's *whole* interest in chattels, real and personal, the only general proper operative word is "assign," coupled occasionally with the word "*confirm*," in the same cases in which "*confirm*" is coupled with "*grant*" in conveyances of freehold estate.

417. CLAUSES *and* COVENANTS *in* DEEDS.

GENERAL WORDS.—Together with all ways, lights, sewers, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof or appurtenant thereto, (*excepting some or adding other words, as the case may require.*)

418. *Another Form.*

"With their usual and legal appurtenances

419. COVENANT *by* VENDOR *for* RIGHT *to* CONVEY.

AND THE SAID (*vendor*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*.) his heirs and assigns, that, notwithstanding any thing by the said (*vendor*.) or any of his ancestors, done or knowingly suffered, he, the said (*vendor*.) now hath power to grant ALL AND SINGULAR the said premises UNTO and TO THE USE of the said (*purchaser*.) his heirs and assigns, free from incumbrances.

420. COVENANTS AGAINST INCUMBRANCES *by* DONEES *of a* POWER.

AND EACH of them, the said A. B. and C. D., so far as relates to his own acts, *doth* hereby, for himself, his heirs, executors, and administrators, *covenant* with the said G. H., his heirs and assigns, that

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they, the said A. B. and C. D., respectively, have not done or knowingly suffered any thing whereby they are prevented from exercising, in manner herein before appearing, the power herein before expressed to be exercised, or whereby the premises herein before expressed to be appointed, or any part thereof, are, is, or can be impeached, incumbered, or affected, in title or otherwise.

421. COVENANT for RIGHT to CONVEY by TENANT for LIFE,
Who CONCURS with the DONEES of a POWER.

AND THE SAID E. F. (*tenant for life*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., (*the appointee*), his heirs and assigns, that, notwithstanding any thing by him, the said E. F., or any of his ancestors, done or knowingly suffered, the said A. B. and C. D., (*the donees of the power*), now have full power, with the consent of the said E. F., to appoint ALL AND SINGULAR the said premises TO THE USE of the said G. H., his heirs and assigns, free from incumbrances.

422. That VENDOR has DONE NOTHING to INCUMBER, and
will FURTHER ASSURE.

THE SAID A. B., (*vendor*), for himself, his heirs, executors, and administrators, covenants with the said C. D., (*purchaser*), his heirs and assigns, that, notwithstanding any thing by the said A. B. [or his ancestors] done or knowingly suffered, he is entitled to execute this grant of the premises, free from incumbrances; AND that he, and every person claiming under or in trust for him, [or his ancestors,] will, at the cost of the said C. D., his heirs and assigns, do all acts required for perfecting such grant.

423. COVENANT for FURTHER ASSURANCE.

AND THAT he, the said (*vendor*), and his heirs, and every other person lawfully or equitably claiming through or in trust for him, or any of his ancestors, will at all times, at the cost of the said (*purchaser*), his heirs and assigns, execute and do all such assurances and acts for further or better assuring all or any of the said premises TO THE USE of the said (*purchaser*), his heirs and assigns, as by him or them shall be reasonably required.

CLAUSES.

424. *That* VENDOR *has* DONE NOTHING *to* INCUMBER.

THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs [executors, administrators] and assigns, that the said A. B. hath done or knowingly suffered nothing whereby the premises are or may be incumbered, or prejudicially affected.

425. *That* VENDORS *have* DONE NOTHING *to* INCUMBER.

EACH of them, the said A. B. and C. D., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs [executors, administrators] and assigns, that they, the said A. B. and C. D., respectively, have done or knowingly suffered nothing whereby the premises are or may be incumbered, or prejudicially affected.

426. *That* VENDORS *have* DONE NOTHING *to* INCUMBER.

EACH of the said parties hereto, of the parts respectively, for himself, his heirs, executors, and administrators, covenants with the said A. B., his heirs [executors, administrators] and assigns, that they, the said parties hereto, of the parts respectively, have done or knowingly suffered nothing whereby the premises are or may be incumbered, or prejudicially affected.

427. CLAUSE *in a* DEED *of* LAND BOUGHT SUBJECT *to a* MORTGAGE.

SUBJECT, HOWEVER, to the payments, conditions, and agreements contained in a certain indenture of mortgage, executed by the said A. B. to E. F., on the day of , A. D. 18 , and recorded in the registry office for the county of , on the day of , memorial number , and which said mortgage was given for the purpose of securing the payment of the sum of dollars, at the time and in the manner therein set forth, and upon which there is now due and payable, [or there is yet to become due and payable, on the day of 18 ,] the sum of dollars, with interest from the day of , 18 ; which said mortgage the said C. D. hereby undertakes to pay, satisfy, and discharge, and to indemnify and save harmless the said A. B., his executors and administrators, from and against.

N. B.—When this clause is used, the covenant for freedom from

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428. JOINT *and* SEVERAL COVENANT.

AND we, the said A. B. and C. D., and each of us, for our and each of our heirs, executors, and administrators, do hereby jointly and severally covenant with the said E. F., his heirs and assigns, that, &c.

429. SEVERAL COVENANT.

AND we, the said A. B. and C. D., do hereby severally, and not jointly, but each, for himself, his heirs, executors, and administrators, doth, covenant with the said E. F., his heirs and assigns, that, &c.

430. COVENANT *by* HUSBAND *for* HIMSELF *and* *his* WIFE.

AND THE SAID A. B., for himself, his heirs, executors, and administrators, and for and on behalf of his wife, the said M. B., and her heirs, executors, and administrators, doth covenant with the said E. F., his heirs and assigns, that, &c.

431. QUALIFIED COVENANT *to* PRODUCE DEEDS *by* TRUSTEES.

AND EACH of them, the said A. B. and C. D., as such trustees as aforesaid, and for such period only as they or either of them, their or either of their heirs, executors, administrators, or assigns, shall have the custody or lawful power over the deeds herein after mentioned, doth hereby covenant with the said C. D., &c.

432. COVENANT *to* PRODUCE DEEDS.

THIS INDENTURE, made the _____ day of _____, between (venditor,) of the one part, and (purchaser,) of the other part, witnesseth as follows:—

The said V., [pursuant to his agreement, on the sale of certain hereditaments called _____, at _____, in the county of _____, conveyed to the said P., by indenture of even date herewith,] for himself, his heirs, executors, administrators, and as-

U. W. O. LAW

CLAUSES.

signs, covenants with the said P., his heirs and assigns, that the muniments of title to the same hereditaments [which have been retained by the said V., and are specified in the schedule hereto,] shall be preserved by the said V., his heirs and assigns, uninjured, [excepting through inevitable accident,] and shall be produced by him and them, at any time and place, and for any purpose required by owners and claimants of the said hereditaments, at the cost of the person or persons requiring the same.

IN WITNESS, &c., (as in n. 413.)

433. COVENANT for RIGHT to ASSIGN LEASEHOLDS FREE from INCUMBRANCES.

AND THAT, notwithstanding any thing by the said A. B., (*vendor*), done or knowingly suffered, he, the said A. B., now hath power to assign ALL AND SINGULAR the said premises unto the said C. D., (*purchaser*), his executors, administrators, and assigns, for the term and subject as and in manner aforesaid, and free from incumbrances.

N. B.—This covenant *implies* that the lease is valid and subsisting, and therefore an express covenant that it *is* so is not necessary, though it was formerly inserted.

434. HABENDUM to an ASSIGNEE of LEASEHOLD.

To HOLD the said premises unto the said C. D., his executors, administrators, and assigns, for the residue of the said term of years, at the rent and subject to the covenants and conditions, in the said lease reserved and contained, and henceforth by the lessee, his executors, administrators, and assigns, to be paid, observed, and performed.

435. COVENANT by VENDOR of LEASEHOLD that RENT and COVENANTS have been PAID and PERFORMED.

AND THE SAID A. B., (*vendor*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., (*assignee*), his executors, administrators, and assigns, that the rent, covenants, and conditions, in the said lease reserved and contained, and by the lessee, his executors, administrators, and assigns, to be paid, observed, and performed, have been paid, observed, and performed, up to the date of these presents.

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436. COVENANT *for FURTHER ASSURANCE by VENDOR of LEASEHOLD.*

AND THAT he, the said A. B., (*vendor*), his executors and administrators, and every other person lawfully or equitably claiming through or in trust for him, will at all times, at the cost of the said C. D., (*purchaser*), his executors, administrators, or assigns, execute and do all such assurances and acts, for further or better assuring all or any of the said premises unto the said C. D., his executors, administrators, and assigns, for the then residue of the said term, subject as and in manner aforesaid, as by the said C. D., his executors, administrators, or assigns, shall be reasonably required.

437. COVENANT *by ASSIGNEE of LEASEHOLD to PAY RENT and OBSERVE COVENANTS.*

AND THE SAID C. D., (*assignee*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., (*vendor*), his executor and administrators, that he, the said C. D., his executors, administrators, or assigns, will henceforth pay the said yearly rent by the said lease reserved, and observe and perform all the covenants and conditions therein contained, and by the lessee, his executors, administrators, or assigns, henceforth to be observed and performed.

438. COVENANT *by ASSIGNEE of LEASEHOLDS to INDEMNIFY VENDOR AGAINST the RENT and COVENANTS of the LEASE.*

AND will keep the said A. B., (*vendor*), his heirs, executors, and administrators, indemnified against all actions, suits, expenses, and claims on account of the non-payment of the said rent, or any part thereof, or the breach, or non-observance, or non-performance of the said covenants and conditions, or any of them.

N. B.—Every vendor of a lease is entitled to this covenant.

439. COVENANT *that POLICY of ASSURANCE is VALID, and that VENDOR has a RIGHT to ASSIGN it.*

AND THE SAID A. B., (*vendor*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., (*assignee*), his executors, administrators, and assigns, that, notwithstanding any thing by him, the said A. B., done, or omitted, or knowingly

CLAUSES.

suffered, the aforesaid policy is now valid and in full force for the said sum of _____ dollars, and for all bonuses and conditions [if any] which have been added or made thereto; AND that, notwithstanding any such thing as aforesaid, he, the said A. B., now hath power to assign the said premises unto the said C. D., his executors, administrators, and assigns, in manner aforesaid, and free from incumbrances.

440. COVENANT *by* VENDOR *of a* POLICY *of* ASSURANCE *not to AVOID it.*

AND THAT he, the said A. B., (*vendor*), will not do, or omit, or knowingly suffer, any thing whereby the said policy may be vitiated or rendered void or voidable, or the said C. D., (*assignee*), his executors, administrators, or assigns, may be prevented from receiving the said sum of _____ dollars, or any bonuses or additions thereto, or any part thereof, respectively.

441. COVENANT *by* VENDOR *of a* POLICY *of* ASSURANCE *to PAY ADDITIONAL PREMIUMS, if REQUIRED.*

AND THAT, if the said A. B., (*vendor*), shall do or suffer any thing whereby any additional premium or payment shall become payable for keeping the said policy in force, then he, the said A. B., will, from time to time and at all times, duly and punctually pay such additional premium or payment, so as to keep the said policy in force.

442. COVENANT *for* FURTHER ASSURANCE *by* VENDOR *of a* POLICY *of* ASSURANCE.

AND THAT he, the said A. B., (*vendor*), his executors and administrators, and every person lawfully or equitably claiming through or in trust for the said A. B., his *executors or administrators*, will at all times, at the cost of said C. D., (*assignee*), his executors, administrators, or assigns, execute and do all such assurances and acts, for more effectually assuring the said premises unto the said C. D., his executors, administrators, or assigns, in manner aforesaid; *or*, for enabling him or them to recover and receive payment of the same, respectively, as by him or them shall be reasonably required.

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443. QUALIFIED COVENANT *that* LEASE SUBSISTS UNPREJUDICED, *and that* VENDOR *is* ENTITLED *to* ASSIGN.

THE SAID A. B., (*vendor*), for himself, his heirs, executors, and administrators, covenants with the said C. D., (*purchaser*), his executors, administrators, and assigns, that, notwithstanding any thing by the said A. B. done or knowingly suffered, the said *lease* is subsisting unprejudiced, and the said A. B. entitled to execute this *assignment* of the premises, free from incumbrances and liability under the said lease, up to the present date.

444. COVENANT *for* FURTHER ASSURANCE.

AND THAT he, and every person claiming under or in trust for him, will, at the cost of the said C. D., his executors, administrators, and assigns, do all acts required for perfecting such assignment.

445. COVENANT *to* INDEMNIFY.

THE SAID C. D., for himself, his heirs, executors, and administrators, covenants with the said A. B., his executors and administrators, that the said C. D., his executors, administrators, and assigns, will discharge and keep the said A. B., his heirs, executors, and administrators, indemnified against all liabilities under the said lease, subsequently to the present date.

446. *That* LEASE *is* UNPREJUDICED *and* VENDOR ENTITLED *to* ASSURE.

THE SAID A. B., (*vendor*), for himself, his heirs, executors, and administrators, covenants with the said C. D., (*purchaser*), his heirs, executors, administrators, and assigns, that, notwithstanding any thing by the said A. B., [or his ancestors,] done or knowingly suffered, the said lease is subsisting unprejudiced, and the said A. B. is entitled to execute this *assurance* of the respective premises, free from incumbrances and liability under the said lease, up to the present date.

447. *For* FURTHER ASSURANCE *and* INDEMNITY.

AND THAT he, and every person claiming under or in trust for him, [or his ancestors,] shall, at the cost of the person or persons requiring the same, do all acts required for perfecting such assurance.

AN ACT RESPECTING

The said C. D., for himself, his heirs, executors, and administrators, covenants with the said A. B., his executors and administrators, that the said C. D., his executors or administrators, will discharge and keep the said A. B., his heirs, executors, and administrators, indemnified against all liabilities under the said lease, subsequently to the present date.

448. *VENDOR is ENTITLED to ASSIGN, and will FURTHER ASSURE.*

THE SAID A. B., (*vendor*), for himself, his heirs, executors, and administrators, covenants with the said C. D., (*purchaser*), his executors, administrators, and assigns, that, notwithstanding any thing by the said A. B. done or knowingly suffered, he is entitled to execute this *assignment* of the premises, free from incumbrances, and that he, and every person claiming under or in trust for him, will, at the cost of the said C. D., his executors, administrators, or assigns, do all acts required for perfecting such assignment or facilitating the *recovery* of the said premises.

Revised Statutes, 1859, CAP. LXXXVIII., p. 916.

449. AN ACT respecting SHORT FORMS of CONVEYANCES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

(1.) When a deed, made according to the forms set forth in the first schedule to this act, or any other deed expressed to be made in pursuance of this act, or referring thereto, contains any of the forms or words contained in column one of the second schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect, and be construed as if it contained the form of words contained in column two of the same schedule, and distinguished by the same number as is annexed to the form of words used in the deed; but it shall not be necessary, in any such deed, to insert any such number. 9 V., c. 6, s. 1.

(2.) Any deed, or part of a deed, which fails to take effect by virtue of this act, shall, nevertheless, be as effectual, to bind the parties thereto, so far as the rules

Where words of column 1 of the second schedule are employed, the deed to have the same effect as if the words in column 2 were inserted.

Deeds failing to take effect under this act to be as valid

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SHORT FORMS OF CONVEYANCES.

of law and equity will permit, as if this act had not as if act not made. 9 V., c. 6, s. 4.

(3.) Every such deed, unless an exception be specially made therein, shall be held and construed to include all houses, outhouses, edifices, barns, stables, yards, gardens, orchards, common, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances, whatsoever, to the lands therein comprised, belonging, or in any wise appertaining, or with the same devised, held, used, occupied, and enjoyed, or taken or known as part or parcel thereof; and, if the same purports to convey an estate in fee, also the reversion or reversions, remainder and remainders, yearly and other rents, issues, and profits, of the same lands, and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim, and demand, whatsoever, both at law and in equity, of the grantor, in, to, out of, or upon the same lands, and every part and parcel thereof, with their and every of their appurtenances. 9 V., c. 6, s. 4; 12 V., c. 10, s. 5.

(4.) In the construction of this act, and the schedules thereto, unless there be something in the subject or of act context repugnant to such construction, the word "lands" shall extend to all freehold tenements and hereditaments, whether corporeal or incorporeal, or any undivided part or share therein, respectively; and the word "party" shall mean and include any body, politic, or corporate, or collegiate, as well as an individual. 9 V., c. 6, s. 5.

(5.) In taxing any bill for preparing and executing any deed under this act, the taxing officer, in estimating the proper sum to be charged therefor, shall consider not the length of such deed, but the skill and labor employed, and responsibility incurred, in the preparation thereof. 9 V., c. 6, s. 3.

(6.) The schedules, and the directions and forms therein contained, shall be deemed parts of this act.

SCHEDULES TO WHICH THIS ACT REFERS.

THE FIRST SCHEDULE.

THIS INDENTURE, made the _____ day of _____, one thousand eight hundred and _____, in pursuance

U. W. O. LAW

AN ACT RESPECTING

of the act to facilitate the conveyance of real property, between (*here insert names of parties and recitals, if any,*) witnesseth that, in consideration of pounds, of 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 for ever, all, &c., (*parcels.*) (*Here insert covenants, or any other provisions.*)

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals.

THE SECOND SCHEDULE.

DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

In cases of sale and conveyance of real property.

(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 two 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, two, three, and four, or such of them as may 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.

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SHORT FORMS OF CONVEYANCES.

COLUMN TWO.

COLUMN ONE.

(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 and assigns, in manner following, that is to say:—

(2.) That for and notwithstanding any act, deed, matter, or thing by the said covenantor done, executed, committed, or knowingly or willfully 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 it shall be lawful for the said covenantee, his heirs 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 land and premises hereby conveyed, or intended so to be, with their and every of their appurtenances; and 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.) 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.

(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 and assigns, that he, the said covenantor, his

(1.) The said (covenantor) covenants with the said (covenantee.)

(2.) That he has the right to convey the said lands to the said (covenantor) notwithstanding any act of the said (covenantor.)

(3.) And that the said (covenantee) shall have quiet possession of the said lands.

(4.) Free from all incumbrances.

(5.) And the said (covenantor) covenants with the said (covenantee.)

U. W. O. LAW

AN ACT RESPECTING

COLUMN ONE.

that he will execute such further assurances of the said lands as may be requisite.

(6.) And the said (covenantor) covenants with the said (covenantee) that he will produce the title-deeds enumerated here under, and allow copies to be made of them, at the expense of the said (covenantee.)

COLUMN TWO.

heirs, executors, and 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 or assigns, make, do, execute, or cause to be made, done, or executed, all such further and other lawful acts, deeds, things, devises, 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 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 doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said covenantee, his heirs 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 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 here under written, for the manifestation, defense, and support of the estate, title, and possession of the said covenantee, his heirs and assigns, in or to the said lands and premises hereby conveyed, or intended so

SHORT FORMS OF CONVEYANCES.

COLUMN TWO.

COLUMN ONE.

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, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said covenantee, his heirs and assigns, that he hath not, at any time heretofore, made, done, committed, executed, or willfully 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 any wise impeached, charged, affected, or incumbered, in title, estate, or otherwise howsoever.

(8.) And the said releasor hath released, remised, and forever quitted claim, and by these presents doth release, remise, and forever quit claim, unto the said releasee, his heirs and assigns, all and all manner of right, title, interest, claim, and demand whatsoever, both at law and in equity, into 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 or 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 and assigns, and the same lands and premises shall, from henceforth forever hereafter, be exonerated and discharged of and from all claims and demands whatsoever which the said releasor might or could have upon him in respect of the said lands, or upon the said lands.

(9.) And the said (A. B.) wife of the said (grantor), for and in consideration of the sum of _____ pounds, of the 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),

(7.) And the said (covenantor) covenants with the said (covenantee) that he has done no act to incumber the said lands.

(8.) And the said (releasor) releases to the said (releasee) all his claims upon the said lands.

(9.) And the said (A. B.) wife of the said (grantor,) hereby bars her dower in the said lands.

U. W. O. LAW

REAL PROPERTY ACT,

his heirs and assigns, all her dower, and right, and title, which, in the event of 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.

REVISED STATUTES, CAP. LXXIX., 1859, p. 839.

450. AN ACT *respecting* REAL PROPERTY.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

(1.) The eighteenth section of the interpretation act is not to apply to this act.*

DESCENTS SINCE THE 1ST. JULY, 1834.

Relation of the act.

(2.) This act shall not extend to any descent which took place on the death of any person who died before the first day of July, one thousand eight hundred and thirty-four. 4 W. 4, e. 1, s. 11.

How the next ten sections are to apply.

(3.) The next ten sections of this act, numbered from four to thirteen, shall apply retrospectively to the sixth day of March, one thousand eight hundred and thirty-four, and also prospectively, [as the case may be,] and shall be construed as if the same had been enacted and passed on the said sixth day of March, one thousand eight hundred and thirty-four. 4. W. 4, e. 1, s. 11.

Descent shall always be traced from the purchaser, &c.

(4.) In every case, on and after the first day of July, one thousand eight hundred and thirty-four, descent shall be traced from the purchaser; and, to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title require, the person last entitled to the land shall, for the purpose of this act, be considered to

* The eighteenth section above alluded to is as follows:—

(18.) Unless otherwise provided, or there be something in the context or other provisions of the act indicating a different meaning or calling for a different construction:—

(1.) The law, in the last act and in the following series of acts, is to be considered as always speaking; and, whenever any matter or thing is expressed in the present tense, the same is to be applied to the circumstances as they arise, so that effect may be given to each act, and every part thereof, according to its spirit, true intent, and meaning;

(2.) The word "shall" is to be construed as imperative or directing, and the word "may" as permissive;

(3.) Whenever the word "herein" is used in any section of an act, it shall be understood to relate to the whole act, and not to that section only.

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have been the purchaser thereof, unless it be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it be proved that he inherited the same; and, in like manner, the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it be proved that he inherited the same. 4 W. 4, c. 1, s. 1.

(5.) When any land shall have been devised by any testator, who shall die after the first day of July, one thousand eight hundred and thirty-four, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee, and not by descent; and when any land shall have been limited, by any assurances executed after the first day of July, one thousand eight hundred and thirty-four, to the person or to the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser, by virtue of such assurance, and shall not be considered to be entitled thereto, as of his former estate, or part thereof. 4 W. 4, c. 1, s. 2.

Heir entitled under a will shall take as devisee, and a limitation to the grantor or his heir shall create an estate by purchase.

(6.) When any person shall have acquired any land by purchase, under a limitation to the heirs, or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said first day of July, one thousand eight hundred and thirty-four, or under a limitation to the heirs, or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said first day of July, one thousand eight hundred and thirty-four, then, and in any of such cases, such land shall descend, and the descent thereof shall be traced, as if the ancestor named in such limitation had been the purchaser of such land. 4 W. 4, c. 1, s. 3.

When heirs take by purchase under limitations to the heirs of their ancestor, the land shall descend as if the ancestor had been the purchaser.

(7.) When the person from whom the descent of any land is to be traced shall have had any relation who, having been attainted, died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land escheated in consequence of such at-

After the death of a person attainted, his descendants may inherit.

U. W. O. LAW

REAL PROPERTY ACT,

tainer before the first day of July, one thousand eight hundred and thirty-four. 4 W. 4, c. 1, s. 9.

Will in law
used to prove
title.

(8.) Proof of entry by the heir after the death of the ancestor shall in no case be necessary in order to prove title in such heir, or in any person claiming by or through him. 4 W. 4, c. 1, s. 10.

Limitations,
made before
1st July, 1834,
to the heirs of
a person then
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not been
made.

(9.) Where any assurance, executed before the said first day of July, one thousand eight hundred and thirty-four, or the will of any person who died before that day, contains any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir, if this act had not been made, shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living on or after the said first day of July, one thousand eight hundred and thirty-four. 4 W. 4, c. 1, s. 12.

Grantees, devisees, &c., shall not take as joint tenants unless, such intention be expressed.

(10.) Whenever, by any letters patent, assurance, or will, made and executed after the first day of July, one thousand eight hundred and thirty-four, land shall be granted, conveyed, or devised to two or more persons other than executors or trustees, in fee simple, or for any less estate, it shall be considered that such persons took or take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such letters patent, assurance, or will that they shall take as joint tenants. 4 W. 4, c. 1, s. 48.

Estates acquired after the making of a will may pass by the will, where such intention was expressed.

(11.) When the will of any person, who shall die after the sixth day of March, one thousand eight hundred and thirty-four, contains a devise in any form of words of all such real estate as the testator shall die seized or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land that may have been or may be acquired by the deviser after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof. 4 W. 4, c. 1, s. 49.

A devisee of land shall be taken to carry as large an estate as the testator had in the land, unless a contrary

(12.) Whenever land is or shall be devised, in a will made by any person who has died since the sixth day of March, one thousand eight hundred and thirty-four, it shall be considered that the deviser intended to devise all such estate as he was seized of in the same land, whether fee simple or otherwise, unless it appears upon the face of such will that he intended to

4 W. 4, c. 1.

devise only an estate for life, or other estate less than intention be he was seized of at the time of making the will con- expressed. taining such devise. 4 W. 4, c. 1, s. 50.

(13.) Any will affecting land, executed after the sixth Witnesses day of March, one thousand eight hundred and thirty- need not sub- four, in the presence of and attested by two or more scribe in the witnesses, shall have the same validity and effect as if presence of the executed in the presence of and attested by three wit- testator. nesses; and it shall be sufficient if such witnesses sub- scribe their names in presence of each other, although their names may not be subscribed in presence of test- ator. 4 W. 4, c. 1, s. 51.

INTERPRETATION CLAUSE.

(14.) The words and expressions in the foregoing Meaning of sections, and in the next seven sections numbered from words in this fifteen to twenty-one inclusive, which in their ordinary act. significance have a more confined or different mean- ing, shall, in all such sections, except where the nature of the provision or the context thereof shall exclude such construction, be interpreted as follows: that is to say, the word "land" shall extend to messuages, and Land. to all other hereditaments, whether corporeal or incor- poreal, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties, or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right, or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles, and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words "the purchaser" shall mean the person who last ac- Purchaser. quired the land otherwise than by descent, or than by any partition, by the effect of which the land shall have become part of or descendible, in the same man- ner as other land acquired by descent; and the word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue; and the expression "descendants Descendants. of any ancestor" shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to land" shall ex- Persons l entitled.

U. W. O. LAW

REAL PROPERTY ACT,

Assurance.

Rent.

Number and gender.

The foregoing sections not to operate retrospectively in certain cases.

Relation of this act as to descents between the 1st July, 1834, and 31st December, 1851.

tend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument [other than a will] by which any land shall be conveyed or transferred, at law or in equity; and the word "rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land; and the "person through whom another person is said to claim" shall mean any person by, through, or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male. 4 W. 4, c. 1, s. 59.

DESCENTS BETWEEN 1ST JULY, 1834, AND 1ST JANUARY, 1852.

(15.) The foregoing sections of this act shall not have operation retrospectively to a period of time anterior to the sixth day of March, one thousand eight hundred and thirty-four, so as, by force of any of their provisions, to render any title valid, which, in regard to any particular estate, had, prior to that day, been adjudged, or has been or may be, in any suit which was depending on that day, adjudged invalid, on account of any defect, imperfection, matter, or thing which is by such sections altered, supplied, or remedied; but, in every such case, the law in regard to any such defect, imperfection, matter, or thing shall, as applied to such title, be deemed and taken to be as if those sections of this act had not been passed. 4 W. 4, c. 1, s. 60.

(16.) As respects every descent between the first day of July, one thousand eight hundred and thirty-four, and the thirty-first day of December, one thousand eight hundred and fifty-one, both days included, and as respects any descent not included or provided for in the sections of this act numbered from twenty-three to forty-nine, both included, the following sections, numbered from seventeen to twenty-one, both included, shall apply retrospectively to the first day of July, one

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thousand eight hundred and thirty-four, and also prospectively, as the case may be, and shall be construed as if the same had been passed on the said first day of July, one thousand eight hundred and thirty-four. 14, 15 V., c. 6, s. 1.

(17.) No brother or sister shall be considered to inherit immediately from his or her brother or sister; but every descent from a brother or sister shall be traced through the parent. 4 W. 4, c. 1, s. 4.

Brothers and sisters shall trace descent through parents. Lineal ancestor may be heir in preference to collateral persons claiming through him.

(18.) Every lineal ancestor shall be capable of being heir to any of his issue, and, in any case where there is no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit either by tracing his descent through such lineal ancestor or in consequence of there being no descendant of such lineal ancestor; so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue other than a nearer lineal ancestor or his issue. 4 W. 4, c. 1, s. 5.

(19.) None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants have failed; and no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants have failed; and no female maternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants have failed. 4 W. 4, c. 1, s. 6.

The male line to be preferred. The mother of the more remote male ancestor to be preferred to the mother of the less remote male ancestor.

(20.) Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person in preference to the mother of a less remote male paternal ancestor, or her descendants; and, when there shall be a failure of male paternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor, and her descendants. 4 W. 4, c. 1, s. 7.

(21.) Any person related to the person from whom the descent is to be traced by the half blood shall be heir after

U. W. O. LAW

REAL PROPERTY ACTS.

the whole blood of the same degree.

capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood and his issue, where the common ancestor shall be a male, and next after the common ancestor, when such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother. 4 W. 4, c. 1, s. 8.

DESCENTS FROM AND AFTER FIRST OF JANUARY, 1852.

Descents since the 1st January, 1852.

(22.) The following sections, numbered from twenty-three to forty-nine, both included, shall apply retrospectively to the first day of January, one thousand eight hundred and fifty-two, inclusive, and also prospectively, as the case may be, and shall be construed as if the same had been passed on the said first day of January, one thousand eight hundred and fifty-two, 14, 15 V., c. 6, s. 1.

How real estate of an intestate, dying after 1st January, 1852, shall descend.

(23.) Whenever, on or after the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, any person shall die, seized in fee simple or for the life of another of any real estate in Upper Canada, without having lawfully devised the same, such real estate shall descend or pass by way of succession in manner following, that is to say: 14, 15 V., c. 6, s. 1.

Firstly.—To his lineal descendants, and those claiming by or under them, *per stirpes*;

Secondly.—To his father;

Thirdly.—To his mother; and,

Fourthly.—To his collateral relatives;

Subject in all cases to the rules and regulations herein after prescribed.

As to descendants in equal degrees of consanguinity.

(24.) If the intestate shall leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate the common degree of consanguinity may be. 14, 15 V., c. 6, s. 2.

If some children be living and others dead leaving issue.

(25.) If any one or more of the children of such intestate be living, and any one or more be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as have died,

4 W. 4, C. 1, AND 14, 15 V., C. 6.

so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who have died leaving issue had been living; and so that the descendants of each child who shall be dead shall inherit, in equal shares, the share which their parent would have received if living.

14, 15 V., c. 6, s. 3.

(26.) The rule of descent prescribed in the last preceding section shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, shall be of unequal degrees of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them had all the descendants in the same degree of consanguinity, who have died leaving issue, been living, and so that the issue of the descendants who have died shall respectively take the shares which their parents, if living, would have received.

14, 15 V., c. 6, s. 4.

(27.) In case the intestate dies without lawful descendants, and leaving a father, then the inheritance shall go to such father—unless the inheritance came to the intestate on the part of his mother, and such mother be living; and, if such mother be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate, and their descendants, according to the law of inheritance by collateral relatives herein after provided; and, if there be no such brothers or sisters, or their descendants, living, such inheritance shall descend to the father.

(28.) If the intestate shall die without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a mother and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brother and sister of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance herein after provided; and, if the intestate in such case leaves no brother or sister, nor any descendant of any brother or sister, the inheritance shall descend to the mother.

14, 15 V., c. 6, s. 6.

(29.) If there be no father or mother capable of inheriting the estate, it shall descend, in the cases herein

Some rule as to other descendants in unequal degrees of consanguinity.

If the intestate leave no descendants' rights of father, mother, &c.

If there be no father entitled to inherit.

And if there be neither fa-

U. W. O. LAW

REAL PROPERTY ACTS,

ther nor mother.

after specified, to the collateral relatives of the intestate; and, if there be several of such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate the common degree of consanguinity may be. 14, 15 V., c. 6, s. 7.

Succession of brothers and sisters, and their descendants.

(30.) If all the brothers and sisters of the intestate be living, the inheritance shall descend to such brothers and sisters; and, if any one or more of them be living and any one or more be dead, then to the brothers and sisters, and every of them, who are living, and to the descendants of such brothers and sisters as have died, so that each brother or sister who may be living shall inherit such share as would have descended to him or her if all the brothers or sisters of the intestate, who have died leaving issue, had been living, and so that such descendants shall inherit, in equal shares, the share which their parent, if living, would have received. 14, 15 V., c. 6, s. 8.

As to such descendants in unequal degrees.

(31.) The same law of inheritance prescribed in the last section shall prevail as to the other direct lineal descendants of every brother and sister of the intestate, to the remotest degree, whenever such descendants are of unequal degrees. 14, 15 V., c. 6, s. 9.

If there be no heir under the preceding sections.

(32.) If there be no heir entitled to take under any of the preceding ten sections, the inheritance, if the same came to the intestate on the part of his father, shall descend: 14, 15 V., c. 6, s. 10.

Firstly.—To the brothers and sisters of the father of the intestate, in equal shares, if all be living;

Secondly.—If any one or more be living, and any one or more have died leaving issue, then to such brothers and sisters as are living, and to the descendants of such of the said brothers and sisters as have died, in equal shares;

Thirdly.—If all such brothers and sisters have died, then to their descendants; and in all such cases the inheritance shall descend in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate.

Further provision.

(33.) If there be no brothers or sisters, or any of them, of the father of the intestate, and no descendants of such brothers and sisters, then the inheritance shall descend to the brothers and sisters of the mother of the intestate, and to the descendants of such of the said brothers and sisters as have died; or, if all have

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4 W. 4, C. 1, AND 14, 15 V., C. 6.

died, then to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the father. 14, 15 V., c. 6, s. 11.

(34.) In all cases not provided for by the twelve next preceding sections, where the inheritance shall have come to the intestate on the part of his mother, the same, instead of descending to the brothers and sisters of the intestate's father, and their descendants, as prescribed in the preceding thirty-second section, shall descend to the brothers and sisters of the intestate's mother, and to their descendants, as directed in the last preceding section; and, if there be no such brothers and sisters, or descendants of them, then such inheritance shall descend to the brothers and sisters, and their descendants, of the intestate's father, as before prescribed. 14, 15 V., c. 6, s. 12.

Further provision if the estate came by the mother's side.

(35.) In cases where the inheritance has not come to the intestate on the part of either the father or the mother, the inheritance shall descend to the brothers and sisters both of the father and mother of the intestate, in equal shares, and to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate. 14, 15 V., c. 6, s. 13.

If it came neither on father's nor mother's side.

(36.) Relatives of the half blood shall inherit equally with those of the whole blood in the same degree, and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors; in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance. 14, 15 V., c. 6, s. 14.

Half blood to succeed with whole blood.

(37.) On failure of heirs under the preceding rules, the inheritance shall descend to the remaining next of kin of the intestate, according to the rules in the English statute of distribution of the personal estate. 14, 15 V., c. 6, s. 15.

If there be failure of heirs.

(38.) Whenever there shall be but one person entitled to inherit, according to the provisions of the twenty-second and following sections of this act, he shall take and hold the inheritance solely; and, wherever an inheritance, or a share of an inheritance, shall descend to several persons under such provisions, they shall take as tenants in common, in proportion to their respective rights. 14, 15 V., c. 6, s. 16.

Co-heirs to take as tenants in common.

REAL PROPERTY ACTS,

Descendants, &c., born after death of *intestate*, to inherit. (39.) Descendants and relatives of the intestate, begotten before his death but born thereafter, shall in all cases inherit in the same manner as if they had been born in the lifetime of the intestate and had survived him. 14, 15 V., c. 6, s. 17.

Illegitimate persons not to inherit. (40.) Children and relatives who are illegitimate shall not be entitled to inherit under any of the provisions of this act. 14, 15 V., c. 6, s. 18.

Courtesy, dower, and estate by deed or will excepted. (41.) The estate of the husband as tenant by the courtesy, or of a widow as tenant in dower, shall not be affected by any of the provisions of the last preceding nineteen sections of this act, nor shall the same affect any limitation of any estate by deed or will, or any estate which, although held in fee simple or for the life of another, is so held in trust for any other person; but all such estates shall remain, pass, and descend as if the last nineteen sections of this act, numbered from twenty-two to forty, both included, had not been passed. 14, 15 V., c. 6, s. 19.

Case of children who have been advanced by settlement, &c., (42.) If any child of an intestate shall have been advanced by the intestate, by settlement or portion of real or personal estate, or of both of them, and the same shall have been so expressed by the intestate in writing, or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal estate of such intestate, descendible to his heirs, and to be distributed to his next of kin according to law; and, if such advancement be equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share in the real and personal estate of the intestate. 14, 15 V., c. 6, s. 20.

If such advancement be not equal. (43.) If such advancement be not equal to such share, such child and his descendants shall be entitled to receive so much only of the personal estate, and to inherit so much only of the real estate, of the intestate, as shall be sufficient to make all the shares of the children in such real and personal estate and advancement to be equal, as near as can be estimated. 14, 15 V., c. 6, s. 21.

Value of property advanced, how estimated. (44.) The value of any real or personal estate so advanced shall be deemed to be that, if any, which may have been acknowledged by the child, by any in-

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4 W., c. 1, AND 14, 15 V., c. 6.

strument in writing; otherwise such value shall be estimated according to the value of the property when given. 14, 15 V., c. 6, s. 22.

(45.) The maintaining or educating, or the giving of money, to a child, without a view to a portion or settlement in life, shall not be deemed an advancement within the meaning of this act. 14, 15 V., c. 6, s. 23.

(46.) The parties authorized to make partition of any such real estate, according to law, shall receive, from any of the persons entitled to a share of such real estate, an offer or proposition to purchase the share or shares of the other parties interested therein, giving the preference to the person who would have been the heir at law thereto had the twenty-second and following sections of this act not been passed; and, next after such heir at law, giving such preference to the several persons successively who would have been such heirs at law had the said last mentioned sections of this act not been passed, and had those persons preceding them respectively in the series of such preference been dead at the time of the death of the intestate.

(47.) The parties so authorized to make such partition shall certify particularly, to the court in which proceedings for a partition may be commenced or pending, the particulars of such offer or proposition for purchase, the nature, quantity, and value of the estate or share proposed to be purchased, and whether they advise such offer or proposition to be accepted or rejected, and their reasons therefor.

(48.) Any court, authorized to make partition of real estate, may direct a sale of the same, if they think it right so to do, upon the application of any of the parties beneficially interested therein; giving however the preference at all times to the person who would have been the heir at law to such real estate had the twenty-second and following sections of this act not been passed; and, after such heir at law, then giving such preference to the several persons successively who would have been such heir at law had the said last mentioned sections of this act not been passed, and had those persons preceding them respectively in the series of such preference been dead at the time of the death of the intestate.

(49.) Every such preference shall be upon and subject to such terms, security, and conditions as the court may think it right to direct. 14, 15 V., c. 6, s. 24.

Education, vancement.
As to the purchase, by any of the parties interested, of real estate, subject to partition.
Particulars of offer to purchase to be certified by the court.
Any court authorized to make partition may direct a sale, giving preference, &c.
Terms on which preference to be given.

U. W. O. LAW

REAL PROPERTY ACTS

Interpretation
as to sections
23 to 49

(50.) In the last twenty-seven sections of this act, numbered from twenty-three to forty-nine, both inclusive, the term "real estate" shall be construed to include every estate, interest, and right, legal and equitable, held in fee simple or for the life of another, [except as in the fortieth section is before excepted,] in lands, tenements, and hereditaments, in Upper Canada, but not to such as shall be determined or extinguished by the death of the intestate seized or possessed thereof, or so otherwise entitled thereto, nor to leases for years; and the term "inheritance," as therein used, shall be understood to mean real estate as herein defined, descended or succeeded to according to the provisions of the said twenty-seven sections. 14, 15 V., c. 6, s. 25.

Interpretation
as to sections
23 to 50.

(51.) Whenever, in the last twenty-eight preceding sections, numbered from twenty-three to fifty, both included, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from whom the descent or succession came; and, whenever any person is described as having died, it shall be understood that he died before such intestate. 14, 15 V., c. 6, s. 26.

Interpretation
as to sections
23 to 50.

(52.) Whenever, in any of the said twenty-eight sections, the expressions "where the estate shall have come to the intestate on the part 'of the father,' or 'mother,'" as the case may be, are used, the same shall be construed to include every case where the inheritance shall have come to the intestate by devise, gift, or descent from the parent referred to, or from any relative of the blood of such parent. 14, 15 V., c. 6, s. 27.

REVISED STATUTES, CAP. LXXXII., 1859, p. 866,

451. AN ACT respecting the CONVEYANCE of REAL ESTATE by MARRIED WOMEN.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

Married
woman of full
age may convey.

(1.) Any married woman, seized of or entitled to real estate in Upper Canada, and being of the age of twenty-one years, may, subject to the provisions herein after contained, convey the same, by deed to be executed by her jointly with her husband, to such use and

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RESPECTING MARRIED WOMEN.

uses as to her and her husband may seem meet. 59
G. 3, c. 3, s. 1; 2 G. 4, c. 14.

(2.) In case such married woman executes such deed in Upper Canada, she shall execute the same in the presence of a judge of one of the courts of Queen's Bench or Common Pleas, or of a judge of the County Court, or of the Surrogate Court, or of two justices of the peace for the county in which such married woman resides or happens to be when the deed is executed, and such judge or two justices of the peace (*as the case may be*) shall examine such married woman, apart from her husband, respecting her free and voluntary consent to convey her real estate in manner and for the purpose expressed in the deed; and, if she gives her consent, such judge or justices shall, on the day of the execution of such deed, certify on the back thereof to the following effect: 43 G. 3, c. 5; 59 G. 3, c. 3, ss. 2, 3; 1 W. 4, c. 2, s. 1; 2 V., c. 6, s. 1; 14, 15, V., c. 115.

"I [*or we, inserting the name or names, &c.,*] do hereby certify that, on this _____ day of _____, at _____, the within deed was duly executed "in my [*or our*] presence, by A. B., of _____, wife of _____, one of the grantors therein named, and that the said wife of the said _____, at the said time and place, being examined by me, [*or us,*] apart from her husband, did appear to give her consent to convey her estate in the lands mentioned in the said deed, freely and voluntarily and without coercion or fear of coercion on the part of her husband, or of any other person or persons whatsoever."

(3.) In case any such married woman resides in Great Britain or Ireland, in any colony belonging to the Crown of Great Britain other than Upper Canada, and there executes any such deed, she shall execute the same in the presence of the mayor or chief magistrate of a city, borough, or town corporate, in Great Britain or Ireland, or of the chief justice, or a judge of the Supreme Court of such colony; and such mayor or chief magistrate, chief justice or judge, (*as the case may be.*) shall examine such married woman, apart from her husband, touching her consent, in manner and form and to the effect specified in the second section of this act; and, if she thereupon gives such consent, such mayor or chief magistrate, under his hand and the seal of the city, town, or borough, or such

How to convey in Upper Canada.

How in Great Britain or Ireland or in the colonies.

U. W. O. LAW

MARRIED WOMEN.

chief justice or judge, under his hand, shall, on the day of the execution of such deed, certify on the back thereof to the effect herein before mentioned in the said second section. 43 G. 3, c. 5; 59 G. 3, c. 5, s. 2; 1 W. 4, c. 2, s. 1; 2 V., c. 6; 14, 15 V., c. 115.

How in foreign states.

(4.) In case any such married woman resides, either temporarily or permanently, in any state or country not owing allegiance to the Crown of Great Britain, and there executes any such deed, she shall execute the same in the presence of the governor or other chief executive officer of such state or country, or in the presence of the British consul resident in such state or country, or in the presence of a judge of a court of record of such state or country, and such governor, chief executive officer, consul, or judge (*as the case may be*;) shall examine such married woman, apart from her husband, touching her consent, in manner and form and to the effect specified in the second section of this act; and, if she thereupon gives such consent, such governor or chief executive officer, under his hand and the seal of such state or country, or such consul, under his hand, or such judge, under his hand and the seal of his court, shall certify to the effect herein before mentioned in the said section. 43 G. 3, c. 5; 59 G. 3, c. 3, s. 2; 1 W. 4, c. 2, s. 1; 2 V., c. 6; 14, 15 V., c. 115.

Certificate to be evidence *prima facie*.

(5.) Every certificate given under this act shall be *prima facie* evidence of the facts therein stated. 14, 15 V., c. 115, s. 2.

The officer certifying need not attest as a witness.

(6.) It shall not be necessary for any judge or other officer, who may certify in any of the foregoing cases, to attest as a subscribing witness the execution of any deed upon the back of which he may so certify. 14, 15 V., c. 115, s. 1.

If not duly executed the deed shall not be valid.

(7.) If any such deed of any such married woman be not executed, acknowledged, and certified as aforesaid, the same shall not be valid, or have any effect. 14, 15 V., c. 115, s. 2.

The deed not to have greater effect than if she was sole.

(8.) No deed of a married woman, executed according to the provisions of this act, shall have any greater effect than the same would have had if such married woman had been sole. 43 G. 3, c. 5, s. 4; 1 W. 4, c. 2, s. 2.

Fee for certificate.

(9.) The sum of five shillings may be demanded for every such certificate. 43 G. 3, c. 5; 59 G. 3, c. 3, s. 2; 1 W. 4, c. 2, s. 4.

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CHAPTER IV.
OF SECURITIES.

NOTES.

452. *Conveyancing securities* are mortgages, bills of sale, bonds, warrants of attorney, and redeemable annuities.

453. *Mortgages* are the best of all securities, from the ample remedies they afford when properly drawn; but care must be taken that the title is *marketable*, and the property of adequate value to cover all expenses.

454. *A mortgage of a mortgage* is resorted to where money is urgently wanted, and the mortgage cannot be called in or the present sum wanted is relatively small.

Securities of this kind have an *advantage* over a mortgage of an equity of redemption, because the mortgagee has the title-deeds delivered to him which he has no right to, or even to their production in a second mortgage.

The *disadvantages* are that the mortgagee takes subject to the equity of redemption upon the original mortgage, and to all the stipulations thereby conferred in favor of the original mortgagor; and besides, the mortgagee of a mortgage is *liable to account* to his immediate mortgagor for negligence on his part in recovering the mortgage debt, but he may be protected by a clause of indemnity.

455. *Interests which cannot be mortgaged* are salaries of most officers under the government or public service—as the pay of an officer of the army or the navy, the salary of a judge, the profits of a clerk of the peace, &c., &c.: still the profits of *some* public officers may be assigned—as of the registrar of the court of Chancery and so of a pension for *past* services; but not if granted by Parliament for the honorable support of the dignities of a peerage, for such pension cannot even be *charged*. So the future interest of a *married woman* in chattels personal, which cannot be assigned so as to bind her husband if he survives her, but her *chattels real* may be so assigned by the husband as to bind her and her representatives.

456. *An estate in the mortgagor commensurate with the interest he conveys* is not always essential: thus, tenant *for life* may mortgage *in fee* under a power, and *trustees* and *executors*, who have no inter-

POWER TO SELL.—EQUITABLE MORTGAGES.

est in the lands, are often authorized to mortgage them to satisfy trusts, &c., under a settlement or will; and, whenever they have an *unlimited* power to charge an estate for a certain specific purpose, it gives them *absolute* power of disposition over the whole property, either by sale or mortgage, so that executors or administrators may insert a *power of sale* in a mortgage of personal estate for the purpose of administering the assets. (*Long v. Long*, 5 Ves., 443.)

457. *A power to sell* implies a power to mortgage, and an implied charge of debts will authorize a mortgage or sale to discharge them; and so, if *trustees* under a will are directed to raise a gross sum for any special purpose out of the rents and profits, that will empower them to mortgage or *sell* the estate for that purpose. *Seuble* that, where a mortgage was made under a power to raise money by sale or mortgage, such mortgage cannot afterward be paid off by a sale, because as soon as the mortgage is made the power is exhausted. (*Polk v. Clinton*, 12 Ves., 48.)

458. *The terms on which a mortgage is to be made* should always be settled in writing, particularly where there is any thing special.

459. *A liquidated damages clause* is sometimes inserted in a mortgage.

460. *Equitable mortgages* by deposit of title-deeds are better to be based upon a written agreement than left to a verbal understanding, though mere word of mouth is sufficient to effect such a mortgage; for, where the borrower is amenable to bankrupt laws, a written agreement will entitle the depository to his *costs* out of the estate, which he could not get if the agreement were by parol only.

461. *Equitable mortgages of share-certificates* by deposit are distinct from that of real estate by deposit of deeds, because actual delivery of the deeds is generally requisite, but where they are delivered the transaction is complete; but as to share-certificates, actual delivery is not essential, but proper notice must be given to the secretary of the company, and until then the lien is not communicated.

462. *Exceptions to the rule that deeds must be delivered* are where the mortgagor has only a *partial interest* in the property and there cannot deposit the deeds, in which a memorandum showing his intention to make the lien will suffice; but if *other parties*, interested in the property, [*e. g.*, partners,] would be prejudiced, it is doubtful whether equity would enforce such a security, but in every other case it may.

463. *Depositor may create an equitable mortgage commensurate with his estate and interest in the lands*, and therefore *lessee*, by depositing his lease, notwithstanding it contains a covenant *not to assign* without license, (*Doe d Pitt v. Hogg*, 4 Dow & Ry., 226;) but

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he cannot create a lien *beyond* the estate which he himself has in the property.

464. *Future* as well as *present* advances may be covered by an equitable mortgage; but if the lien is to a firm, and is intended to be in favor of any new partners admitted into such firm, such intent should be expressed in the memorandum which accompanies the deposit of title-deeds.

465. *Title* is not often invested in these cases; but there should be reasonable ground of belief that the title is good, and care should be taken that *all* the matters relating to the property are deposited, for if some are retained, and money is raised upon *them* from a *third* party, equity may refuse to enforce the claim of *either* mortgagee. (*Ex parte Pearce*, 1 Buck, 525.)

466. *Mere deposit will not create a mortgage*, for that may be done as with a banker for safe custody only, and therefore the purpose for which they are deposited should always be expressed; but deposit of deeds for the purpose of preparing a legal mortgage will create an equitable mortgage, *ad interim*. This is now settled law.

467. *A warrant of attorney* to enter up judgment on the debt, or to confess judgment in ejectment where the mortgagor is himself in possession of the premises, is sometimes given as collateral security to facilitate recovery by mortgagee in case of need.

468. *Mortgages in fee* are now usual. Formerly, long terms of years were generally granted to the mortgagee, or to a trustee for him, because it was thought, if the estate were absolute at law, dower would attach, and also any real charges of the mortgagor; but equity treats a mortgage as a *pledge* merely for the payment of money, and therefore, though the legal estate descends to the heir of the mortgagee, he merely holds it for the benefit of the personal representatives who are entitled to the beneficial interest as personal estate.

The wife of a mortgagee has therefore no *dower* in lands mortgaged in fee.

469. *Mortgages for a long term* have one advantage; because, if the mortgagee dies, the term and the mortgage debt both vest in the same person, whereas if the mortgage is in fee the legal estate goes to the heir and the mortgage debt to the personal representatives of the mortgagee: but in case of foreclosure the mortgagee in one case acquires the *whole fee*, while in the other he only acquires the *term*. To avoid this disadvantage, the mortgagor may be made to covenant that, in case of default, he would convey the fee discharged of all equity of redemption. And in certain cases *both a term and a fee* are limited to the mortgagee, and this is done where *two mortgagees* advance money at the same time on the same estate.

470. *Recitals in mortgages*, if the mortgagor has the title-deeds,



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DISTINCT RIGHTS.—NO MORTGAGE FOR COSTS.

should merely show how he became entitled to dispose of the premises; and if the mortgagor is seized simply in fee no recital is necessary, but when the *concurrence* of several parties is necessary recitals should show the relationship between such parties and the property, and in a *second* mortgage the recitals should be carried back far enough to show that the mortgagor has a title to the equity of redemption.

Where two or more persons convey in *distinct rights*, the instrument which created those rights should always be recited; and so of trusts and powers.

When a mortgage is for *past* as well as future advances, that should be very clearly set out.

The law will not allow an *attorney* to take a mortgage from his *client* to secure *future costs*; and therefore, in mortgages between such parties, where future advances are to be made, great care is requisite.

Mortgages of *equity of redemption* should recite the first mortgage, and the amount of principal and interest outstanding upon it, and the agreement for the present loan.

Matters of fact should be recited in the order of their occurrence; as birth, death, probates, &c.

471. *The proper habendum* in a mortgage of an equity of redemption will be found among the "*Forms*," and also that of the mortgage of a *mortgage security*, and in such cases a power of attorney to sue for the debt should always be taken. If the mortgage is taken when the fee is subject to a limitation over by way of *executory devise*, or if it is of a *rent charge*, (*see the forms*.)

472. *The proviso* should say *where* payment is to be made as well as *when*; for otherwise the mortgagor is bound to *find out* the mortgagee, and tender him the money at the appointed time. Sometimes it is provided that the mortgagee shall *reconvey* the premises to the mortgagor on payment of principal and interest, and sometimes that in such case the *estate* of the mortgagee shall *cease*. The latter form is not so well suited to mortgages in fee simple which contain a *power of sale*, for it may happen that the mortgagee's estate may have ceased before the power is exercised, if not by actual payment at least by tender and refusal, which in law amount to the same.

473. *The rate of interest* should always be set out in the proviso, and there is now no restriction as to the rate, but any amount of interest may be reserved which the parties agree upon.

474. *If mortgage is not to be called in or paid off* until a given time, (*see the form for each of these clauses*.) They are usually inserted at the end of the deed, and sometimes the period is made to depend upon the *punctual payment of interest*.

475. *Punctual payment* is sometimes made a ground of covenant

COMPOUND INTEREST.—RECONVEYANCE.

to accept a *lower* rate of interest than that set out in the proviso. A clause in which a *higher* rate should be made a penalty for not paying a lower rate could not be enforced in equity.

476. *Single breach* will not generally deprive mortgagor of the benefit of future punctual payments, unless the clause is *expressly worded* so as to deprive him of that benefit.

477. *Such provisos* should be inserted in the mortgage deed, though it has been held that a *verbal agreement* is sufficient, (*Milton v. Edgeworth*, 5 Bro. Parl. Cos. edit. Fowl., 313;) and they are certainly effectual in a separate instrument, but they are better in the deed, and should be preceded by a covenant to pay the interest half-yearly, or at some other stated period, *distinct* from the covenant for payment of principal and interest.

478. *Power to distrain* is useful where the mortgagor himself is in possession, and a clause containing such power may follow the proviso for redemption, or the covenant for payment of principal and interest. (*See form.*)

479. *Interest cannot carry interest*; but, if arrears accumulate, a *written assent* of the mortgagor to pay interest on such arrears will be binding on him. This, however, is best done by a deed of further charge.

480. *For payment by installments.* (*See form.*)

481. *For power to redeem in parcels.* (*See form.*)

482. *A mortgage to secure the balance of a banking account* is specially worded, (*see form*;) and so also are those under building societies.

483. *Reconveyance of the premises* is usually to the party entitled to the equity of redemption, and therefore in mortgages in fee it is to the mortgagor, his heir and assigns; but, when there are several parties, mortgagors, taking distinct estates and interests, as tenant for life and remainder-man, husband and wife seized in her own right, tenants in common, copartners, &c., the safest way is to stipulate that the mortgagee will, at the request and cost of the persons *for the time being entitled* to the equity of redemption, reconvey the premises to them. (*See form.*)

484. *Power of sale and trusts for sale.*—Trusts were first adopted, but were inconvenient because *imperative*, so that the mortgagee had no choice. He *must sell* and could not *foreclose*, but under a *power of sale* he may do *either*. There is, however, *one case* in which a trust is better than a power: *e. g.*, if a man contracts to sell an estate, but something prevents the completion of the contract for an inconvenient period, and in the meantime the vendor wishes to raise money upon the property, it may be conveyed to a mortgagee upon trust, to carry out the contract by conveying it to the intended purchaser, and after defraying the expenses of the sale to retain the principal moneys due to him upon the mortgage

U. W. O. LAW

MORTGAGOR'S CONCURRENCE.—USUAL COVENANTS.

security, and pay over the surplus to the mortgagor or his representatives.

485. *Power of sale.*—Forms, both extended and concise, are given in the following pages. Where notice is to be given previous to exercising the power, the clause should be so worded as not to make such notice a *condition precedent*, which, if not observed, would vitiate the title of a purchaser under an exercise of the power. To avoid this, and yet give the mortgagor as much protection as possible, the forms below seem adequate.

486. *Mortgagor's concurrence* to sale under a power is not necessary; and if he *expressly* covenant to concur, such concurrence cannot be insisted on by a purchaser; and if the purchaser refuse specific performance because of his non-concurrence, it will be decreed against him *with costs*.

487. *An infant heir* may convey the beneficial interest under a power of sale, if it be properly drawn, by being extended to the mortgagee's personal representatives, who will thereby be authorized to sell the property, and then the infant heir, under the direction of the court of Chancery, may convey to the purchaser.

488. *Surplus purchase money* is usually directed to be paid to the mortgagor, his heirs, executors, administrators, and assigns, but sometimes to his personal representatives only; but in either case the money goes to the same class of persons, *e. g.*, if the power of sale is not exercised until after the mortgagor's death, the surplus money acquires the character of real estate, and descends to the heir at law; but if the sale is in the lifetime of the mortgagor, it retains the character of personal property, and is transmissible as such to his personal representatives; but if this latter form of transmission is desired, without reference to the time when the sale may take place, it should be *expressly declared*. In trusts there is a constructive conversion in equity of the real into personal estate *immediately on the creation of the trust*, so that, whenever the sale may take place, the surplus money has all the transmissible qualities of personal estate.

489. COVENANTS.—*Usual covenants* by a mortgagor in a mortgage are:—

- (1.) For payment of principal and interest;
- (2.) That he has good right to convey;
- (3.) For quiet enjoyment;
- (4.) For freedom from incumbrances;
- (5.) For further assurance.

If the mortgage is by simple appointment in exercise of a power, the mortgagor should covenant that such power is good, valid, and subsisting, and a covenant that he has good right to appoint should be substituted for the covenant that he has good right to convey.

The usual covenants of a mortgagee are:—

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COVENANTS.—RELEASE FROM ON SALE.

- (1.) That mortgagor shall enjoy until default;
- (2.) That mortgagee will not exercise power of sale without the specified notice.

The covenants of the mortgagor are always absolute against the acts of all mankind: those of mortgagee are merely qualified covenants, which bind himself and persons rightfully claiming under him.

To the first covenant of mortgagor is usually added a covenant that, so long as the principal moneys remain undischarged, the mortgagor will pay the interest thereon upon some specified days; but the proviso, as given in the forms, effects the same object.

490. *Power of distress*, when inserted, comes next. (*See form.*)

491. *Future advances*, as well as past or present, require a covenant thus drawn:—1st. That mortgagor will pay the past or present advance in the usual form, and then that, in case any further advances should be made, he will repay the same, with interest, from the time such advances are made.

492. *As to balance of banking account*, the covenant is that mortgagee will, on receiving some specified notice, pay the same, and all costs in respect thereof, and that bankers will produce an account on request.

493. *If husband and wife concur* in a mortgage, the wife cannot covenant, but the husband covenants for both. (*See form.*)

494. *Trustees* cannot be compelled to covenant for any thing but that they have done no act to encumber the premises.

495. *Covenants for title, quiet enjoyment, and freedom from incumbrances* are much the same as in purchase-deeds, except that they are always *absolute*, but sometimes it is provided that, if the premises are sold under a power of sale, and the mortgagor concurs therein, he shall be released from the absolute covenants in the mortgage.

496. *Covenant to insure against damage by fire* is usually the last by the mortgagor, and is preceded by the one for *further assurance*.

497. *Acknowledgment of wife*, if necessary, is covenanted for by her husband, the mortgagor.

498. *A covenant to produce title-deeds* is sometimes given by mortgagee, and is important where a large property is disposed of in lots. This covenant should follow that for quiet enjoyment.

499. *Not to grant leases without notice to the mortgagee* is usually covenanted by the mortgagor where he is empowered to make leases; but such power must be specially granted, and when so is usually inserted at the end of the deed. It requires to be carefully worded, in order to protect the interest of the mortgagor.

500. *Mortgages by demise* do not usually contain any recitals, unless they are in exercise of a power, in which the deed creating the power should be recited.

U. W. O. LAW

DEMISE UNDER POWER—PROVISO FOR REDEMPTION.

501. *The operative words* are "grant, bargain, sell, and demise," which vests the possession in the mortgagee, without entry under the statute of uses, and by force of the consideration which raises a use.

502. *For demise in exercise of a power*, (see form;) or the power may be briefly referred to in the granting clause, in this way:—

"That the said (*mortgagor*.) in exercise of a power limited to "him by a certain indenture [will, or other instrument, as the case "may be,] dated _____, doth by this present deed appoint and, "by way of further assurance, doth by these presents grant, bar, "gain, sell, and demise, &c., &c."

503. *The words of limitation* are to be in the habendum, the *all-estate* clause being omitted, but the *all-deeds* clause should always be inserted.

504. *The proviso for redemption* usually provides that, if the condition be fulfilled, the mortgagor shall be in of his former estate without reconveyance or surrender of the term, and even if the mortgagee's estate has become absolute in consequence of the mortgagor's default in payment; yet *semble* that, since the 8 and 9 Vic., c. 112, which declares that any satisfied term shall cease, the mere receipt of a mortgagee acknowledging satisfaction of the debt will operate as a cesser of the term in England, and that *nothing* more is required to reinvest the premises in the mortgagor or other owner of the reversion; and so, in this province, a duly authorized discharge of mortgage reinvests the estate.

505. *A power of sale* may be inserted in a mortgage by demise, but the exercises of it must be restricted to the mortgagee or his personal representatives only, and to the term for which the premises are demised.

506. *The usual covenants* are for payment of principal money and interest; that mortgagor has good right to demise; for quiet enjoyment, freedom from incumbrances, and for further assurance. Other covenants and provisos may be added.

MORTGAGES of ENTAILED PROPERTY.

507. *Entailed property* is not a marketable mortgage security, unless such mode of assurance were authorized by some power in the settlement creating the estate tail. If the mortgagor can and does bar the entail, the objection is removed; but if there is a *protector* who will *not consent*, such bar will only create a base fee determinable on failure of the issue of the mortgagor with power, if there should cease to be a protector to convert the base fee into a fee simple absolute, and this power should be reserved by express covenant.

508. *A mortgage in fee* will be an effectual bar of the entail in the equity of redemption under the English statute 3 and 4 Wm.,

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MORTGAGE IN FEE BARS ENTAIL.

iv. c., 74, [Fine and Recovery act.] if the proviso direct a *reconveyance* instead of declaring that the deed shall be *void* on performance of the condition; but this does not appear to be law in Canada. See 9 Vic., c. 11, s. 9.

MORTGAGE of an EQUITY of REDEMPTION.

509. *Important hints.*—The first thing is to ascertain whether the prior mortgage was made to cover *further advances*, and this is best done by inspection of the deed; but, if the mortgagee will not allow inspection, he may still reply to inquiries, and will be *bound* by *his answers*, so that if he say that the first mortgage did not extend to further advances, or was for a less sum than the true one, the second mortgage will be protected by such statement.

Second.—It should be ascertained that the mortgagor has not mortgaged other property to the first mortgagee; for, if such mortgage subsist, the mortgagor will not be allowed to redeem the *one* without the *other*, nor therefore will the second mortgagee; and if one mortgage is of *real* and the other of *personal* property that will make no difference. *Willie v. Lloyd*, 2 Eden, 78. *Third.*—The first mortgagee should, if possible, be made a party to the second mortgage, and enter into a covenant to hand over the title-deeds to the second mortgagee if the first mortgage is paid off.

510. *First mortgage should always be recited*, and how much remains due thereon, and that the present advance and security is subject to the first mortgage. See form containing the usual covenants, and also the one for delivery of title-deeds to the second mortgagee.

511. *If first mortgagee concurs*, he is the party last named, and should neither *convey*, nor *confirm*, nor *concur*, in any manner, except that, where he is to produce title-deeds, he should covenant therefor, and such covenant will come in at the very end of the deed.

512. *Notice* should be immediately given by the second mortgagee to the original mortgagee, when *he* is *not* a party to the second mortgage. The object of this was formerly to prevent the first mortgagee, if he had the legal estate, from tacking any subsequent advance to his original mortgage; but tacking is abolished in Canada by 13, 14 V., c. 63, s. 4.

513. *Mortgagor should also give immediate notice* of the second mortgage to the prior mortgagee, otherwise he may lose the right of redemption. 4 Wm. and Mary, c. 160.

514. *Distinction between an equity of redemption and a legal reversion* expectant on a mortgage term. The one is *equitable* the other *legal* assets; so that a mortgage in fee, although expectant on a long term of years, will take precedence of mere equitable incumbrances; when therefore the first mortgage is only for a term, the second mortgagee should insist upon having a conveyance of the legal reversion expectant thereon. This, however, would not in

U. W. O. LAW

LIFE ESTATES.—LEASEHOLDS.

England prevent the first mortgagee from tacking any further advance where he had no notice of the second mortgage, and notice should be given him accordingly.

MORTGAGES of ESTATES for LIFE.

515. *Such mortgages* are a precarious security without the addition of a *policy of assurance* upon the life of the tenant assigned, by way of collateral security, which will make them a safe investment. The assignment of the policy should be in the mortgage-deed, which should contain a covenant to keep up the policy besides the usual power of sale and mortgage covenants.

516. *Estates pour autre vie*, limited to the grantee and his *heirs*, pass a freehold interest to grantee, his executors and administrators or, with no words of limitation, pass a chattel interest only.

517. *Estates for years determinable on lives*, however limited, pass no more than a chattel interest, and mortgages thereon are but seldom met with in ordinary practice.

MORTGAGES of LEASEHOLDS.

518. *Mortgages of leasehold* are generally by way of underlease, in order to protect the mortgagee against the rents and covenants of the lease; but sometimes an *assignment* of the whole term is *preferable*, as where a low rent is reserved and no burdensome covenants are imposed on the lessee, while the covenants of the lessor are beneficial to the tenant's interests—as a covenant for renewal, and the like, which a mere underlessee would be unable to enforce, for want of privity of estate between them.

519. *In a mortgage by way of assignment*, unless the relation of the mortgaging parties may be affected thereby, any *mesne* assignments need only to be very briefly mentioned; as “that, by divers mesne assignments, &c., and ultimately by the last assignment, the premises were assigned unto and became vested in the mortgagor.” If there has been but one assignment, that may be shortly recited. The granting clause, operative words, description of parcels, general words, all-estate clause, and all-deeds clause are *the same* as in an assignment by way of absolute sale.

520. *The habendum* must embrace *all* the mortgagor's interest, otherwise it will pass a mere *underlease*. It should also indemnify the mortgagee against the rents and covenants in the original lease.

521. *The assignment of a policy of assurance* should come in after the habendum of the mortgaged property, followed by the habendum of the policy, and a short power of attorney to sue and give receipt. Then follow the proviso for redemption and power of sale on default; and, after the covenants, any further powers which may be agreed, and which are not inconsistent with the estate of the mortgagor, including a power of distress.

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COVENANTS IN MORTGAGE BY ASSIGNMENT.

522. *The usual covenants in a mortgage by assignment* are absolute for payment of principal and interest: that the original lease is valid and subsisting; that all outgoing have been duly paid, and all covenants and conditions on the lessee's part duly performed; that mortgagor will, at all times thereafter, pay and perform the same, so that the mortgagee may be effectually indemnified therefrom; that mortgagor has good right to assign; for quiet enjoyment, freedom from incumbrances, and for further assurance. If policy of assurance is assigned, mortgagor must covenant to keep it up, or mortgagee, if he does not. If the original lease contains a covenant for *renewal*, the mortgagee should be authorized to effect such renewal, the expenses thereof to be a *further charge* upon the premises, with a further covenant that mortgagor will repay him the same, with interest. This will enable the mortgagee to support an action at law for its recovery. (*See form.*)

523. *Mortgages by way of underlease* are in form similar to those by assignment; the term being demised to hold for all the residue thereof, except some small reversion. The proviso and covenants then follow in the usual form.

524. *A lease determinable on lives* should have a policy of assurance on one of the lives at least assigned, as collateral security.

525. *For a mortgage of equity of redemption of leasehold*, (*see form.*)

BOND DEBTS.

526. *Mortgage of a bond debt* is not met with frequently, except where the money is payable at some distant period.

527. *Mortgages of policies of assurance* are most frequent where the trustees under a marriage settlement are authorized to make advances out of trust moneys to the husband, upon his assignment of a policy of assurance upon his life to the trustees.

528. *Formal mortgages on bills of exchange and promissory notes* are rare, though they are frequently deposited by way of *equitable mortgage*. Sometimes, however, it is done when the bills are of long date, and a power of sale may then be taken.

529. *Simple contract debts*, when assigned as a mortgage security, should be set out in a *schedule* annexed to the deed, which shows the names of the debtors, the amount of each debt, and the particulars for which they were contracted. The agreement to assign them is recited, the consideration stated, the assignment declared, a power of attorney to sue for them given, including liberty to give time, to compound, and to take securities for them, with indemnity to the mortgagee so doing. Next follows a declaration of trust, to pay the consideration and expenses, and pay over the surplus to the mortgagor: proviso for redemption and covenant of mortgagor that he will pay the consideration; that he will not revoke the power of

U. W. O. LAW

JUDGMENT DEBTS.—SHIPPING.

attorney, nor release any of the debts; for further assurance; and that mortgagee shall not be liable for neglecting to sue for the debt.

530. *Judgment debts* are frequently assigned, with power of attorney to sue for and give discharges for them, and this should always be extended to the appointing of one or more substitutes, otherwise the assignee of the mortgagee cannot sue for debt. (*See form.*)

531. *Mortgages of legacies* require care. It should be ascertained that the bequest is valid, that the amount is sufficient, and that the executor has assented to the bequest.

When that assent is given, the title of the legatee is complete; if the executor should afterward waste the assets, the persons affected by it could not come upon the legatee, but upon the executor only. A power of attorney to sue for a legacy is useless, except where the legacy arises out of a fund in the court of Chancery, where a power may be given to the mortgagee for him to authorize any barrister to appear in the suit for, and in the name of, the mortgagee.

MORTGAGES OF INTEREST *in SHIPPING.*

532. *Mortgages of interest in shipping* are, in England, under the new merchant shipping act, 17 and 18 Vic., c. 104; and, in this province, under our provincial statute, 8 Vic., c. 5.

FORMS.

533. MORTGAGE *in FEE, with POWER of SALE to ONE MORTGAGEE.*

THIS INDENTURE, made, &c., between A. B., of _____, (*mortgagor*), of the one part, and C. D., of _____, (*mortgagee*), of the other part, witnesseth:—

THAT, IN CONSIDERATION of the sum of _____ dollars, this day paid to the said A. B. by the said C. D., [the receipt whereof the said A. B. doth hereby acknowledge,] he, the said A. B., doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he, the said A. B., his heirs, executors, or administrators, will pay to the said C. D., his executors, administrators, or assigns, the sum of _____ dollars, [the principal,] with interest for the same in the meantime at the rate of _____ per cent. per annum, on the day of _____ next, without any deduction.

AND THIS INDENTURE ALSO WITNESSETH that, for the consideration aforesaid, he, the said A. B., doth hereby *grant* unto the said C.

MORTGAGES.

D., his heirs and assigns, ALL THOSE (description of the property,) TOGETHER with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments, or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof, or appurtenant thereto, and ALL THE ESTATE and interest of the said A. B. in the said premises. To HOLD the said premises unto and TO THE USE of the said C. D., his heirs and assigns.

PROVIDED ALWAYS that, if the said A. B., his heirs, executors, administrators, or assigns, shall pay unto the said C. D., his executors, administrators, or assigns, the said sum of _____ dollars, [the principal,] together with interest for the same in the meantime at the rate of _____ per cent. per annum, on the said _____ day of _____ next, without any deduction, then the said C. D., his heirs or assigns, will, at any time thereafter, upon the request and at the cost of the said A. B., his heirs, executors, administrators, or assigns, reconvey the said premises unto the said A. B., his heirs and assigns, or as he or they shall direct, free from incumbrances, by the said C. D., his heirs, executors, administrators, or assigns.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that, if the said sum of _____ dollars, [the principal,] or any part thereof, shall remain unpaid after the said _____ day of _____ next, he, the said A. B., his heirs, executors, or administrators, will, so long as the same sum, or any part thereof, shall remain unpaid, pay to the said C. D., his executors, administrators, or assigns, interest for the said sum of _____ dollars, or for so much thereof as shall for the time being remain unpaid, at the rate of _____ per cent. per annum, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____, without any deduction.

AND IT IS HEREBY DECLARED that the said C. D., his executors, administrators, or assigns, may, at any time or times after the said _____ day of _____ next, without any further consent on the part of the said A. B., his heirs or assigns, sell the said premises, or any part thereof, either together or in parcels, and either by public auction or by private contract, and may buy in or rescind any contract for sale, and resell, without being responsible for loss occasioned thereby; AND may execute and do all such assurances and acts for effectuating any such sale as the said C. D., his executors, administrators, or assigns, shall think fit; AND THAT, upon a sale by any person or persons who may not be seized of the legal estate, the person in whom the legal estate shall be vested shall execute and do such assurances and acts for carrying the sale into effect as the person or persons by whom the sale shall be made shall direct.

U. W. O. LAW

FORMS.

PROVIDED, NEVERTHELESS, that the said C. D., his executors, administrators, or assigns, shall not execute the power of sale herein before contained, until he or they shall have given to the said A. B., his heirs, executors, administrators, or assigns, or left on the said premises a notice in writing to pay off the moneys for the time being owing on the security of these presents, and default shall have been made in such payment for _____ calendar months after giving or leaving such notice, or until the whole or part of some half-yearly payment of interest shall have become in arrear for three calendar months; PROVIDED, ALSO, that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either of the cases mentioned in the clause lastly herein before contained has happened, nor whether any money remains upon the security of these presents, nor as to the propriety or regularity of such sale; and, notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards the purchaser, or purchasers, be deemed to be within the aforesaid power, and be valid accordingly.

AND IT IS HEREBY DECLARED that the receipt of the said C. D., his executors, administrators, or assigns, for the purchase moneys of the premises sold, or any part thereof, shall effectually discharge the purchaser, or purchasers, therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof; AND that the said C. D., his executors, administrators, and assigns, shall, out of the moneys arising from any sale, in pursuance of the aforesaid power, in the first place, pay the expenses incurred on such sale, or otherwise, in relation to the premises; AND, in the next place, apply such moneys in or toward satisfaction of the moneys for the time being owing on the security of these presents; AND then pay the surplus [if any] of the moneys arising from such sale to the said A. B., his heirs or assigns; AND that the aforesaid power of sale and other powers may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys then owing on the security of these presents. PROVIDED ALWAYS that the said C. D., his executors, administrators, or assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or any of them.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that he, the said A. B., now hath power to grant ALL AND SINGULAR the said premises UNTO and TO THE USE of the said C. D., his heirs and assigns, in manner aforesaid, and free from incumbrances; AND THAT he, the said A. B., and his heirs, and every other person lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said C. D., his

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heirs, executors, administrators, or assigns, but at the cost of the said A. B., his heirs, executors, or administrators, execute and do all such assurances and acts for further or better assuring all or any of the said premises to the use of the said C. D., his heirs and assigns, in manner aforesaid, as by him or them shall be reasonably required.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year first above mentioned.

SIGNED, SEALED, AND DELIVERED	}	A. B. [SEAL.]
in the presence of		C. D. [SEAL.]
E. F.		

MEM.—In practice, the mortgagee rarely executes the mortgage.

534. MORTGAGE *in FEE*.

THIS INDENTURE, &c., between A. B., of _____, (mortgagor,) of the one part, and C. D., of _____, of the other part, witnesseth as follows:—

(1) IN CONSIDERATION of _____ dollars, paid to the said A. B. by the said C. D., the said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said A. B., his heirs, executors, administrators, or assigns, will pay to the said C. D., his executors, administrators, or assigns, _____ dollars, with interest after the rate of _____ per cent. per annum, on the _____ day of _____ next.

(2) FOR THE CONSIDERATION AFORESAID, the said A. B. grants unto the said C. D., and his heirs, the hereditaments described in the schedule hereto, with their legal or usual appurtenances.

(3) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said A. B., his heirs and assigns, shall be entitled to a reconveyance of the premises, at his and their cost.

(4) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that the said A. B. is entitled to execute this grant of the premises, free from incumbrances, and that such grant shall, if required, be perfected at the cost [excepting as regards foreclosed or sold premises] of the said A. B., or his estate.

(5) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said A. B., his heirs, executors, or administrators, will, on demand, reimburse the said C. D., his executors, administrators, or assigns, all expenses under the subsequent powers, with

U. W. O. LAW

FORMS.

interest after the rate aforesaid, and will pay to him or them interest, after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the day of , and the day of ; But so that payment of interest on such last mentioned moneys, after the rate of per cent. per annum, within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(6.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said A. B., his executors, administrators, or assigns, and that [unless some interest shall be forty days in arrear] no sale shall be made without calendar months' written notice to the said A. B., his executors, administrators, or assigns, such payment and notice aforesaid, to the executors or administrators of the said A. B., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

IN WITNESS, &c., (as in n. 533.)

535. MORTGAGE of FREEHOLDS.—The PRINCIPAL payable by INSTALLMENTS, and the INTEREST on the UNPAID PRINCIPAL HALF-YEARLY, without reference to the TIME fixed for the INSTALLMENTS.

THIS INDENTURE, made the first day of January, 1860, between A. B., of , (mortgagor,) of the one part, and C. D., of , (mortgagee,) of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of dollars, paid to the said A. B. by the said C. D., the said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said A. B., his heirs, executors, administrators, or assigns, will pay to the said C. D., his executors, administrators, or assigns, dollars, with interest after the rate of per cent. per annum, on the day of next.

(2.) FOR THE CONSIDERATION AFORESAID, the said A. B. grants unto the said C. D., and his heirs, the hereditaments described in the schedule hereto, with their legal or usual appurtenances.

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(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said A. B., his heirs, and assigns, shall be entitled to a reconveyance of the premises, at his and their cost.

(4.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that the said A. B. is entitled to execute this grant of the premises, free from incumbrances, and that such grant shall, if required, be perfected at the cost [excepting as regards foreclosed or sold premises] of the said A. B., or his estate.

(5.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said A. B., his heirs, executors, or administrators, will, on demand, reimburse the said C. D., his executors, administrators, or assigns, all expenses under the strict powers, with interest after the rate aforesaid, and will pay to him or them interest, after the rate aforesaid on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; BUT SO THAT payment of interest on such last mentioned moneys, after the rate of _____ per cent. per annum, within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(6.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said A. B., his executors, administrators, or assigns, and that [unless some interest shall be *forty days* in arrear] no sale shall be made without six calendar months' written notice to the said A. B., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said A. B. being sufficient, as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

(7.) PROVIDED THAT, if the said A. B., his heirs, executors, administrators, or assigns, shall pay to the said C. D., his executors, administrators, or assigns, _____ dollars as follows: [that is to say,] \$500 on the first day of January, 1863; \$400 on the first day of January, 1864; and \$200 on every succeeding first day of January; and shall discharge all liabilities of the said A. B., his heirs, executors, or administrators, under the preceding covenants of the said A. B., [excepting the firstly herein before contained covenant,] at

U. W. O. LAW

FORMS.

the times and in manner therein respectively specified, the said C. D., his executors, administrators, or assigns, will not *sell* nor *foreclose* the premises, nor adopt any legal or equitable proceeding for recovering the moneys continuing secured hereon.

IN WITNESS, &c., (*as in n. 533.*)

536. MORTGAGE of FREEHOLDS to secure PRESENT and FUTURE ADVANCES.

THIS INDENTURE, &c., between A. B., of _____, (*mortgagor*), of the one part, and C. D., of _____, (*mortgagee*), of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of _____ dollars, paid to the said A. B. by the said C. D., and for securing the repayment thereof, and of such *further advances* as are herein after mentioned, the said A. B., for himself, his heirs, executors, or administrators, covenants that the said A. B., his heirs, executors, or administrators, will pay to the said C. D., his executors, administrators, or assigns, on the _____ day of _____ next, _____ dollars, with interest after the rate of _____ per cent. per annum, and will also pay to him or them, on demand, all moneys which he or they may hereafter advance to the said A. B., his executors or administrators, with interest after the rate aforesaid.

(2.) FOR THE CONSIDERATION and purpose aforesaid, the said A. B. grants unto the said C. D., and his heirs, the hereditaments described in the schedule hereto, with their legal or usual appurtenances; PROVIDED that, on satisfaction of the foregoing covenants as to the said sum of _____ dollars, and interest, on the said _____ day of _____; and as to all other moneys and interest therein mentioned, on demand, provided that, if the foregoing covenant shall be satisfied on the _____ day of _____; the said A. B., his heirs and assigns, shall be entitled to a *reconveyance* of the premises, at his and their cost.

(3.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that the said A. B. is entitled to execute this grant of the premises, free from incumbrances, and that this grant shall, if required, be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said A. B., and his estate.

(4.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said A. B., his heirs, executors, or administrators, will, on demand, reimburse the said C. D., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him

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(5.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said A. B., his executors, administrators, or assigns, and that, [unless some interest shall be forty days in arrear,] no sale shall be made without calendar months' written notice to the said A. B., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said A. B., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

IN WITNESS WHEREOF, &c.

537. MORTGAGE of FREEHOLDS, with SURETY joining in the COVENANTS for PAYMENT of PRINCIPAL and INTEREST.

THIS INDENTURE, &c., between A. B., of (mortgagor,) of the first part, C. D., of the second part, and E. F., of the third part, witnesseth as follows:—

(1.) IN CONSIDERATION of dollars, paid to the said A. B. by the said E. F., they, the said A. B. and C. D., [at his request, and as surety for him, the said A. B.,] do, for themselves, their heirs, executors, and administrators, and each of them doth, for himself, his heirs, executors, and administrators, covenant with the said E. F., his executors and administrators, that the said A. B. and C. D., or one of them, their or one of their heirs, executors, or administrators, will pay to the said E. F., his executors, administrators, or assigns, dollars, with interest, after the rate of per cent. per annum, on the day of , one thousand eight hundred and

(2.) FOR THE CONSIDERATION AFORESAID, the said A. B. grants unto the said E. F., and his heirs, the hereditaments known and de-

U. W. O. LAW

FORMS.

scribed as ALL AND SINGULAR, &c., (*description of property*), with their legal or usual appurtenances.

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said A. B., his heirs and assigns, shall be entitled to a *reconveyance* of the premises, at his or their cost.

(4.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said E. F., his heirs and assigns, that the said A. B. is entitled to execute this grant of the premises, free from incumbrances, and that such grant shall, if required, be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said A. B., or his estate.

(5.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said E. F., his executors and administrators, that the said A. B., his heirs, executors, or administrators, will, on demand, reimburse the said E. F., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest, after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; BUT SO THAT payment of interest on such last mentioned moneys, after the rate of _____ per cent. per annum, within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(6.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said A. B., his executors, administrators, or assigns, and that [unless some interest shall be *forty days* in arrear] no sale shall be made without _____ calendar months' written notice to the said A. B., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said A. B., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

PROVIDED THAT the said C. D., his heirs, executors, and administrators, are and shall continue [as between him and them and the said E. F., his executors and administrators,] liable as principals under the foregoing covenants of the said C. D., notwithstanding his executing the same as such surety as aforesaid, and notwithstanding any transaction between the said E. F., his executors, administra-

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tors or assigns, and the said A. B., his heirs, executors, administrators, or assigns, operating as a discharge [whether partial or entire] of such suretyship.

IN WITNESS, &c., (as in n. 533.)

538. MORTGAGE *in FEE* to THREE TRUSTEES.—BAR of DOWER.—INSURANCE.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and fifty-_____, between A. B., of the _____ of _____, in the county of _____, and Province of Canada, _____, of the first part; L. B., his wife, _____, of the second part; and C. D., of _____, E. F., of _____, and G. H., of _____, in the county of _____, and province aforesaid, trustees for _____, of the third part, witnesseth:—

THAT, IN CONSIDERATION of the sum of _____ dollars, this day paid to the said party of the first part by the said parties of the third part, [the receipt whereof the said party of the first part doth hereby acknowledge,] he, the said party of the first part, doth hereby grant, and she, the said party of the second part, for the purpose of releasing her right of dower, and with the concurrence of the said party of the first part, doth hereby release, unto the said parties of the third part, their heirs and assigns, ALL AND SINGLE that certain parcel or tract of land and premises situate in the _____; TOGETHER with all houses, buildings, ways, lights, waters, water-courses, trees, woods, fences, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof, or appurtenant thereto, AND ALL THE ESTATE and interest of the said parties of the first and second parts in the said premises: To HOLD the said premises UNTO the said parties of the third part, their heirs and assigns, TO THE USE of the said parties of the third part, their heirs and assigns. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the crown.

PROVIDED ALWAYS that, if the said party of the first part, his heirs, executors, administrators, or assigns, shall pay unto the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, the sum of _____ dollars, together with interest for the same at the rate of _____ per cent. per annum, in manner and at the times following, that is to say: the said principal sum of _____ dollars, on the _____ day of _____, which will be in the year of our Lord one thousand eight hundred and _____, and the interest

U. W. O. LAW

MORTGAGES.

thereon after the rate aforesaid, on the first day of the months of January and July in each year, until the whole of the said principal sum be fully paid and satisfied, such interest to commence and be computed from the _____ day of _____, and the first payment thereof to be made on the first day of _____ now next ensuing, without any deduction; THEN these presents shall cease and be void, to all intents and purposes whatsoever.

AND THE SAID PARTY OF THE FIRST PART doth hereby, for himself, his heirs, executors, and administrators, covenant with the said parties of the third part, their executors, administrators, and assigns, that he, the said party of the first part, his heirs, executors, or administrators, will pay to the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, the said sum of _____ dollars, and interest, at the times and in manner herein before appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents.

AND THAT he, the said party of the first part, his executors, administrators, and assigns, will, so long as any money shall remain on this present security, keep all the messuages and buildings herein before granted insured against loss or damage by fire, in some reputable British or Canadian insurance office, to be approved of by the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, in the sum of _____ dollars at least, and will duly and punctually pay all premiums and sums of money necessary for such purpose, and will forthwith assign to the said parties of the third part, their executors, administrators, and assigns, the policy or policies of such insurance, and the receipt for every such payment. AND ALSO that, if default shall be made in keeping the said premises so insured, it shall be lawful for, but not incumbent on, the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, out of their or his own moneys, to insure and keep insured the said premises in any sum not exceeding _____ dollars; AND that the said party of the first part, his executors, administrators, or assigns, will repay to the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, all moneys expended for that purpose by them or him, with interest thereon at the rate aforesaid, from the time of the same respectively having been advanced or paid, and that, until such repayment, the same shall be a charge upon the said premises herein before expressed to be hereby granted. AND it is hereby declared that the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, shall hold the

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policy or policies of insurance to be effected as aforesaid in trust, in the first place, for better securing the said principal money secured by these presents, and the interest thereof, and any moneys which shall have been paid or expended by them, or any of them, in and about such insurance and insurances, and interest thereon as aforesaid, and subject thereto, for the said party of the first part, his executors, administrators, and assigns.

AND IT IS HEREBY DECLARED that, if default shall be made in payment of the said principal money hereby secured, or any part thereof, or the interest thereof, or any part thereof, contrary to the true intent and meaning of the proviso and covenant herein before in that behalf contained, then it shall and may be lawful for the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, without any further consent of the said party of the first part, his heirs or assigns, to sell the said premises, or any part thereof, either together or in parcels, and either by public auction or private contract, and to buy in or rescind any contract for sale, and to resell, without being responsible for loss occasioned thereby; AND to execute and do all such assurances and acts for effectuating any such sale as the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, shall think fit. PROVIDED, NEVERTHELESS, that the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, shall not execute the power of sale herein before contained until they or he shall have given to the said party of the first part, his heirs, executors, administrators, or assigns, or left at his or their last place of abode in Upper Canada, or upon the said premises hereby granted, a notice in writing to pay off the moneys for the time being owing upon the security of these presents, and until default shall have been made in payment for three calendar months after giving or leaving such notice; PROVIDED ALSO that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether any such default in any such payment has been made as aforesaid, nor whether any money remains upon the security of these presents, nor as to the propriety or regularity of such sale; AND, notwithstanding any impropriety or irregularity, whatsoever, in any such sale, the same shall, as regards the purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly. AND IT IS HEREBY DECLARED that the said parties of the third part, and the survivors or survivor of them, and the executors or administrators of such survivor, their or his assigns, shall, out of the moneys arising from any sale in pursuance of the aforesaid power, in the first place, thereout pay the expenses incurred on such sale, or otherwise in relation to the premises; AND,

U. W. O. LAW

MORTGAGES.

in the next place, apply such moneys in or toward the satisfaction of the said principal sum of _____ dollars, or so much thereof as shall then remain undischarged, and all interest then due in respect thereof, and all other moneys then owing upon the security of these presents, and then pay the surplus [if any] of the moneys to arise from such sale unto the said party of the first part, his heirs and assigns; PROVIDED ALWAYS that the said parties of the third part, or any of them, their or any of their executors, administrators, or assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or any of them.

PROVIDED LASTLY, and it is hereby declared and agreed, that, until default shall be made in payment of the said principal money secured by these presents, or the interest thereof, or any part thereof, respectively, contrary to the form and effect of the proviso and covenant for payment of the same herein before contained, it shall be lawful for the said party of the first part, his heirs or assigns, to hold and enjoy, and to receive the rents and profits of, the said lands and premises, without any eviction, claim, or demand, whatsoever, from or by the said parties of the third part, their heirs or assigns, or from or by any person lawfully claiming any estate or interest through or in trust for them or any of them.

AND THE SAID party of the first part doth hereby, for himself, his heirs, executors, and administrators, covenant with the said parties of the third part, their heirs and assigns, that he, the said party of the first part, now hath power to grant ALL AND SINGULAR the said premises TO THE USE of the said parties of the third part, their heirs and assigns, in manner aforesaid, and free from incumbrances; AND THAT he, the said party of the first part, and his heirs, and every other person lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said parties of the third part, their heirs, executors, administrators, or assigns, but at the cost of the said party of the first part, his heirs, executors, or administrators, execute and do all such assurances and acts, for further or better assuring all or any of the said premises TO THE USE of the said parties of the third part, their heirs and assigns, in manner aforesaid, as by them shall be reasonably required.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED, }
in presence of } A. B. [SEAL.]
X. Y. } C. D. [SEAL.]

RECEIVED, on the day of the date of the within indenture, the sum of _____ dollars, of lawful money of Canada, being the full consideration therein mentioned.

SIGNED in presence of A. B.

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539. MORTGAGE of FREEHOLDS to THREE OWNERS.

Short Form.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____, (*mortgagor*), of the one part, and C. D., E. F., and G. H., all of _____, of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of \$1500, paid to the said A. B. by the said C. D., E. F., and G. H., out of moneys belonging to them on a legal and equitable joint account, the said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., E. F., and G. H., their executors and administrators, that the said A. B., his heirs, executors, or administrators, will pay to the said C. D., E. F., and G. H., or the [survivors or] survivor of them, his executors or administrators, or their or his assigns, \$ _____, with interest after the rate of _____ per cent. per annum, on the _____ day of _____ next.

(2.) FOR THE CONSIDERATION AFORESAID, the said A. B. grants unto the said C. D., E. F., and G. H., and their heirs, the hereditaments known and described as ALL AND SINGULAR, &c., (*description*), with their legal or usual appurtenances.

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said (*mortgagor*) his heirs and assigns, shall be entitled to a reconveyance of the premises, at his and their cost.

(4.) PROVIDED THAT the receipts of the [survivors or] survivor, and the executors or administrators of the survivor of the said C. D., E. F., and G. H., shall be sufficient equitable and legal discharges for all moneys hereby secured.

(5.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., E. F., and G. H., their heirs and assigns, that the said A. B., is entitled to execute this grant of the premises, free from incumbrances, and that such grant shall, if required, be perfected at the cost [excepting as regards foreclosed or sold premises] of the said A. B., or his estate.

(6.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., E. F., and G. H., their executors and administrators, and assigns, will, on demand, reimburse the said C. D., E. F., and G. H., or the [survivors or] survivor of them, his executors or administrators, or their or his assigns, all expenses under the subsequent powers, [other than the power of sale,] with interest after the rate aforesaid, and will pay to them or him interest after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____ and the _____ day of _____; BUT SO THAT payment of interest, after the rate of _____ per cent. per annum,

U. S. LAW
U. S. O. LAW
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MORTGAGES.

within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(7.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said A. B., his executors, administrators, or assigns; AND THAT [unless some interest shall be *forty* days in arrear] no sale shall be made without calendar months' written notice to the said A. B., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said A. B., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

IN WITNESS, &c., (*as in n. 533.*)

540. MORTGAGE of FREEHOLDS to ONE MORTGAGEE.

Short Form.

THIS INDENTURE, made the day of , 18 , between A. B., of , in the county of , brewer, of the one part, and C. D., of the same place, Esquire, of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of \$, paid to him by the said C. D., the said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said A. B., his heirs, executors, administrators, or assigns, will pay to the said C. D., his executors, administrators, or assigns, \$, with interest after the rate of per cent. per annum, on the day of next.

(2.) FOR THE CONSIDERATION AFORESAID, the said A. B. grants unto the said C. D., and his heirs, the hereditaments described in *the schedule* hereto, with their legal or usual appurtenances.

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the day of next, the said A. B., his heirs and assigns, shall be entitled to a *reconveyance* of the premises, at his and their cost.

(4.) THE SAID A. B., for himself, his heirs, executors, administrators, and assigns, covenants with the said C. D., his heirs, executors,

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administrators, and assigns, that the said A. B. is entitled to execute this grant of the premises, free from incumbrances, and that such grant shall, if required, be perfected at the cost [excepting as regards foreclosed or sold premises] of the said A. B., and his estate; AND FURTHER, that the said A. B., his heirs, executors, and administrators, will pay to the said C. D., his executors, administrators, and assigns, interest after the rate aforesaid, on all principal moneys continuing hereby secured, by half-yearly payments, on the 1st day of June and the 1st day of December in each year.

(5.) THE HOLDERS OR HOLDEE of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute, without exception:] PROVIDED that the purchase money shall be paid [after discharging expenses and all moneys continuing hereby secured] to the said A. B., his executors, administrators, or assigns; AND that [unless some interest shall be forty days in arrear] no sale shall be made without six calendar months' written notice to the said A. B., his executors or administrators, such payment and notice as aforesaid, to the executors or administrators of the said A. B., being sufficient as against all persons actually or possibly interested in the equity of redemption, [without reference to the nature of the premises.]

IN WITNESS, &c., (as in n. 533.)

541. MORTGAGE of FREEHOLDS to secure an ACCOUNT CURRENT to a PRIVATE BANK, with variations for a BANKING COMPANY.

THIS INDENTURE, &c., between M. N., of _____, (mortgagor,) of the one part, and A. B., C. D., and E. F., (bankers and copartners under the firm of _____,) of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of a banking account, opened by the said M. N. with the said firm, the said M. N., for himself, his heirs, executors, and administrators, covenants with the said A. B., C. D., and E. F., their executors and administrators, that the said M. N., his heirs, executors, or administrators, will, on demand, pay to the cashier of the said firm the balance for the time being due from him on his said account for accommodation, with interest and other charges, and also all expenses under the subsequent powers, with interest thereon after the rate of _____ per cent. per annum.

U. W. O. LAW

MORTGAGES.

(2.) FOR THE CONSIDERATION AFORESAID, the said M. N. grants unto the said A. B., C. D., and E. F., and their heirs, the hereditaments described in the schedule hereto, [or, and known as ALL AND SINGULAR, &c.,] with their legal or usual appurtenances.

(3.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said A. B., C. D., and E. F., their heirs [executors, administrators] and assigns, that the said M. N. hath done or knowingly suffered nothing whereby the premises are or may be incumbered, or prejudicially affected. PROVIDED THAT, after satisfaction of the foregoing covenant, the said M. N., his heirs or assigns, shall be entitled to a reconveyance of the premises, at his and their cost.

(4.) EACH of the said A. B., C. D., and E. F., for himself, his heirs, executors, and administrators, covenants with the said M. N., his heirs [executors, administrators] and assigns, that they, the said A. B., C. D., and E. F., respectively, have done or knowingly suffered nothing whereby the premises are or may be incumbered, or prejudicially affected. AND THAT the foregoing covenant of the said M. N. shall be satisfied, both in law and equity, by payment to the cashier of any firm carrying on the business of the said firm of _____, whether the same shall consist of all, any, or none of the partners, and notwithstanding the addition thereto of any partner or partners, or any variation in or disability of the partners thereof, for the time being.

(5.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said A. B., C. D., and E. F., their heirs and assigns, that the said M. N. is entitled to execute this grant of the premises, free from incumbrances, and that such grant shall, if required, be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said M. N., or his estate.

(6.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said M. N., his executors, administrators, or assigns; AND that [unless some interest shall be *forti dies* in arrears] no sale shall be made without *six calendar months'* written notice to the said M. N., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said M. N., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

WITNESS, &c., (as in n. 533.)

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542. MORTGAGE in FEE.—BAR of DOWER.—INSURANCE.—
POWER of SALE.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and fifty _____ between _____, of the _____ of _____, in the county of _____, and Province of Canada, _____ of the first part; the wife of the said part _____ of the first part, of the second part; and _____, of the third part, witnesseth:—

THAT, IN CONSIDERATION of the sum of _____ dollars, this day paid to the said part _____ of the first part by the said party of the third part, [the receipt whereof the said part _____ of the first part do hereby acknowledge,] he, the said part _____ of the first part, do hereby grant, and she, the said party of the second part, for the purpose of releasing her right of dower in the hereditaments and premises herein after described, and with the concurrence of the said part _____ of the first part, doth hereby release, unto the said part _____ of the third part, _____ heirs and assigns, ALL AND SINGULAR

_____ certain parcel or tract of land and premises situate in the _____; TOGETHER with all houses, buildings, ways, lights, waters, water-courses, trees, woods, fences, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof or appurtenant thereto, AND ALL THE ESTATE and interest of the said part _____ of the first part in the said premises: To HOLD the said premises unto and TO THE USE of the said part _____ of the third part, _____ heirs and assigns. SUBJECT, NEVERTHELESS, to the reservations, limitations, provisos, and conditions expressed in the original grant thereof from the crown.

PROVIDED ALWAYS that, if the said part _____ of the first part, _____ heirs, executors, administrators, or assigns, shall pay unto the said part _____ of the third part, _____ executors, administrators, or assigns, the sum of _____, together with interest for the same at the rate of _____ per cent. per annum, in manner and at the times following, that is to say; _____, without any deduction, then these presents shall cease and be void, to all intents and purposes whatsoever.

AND THE SAID part _____ of the first part do hereby, for _____ heirs, executors, and administrators, covenant with the said part _____ of the third part, _____ executors and administrators, that the said part _____ of the first part, _____ heirs, executors, or administrators, will pay to the said part _____ of the third part, _____ executors, administrators, or assigns, the said sum of _____, and interest, at the times and in manner herein before appointed for payment thereof, without any deduction or abatement whatsoever.

AND IT IS HEREBY DECLARED that, if default shall be made in

U. W. O. LAW

MORTGAGES.

payment of the said principal money hereby secured, or any part thereof, or the interest thereof, or any part thereof, at the time herein before appointed for the payment of the same, *then*, and at any time thereafter, it shall be lawful for the said part of the third part, executors, administrators, or assigns, either with or without the concurrence of the said part of the first part, heirs or assigns, to *sell* the said premises herein before expressed to be hereby granted, or any part or parts thereof, either together or in parcels, and either by public auction or private contract, for such price as may appear reasonable; AND to buy in or rescind any contract for sale, and rescind, without being responsible for loss occasioned thereby; AND to execute and do all such assurances and things for effectuating any such sale as or they shall think fit. PROVIDED, NEVERTHELESS, that the said part of the third part, executors, administrators, or assigns, shall not execute the power of sale herein before contained until he or they shall have given to the said part of the first part, heirs, executors, administrators, or assigns, or left at or their last place of abode in Upper Canada, or upon the said premises hereby granted, a notice in writing to pay off the moneys for the time being owing upon the security of these presents, and until default shall have been made in payment of the whole or some part of such moneys for *four calendar months* after giving or leaving such notice: PROVIDED ALSO that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether the case mentioned in the clause lastly herein before contained has happened, nor whether any money remains upon the security of these presents, nor as to the propriety or regularity of such sale; AND, notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards the purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly. AND IT IS HEREBY DECLARED that the said part of the third part, executors, administrators, or assigns, shall, out of the moneys arising from any sale in pursuance of the aforesaid power, in the first place, pay the expenses incurred in such sale, or otherwise in relation to the premises; AND, in the next place, apply such moneys in or toward the satisfaction of the said principal sum of , or so much thereof as shall then remain undischarged, and all interest then due in respect thereof, and all other moneys then owing upon the security of these presents, and then pay the surplus [if any] of the moneys to arise from such sale unto the said part of the first part, heirs or assigns; PROVIDED ALWAYS that the said part of the third part, executors, administrators, or assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or any of them.

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AND THE SAID part of the first part, do hereby, for heirs, executors, and administrators, covenant with the said part of the third part, heirs and assigns, that, the said part of the first part, now has power to grant ALL AND SINGULAR the said premises UNTO and TO THE USE of the said part of the third part, heirs and assigns, in manner aforesaid, and free from incumbrances; AND that, the said part of the first part, and heirs, and every other person lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said part of the third part, heirs, executors, administrators, or assigns, but at the cost of the said part of the first part, heirs, executors, or administrators, execute and do all such assurances and acts, for further or better assuring all or any of the said premises TO THE USE of the said part of the third part, heirs and assigns, in manner aforesaid, as by him or them shall be reasonably required.

PROVIDED LASTLY, and it is hereby declared and agreed, that, until default shall be made in payment of the said principal money secured by these presents, or the interest thereof, or any part thereof, respectively, contrary to the form and effect of the proviso and covenant for payment of the same herein before contained, it shall be lawful for the said part of the first part, heirs or assigns, to hold and enjoy, and to receive the rents and profits of, the said hereditaments and premises, without any eviction, claim, or demand, whatsoever, from or by the said part of the third part, heirs or assigns, or from or by any person rightfully claiming under him or them.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED, }
in presence of

[SEAL.]
[SEAL.]

543. INSURANCE CLAUSE INDORSED on the ABOVE.

Covenant to be taken as part and parcel of the within Indenture of Mortgage, and to be treated and construed in all respects as if inserted therein.

THE WITHIN NAMED part of the first part, for heirs, executors, and administrators, do hereby covenant to and with the within named part of the third part, executors, administrators, and assigns, in manner following, that is to say: that the said part of the first part, executors, administrators, and assigns, will, so long as any money shall remain on this present se-

W. W. O. LAW
J. W. O. LAW

MORTGAGES.

curity, keep all the messuages and buildings upon the hereditaments and premises hereby granted insured against loss or damage by fire, in some reputable British or Canadian insurance office, to be approved of by the said part of the third part, executors, administrators, or assigns, in the sum of dollars at least, and will duly and punctually pay all premiums and sums of money necessary for such purpose, and will forthwith assign and deliver to the said part of the third part, executors, administrators, and assigns, the policy or policies of such insurance, and the receipt for every such payment. AND ALSO that, if default shall be made in keeping the said premises so insured, it shall be lawful for, but not incumbent on, the said part of the third part, executors, administrators, or assigns, out of or their own moneys, to insure and keep insured the said premises in any sum not exceeding dollars; AND that the said part of the first part, executors, administrators, or assigns, will repay to the said part of the third part, executors, administrators, or assigns, all moneys expended for that purpose by or them, with interest thereon at the rate aforesaid from the time of the same respectively having been advanced or paid, and that, until such repayment, the same shall be a further charge upon the said premises herein before expressed to be hereby granted. AND it is hereby declared that all sums of money to be received in respect of such policy or policies of insurance shall be received by the said part of the third part, executors, administrators, or assigns, and be held by him or them IN TRUST, for better securing the repayment of the said principal money secured by these presents, and the interest thereof, and any moneys which shall have been paid or expended by him or them in and about such insurance and insurances, and interest thereon as aforesaid; and subject thereto, IN TRUST for the said part of the first part, executors, administrators, and assigns.

IN WITNESS WHEREOF, (as in n. 542.)

A. B. [SEAL.]

544. MEMORIAL for the above MORTGAGE.

A MEMORIAL [to be registered pursuant to the acts of Parliament in that behalf] of an indenture of mortgage, bearing date the day of , in the year of our Lord one thousand eight hundred and , and made between , of the first part; the wife of the said party of the first part, of the second part; and , of the third part:—

WHEREBY the said party of the first part, in consideration of , of lawful money of Canada, [the receipt whereof is there-

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by acknowledged,] did grant, and the said party of the second part, for the purpose of releasing her right of dower, did release, unto the said party of the third part, heirs and assigns, ALL AND SINGULAR th certain parcel or tract of land and premises situate in the ; To HOLD the same, with all the privileges and appurtenances thereof, to the said party of the third part, heirs and assigns, to and their own use forever. SUBJECT, NEVERTHELESS, to a proviso, therein contained, that the said indenture, and every thing therein, should be absolutely void on payment by the said party of the first part, his heirs, executors, administrators, or assigns, to the said party of the third part, executors, administrators, or assigns, of the sum of , of lawful money of the Province of Canada, with interest thereon, on the day and time and in manner following, that is to say:

WHICH INDENTURE contains a power to the said party of the third part to sell and dispose of the said lands and premises in case of default made in the payment of the said sum of money and interest, or any part thereof, contrary to the above proviso; AND is witnessed by , of ; AND this memorial thereof is hereby required to be registered by me, the said party of the part therein mentioned.

AS WITNESS my hand and seal, this day of 18 .
 SIGNED AND SEALED, }
 in the presence of } [SEAL.]

This memorial must be attested by two witnesses, one of whom must be the witness to the mortgage; and HE must afterward make the following

545. AFFIDAVIT.

COUNTY OF to wit: of , in the said county , in the within memorial named, maketh oath and saith that he was present and did see the indenture to which the said memorial relates duly executed, signed, sealed, and delivered by the therein named ; AND that he is a subscribing witness to the execution of the said indenture; THAT he, this deponent, also saw the said memorial duly signed and sealed by the therein named , for registry thereof, which said memorial was attested by him, this deponent, and another subscribing witness, and that both said instruments were executed at

Sworn before me, at , in the county of , this day of , 18 .

A Commissioner in B. R., &c.

MORTGAGES.

546. MORTGAGE of LEASEHOLDS by DEMISE.—POWER of SALE.—INSURANCE.—LIFE POLICY.

THIS INDENTURE, &c., between M. N., of _____, (*mortgagor*), of the one part, and W. T., of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of \$ _____, paid to the said M. N. by the said W. T., the said M. N., for himself, his heirs, executors, and administrators, covenants with the said W. T., his executors and administrators, that the said M. N., his heirs, executors, administrators, or assigns, will pay to the said W. T., his executors, administrators, or assigns, \$ _____, with interest after the rate of _____ per cent. per annum, on the _____ day of _____, one thousand eight hundred and _____.

(2.) FOR THE CONSIDERATION AFORESAID, the said M. N. *demises* unto the said W. T., his executors and administrators, the premises [described in the schedule hereto, *or*] known as ALL AND SINGULAR, &c., with their legal or usual appurtenances, during the subsisting residue of the term of _____ years, created by a lease [dated, &c.,] from A. B. to the said M. N., wanting the last day of such term.

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said M. N., his executors, administrators, and assigns, shall be entitled to a *surrender* of the premises, at his or their cost.

(4.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said W. T., his executors, administrators, and assigns, that the said lease is subsisting unprejudiced, and that the said M. N. is entitled to execute this demise of the premises, free from incumbrances: *that* he, and those claiming under him, shall do and suffer nothing whereby the said lease may be prejudicially affected, *and that* this demise shall, if required, be perfected at the cost [excepting as regards foreclosed or sold premises] of the said M. N., and his estate, the last day of the said _____ years' term in foreclosed or sold premises being held in trust for the person or persons entitled to the subsisting residue of the term hereby created.

(5.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said W. T., his executors and administrators, that the said M. N., his heirs, executors, or administrators, will, on demand, reimburse the said W. T., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; So THAT payment of interest on such last mentioned moneys, after the rate of _____ per cent. per annum, within seven days, next after each of the said half-yearly days, shall

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satisfy this covenant as regards the interest payable on such half-yearly day.

(6.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said M. N., his executors, administrators, or assigns, and that [unless some interest shall be forty days in arrear] no sale shall be made without calendar months' written notice to the said M. N., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said M. N., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

(7.) THEY OR HE may also, unless the current year's receipt for a fire insurance of dollars on the premises shall be produced to them, or him, on demand, effect such insurance in any office, and may also, in substitution for every policy comprised in this security which shall lapse or become void or voidable, effect in any office an insurance on the life of the said M. N., for an amount equal to the aggregate moneys then hereby secured, and the clauses and powers herein contained [in reference to the said policy for dollars] shall apply to every such constituted policy.

(8.) ALL EXPENSES under the preceding powers, [other than the power of sale,] with interest after the rate aforesaid, shall constitute a charge on the premises; the moneys arising therefrom being applicable, as the purchase moneys aforesaid, or, [as to fire insurance moneys, and if the holders or holder of the security shall so elect,] in rebuilding the premises insured. PROVIDED that the aggregate of such expenses as aforesaid, exclusive of fire insurance, and of the said sum of dollars, [and such further advances as aforesaid,] shall not exceed dollars.

IN WITNESS, &c., (as in n. 542.)

547. MORTGAGE of LEASEHOLDS by ASSIGNMENT.

Power of Sale.—Insurance.—Power to Insure Mortgagee's Life.

THIS INDENTURE, &c., between M. N., of _____, (mortgagor,) of the one part, and R. M., of _____, (mortgagee,) of the other part, witnesseth as follows:—

W. W. O. LAW
 W. W. O. LAW
 W. W. O. LAW

MORTGAGES.

(1.) IN CONSIDERATION of _____ dollars, paid to the said M. N. by the said R. M., the said M. N., for himself, his heirs, executors, and administrators, covenants with the said R. M., his executors and administrators, that the said M. N., his heirs, executors, administrators, or assigns, will pay to the said R. M., his executors, administrators, or assigns, _____ dollars, with interest after the rate of _____ per cent. per annum, on the _____ day of _____

(2.) FOR THE CONSIDERATION AFORESAID, the said M. N. assigns unto the said R. M., his executors and administrators, the premises known and described as ALL AND SINGULAR, &c., with their legal or usual appurtenances, during the subsisting residue of the term of _____ years, created by a lease [dated, &c.] from A. B. to the said M. N.

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said M. N., his executors, administrators, and assigns, shall be entitled to a *reassignment* of the premises, during the subsisting term therein, at his and their cost.

(4.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said R. M., his executors, administrators, and assigns:—1. That the said lease is subsisting unprejudiced, and the said M. N. is entitled to execute this assignment of the premises, free from incumbrances and liability, under the said lease, up to the present date, *and* that such assignment shall, if required, be perfected at the cost [excepting as regards foreclosed or sold premises] of the said M. N., and his estate; 2. That, during the continuance of this security, the said M. N., his heirs, executors, and administrators, will discharge and keep the said R. M., his heirs, executors, administrators, and assigns, indemnified against all liabilities under the said lease, subsequently to the present date.

(5.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said R. M., his executors and administrators, that the said M. N., his heirs, executors, or administrators, will, on demand, reimburse the said R. M., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; BUT SO THAT payment of interest on such last mentioned moneys, after the rate of _____ per cent. per annum, within *seven days* next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(5.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, ex-

FORMS.

cepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said M. N., his executors, administrators, or assigns, and that [unless some interest shall be *forty days* in arrear] no sale shall be made without _____ calendar months' written notice to the said M. N., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said M. N., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

(6.) THEY OR HE may also, unless the current receipt for a fire insurance of _____ dollars on the premises shall be produced to them or him on demand, effect such insurance in any office, and may also, in substitution for every policy comprised in this security which shall lapse or become void or voidable, effect in any office an *insurance on the life* of the said M. N. for an amount equal to the aggregate moneys then hereby secured, and the clauses and powers herein contained, in reference to the said policy for _____ dollars, shall apply to every such substituted policy.

(7.) ALL EXPENSES under the preceding powers, [other than the power of sale,] with interest after the rate aforesaid, shall constitute a charge on the premises, the moneys arising therefrom being applicable as the purchase moneys aforesaid, or [as to fire insurance moneys, and if the holders or holder of the security shall so elect] in rebuilding the premises insured. PROVIDED that the aggregate of such expenses as aforesaid, exclusive of fire insurance, and of the said sum of _____ dollars, [and such further advances as aforesaid] shall not exceed _____ dollars.

IN WITNESS, &c., (*as in n. 542.*)

548. MORTGAGE of a REVERSION in FREEHOLDS.

Mortgagor not to have option to pay off.

THISIndenture, &c., between M. N., of _____, of the one part, and C. D., of _____, of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of _____ dollars, paid to the said M. N. by the said C. D., the said M. N., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said M. N., his heirs, executors, administrators, or assigns, will pay to the said C. D., his executors, administrators, or assigns, _____ dollars, with interest after the rate of _____ per cent. per annum, on the _____ day of _____

U. W. O. LAW

MORTGAGES.

(2.) FOR THE CONSIDERATION AFORESAID, the said M. N. grants UNTO the said C. D., and his heirs, [subject to the interests subsisting under the will, dated, &c., of X. Y., in privity to the estate thereby limited TO THE USE of the said M. N., and his heirs] the hereditaments described in the schedule hereto [or, ALL AND SINGULAR, &c.] with their legal or usual appurtenances.

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said M. N., his heirs and assigns, shall be entitled to a *reconveyance* of the premises, subject as aforesaid, at his and their cost.

(4.) PROVIDED THAT the said M. N., his heirs, executors, administrators, or assigns, shall not pay off nor [excepting in the event of some interest being *thirty days* in arrear, or of the breach of some other covenant of the said M. N.] be required to pay the said principal before the _____ day of _____.

(5.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said M. N., his heirs, executors, or administrators, will, on demand, reimburse the said C. D., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; BUT SO THAT payment of interest on such last mentioned moneys, after the rate of _____ per cent. per annum, within *seven days* next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(6.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises as well before as after determination of the interests subject to which the same are hereby granted, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said M. N., his executors, administrators, or assigns, and that [unless some interest shall be *forty days* in arrear] no sale shall be made without *six calendar months'* written notice to the said M. N., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said M. N., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

IN WITNESS, &c., (as in n. 542.)

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549. SECOND MORTGAGE [or MORTGAGE of an EQUITY of REDEMPTION] of FREEHOLDS.

THIS INDENTURE, made the _____ day of _____, between M. N., of _____, (*morigagor*), of the one part, and C. D., of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of \$ _____, paid to the said M. N. by the said C. D., the said M. N., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said M. N., his heirs, executors, administrators, or assigns, will pay to the said C. D., his executors, administrators, or assigns, \$ _____, with interest after the rate of _____ per cent. per annum, on the _____ day of _____

(2.) FOR THE CONSIDERATION AFORESAID, the said M. N. grants unto the said C. D., and his heirs, the hereditaments known and described as ALL AND SINGULAR, &c., with their legal or usual appurtenances, subject to a mortgage security in fee for \$ _____, and interest, effected by indenture dated, &c., &c., and expressed to be made between, &c., &c.

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said M. N., his heirs and assigns, shall be entitled to a *reconveyance*, subject as aforesaid, of the premises, at his and their cost.

(4.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that the said M. N. is entitled to execute this grant of the premises, free from incumbrances, except as aforesaid, and that such grant shall, if required, be perfected at the cost [excepting as regards foreclosed or sold premises] of the said M. N., or his estate.

(5.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said M. N., his heirs, executors, or administrators, will, on demand, reimburse the said C. D., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; BUT SO THAT payment of interest on such last mentioned moneys, after the rate of _____ per cent. per annum, within *seven days* next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(6.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, either subject to the said mortgage of the _____ day of _____ or otherwise, and, upon every sale [or attempted sale] and assurance thereof, may deal with the

THE NEW YORK LAW
 OFFICE
 111 N. W. O. LAW
 OFFICE

MORTGAGES.

premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase moneys shall, after discharging expenses, be applied [subject, in the event of a sale not subject to the last mentioned security, to the discharge of all moneys due thereon] in discharging all moneys hereby secured, or made chargeable on the premises, and the residue paid to the said M. N., his executors, administrators, or assigns, and that [unless some interest shall be *forty days* in arrear] no sale shall be made without *six calendar months'* written notice to the said M. N., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said M. N., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]
 IN WITNESS, &c., (*as in n. 542.*)

550. EQUITABLE MORTGAGE.

MEMORANDUM that the muniments of title specified in the schedule hereto have this _____ day of _____ been deposited, by A. B., of _____, in the county of _____, and Province of _____, Canada, (*mortgagor*), with C. D., of _____, security for \$ _____, advanced to the said A. B. by the said C. D., with interest at _____ per cent.

N. B.—This short memorandum is a perfect equitable security, and implies an agreement in equity for a legal mortgage.

551. MORTGAGE of a LIFE POLICY for SECURING a SUM ALREADY DUE and FUTURE ADVANCES.

THIS INDENTURE, made, &c., between A. B., of _____, (*mortgagor*), of the one part, and C. D., of _____, (*mortgagee*), of the other part. WHEREAS the said A. B. is indebted to the said C. D. in the sum of _____ dollars, and may become further indebted to the said C. D.:

NOW THIS INDENTURE WITNESSETH that, in consideration of the premises, he, the said A. B., doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he, the said A. B., his heirs, executors, or administrators, will pay unto the said C. D., his executors, administrators, or assigns, the sum of \$ _____, (*the sum*

FORMS.

already owing,) together with interest for the same in the meantime, at the rate of _____ per cent. per annum, on the _____ day of _____ next, without any deduction, and will also, within _____ calendar months from the time or times of the same respectively being advanced or becoming due, pay to him or them such other moneys [if any] as may be advanced by him or them, to or on account of, or may become due to him or them by the said A. B., his executors or administrators, with interest thereon at the rate aforesaid, from the time or times of the same respectively being advanced or becoming due, without any deduction.

AND THIS INDENTURE ALSO WITNESSETH that, in consideration of the premises, the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, all that policy of assurance on the life of the said A. B. granted by the Assurance Society, dated the _____ day of _____, for the sum of \$ _____, and under the annual premium of \$ _____, and all moneys assured or to become payable by or under the said policy, and the full benefit thereof, AND ALL THE ESTATE and interest of the said A. B. in the said premises; To hold the said premises unto the said C. D., his executors, administrators, and assigns.

PROVIDED ALWAYS that, if the said A. B., his executors, administrators, or assigns, shall pay to the said C. D., his executors, administrators, or assigns, the said sum of \$ _____, (the sum already owing,) with interest for the same in the meantime at the rate of _____ per cent. per annum, on the said _____ day of _____ next, without any deduction, and shall also, within _____ calendar months from the time or times of the same respectively being advanced or becoming due, pay to him or them such other moneys as may be advanced by him or them, to or on account of, or may become due to him or them by, the said A. B., his executors or administrators, with the interest thereon, at the rate aforesaid, from the time or times of the same respectively being advanced or becoming due, without any deduction, then the said C. D., his executors, administrators, or assigns, will, at any time thereafter, upon the request and at the cost of the said A. B., his executors, administrators, or assigns, assign the said policy and premises to the said A. B., his executors, administrators, or assigns, as he or they shall direct, free from incumbrances by the said C. D., his executors, administrators, or assigns.

AND IT IS HEREBY DECLARED that, if before the said policy shall have been assigned as last aforesaid any moneys shall become payable under the same, the said C. D., his executors, administrators, or assigns, may receive the same, and shall thereout, in the first place, pay the expenses incurred in recovering the same, or otherwise in relation to the premises; AND, in the next place, shall apply

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such moneys in or toward satisfaction of the moneys for the time being owing on the security of these presents; AND then shall pay the surplus [if any] of the said moneys to become payable under the said policy to the said A. B., his executors, administrators, or assigns.

AND IT IS HEREBY DECLARED that the receipt of the said C. D., his executors, administrators, or assigns, for any moneys payable under the said policy, shall effectually discharge the insurance society, and all other persons, from being concerned to see to the application thereof, or being accountable for the non-application or mis-application thereof.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that the aforesaid policy is now valid and in full force for the said sum of \$ _____, and that he, the said A. B., will not do or suffer any thing whereby the said policy may become void or voidable, or the said C. D., his executors, administrators, or assigns, be hindered from receiving all or any of the moneys assured or to become payable under the same; AND THAT, if the said policy shall become void, the said A. B. will immediately effect a new policy or policies on his life, in the name or names of the said C. D., his executors, administrators, or assigns, for a sum or sums not less in the whole than the sum of \$ _____; AND THAT every such new policy, and the moneys to become payable under the same, shall be subject to the proviso for redemption herein before contained, and the trusts hereby declared concerning the said existing policy of assurance, and the moneys to become payable under the same; AND THAT he, the said A. B., will, from time to time, pay the said premium of \$ _____, and any other premiums or sums for the time being necessary for keeping on foot the said existing policy, or any policy to be effected as aforesaid, on the first day on which the same respectively ought to be paid, and forthwith deliver the receipt for the same to the said C. D., his executors, administrators, or assigns; AND THAT the said A. B., his executors, administrators, or assigns, will, on demand, pay to the said C. D., his executors, administrators, or assigns, all moneys [if any] which shall be expended by him or them in keeping on foot the said existing policy, or effecting or keeping on foot any new policy in lieu thereof, with interest thereon at the rate aforesaid, from the time or respective times of the same having been expended; AND THAT, until such moneys shall be repaid, with interest, the said existing policy, and any new policy to be effected as aforesaid, and the moneys to become payable under the same respectively, shall be charged with the payment thereof.

AND THAT he, the said A. B., now hath power to assign the said premises unto the said C. D., his executors, administrators, and

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FORMS.—MORTGAGES.

assigns, in manner aforesaid, and free from incumbrances; AND THAT the said A. B., his executors and administrators, and every other person lawfully or equitably claiming any estate or interest in the premises, will, at all times, at his or their own cost, execute and do all such assurances and acts, for further or better assuring the said premises unto the said C. D., his executors, administrators, and assigns, in manner aforesaid, and for enabling him and them to recover and receive the moneys assured or to become payable under the said policy or policies, as by him or them shall be reasonably required.

AND IT IS HEREBY DECLARED that the said C. D., his executors, administrators, or assigns, may, at any time or times after the said day of _____ next, without any further consent on the part of the said A. B., sell the said policy and premises herein before expressed to be hereby assigned, or any new policy to be effected as aforesaid, either by way of surrendering the same to the office by which the same respectively has been or may be granted or otherwise, and either by public auction or private contract, and may buy in or rescind any contract for sale, and resell, without being responsible for loss occasioned thereby, and may execute and do all such assurances and acts for effectuating any such sale as he or they shall think fit; PROVIDED ALWAYS, and it is hereby declared, that the said C. D., his executors, administrators, or assigns, shall not execute the power of sale herein before contained until he or they shall have given to the said A. B., or left at his usual or last known place of abode, a notice in writing to pay off the moneys for the time being owing on the security of these presents, and default shall have been made in such payment for _____ calendar months after giving or leaving such notice, or until there shall be more than _____ calendar months' interest due upon the principal money for the time being owing on the security of these presents. [Here may be inserted clauses that—*Purchasers shall not be bound to see that such events have happened; that mortgagee's receipt shall be a discharge to purchasers; the trusts of the purchase money; that power may be exercised by any person entitled to give a receipt for the mortgage money; and mortgagee's indemnity clause.**] PROVIDED, LASTLY, that the total amount of money hereby secured, or to be ultimately recoverable hereupon, shall not exceed the sum of \$ _____.

IN WITNESS WHEREOF, (as in n. 542.)

552. PROVISIO for REDEMPTION and RECONVEYANCE of MORTGAGED PREMISES.

PROVIDED ALWAYS that, if the said A. B., (*mortgagor*), his heirs, executors, administrators, or assigns, shall pay unto the said C. D.,

* See the clauses in mortgages which now follow.

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CLAUSES IN MORTGAGES.

(mortgagee,) his executors, administrators, or assigns, the said sum of \$ _____, together with interest thereon in the meantime at the rate of _____ per cent. per annum, on the said _____ day of _____, without any deduction, then the said C. D., his heirs or assigns, will, at any time thereafter, upon the request and at the cost of the said A. B., his heirs, executors, administrators, or assigns, reconvey the said premises unto the said A. B., his heirs and assigns, or as he or they shall direct, free from incumbrances by the said C. D., his heirs, executors, administrators, or assigns.

553. SHORT FORM.

PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said (mortgagor,) his heirs and assigns, shall be entitled to a reconveyance of the premises, at his or their cost.

554. ANOTHER.

PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said (mortgagor,) his executors, administrators, and assigns, shall be entitled to a surrender of the premises, at his and their cost.

555. ANOTHER.

PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said (mortgagor,) his executors, administrators, and assigns, shall be entitled to a reassignment of the premises, [during the subsisting term therein,] at his and their cost.

556. ANOTHER.

PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said (mortgagor,) his heirs, executors, administrators, and assigns, shall be entitled, at his and their respective cost, to a reconveyance of the premises hereby granted, and a surrender of the premises hereby demised.

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557. ANOTHER.

PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said (*mortgagor*), his heirs, executors, administrators, and assigns, shall be entitled, at his and their respective cost, to a *reconveyance* of the premises hereby granted, and a *reassignment* [during the subsisting term therein] of the premises hereby assigned.

558. PROVISIO; SEVERAL MORTGAGEES.

PROVIDED ALWAYS that, if the said party of the first part, his heirs, executors, administrators, or assigns, shall pay unto the said parties of the third part, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, the sum of _____ dollars, together with interest for the same at the rate of _____ per cent. per annum, in manner and at the times following, that is to say: the said principal sum of _____ dollars on the _____ day of _____, which will be in the year of our Lord one thousand eight hundred and _____, and the interest thereon after the rate aforesaid, on the first day of the months of January and July in each year, until the whole of the said principal sum be fully paid and satisfied, such interest to commence and be computed from the _____ day of _____, and the first payment thereof to be made on the first day of _____ now next ensuing, without any deduction; THEN these presents shall cease and be void, to all intents and purposes whatsoever.

559. COVENANT *by* MORTGAGOR *for* REPAYMENT *of* MORTGAGE MONEY, *with* INTEREST.

AND HE, the said A. B., (*mortgagor*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., (*mortgagee*), his executors and administrators, that he, the said A. B., his heirs, executors, or administrators, will pay to the said C. D., his executors, administrators, or assigns, the sum of \$ _____, with interest for the same in the meantime at the rate of _____ per cent. per annum, on the _____ day of _____, one thousand eight hundred and _____, without any deduction.

CLAUSES IN MORTGAGES.

560. ANOTHER FORM.

THE SAID (*mortgagor*), for himself, his heirs, executors, and administrators, covenants with the said _____, his executors and administrators, that the said M., his heirs, executors, administrators, or assigns, will pay to the said _____, his executors, administrators, or assigns, \$ _____, with interest after the rate of _____ per cent. per annum, on the _____ day of _____.

561. ANOTHER FORM.—To SEVERAL MORTGAGEES.

THE SAID (*mortgagor*), for himself, his heirs, executors, and administrators, covenants with the said _____, their executors and administrators, that the said M., his heirs, executors, or administrators, will pay to the said _____, or the [survivors] or survivor of them, his executors or administrators, or their or his assigns, \$ _____, with interest after the rate of _____ per cent. per annum, on the _____ day of _____ next.

562. COVENANT to INSURE AGAINST FIRE.

AND THE SAID A. B. (*mortgagor*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he, the said A. B., his executors, administrators, or assigns, will, so long as any money shall remain on this present security, keep all said messuages and buildings insured against loss or damage by fire, in some reputable British or Canadian fire insurance office, to be approved by the said C. D., (*mortgagee*), in the sum of \$ _____ at the least, and will pay all premiums and sums of money necessary for such purpose on the first day on which the same respectively ought to be paid, and will, on demand, produce to the said C. D., his executors, administrators, and assigns, the policy or policies of such insurance, and the receipt for every such payment.

563. COVENANT that MORTGAGEE may INSURE if the MORTGAGOR does not.

AND ALSO that, if default shall be made in keeping the said premises so insured, it shall be lawful for, but not incumbent on, the said C. D., (*mortgagee*), his executors, administrators, and assigns,

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CLAUSES IN MORTGAGES.

out of his or their own moneys, to insure and keep insured the said premises, in any sum not exceeding § , and that the said A. B., (*mortgagor.*) his executors, administrators, or assigns, will repay to the said C. D., his executors, administrators, or assigns, all moneys expended for that purpose by him or them, with interest thereon, at the rate aforesaid, from the time of the same having been advanced or paid, and that, until such repayment, the same shall be a charge upon the said premises herein before expressed to be hereby demised.

564. COVENANT by LESSEE to do no ACT AFFECTING INSURANCE.

AND ALSO that he, the said (*lessee,*) his executors, administrators, or assigns, will not, at any time or times during this demise, do or suffer to be done any act, matter, or thing, whereby the insurance of the said premises against damage by fire may be made void or voidable; AND will not do or suffer herein any act, matter, or thing, whereby the rate of premium on such insurance would be increased, without giving to the said (*lessor,*) his heirs [or executors, administrators] or assigns, written notice thereof, with sufficient time for him or them to have the insurance altered accordingly; AND that he, the said (*lessee,*) his executors, administrators, and assigns, will from time to time repay to the said (*lessor,*) his heirs, executors, administrators, or assigns, on demand, all moneys which he or they shall pay for increased premium, or the expense of effecting any new policies, or keeping on foot the same, by reason or in consequence of such acts, matters, and things.

565. COVENANT that MORTGAGEE may INSURE if MORTGAGOR does not.

THEY OR HE may also, unless the current year's receipt for a fire insurance of § on the premises shall be produced to them or him on demand, effect such insurance in any office, and may also, in substitution for every policy comprised in this security which shall lapse or become void or voidable, effect in any office an insurance on the *life* of the said (*mortgagor*) for an amount equal to the aggregate moneys then hereby secured, and the clauses and powers herein contained [in reference to the said policy for §] shall apply to every such substituted policy.

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CLAUSES IN MORTGAGES.

566. POWER to LEASE for BUILDING or MINES.

THEY OR HE may also, whether in possession or receipt of the rents or not, and [as to every lease under these powers, either with or without taking a premium for the same] lease the premises either for twenty-one years or less, or else [if the lessee or lessees shall improve the same by building, or completing or repairing buildings, or agree to do so within two years next after the date of such lease] for ninety-nine years or less, at ground-rents [which, during the first three years, may be a peppercorn] and may also lease any *substances* in or *under* the premises, either with or without buildings and surface-lands, [and whether previously worked or not,] for sixty years or less, with all usual powers for working and disposing of the demised premises, or incidental thereto, and either at rents or royalties or both, and either with or without a minimum rent, and either with or without power to the lessee or lessees to determine any such lease.

THEY OR HE may also enter into such contracts and execute such works as shall be judged expedient, with a view to the exercise of these powers, or in lieu of an exercise thereof, as might be done by lessees under such powers, [and may also determine and accept surrenders of leases and other tenancies, and fell and sell any wood growing on the premises, including underwood,]

567. COVENANT that MORTGAGOR will PAY PREMIUM, and will not AVOID POLICY.

THE SAID (*mortgagor*.) for himself, his heirs, executors, and administrators, covenants with the said _____, his executors, administrators, and assigns, that the said _____ will pay the premiums on the said policy [and every policy effected under the subsequent power] when due, and will do nothing whereby any such policy may become void or voidable, and, in every event of such policy becoming void or voidable, or lapsing, will, at his own cost, do all acts required for enabling a policy in substitution for the same to be effected under the subsequent power.

568. POWER of SALE.

AND IT IS HEREBY DECLARED that the said C. D., his executors, administrators, or assigns, may, at any time or times after the said day of _____, without any further consent of the said A. B., his heirs or assigns, sell the said premises, or any part there-

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CLAUSES IN MORTGAGES.

of, either together or in parcels, and either by public auction or private contract, or partly by public auction and partly by private contract, and may buy in or rescind any contract for sale, and resell, without being responsible for loss occasioned thereby; AND may execute and do all such assurances and acts, for effectuating any such sale, as he, the said C. D., (*mortgagee*), his executors, administrators, or assigns, shall think fit: PROVIDED, NEVERTHELESS, that the said C. D., his executors, administrators, or assigns, shall not execute the power of sale herein before contained until he or they shall have given to the said A. B., his heirs, executors, administrators, or assigns, or left on the said premises, a notice in writing to pay off the moneys for the time being owing on the security of these presents, and default shall have been made in such payment for _____ calendar months after giving or leaving such notice, or until the whole or part of some half-yearly payment of interest shall have become in arrear for three calendar months.

569. POWER of SALE.

Who may exercise.—Trusts of purchase money.—Notice of sale.—Receipt clause.

THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as *absolute owners* or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharge of all expenses and all moneys continuing hereby secured] to the said (*mortgagor*), his executors, administrators, or assigns, and that [unless some interest shall be forty days in arrear] no sale shall be made without six calendar months' written notice to the said M., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said M., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

[N. B.—The words in brackets may be omitted when real estate forms no part of the security.]

570. EXTENSION of POWER of SALE to FURTHER ADVANCE.

AND it shall and may be lawful for the said (*mortgagee*), his

CLAUSES IN MORTGAGES.

heirs, executors, administrators, or assigns, at any time after default in payment of the principal and interest moneys hereby secured, or any part thereof, respectively, to use and exercise all the powers of sale, or otherwise, contained in the before mentioned surrender, as if the same powers and provisions thereof had been in this surrender repeated.

571. POWER of SALE may be EXERCISED by any PERSON ENTITLED to RECEIVE the MORTGAGE MONEY.

AND THAT the aforesaid power of sale, and other powers, may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys then owing upon the security of these presents.

572. CLAUSE in POWER of SALE that on SALE PERSONS having the LEGAL ESTATE shall JOIN.

AND THAT, upon a sale by any person or persons who may not be seized of the legal estate, the person in whom the legal estate shall be vested shall execute and do all such assurances and acts for carrying the sale into effect as the person or persons to whom the sale shall be made shall direct.

573. INDEMNITY to PURCHASERS against IMPROPER EXERCISE of a POWER of SALE.

PROVIDED ALSO that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether the said power is thereby lawfully exercised in pursuance of the terms thereof, nor whether any money remains upon the security of these presents; AND, notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards the purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly.

574. INDEMNITY to MORTGAGEE exercising POWER of SALE.

PROVIDED ALWAYS that the said C. D., (*mortgagee*), his executors, administrators, or assigns, shall not be answerable for any involun-

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CLAUSES IN MORTGAGES.

tary losses which may happen in the exercise of the aforesaid power and trusts, or any of them.

[N. B.—It is not necessary to provide that the *right of foreclosure* shall not be affected by the power of sale, because that right continues without such express provision. Under a *trust for sale*, there is no right of foreclosure, because, in fact, there is no true mortgage; but a power of sale is only an *addition* to the ordinary remedies of a mortgagee.]

575. CLAUSE of INDEMNITY.

THAT, during the continuance of this security, the said M., his heirs, executors, and administrators, will discharge and keep the said _____, his heirs, executors, administrators, and assigns, indemnified against all liabilities under the said *lease* subsequently to the present date.

576. INDEMNITY to SEVERAL MORTGAGEES.

WHERE the ordinary form would be "the said C. D. &c.," (*as in n. 574.*) say: "the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns."

577. TRUSTS of PURCHASE MONEY of MORTGAGED PREMISES SOLD UNDER a POWER.

AND THAT the said C. D., (*mortgagee*), his executors, administrators, and assigns, shall, out of the moneys arising from any sale in pursuance of the aforesaid power, in the *first* place, pay the expenses incurred on such sale, or otherwise in relation to the premises. AND, in the *next* place, apply such moneys in or toward satisfaction of the moneys for the time being owing on the security of these presents, and *then* pay the surplus [if any] of the moneys arising from such sale to the said A. B., his heirs or assigns.

578. MORTGAGEE'S RECEIPT to be SUFFICIENT DISCHARGE to PURCHASERS under a POWER of SALE.

AND IT IS HEREBY DECLARED that the receipt of the said C. D.,

CLAUSES IN MORTGAGES.

his executors, administrators, or assigns, for the purchase moneys of the premises sold, or of any part thereof, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof.

579. RECEIPT CLAUSE *by* TWO or MORE.

PROVIDED that the receipts of the [survivors or] survivor, and the executors or administrators of the survivor, of the said (*mortgagees*), shall be sufficient equitable and legal discharge for all moneys hereby secured.

580. RECEIPT of TRUSTEES a SUFFICIENT DISCHARGE *by*
STATUTE.

The *bona fide* payment to or receipt of any person to "whom any money shall be payable, upon any express or implied trust, or for any limited purpose, or of the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, their or his assigns, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication, thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security." 12 Vic., c. 71, s. 10, which extends to Upper Canada only.

581. PROVISIO *for* QUIET ENJOYMENT *until* DEFAULT.

PROVIDED ALWAYS that, until default shall be made in the payment, in manner aforesaid, of the said principal money and interest, or of any part of either, respectively, it shall be lawful for the said (*mortgagor*), his heirs or assigns, to hold and enjoy, and to receive the rents and profits of, the said lands and premises, without any eviction, claim, or demand, whatsoever, from or by the said (*mortgagee*), his heirs or assigns, or from any person lawfully claiming any estate or interest through or in trust for them or any of them.

582. *For* QUIET ENJOYMENT.

PROVIDED LASTLY, and it is hereby declared and agreed, that,

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CLAUSES IN MORTGAGES.

until default shall be made in payment of the said principal money secured by these presents, or the interest thereof, or any part thereof, respectively, contrary to the form and effect of the proviso and covenant for payment of the same herein before contained, it shall be lawful for the said party of the first part, his heirs or assigns, to hold and enjoy, and to receive the rents and profits of, the said hereditaments and premises, without any eviction, claim, or demand, whatsoever, from or by the said party of the third part, his heirs or assigns, or from or by any person rightfully claiming under him or them.

583. *That MORTGAGOR has POWER to GRANT.*

AND THE SAID party of the first part doth hereby, for himself, his heirs, executors, and administrators, covenant with the said parties of the third part, their heirs and assigns, that he, the said party of the first part, now hath power to grant ALL AND SINGULAR the said premises TO THE USE of the said parties of the third part, their heirs and assigns, in manner aforesaid, and free from incumbrances.

584. COVENANT for RIGHT to GRANT, and for FURTHER ASSURANCE.

THE SAID (*mortgagor*.) for himself, his heirs, executors, and administrators, covenants with the said _____, his heirs and assigns, that the said M. is entitled to execute this *grant* of the premises, free from incumbrances; AND THAT such grant shall, if required, be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said M., or his estate.

585. COVENANT that LEASE is SUBSISTING, and that MORTGAGOR has a RIGHT to DEMISE; will keep UNIMPEACHED, and FURTHER ASSURE.

THE SAID (*mortgagor*.) for himself, his heirs, executors, and administrators, covenants with the said _____, his executors, administrators, and assigns, that the said *lease* is subsisting unprejudiced, and the said M. is entitled to execute this *demise* of the premises, free from incumbrances; THAT he, and those claiming under him, shall do and suffer nothing whereby the said lease may be prejudicially affected; AND THAT this demise shall, if required,

CLAUSES IN MORTGAGES.

be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said M., and his estate; the last day of the said years' term in foreclosed or sold premises being held in trust for the person or persons entitled to the subsisting residue of the term hereby created.

586. ANOTHER.

THE SAID (*mortgagor*), for himself, his heirs, executors, and administrators, covenants with the said , his heirs, executors, administrators, and assigns, that the said *lease* is subsisting unprejudiced, and the said M. is entitled to execute this *assignment* of the premises, free from incumbrances and liability, under the said lease, up to the present date; AND THAT such assignment shall, if required, be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said M., and his estate.

587. ANOTHER.

THE SAID (*mortgagor*), for himself, his heirs, executors, and administrators, covenants with the said , his heirs, executors, administrators, and assigns, that the said *lease* is subsisting unprejudiced, and the said M. is entitled to execute this *assurance* of the respective premises, free from incumbrances; THAT he, and those claiming under him, will do and suffer nothing whereby the said lease may be prejudicially affected; AND THAT this assurance shall, if required, be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said M., and his estate; the last day of the said years' term in foreclosed and sold premises being held in trust for the person or persons entitled to the subsisting residue of the term hereby created.

588. ANOTHER.

THE SAID (*mortgagor*), for himself, his heirs, executors, and administrators, covenants with the said , his heirs, executors, administrators, and assigns, that the said *lease* is subsisting unprejudiced, and the said M. is entitled to execute this *assurance* of the respective premises, free from incumbrances and liability, under the said lease, up to the present date; AND THAT such assurance shall, if

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CLAUSES IN MORTGAGES.

required, be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said M., and his estate.

589. ANOTHER.

THE SAID (*mortgagor*.) for himself, his heirs, executors, and administrators, covenants with the said _____, his executors, administrators, and assigns, that the said M. is entitled to execute this assignment of the premises, free from incumbrances; AND THAT he and all necessary persons will, at the cost [excepting as regards foreclosed or sold premises] of the said M., and his estate, do all acts required for perfecting such assignment and effecting the recovery of the said premises.

590. ANOTHER.

AND THAT he, the said party of the first part, and his heirs, and every other person lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said parties of the third part, their heirs, executors, administrators, or assigns, but at the cost of the said party of the first part, his heirs, executors, or administrators, execute and do all such assurances and acts, for further or better assuring all or any of the said premises TO THE USE of the said parties of the third part, their heirs and assigns, in manner aforesaid, as by them shall be reasonably required.

591. POWER to MORTGAGEE to DISTRAIN for INTEREST.

Where property is in possession of mortgagor.

AND, for the better securing the payment of the interest to become due, from time to time, on the principal money hereby secured, the said (*mortgagor*) doth hereby grant unto the said (*mortgagee*.) his executors, administrators, and assigns, that, when and as often as it shall happen that the interest from time to time to become due under this security shall be in arrear, in whole or in part, for the space of _____ days after any of the days whereon the same shall become due, [or, after the _____ day of _____, and the _____ day of _____, in each and every year during the continuance of any principal money on this security,] it shall be lawful for the said (*mortgagee*.) his executors, administrators, or assigns,

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CLAUSES IN MORTGAGES.

into and upon the hereditaments and premises hereby demised, [or, granted and conveyed,] or otherwise assured or expressed, or intended so to be, or any part thereof, respectively, to enter and *distrain* for the same interest, and all the arrears thereof, and the distress and distresses then and there found, to remove and impound and in pound to detain, and in due time to appraise and dispose of the same in due course of law, in the same manner and as fully and effectually as landlords are authorized to do in respect to distresses for rent reserved on leases for years, to the intent that the said (*mortgagee*.) his executors, administrators, and assigns, shall thereby be paid and satisfied the said interest, and all arrears thereof, and all costs occasioned by non-payment thereof.

[To be inserted in the mortgage deed, before the covenants.]

592. SHORT FORM *to follow* COVENANT for PAYMENT of INTEREST.

AND, in case the said interest, hereby reserved, or any part of the same, shall be in arrear for the space of fourteen days next after any of the days herein before appointed for payment thereof, it shall be lawful for the said (*mortgagee*.) his heirs, executors, administrators, or assigns, into and upon the said hereditaments and premises to enter, and then and there to *distrain* for such interest so in arrear as aforesaid, and impound or dispose of the distress or distresses so taken, or otherwise to act therein according to due course of law, as in cases of distress taken for non-payment of rent reserved upon common demise or lease.

593. PROviso that MORTGAGOR shall have SIX MONTHS to pay-in PRINCIPAL.

PROVIDED THAT the said M., his executors, administrators, or assigns, shall not [excepting in the event of some interest being ten days unpaid after a written demand] be required to pay the said principal before the _____ day of _____, or such earlier day as the holders or holder of this security shall, by six calendar months' previous written notice, appoint; THE SAID M., his executors, administrators, and assigns, being entitled, meanwhile, to the possession and use of the premises.

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CLAUSES IN MORTGAGES.

594. COVENANT to REIMBURSE MORTGAGEE.

THE SAID (*mortgagor*,) for himself, his heirs, executors, and administrators, covenants with the said _____, his executors and administrators, that the said M., his heirs, executors, or administrators, will, on demand, reimburse the said _____, his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest, after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; BUT SO THAT payment of interest on such last mentioned moneys, after the rate of _____ dollars per cent. per annum, within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

595. ALL EXPENSES to be a FURTHER CHARGE.

ALL EXPENSES under the preceding powers, [other than the power of sale,] with interest after the rate aforesaid, shall constitute a charge on the premises, the moneys arising therefrom being applicable as the purchase moneys aforesaid, or [as to fire insurance moneys, and if the holders or holder of the security shall so elect,] in rebuilding the premises insured. Provided that the aggregate of such expenses as aforesaid, exclusive of the insurance, and of the said sum of _____ dollars, [and _____ further advance as aforesaid,] shall not exceed _____ dollars.

596. COVENANT with SEVERAL MORTGAGEES to REPAY EXPENSES.

THE SAID (*mortgagor*,) for himself, his heirs, executors, and administrators, covenants with the said A. B. and C., their executors and administrators, that the said M., his heirs, executors, administrators, and assigns, will, on demand, reimburse the said A. B. and C., or the [survivors or] survivor of them, his executors or administrators, or their or his assigns, all expenses under the subsequent powers, [other than the power of sale,] with interest after the rate aforesaid, and will pay to them or him interest, after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; BUT SO THAT payment of interest, after the rate of _____ per cent. per annum, within seven days next after each of the said

CLAUSES IN MORTGAGES.

half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

597. HABENDUM *in* MORTGAGE of LEASEHOLDS *by* DEMISE.

To HOLD the said premises unto the said C. D., his executors, administrators, and assigns, for the residue of the said term of years, except the last days thereof.

[N. B.—This exception of the last days of the lease is necessary to make the instrument a demise, and to exempt the lessee from the rents and covenants of the original lease, to which he would be liable if the whole remaining term were conveyed to him by assignment.]

598. HABENDUM *in* FEE of an EQUITY of REDEMPTION.

To HOLD the said premises, with their usual or legal appurtenances, UNTO and TO THE USE of the said (*second mortgage*.) his heirs and assigns. SUBJECT, NEVERTHELESS, to the said herein before recited mortgage; the proviso for redemption therein contained; and the powers, provisos, declarations, and agreements herein after expressed and declared of and concerning the same.

599. HABENDUM of a MORTGAGE of a MORTGAGE *in* FEE.

To HOLD the said premises, with their usual or legal appurtenances, UNTO and TO THE USE of the said (*present mortgage*.) his heirs and assigns. SUBJECT, NEVERTHELESS, to such equity of redemption as is now subsisting in the said hereditaments and premises, under or by virtue of the said herein before recited indenture of mortgage; AND subject also to the proviso for redemption herein after contained.

600. COVENANT *that* MORTGAGOR *shall not be* REQUIRED to PAY *before* TIME LIMITED.

PROVIDED THAT the said (*mortgagor*.) his heirs, executors, administrators, or assigns, shall not pay off nor [excepting in the event of some interest being thirty days in arrear, or of the breach of some other covenant of the said M.,] be required to pay the said principal before the day of

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AN ACT RESPECTING MORTGAGES OF REAL ESTATE.

601. COVENANT of MORTGAGEE to PRODUCE DEEDS.

THAT, in case the said (*mortgagor*) shall at any time enter into any contract or agreement for the sale or mortgage of the mortgaged property, the said (*mortgagee*) will, at the expense of the said (*mortgagor*), supply him with abstracts of the title-deeds, and permit the intended purchaser or mortgagee to compare the same with the originals.

602. No WARRANTY by STATUTE in the words "GRANT" and "EXCHANGE."

"NEITHER the word 'grant' nor the word 'exchange,' in any deed, shall have the effect of creating any warranty or right of re-entry, nor shall either of such words have the effect of creating any covenant by implication, except in cases where, by any act in force in Upper Canada, it is or shall be declared that the word 'grant' shall have such effect." 12 Vic., c. 71., sec. 6.

SEEMLE that no such act is in existence.

Revised Statutes, 1859, CAP. LXXXIV., p. 878.

603. AN ACT respecting MORTGAGES of REAL ESTATE.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

(1.) Any mortgagee of freehold or leasehold property, or any assignee of such mortgagee, may take and receive from the mortgagor, or his assignee, a release of the equity of redemption in such property, or may purchase the same under any power of sale in his mortgage, or any judgment or decree, without thereby merging the mortgage debt as against any subsequent mortgagee or registered judgment creditor having a charge on the same property. 14, 15 V., c. 45, s. 1.

(2.) In case any such prior mortgagee, or his assignee, takes a release of the equity of redemption of the mortgagor, or his assignee, in such mortgaged property, or purchases the same under any power of sale in his mortgage, or any judgment or decree, no subsequent mortgagee, or his assignee, or registered judgment creditor, shall be entitled to foreclose or sell such property, without redeeming or selling subject to the

Mortgagee of freehold property, &c., may receive, release, &c., without merger of debt.

When prior mortgagee shall take release of equity of redemption, &c., subsequent mortgagee not entitled to foreclose or sell property

AN ACT RESPECTING MORTGAGES OF REAL ESTATE.

without recording, &c.

Priority of mortgage and judgment under registry act not to be affected by this act.

In proceedings for foreclosure, &c., state of mortgage account may be proved *prima facie* by statement on oath of assignee of mortgage.

Executors of deceased mortgages may convey or release the lands mortgaged in certain cases.

rights of such prior mortgagee, or his assignee, in the same manner as if such prior mortgagee, or his assignee, had not acquired such equity of redemption. 14, 15 V., c. 45, s. 2.

(3.) This act shall not affect any priority or claim which any mortgagee or judgment creditor may have under the registry laws. 14, 15 V., c. 45, s. 3.

(4.) On any proceeding for foreclosure by, or for redemption against, an assignee of a mortgagee, the statement of the mortgage account, under the oath of the state of such account, and no affidavit or oath shall be required from the mortgagee, or any intermediate assignee, denying any payment to such mortgagee, or intermediate assignee, unless the mortgagor, or his assignee, or the party proceeding to redeem, denies the correctness of such statement of account by oath or affidavit. 14, 15 V., c. 45, s. 4.

(5.) When any person, entitled to any freehold or leasehold land by way of mortgage, has departed this life, and his executor or administrator is entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the said mortgage, may convey, release, and discharge the said mortgage debt, and the legal estate in the land; and such executor or administrator shall have the same power as to any portion of the lands, on payment of some part of the mortgage debt, or on any arrangement for exonerating the whole or any part of the mortgaged lands without payment of money, and such conveyance, release, or discharge shall be as effectual as if the same had been made by the person having the legal estate. 14, 15 V., c. 7, s. 8.

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CHAPTER V. OF CONVEYANCING SECURITIES.

NOTES.

BONDS.

604. *A bond given as an original security* for the payment of a certain sum of money is a very simple one; but, if the bond be given as a collateral security, the original security should be recited at the end of the condition for payment, so as to show that the sum secured by both is identical, and also the date, parties, &c., to the original should be set out; but, if the money is to be repaid by installments, the loan should be recited immediately after the exordium, and the manner in which it is to be paid, with a condition for avoiding the bond if such installments are duly paid.

605. *When the bond is by more than one obligor*, or sureties, they should be *severally* as well as jointly bound; for, if only jointly bound and one of the obligors should die, his representatives would be wholly discharged at law, and in most instances in equity too.

Equity will however consider the *intention* of the parties: and therefore, if a joint and several bond was intended, and the parties were ignorant of the distinction between the two instruments; or if a joint bond is given for a *partnership* debt; or if it relates to transactions in which all the parties bound have been individually benefited, as where a joint bond is given to secure a banking account upon which several persons may receive advances; such bond will be sustained as joint and several, though on the face of it a joint bond only.

WARRANTS of ATTORNEY.

606. *A warrant of attorney* empowers certain attorneys to enter up judgment in double the amount intended to be secured, with a defeasance that no execution shall be sued out until default made by the debtor. Where the warrant is given as a collateral security, a recital of such security should precede the defeasance.

POST OBIT BONDS.

607. *Post obit bonds* are generally accompanied by a warrant of attorney, in which the bond is recited. The bond itself has the usual exordium and penalty; then follows a recital of the agree-

POST OBIT BOND.—REDEMPTION OF.

ment that, in consideration of \$1000 now paid, the obligor is to pay the obligee, say, \$2000 in the event of the obligor surviving some person named, on whose decease he is to succeed to property, with a condition for avoiding the bond if the obligor survives the person named and pay the \$1000, or shall die in the lifetime of such person. In the latter event the obligee will lose his money.

The defeasance declares that it is given as security for payment to the obligee of the money secured by the bond in case the obligor should *outlive* the person upon whose decease it is to become payable, but that no execution shall issue unless that event take place, or if the obligor shall in such event pay the sum there secured and then payable.

If such obligation is given for the release of a pre-existing debt, the amount and nature of the debt should be set out, and the inability of the obligor to discharge it during the lifetime of the party upon whose decease the post obit payment is to be made, with the agreement of the obligee to release the obligor from the debt upon his executing the post obit bond, and also recital that such release has been given with a condition for avoiding the bond on payment of the money thereby secured within a certain time after the death of the person named, or by the decease of the obligor in his lifetime.

608. *A power to redeem* a post obit is sometimes reserved; and, as it is not easy to settle what may be an adequate sum for that purpose, the best way is to leave that to be determined by an actuary, thus:—

“In case the said (*obligor*) shall at any time during the lifetime of the said (*person designated*) be desirous to redeem the said expectant sum of _____ dollars, or any part of the same, and shall give _____ days’ previous notice in writing to the said (*obligee*), his executors, administrators, or assigns, or leave the same at his or their last or usual place of abode or business in Upper Canada, and shall, at the end of _____ days after such notice shall be given, well and truly pay or cause to be paid unto the said (*obligee*), his executors, administrators, or assigns, such sum or sums of money as the actuary for the time being of the _____ society shall deem a reasonable price for such total or partial redemption, as the case may be, at the time of such redemption; and also if, in the event of any such total or partial redemption as aforesaid, the said (*obligor*), his heirs, executors, or administrators, shall, within six calendar months next after the decease of the said (*person designated*), well and truly pay unto the said (*obligee*), his executors, administrators, or assigns, so much of the said sum of _____ dollars as shall not have been redeemed as aforesaid; THEN, or in either of such cases, the above written bond to be void, &c.”

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FURTHER CHARGES.—TRANSFERS OF MORTGAGES.

609. *If the bond is to be kept sealed* until the death of the party designated, unless redeemed before, and to be kept in the meantime in the custody of a third party, a written memorandum should set forth the terms of the deposit, and that the amount redeemed, if any, shall be indorsed upon the bond.

610. *Further charges* should never be taken without first ascertaining that no incumbrances have affected the property since the mortgage was executed. And, if *more property* be added by way of additional security, it is generally desirable in such case to take a power to redeem in parcels.

And, if household furniture, &c., is thus taken as additional security, care must be taken to comply with all the conditions of the statute. 20 Vic., cap. 3.

TRANSFERS OF MORTGAGES.

611. *The right of transfer* is incidental to a mortgage, nor will the express dissent of the mortgagor have the slightest effect upon such transfer. Still it is better to have the concurrence of the mortgagor as a party, to prevent questions being raised at a future day as to the amount of money really due from him on the mortgage at the time of its transfer; for a mortgagor may set off any payments made by him on account of the mortgage against any transferee who, without his consent, takes a transfer of the mortgage; and even payments made *after the transfer* may be thus set off if the mortgagor has no notice of the transfer at the time of such payments. Nor will the fact of registering a deed of transfer be sufficient to fix a mortgagor with notice in England; but in Canada registration is notice in equity, by 13, 14 Vic., c. 63, s. 8.

612. *Mortgage is bound to account for the rents and profits* as well *after* as before the transfer, if he assigns without the concurrence of the mortgagor; and, therefore, if his assignee becomes insolvent, he will have to answer for those matters. If, however, the concurrence of the mortgagor cannot be had, every possible inquiry should be made to ascertain whether the whole mortgage debt is still due, and he should have notice of the transfer as soon as possible.

613. *When the mortgagor does not concur* the original mortgage should be recited, and that default has been made in payment, [if so,] and the amount remaining due. If the interest has been paid by third parties, or in any particular manner, that should be stated; as by tenants under notice from the mortgagee, or by representatives of a deceased mortgagor, and the same if any part of the principal has been so paid.

614. *The claim of mortgagor's heir or devisee* to have the mortgage debt discharged out of the *personal estate* was abolished in England by 17 and 18 Vic., c. 114. Formerly, if mortgagor himself created the debt, his personality was charged with it; but, if

MORTGAGE DEBT.—INFANT HEIR.

property came to him *already charged*, it so descended to the heir or devisee. The act just mentioned abolishes this distinction as to all persons dying after 1854, and the realty is charged in every case except that of persons claiming under wills, deeds, or documents made before 1855, and except the mortgagor has signified a contrary intention, which he may do by will or otherwise, so as to make his personalty the *primary fund* for payment of mortgage debts.

We seem to have no statute in Canada like the English statute 17 and 18 Vic., c. 114; and therefore it is presumed that the law remains with us as it was in England before that statute was passed.

615. *If the mortgagor has left an infant heir*, upon whom the equity of redemption descends, the facts should be recited, so as to show how it descended.

616. *The mortgage debt* should always be assigned, with power of attorney to sue and give discharges for it.

617. *Conveyance of the premises* then follows, subject to the equity of redemption; and, if the mortgage contained a power of sale, then say:—

“But subject to the powers of sale, and all other powers and authorities, trusts, interests, and purposes, in the said recited indenture of mortgage expressed and contained, as are now subsisting; and that as fully and effectually, to all intents and purposes, as the said (*original mortgagee*), his heirs, executors, administrators, or assigns, could or might have exercised the same.”

618. *The premises and debt* may both be assigned in the same clause, but the habendum should have two clauses.

619. *If less than the original sum* is given by the transferee, the transaction is, in law, an *actual purchase*.

620. *Where the mortgagor concurs*, the mortgagee, or whoever has the *legal* estate, must be the *first* party in the deed, because the mortgagor has now only an *equitable* estate. The mortgage is recited and the amount due stated; but usually all arrears are paid to the mortgagee up to the time of transfer, and if so, such payment is recited.

621. *The mode of assurance* differs from an original mortgage in no way except that the mortgagor is made a conveying party in the operative part of the deed, in which he acknowledges the payment by the transferee to the transferor to be made by his direction and confirms the conveyance, the transferor covenanting that he has done no act to incumber.

622. *If a further advance is made*, and even where a further charge is made in respect thereof, a slight alteration in the form will suffice.

623. *If additional property be added*, it is best to have *two* test-

ADDITIONAL PROPERTY.—CLAUSES.

atum clauses : one in which the mortgagee concurs with the mortgagor in conveying the mortgaged premises, and the other in which the mortgagor alone conveys the additional property.

(1.) Therefore recite the mortgage, and the instrument under which the mortgagor holds the additional property, and the amount of moneys then due on the mortgage.

(2.) Recite the agreement to pay off the mortgage debt.

(3.) The mortgagee or mortgagor should then convey the mortgaged premises TO HOLD IN FEE, subject to the proviso for redemption therein after contained.

(4.) Now comes the further testatum and habendum, by which the mortgagor conveys the additional property.

(5.) The proviso for redemption, power of sale, foreclosure clause, and usual mortgage covenants.

624. *If a mortgage by demise is converted into a mortgage in fee, the order is much the same; e. g. :—*

(1.) Recital of mortgage by demise.

(2.) The amount of debt and interest due, and agreement for the transfer.

(3.) The mortgagee, by the mortgagor's direction, surrenders his term, and the mortgagor conveys to him in fee, TO HOLD, subject to the proviso for redemption.

(4.) The usual mortgage clauses.

625. *Transfer by representatives of a deceased mortgagee.*—If the mortgage was by way of demise, or was of chattel property only, the personal representatives must convey; but, if the mortgage were in fee, the heir also must concur, the one to convey the legal estate, the others to release the premises from claims on account of the mortgage debt. In this case the heir is the party of the first part; the personal representatives are of the second part; the mortgagor of the third part; and the transferee of the fourth part. *Executors* cannot incur, because they take no legal estate in the premises, and therefore they need not join the heir in that covenant; but, if the mortgage is of a *chattel interest*, or partly so, the whole legal estate in such property being in them, they should covenant that they have done no act to incur.

626. *In mixed interests, as freehold and chattel, a further testatum and habendum is necessary to pass the chattel interest, in which the heirs do not concur, but which the mortgagor confirms. If the original mortgage were by way of assignment, the mortgagor may assign as well as confirm, and this name should be in the all-estate clause, but not if it were an underlease.*

627. *The assignment of a bond* must contain a power of attorney to sue for the debt in the name of the obligee. The form is simple; e. g. :—

(1.) The date and description of the parties.

ASSIGNMENT OF BOND.—REDEMPTION.

(2.) Recital of the bond, and the amount of principal and interest due thereon.

(3.) Assignment of bond and bond-debt to the assignee, with power to sue in the name of obligee, and to give effectual discharges for the debt.

(4.) Qualified covenants that assignor has good right to assign; that he will not release the debt thereby secured, or any action which may be brought for its recovery under the power of attorney; and for further assurance.

(5.) Covenant of the assignee to indemnify the assignor from the consequences of any action brought for the recovery of the debt under the power of attorney.

628. *If the assignment is by trustees*, they only covenant that they have done no act to incumber.

REDEMPTION and RECONVEYANCE of MORTGAGED ESTATES.

629. *Payment of principal, interest, and costs* will entitle the party who has the right of redemption to redeem the premises; and, if mortgagee refuse, the court will compel him to reconvey and deliver up the muniments of title; and this right subsists until barred by time or by foreclosure.

630. *Right to redeem may be lost* by the *laches* of the mortgagor: as where he suffers a long period to elapse before asserting his right; or if he is guilty of any fraud by which the mortgagee's interest may be imperilled or prejudiced.

631. *What is a bar.*—(1.) *Possession* by mortgagee for twenty years, without any written acknowledgment that the estate is held upon mortgage, is a complete bar, and no time is now allowed for disabilities; but written acknowledgments, or accounts between mortgagor and mortgagee, are sufficient to keep open the right to redeem, and for this purpose even a letter was held to be enough in *Trulock v. Robley*, 12 Sim., 402.

(2.) *Fraud*, as if mortgagor execute a second mortgage without giving second mortgagee notice of all prior charges. In such case he will lose the right of redemption as against such second mortgagee. (*Strafford v. Selby*, 2 Vern., 589.)

632. *As to notice to redeem.*—If the mortgagor desires to redeem before the end of the six months' notice, the mortgagee is in practice entitled to six months' interest; and it has been said that tender of six months' interest in advance is equivalent to notice, but this seems doubtful. The mortgagee, however, will very seldom refuse the opportunity to make double interest of his money, which such prepayment would give him.

633. *Mortgagee may deprive himself of the right to notice*, (1.) By making a previous demand of payment; (2.) By taking steps to enforce it. In either of these cases the mortgagor will, at any time

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NOTICE TO REDEEM.—TACKING.

thereafter, be entitled to a reconveyance on tendering principal, interest, and costs. Nor will a mortgagee be entitled to notice where any particular day is appointed for payment by agreement of the parties.

634. *Mortgagor is not entitled to any notice* before the mortgagee institute proceedings against him, either for the debt or for possession, unless there is an express stipulation in the mortgage deed.

635. *Tacking incumbrances.*—If the mortgagor is indebted to the mortgagee in any other sums which would create a lien on the mortgaged premises, he will not be allowed to redeem without satisfying those charges also. And, if the mortgagor has mortgaged several estates to the same mortgagee, he cannot call upon such mortgagee to allow him to redeem the one without the other; notwithstanding that the mortgages were made at separate times, and to secure distinct debts, (*Shuttleworth v. Laycock*, 1 Vern., 245.) and the mortgaged property may be of different kinds. (*Jones v. Smith*, 2 Ves., 276; 6 *ib.*, 229.) But this rule will hold only where *both* the mortgages are *redeemable*; and, therefore, if the time to redeem *one* of them has *not arrived*, the *other* may be redeemed. Again, *third parties* are not to be prejudiced by this rule: therefore, if A. and B. mortgage to C., and A. or B. afterward mortgage a distinct estate to C., for a different debt, the *first mortgage* may be redeemed without redeeming the *separate mortgage* also.

And, if the mortgagee assigns one of several mortgages, he, by his own act, brings it under the last named exception, and it may be redeemed in the hands of his assignee.

And, if the mortgagee takes no *legal* estate in the premises, the rule does not apply.

636. *Bond debts* cannot be *tacked* to mortgage debts as against the mortgagor or purchasers claiming under him, even with notice of the bond, nor as against purchasers for valuable consideration; but it is otherwise as to the heir or devisee of the mortgagor, or his devisee of the equity of redemption; for, the heir being in by descent, the estate will be assets in his hand to pay bond debts, which, if due to the mortgagee, must be paid before the mortgaged premises can be redeemed.

On the same principle, the devisee of an equity of redemption cannot redeem (since 3 & 4 Will., & M., c. 13.) without paying off both mortgage and bond, because such devise is void as against creditors.

Again, if the mortgage is for a term, or other property which is transmissible to personal representatives, the same rule applies, and they cannot redeem without paying both bond and mortgage; because the equity of redemption of the term is assets in their hands, and it is immaterial whether bond or mortgage were made first. (*Eccles v. Thawell*, Proc. Cha., 18.)

TACKING.—PAYMENT INTO COURT.

637. *The right of tacking* against the heir, devisee, or personal representatives of the mortgagor in England does not affect the assignees of any of them, but *they* will be entitled to redeem the premises on payment of the mortgage only, (*Vandergree v. Willis*, 3 Bro. c. c., 20;) neither will mesne incumbrancers be prejudiced, whether by mortgage, judgment, or statute staple, for the bond creditor has not the same equity against them as against an heir at law.

N. B.—Such debts only can be tacked against the mortgagor's representatives as they are bound to pay in their representative character; but simple contract debts may, by 3 and 4 Wm. 4, c. 104, in all cases, be tacked as against the heir or devisee of real estate, which is not charged with the payment of debts.

638. *Mortgagor wishing to redeem* should give mortgagee six months' notice in writing, and the notice should be plain and positive, and it is often advisable to appoint time and place for payment; because, if no place is named, the mortgagor is bound to find out the mortgagee, and make personal tender to him, unless he is out of the province, and without valid tender the mortgagee is not bound to reconvey.

Payment into court is not sufficient; and, unless tender be made on the *precise day* when the notice expires, the mortgagee will be entitled to a fresh six months' notice; but tender, at the *place named*, is sufficient; and, if time be named, as between the hours of twelve and two in the afternoon, attendance at those hours only will be sufficient, and the mortgagee will have *no claim for interest* after that time, if he refuses [or neglects] to receive the money, unless the title to the equity of redemption is disputed, or it is doubtful to whom it belongs.

639. *Draft reconveyance* should be presented to the mortgagee's solicitor for approval, a reasonable time before the expiration of the notice; but, if the reconveyance is not settled, still the mortgagor can demand his muniments of title on payment of principal, interest, and costs.

640. *The deed of reconveyance in fee* may be similar in form to 409, with modifications to suit any particular case; but, if the mortgage were by *demise*, then a simple acknowledgment of the receipt of the mortgage money, indorsed on the deed and signed by the mortgagee, will be conclusive proof of the surrender of the term, and no deed of surrender is necessary.

641. *When parcels only are redeemed*, it is important, in addition to the ordinary covenant that the mortgagee has done no act to inenumber, to insert another covenant that he will produce all such title-deeds relating to the reconveyed premises as are still in his custody.

In many cases, indeed, where due regard is not had to the safety and marketableness of titles in after-time, the mortgagor is satisfied

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QUIT CLAIM.—REMEDIES OF MORTGAGEE.

with a *simple release and quit claim* as to the parcels redeemed; but, if the mortgagor should never be able to redeem the remaining lands, he may find the value of those he *has redeemed* considerably affected by his want of evidence of title, and therefore such a simple form cannot be recommended.

642. *Reconveyance by mortgagee's representatives* must, in the case of freehold estate, be by both his real and personal representatives.

If a deceased *mortgagor* has made *no devise* capable of passing mortgaged estates, his heir [or heirs] must convey; but, if he *has* made such a devise, then the reconveyance must be made by the devisees, and the heir need not concur; but, in the case of devisees or administrators, *all* of them must concur, while in that of *executors* the act of *one* will bind the rest. [1 Eq. Ca. Abr., 319.]

643. *In all chattel interests*, as of *terms*, &c., the executors or administrators must reconvey.

644. *An heir may be compelled to reconvey*, though disinherited of every thing but his dry, unprofitable legal estate, and devisees and personal representatives are equally compellable; and, if the heir is an infant, his reconveyance will be valid under an order of the court of Chancery; and, in case of refusal or neglect to execute such reconveyance by heir, devisee, or personal representatives, for twenty days, the court will appoint any other person to execute the same, and give the same effect to such execution as if the recusant or neglecting party had executed the deed.

REMEDIES of the MORTGAGEE.

645. *The remedies of a mortgagee* are:—

- (1.) By action of ejectment to recover possession of the premises;
- (2.) By notice to the tenants to pay him the rents and profits, which he may enforce by distress.
- (3.) By action on the covenant for debt and interest, or by action of debt upon the mortgage bond where such a collateral security is given, and where there is a covenant to pay interest distinct from the debt, he may sue upon the covenant; or he may enter judgment and sue out execution upon a warrant of attorney or confession of judgment, where such has been given;
- (4.) He may file a bill in equity for foreclosure; or,
- (5.) He may sell under the *power of sale*, which is his speediest, best, and most usual remedy.

646. *Mortgagor is tenant at will* until default, and afterward merely tenant at sufferance, and may be ejected *without notice*; and so may any *lessee* under a lease from the mortgagor, whether the lease were made before or after default.

647. *Ejectment* must be brought by, or in the name of, the party who has the *legal estate*.

648. *Receipt of the rents and profits*, after default and notice to the tenants, may be had in two ways:—

(1.) If the lease to the tenants were *prior* to the mortgage, the notice operates as an attornment at common law, and relates to the grant; so that all rents, due and not paid to the landlord at the time of notice, may be *distrainted* for by the mortgagee; (2.) But, if the lease were granted *after* the mortgage, the mortgagee cannot enforce payment as of *rent*, but his remedy will be by *ejectment* and an action against the tenants for the mesne profits.

649. A *power of distress* is sometimes inserted in a mortgage, to enable the mortgagee to distrain upon the mortgagor in possession, and the amount of interest reserved is stated to be by way of rent; but such a power is *bad* where the object of the mortgage is not *bona fide* to create the relation of landlord and tenant.

650. *Rents and profits* the mortgagee must account for, if he enter into the receipt of them, and he must pay to the mortgagor the surplus, if any, over and above his principal and interest; and, if he do not do so, he will be chargeable with interest on the balance, and annual rests will be decreed against him as well in the case of occupation-rents as on account of rents and profits actually received.

651. *Expenses out of pocket*, incurred in collecting rents, are allowed to the mortgagee; but *nothing for his trouble*, not even where an express agreement to that effect has been entered into between the mortgagor and mortgagee.

652. *Proceedings on bond and covenant*.—If there is a distinct covenant for payment of interest at stated periods, an action will lie on that covenant, or in debt on the mortgage bond; and the latter course is the best, because the judgment entered up for the debt on the bond will stand as security for *future breaches* when the mortgagee may have a *seire facias* on the judgment, suggest the breaches, and assess damages thereon by a writ of inquiry; but, in covenant, the plaintiff must bring a fresh action for every breach.—(See also *n.* 664.)

653. *Equity will not allow costs at law* if both remedies are taken at the same time, in Canada, though formerly it was otherwise. The better course is to proceed first at law on the covenant or bond; for, if the mortgage is foreclosed first and then an action brought on the covenant or bond, equity will restrain the action, and its institution will open the foreclosure and revive the equity of redemption; and, if the mortgagee has sold the estate, equity will restrain him from suing the mortgagor for any portion of the mortgage debt, though the sale may not have paid it off.

654. *In foreclosure*, all persons interested in the equity of redemption must be made parties to the bill. The devisees of the mort-

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EQUITABLE MORTGAGES.—POWERS AND TRUSTS FOR SALE.

gaged estate, or the heir of a deceased mortgagee, and also his personal representatives, must be made parties, whether the mortgage be of real or personal property. The heir ought not to be made a party where there is an express devise of mortgaged premises; and, if the devisee does so, he will not be allowed his costs.

655. *As to equitable mortgages.*—An equitable mortgagee on a suit to give effect to his security seems, according to modern practice, to be entitled to a decree for a conveyance, free from all equity of redemption, and not to a decree for a sale only; but, if the mortgagor be dead, then the mortgagee is entitled to a sale, and to stand as a creditor for the balance remaining, if any, on the general assets of the mortgagor.

656. *Powers and trusts for sale* must be exercised in strict conformity to the express terms by which they are created. Remedy by foreclosure is absolutely barred by a trust.

Under ordinary powers of sale, the mortgagee cannot compel the mortgagor to concur in the conveyance, though the mortgage contain an express covenant on his part to do so; nor is such concurrence necessary, for the mortgagee can himself make an effectual conveyance, and, as to the mortgagor covenanting or title with the purchaser, that is even better dispensed with, because the covenants in the mortgage which run with the land are absolute, while any express covenants with the purchaser would be qualified only, and exonerate the mortgagor from the others.

A mortgagee can only be required to covenant that he has done no act to incumber the premises.

A second mortgagee can only sell subject to the first mortgage; but he may redeem that mortgage, and so confer a clear title.

657. *Surplus purchase money*, after paying the mortgage debt and expenses, will go to the mortgagor's personal representatives if the sale took place in the mortgagor's lifetime and were of freehold or other estate of inheritance, and he died before payment was made; and, if the sale of such property takes place after the mortgagor's death, the surplus purchase money will go to the heir or to the devisee of the premises upon whom the equity of redemption descends or is devised.

But, if the sale is under a trust for sale, there is a constructive conversion of the real and personal estate by the creation of the trust, and the surplus goes to the personal representatives, without any reference to the time when the sale took place.

The surplus arising from the sale of a chattel interest will, of course, go to the personal representatives; and the heir has no claim upon it whatever.

REDEEMABLE ANNUITIES.

658. *Annuities* out of real or personal property may be made to

ANNUITIES.—POWER OF ENTRY.

descend to a man and his heirs like real estate, or in any way the grantor may elect.

If an annuity is out of a freehold estate in England, and for a *life* or lives, the 43 Geo. 3, c. 28, s. 5, empowers the annuitant to distrain for it as a *rent seek*; but, if it is only for a term of years, or, in any case, if out of a chattel interest, a *power of distress* will be requisite to confer that right, unless the grantee has the reversion in the property charged. In Canada a *power* is necessary in either case.

659. *Power of entry* to secure arrears is also usually taken, and next after the power of distress; and, in all cases where the grantor can confer such power, it is provided that the possession of the grantee shall be *without impeachment of waste*; but, if the right of the grantor is doubtful, then say "so far as the grantor is able to confer that privilege."

660. *Powers of sale* are also taken either to pay arrears or absolute to sell the property, and invest the proceeds for the satisfaction of the annuity, paying the surplus, if any, to the grantor.

661. *The covenants* usual will be found in the forms; and, when needful, a clause to insure against fire is inserted.

662. *The proviso for repurchase* is in the form of a separate testamentary clause.

663. *Annuities in leasehold* may be in the same form, with a slight variation and recital of the lease.

664. *A mere personal annuity* may be secured by the grantor executing a deed of covenant to pay the annuity and insure his life, accompanied by a bond or a warrant of attorney, or both, by way of collateral security. If there is no warrant of attorney, a bond is better than a covenant; because, as remarked at *n.* 652, judgment may be obtained on a bond for the *penalty* in a single action, and *execution* taken out from time to time on the arrears, whereas, in covenant, *successive actions* must be brought to recover the arrears as they become due. And besides, on a *covenant* the annuitant is not entitled, as against simple contract debts, to have *assets reserved* for future payments in case of the grantor's death, as he is if the annuity is secured by bond, which for that purpose is treated as an actual subsisting debt.

665. *Clauses in a personal annuity deed.*

(1.) Recital that grantor has given grantee his bond, or executed the warrant of attorney, and that a policy of assurance has been effected on the grantor's life.

(2.) Covenant by grantor to pay grantee the annuity, and [if the life policy is *not* already effected] to insure grantor's life and to assign the policy; or

(3.) Its actual assignment, if already effected.

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ANNUITIES.—JOINT LIVES.—BOND.

(4.) Covenant not to do any act which may vacate the policy, or by which any extra premium may become payable thereon, and to repay any moneys which grantee may pay in respect thereof.

(5.) Clause that the bond or warrant of attorney, or both, are to be considered as collateral securities for the annuity; and that, on payment of the annuity, the grantee will acknowledge satisfaction on the record of judgment.

(6.) Proviso for redemption and repurchase.

666. *Registry of annuities* is necessary if charged on real estate.

667. *The regrant of annuities, when redeemed, is not much unlike a reconveyance on paying off a mortgage.*

(1.) Recital of grant of the annuity and proviso for redemption, and that grantor has agreed with grantee to redeem the annuity accordingly, all arrears being paid up to date.

(2.) The premises charged are then reconveyed or reassigned, as the case may be, to the grantor, exonerated from the charge.

668. *An annuity for the joint lives of a man and his wife, charged on land, presents difficulties.*

At common law, a married woman cannot convey, but *semble* that the Canadian statute, 14, 15 Vic., c. 115, may apply to an interest of this kind; for, if not, then it would seem that such an annuity, once granted, cannot be redeemed during the life of the husband, except as to the interest of the husband alone, and that a regrant in full is only possible by the surviving joint annuitant. In practice, however, it has been assumed that the statute applies; and that practice has not yet been overruled by any decision.

FORMS.

669. MONEY BOND.

KNOW ALL MEN BY THESE PRESENTS: That _____ held and firmly
bond unto _____, in the penal sum of _____ dollars of law-
ful money of Canada, to be paid to the said _____, or
to _____ certain attorney, executors, administrators, or as-
signs; for which payment, well and truly to be made, _____ bind
_____ heirs, executors, and administrators, firmly by these
presents. SEALED with _____ seal. DATED this
day of _____, in the year of our Lord one thousand eight
hundred and _____

THE CONDITION of the above written bond or obligation is such

FORMS.

that, if the above bounden , heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto , executors, administrators, or assigns, the just and full sum of dollars, with interest thereon at the rate of per cent. per annum, on the days and times and in the manner following: that is to say, , without any deduction, defalcation, or abatement, whatsoever; THEN the said bond or obligation to be void, otherwise to be and remain in full force and virtue.

SIGNED, SEALED, AND DELIVERED }
 in presence of } A. B. [SEAL.]
 E. F. }

670. BOND for a DEED of LAND.

KNOW ALL MEN BY THESE PRESENTS: That held and firmly bound unto in the penal sum of of lawful money of Canada, to be paid to the said , or to certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, bind , heirs, executors, and administrators, and every of them, forever, firmly by these presents. SEALED with seal. DATED this day of , in the year of our Lord one thousand eight hundred and .

WHEREAS the said ha contracted with the above bounden for the absolute purchase, in fee simple, free from all incumbrances, of the following parcel or tract of land, hereditaments, and premises: that is to say, (*description.*;) AND WHEREAS the said ha agreed to pay therefor the sum of of lawful money of Canada, at the times and in manner following: that is to say

NOW THE CONDITION of the above obligation is such that, if the said , heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, to the above bounden executors, administrators, or assigns, the sum of , at the times and in manner aforesaid; THEN, if the above bounden , heirs and assigns, shall, by good and sufficient deed or deeds of conveyance, in fee simple, convey and assure, or cause to be conveyed and assured, unto the said , heirs and assigns, forever, the said premises herein before described, free from all incumbrances; THEN the above obligation shall be void, otherwise to be and remain in full force and virtue.

SIGNED, SEALED, AND DELIVERED }
 in presence of } C. D. [SEAL.]
 E. F. }

BONDS.

671. COMMON BOND, *with* CONDITION.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town of _____, in the county of _____, and Province of Canada, (*state occupation*), am held and firmly bound unto C. D., of _____, in the county of _____, and province aforesaid, (*state occupation*), in the sum of _____ dollars, lawful money of Canada, to be paid to the said C. D., his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. SEALED with my seal. DATED the _____ day of _____, one thousand eight hundred and _____.

THE CONDITION of the above obligation is such that, if the above bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above named C. D., his executors, administrators, or assigns,* the sum of five hundred dollars, in five equal annual payments from the date hereof, with interest half-yearly, on the first day of January and July in each year, upon the whole sum outstanding on this security; THEN the above obligation to be void, otherwise to remain in full force and virtue.

SIGNED, SEALED, AND DELIVERED }
 in presence of }
 G. H. }

A. B. [SEAL.]

672. BOND of TWO OBLIGORS.

KNOW ALL MEN BY THESE PRESENTS: That we, A. B., of the city of _____, in the county of _____, and Province of Canada, (*state occupation*), and C. D., &c., _____, are held and firmly bound unto E. F., of the city of _____, in the county of _____, and province aforesaid, _____, in the sum of one thousand dollars of lawful money of the Province of Canada, to be paid to the said E. F., his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. SEALED with our seals. DATED this _____ day of _____, one thousand eight hundred and _____.

THE CONDITION of the above obligation is such that, if the above bounden A. B. and C. D., or either of them, their or either of their heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above named E. F., &c., (*here describe the*

FORMS.

payment to be made or the covenant to be performed, as the case may be.) THEN, &c., (as in n. 671.)

SIGNED, SEALED, AND DELIVERED
in presence of
G. H.

A. B. [SEAL.]
C. D. [SEAL.]

673. CONDITION *in a BOND that PRINCIPAL MONEY shall become PAYABLE on DEFAULT in PAYMENT of INTEREST.*

AND it is hereby expressly agreed that, in case of default made in payment of the said interest, or any part thereof, on any day whereon the same is herein before made payable, and if the same remains unpaid and in arrear for the space of thirty days; THEN and from thenceforth, that is to say after the lapse of the said thirty days, the aforesaid principal sum of _____ dollars, with all arrears of interest thereon, shall, at the option of the said C. D., his executors, administrators, or assigns, become due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired: any thing herein before contained to the contrary thereof, in any wise, notwithstanding.

674. BOND *to a CORPORATION.*

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the village of _____, in the county of _____, and Province of _____ Canada, (*state occupation*), am held and firmly bound unto the _____ (*name the company or corporation*), in the sum of _____ dollars, lawful money of the Province of Canada, to be paid to the said (*corporation or company*), or their successors or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. SEALED with my seal. DATED the _____ day of _____, one thousand eight hundred and _____.

THE CONDITION of the above obligation is such that, if the above bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above named (*corporation or company*), or their successors or assigns, the just and full sum of. (*Here set out the money to be paid, or the contracts to be performed, or the duty to be done.*) THEN, &c.

SIGNED, SEALED, &c.

A. B. [SEAL.]

BONDS.

675. BOND to EXECUTORS.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town of _____, in the county of _____, and Province of Canada, am held and firmly bound unto C. D., E. F., and L. M., of the town of _____, in the county of _____, and province aforesaid, executors of the last will and testament of S. T., deceased, late of the _____ of _____, in the county of _____ and province aforesaid, in the sum of _____ dollars lawful money of Canada, to be paid to the said C. D., E. F., and L. M., executors as aforesaid, the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. SEALED with my seal. DATED the _____ day of _____, one thousand eight hundred and _____.

THE CONDITION of the above written obligation is such that, if the above bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above named C. D., E. F., and L. M., executors as aforesaid, or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, the just and full sum of. (*Here state the payment to be made, and conclude as before.*)

SIGNED, SEALED, &c.

A. B. [SEAL.]

676. BOND to EXECUTORS by LEGATEES.

KNOW ALL MEN BY THESE PRESENTS: That we, A. B. and O. P., of the city of _____, in the county of _____, and Province of Canada, are held and firmly bound unto C. D., E. F., and L. M., of _____, executors of the last will and testament of S. T., deceased, late of the town of _____, in the county of _____, and province aforesaid, in the sum of _____ dollars, lawful money of Canada, to be paid to the said C. D., E. F., and L. M., executors as aforesaid, or to the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. SEALED with our seals. DATED the _____ day of _____, one thousand eight hundred and _____.

WHEREAS, in and by the last will and testament of the said S. T., deceased, a legacy of _____ dollars is bequeathed to the said A. B., which has been paid to him by the said C. D., E. F., and L. M., executors as aforesaid;

BONDS.

678. BOND of INDEMNITY to SHERIFF.

KNOW ALL MEN BY THESE PRESENTS: That we, A. B., C. D., and H. R., of the town of _____, in the county of _____ and Province of Canada, (state occupation.) are held and firmly bound unto C. D., Esquire, sheriff of the county of _____ &c., (as in n. 671 to the *, and then add:)

WHEREAS the above bounden A. B. did obtain a judgment in the county court of the county of _____, held at _____, in and for the said county, on the _____ day of _____, 18____, against E. F., for _____ dollars and _____ cents, damages and costs, whereupon execution has been issued, directed, and delivered to the said C. D., sheriff as aforesaid, commanding him that of the goods and chattels of the said E. F. he should cause to be made the damages and costs aforesaid;

AND WHEREAS certain goods and chattels, that appear to belong to the said E. F., are claimed by L. M., of the _____ of _____, in the _____ county of _____;

NOW, THEREFORE, the condition of this obligation is such that, if the above bounden A. B. shall well and truly keep, and bear harmless, and indemnify the said C. D., sheriff as aforesaid, and all and every person and persons aiding and assisting him in the premises, of and from all harm, let, trouble, damages, costs, suits, actions, judgments, and executions, that shall or may at any time arise or be brought against him, them, or any of them, as well for the levying and making sale, under and by virtue of such execution, of all or any goods and chattels which he or they shall or may judge to belong to the said E. F., as for entering any shop, store, building, or other premises, for the taking of any such goods and chattels; THEN this obligation to be void, else to remain in full force and virtue.

SIGNED, SEALED, &c., (as in n. 676.) } A. B. [SEAL.]
C. D. [SEAL.]
H. R. [SEAL.]

679. BOND, with WARRANT of ATTORNEY to CONFESS JUDGMENT.

KNOW ALL MEN, &c., (as in n. 671 to the *, and then add:) the sum of \$ _____ on demand, (or otherwise, as the case may be;) THEN the above obligation to be void, otherwise to remain in full force and virtue.

SIGNED, SEALED, &c., (as in n. 676.) A. B. [SEAL.]

WHEREAS I, A. B., of _____, am held and firmly bound unto C. D., of _____, by a certain bond or obligation of this date, in the _____
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FORMS.

penal sum of \$ _____, conditioned for the payment of \$ _____, on demand;

Now, THEREFORE, I do authorize and empower any attorney, in any court of record in the Province of Canada, to appear for me at the suit of the said obligee, or his representatives, in an action of debt, and confess judgment against me upon the said bond or obligation, or for so much money borrowed, of any term or vacation of term antecedent or subsequent to this date; and to release to the said obligee all errors that may intervene in obtaining said judgment, or in issuing execution on the same.

SIGNED AND SEALED, this _____ day of _____, A. D. 18 ____.
 SIGNED in presence of }
 G. H. } A. B. [SEAL.]

680. BOND to EXECUTE a CONVEYANCE.

KNOW ALL MEN, &c., (as in n. 671, to the condition, and then add:)
 THE CONDITION of the above obligation is such that, if the above bounden A. B., on or before the _____ day of _____ next, or in case of his death before that time, if the heirs of the said A. B., within three months after his decease, [if such heirs shall then be of full age,] shall and do, upon the reasonable request and at the cost and charge of the said C. D., his heirs or assigns, make, execute, and deliver, or cause so to be, a good and sufficient deed, in fee simple, free from all incumbrance, and with the usual covenants, of the following described premises, to wit, ALL, &c., (describe premises;) THEN the above obligation to be void, else to remain in full force and virtue.

[N. B.—This may be readily varied, if the condition should be to procure an heir at law to convey, when of age; and a clause may be added to warrant and defend the obligee in the quiet enjoyment of the premises until such conveyance be executed.]

SIGNED, SEALED, &c., (as in n. 676.)

681. BOND to DISCHARGE BOND and MORTGAGE.

KNOW ALL MEN, &c., (as in n. 671, to the condition, and then add:)
 WHEREAS the said C. D., and E., his wife, have this day conveyed to the said A. B., by deed duly executed and bearing even date herewith, the following described premises, to wit, ALL, &c., (describe premises conveyed;) subject, however, to the covenants and conditions contained in a certain indenture of mortgage, bearing date the _____ day of _____, 18 ____, executed by the said C. D., and E., his wife, to S. V. R., of the _____ of _____, in the county

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of _____, for the purpose of securing the payment of the sum of _____ dollars in five years from the day of the date thereof, with interest half-yearly, as covenanted to be paid by the conditions of a bond of like date therewith, executed by the said C. D. to the said S. V. R., which said mortgage is a lien upon the premises aforesaid, and was recorded in the office of the registrar of the county of _____, on the _____ day of _____, 18____, memorial number _____, and upon which there is now remaining due and unpaid the said principal sum of _____ dollars, with interest from the day of _____ last past;

Now, THEREFORE, the condition of the above obligation is such that, if the said A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the said S. V. R., his executors, administrators, or assigns, all such sum and sums of money as are or may hereafter become due on the said bond and mortgage, executed by the said C. D., and the said C. D., and E., his wife, as aforesaid, and satisfy and discharge the same, saving the said C. D., his heirs, executors, and administrators, harmless of and from all and all manner of costs, charges, and expenses in the premises; THEN the above obligation to be void, otherwise to remain in full force and virtue.

SIGNED, SEALED, &c., (as in n. 676.)

[A. B. SEAL.]

682. BOND of an OFFICER of a BANK or COMPANY.

KNOW ALL MEN, &c., (as in n. 674 to the *, substituting the name of the bank for that of the company, if necessary, and then add:)

WHEREAS the above bounden A. B. has been chosen and appointed cashier, [or teller, or treasurer, as the case may be,] of the _____ Company, [or bank,] by reason whereof divers sums of money, goods, and chattels, and other things, the property of the said company [or bank] will come into his hands;

Now, THEREFORE, the condition of the above obligation is such that, if the said A. B., his executors or administrators, at the expiration of his said office, upon request to him or them made, shall make or give unto the said company, [or bank,] or to their agent or attorney, a just and true account of all such sum or sums of money, goods, and chattels, and other things, as have come into his hands, charge, or possession, as cashier, [or teller, or treasurer,] as aforesaid, and shall and do pay and deliver over to his successor in office, or any other person duly authorized to receive the same, all such balances, or sums of money, goods, and chattels, and other things, which shall appear to be in his hands, and due by him to the said company, [or bank,] AND, if the said A. B. shall well and truly, honestly and faithfully, in all things, serve the said company, [or bank,]

FORMS.

in the capacity of cashier, [or teller, or treasurer,] as aforesaid, during his continuance in office; THEN the above obligation to be void, otherwise to remain in full force and virtue.

SIGNED, SEALED, &c., (as in n. 676.) A. B. [SEAL.]

683. BOND of INDEMNITY to a SURETY in a BOND.

KNOW ALL MEN, &c., (as in n. 671 to the condition, and then add:)

WHEREAS the said C. D., at the special instance and request of the above bounden A. B., has bound himself, together with the said A. B., unto one E. F., of _____, in a certain obligation bearing even date herewith, in the penal sum of _____ dollars lawful moneys of Canada, conditioned for the payment of the sum of five hundred dollars, due and owing by the said A. B. to the said E. F., on, &c.: [as in the bond; or, if a bail bond be referred to, say: conditioned for the appearance of the said A. B., &c.; or, conditioned that the said A. B. shall put in special bail, &c.;

NOW, THEREFORE, the condition of the above obligation is such that, if the said A. B. shall well and truly perform and fulfill the condition of the said bond, executed to the said E. F., in manner and form set forth herein, and at all times hereafter save harmless the said C. D., his heirs, executors, and administrators, of and from the said obligation, and of and from all actions, costs, and damages, for or by reason thereof; THEN this obligation to be void, else to remain in full force and virtue.

SIGNED, SEALED, &c., (as in n. 676.) A. B. [SEAL.]

684. BOND of INDEMNITY on PAYING LOST NOTE.

KNOW ALL MEN, &c., (as in n. 671 to the *, and then add:)

WHEREAS the said E. F., on the _____ day of _____, 18____, did make, execute, and deliver unto the above bounden A. B., for a valuable consideration, his promissory note for the sum of _____ dollars, payable on or before the _____ day of _____ then next, with interest, which said promissory note the said A. B., since the delivery of the same to him as aforesaid, has, in some manner to him unknown, lost out of his possession;

AND WHEREAS the said E. F. hath this day paid unto the said A. B. the sum of _____ dollars, [the receipt whereof the said A. B. doth hereby acknowledge,] in full satisfaction and discharge of the said note, upon the promise of the said A. B. to indemnify and save harmless the said E. F. in the premises, and to deliver up the said note, when found, to the said E. F. to be cancelled;

NOW, THEREFORE the condition of this obligation is such that, if

BONDS.

the above bounden A. B., his heirs, executors, or administrators, or any of them, do and shall, at all times hereafter, save and keep harmless the said E. F., his heirs, executors, and administrators, of, from, and against the promissory note aforesaid, and of and from all costs, damages, and expenses that shall or may arise therefrom, and also deliver, or cause to be delivered up, the said note, when found, to be cancelled; THEN this obligation to be void, otherwise to remain in full force and virtue.

SIGNED, SEALED, &c., (as in n. 676.) }
A. B. [SEAL.]
C. D. [SEAL.]

685. BOND for PERFORMANCE of a CONTRACT to be INDORSED on the AGREEMENT.

KNOW ALL MEN, &c., (as in n. 671, to the condition, and then add:)

The CONDITION of this obligation is such that, if the above bounden A. B., his executors, administrators, or assigns, shall in all things well and truly keep and perform the covenants, conditions, and agreements in the within instrument contained, and on his or their part to be kept and performed, at the time and in the manner and form therein set forth; THEN the above obligation shall be void, otherwise to remain in full force and virtue.

SIGNED, SEALED, &c., (as in n. 676.)
A. B. [SEAL.]

686. BOND for PAYMENT of MONEY, to ACCOMPANY DEPOSIT of TITLE-DEEDS.

[Exordium, as in n. 671.]

WHEREAS the above named C. D. hath this day lent and advanced unto the above bounden A. B. the sum of _____ dollars, at interest, and on the treaty for the loan it was agreed that the repayment of the same sum, and lawful interest, should be secured unto the said C. D., his executors, administrators, and assigns, by the above written bond or obligation, conditioned as herein after mentioned, and also by a deposit of the lease and assignment of a leasehold house, situate in _____ of _____, in the _____ now in the occupation of the said A. B., [and which, by the said assignment, is assigned to him, his executors, administrators, and assigns,] as a collateral or equitable security for the said sum of _____ dollars, and interest, and the said A. B. hath accordingly deposited with the said C. D. the lease and assignment of the said premises, as such collateral or equitable security as aforesaid as they, the said A. B. and C. D. do hereby respectively acknowledge;

FORMS.

NOW THE CONDITION of the above written bond or obligation is such that, if the above bounden A. B., his heirs, executors, or administrators, do and shall pay, or cause to be paid, unto the said C. D., his executors, administrators, and assigns, at or in his now dwelling-house, situate at _____ aforesaid, the said sum of _____ dollars, with interest for the same after the rate of _____ for every _____ dollars by the year, on the _____ day of _____ now next ensuing, without any deduction or abatement, whatsoever, for or in respect of the same, or otherwise however; THEN the above written bond or obligation shall be void, or else be and remain in full force and virtue.

SIGNED, SEALED, AND DELIVERED }
 in presence of } A. B. [SEAL.]
 C. D. [SEAL.]

687. POST OBIT BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, &c.

WHEREAS the above named A. B., on the application and at the instance and request of the said C. D., hath contracted and agreed with the said C. D. to become the purchaser of the sum of _____ dollars, of lawful money of Canada, to be paid by the said C. D., his heirs, executors, administrators, or assigns, within one year after the decease of the above named E. F., if and in case the said E. F. shall die in the lifetime of the said C. D., with interest for the same sum of _____ dollars, if the same shall become payable from the death of the said E. F., at and after the rate of _____ for every \$100 dollars for a year;

IN CONSIDERATION WHEREOF, the said A. B. did agree to pay to the said C. D. the sum of _____ dollars, on the execution of these presents;

AND WHEREAS also the said A. B. hath, on the day of the date of these presents, paid to the said C. D. the said sum of _____ dollars, as the said C. D. doth hereby acknowledge, testified by his sealing and delivering these presents;

NOW THE CONDITION of the above written obligation is such that, if the said C. D. shall die in the lifetime of the said E. F., or if the said C. D. shall survive the said E. F., and the said C. D., his heirs, executors, or administrators, or any of them, do and shall, within twelve calendar months next after the decease of the said E. F., pay, or cause to be paid, to the said A. B., his executors, administrators, or assigns, the full sum of _____ dollars, if that sum shall become payable, with interest for the same, at and after the rate of _____ for every \$100 dollars for a year, from the death of the said E. F., and thenceforth, until payment of the said sum

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of _____, without any deduction or abatement, out of the same principal money and interest, on any account whatsoever, and without fraud or further delay; **THEN**, and in that case, the above written bond or obligation shall be null and void, or else be and remain in full force and virtue.

SIGNED, SEALED, AND DELIVERED }
in presence of

A. B.
C. D.

688. CONDITION *that the OBLIGOR shall suffer his INTENDED WIFE to make a WILL.*

WHEREAS a marriage is shortly intended to be solemnized between the above bounden L. R. and one M. W.;

Now the condition of this obligation is such that, if, after the said intended marriage shall be solemnized between the said L. R. and M. W., the said L. R. shall quietly permit and suffer the said M. W., in due form of law, to sign, seal, publish, and declare her last will and testament in writing, and in and by the same to bequeath, or otherwise to dispose of, at her free will and pleasure, unto such person or persons as to her shall seem meet, the sum of \$ _____, of lawful money of Canada; AND FURTHER, in case of the said L. R. surviving the said M. W., if the said L. R., his heirs, executors, or administrators, or any of them, upon reasonable request to him or them in that behalf made by any such person or persons to whom she, the said M. W., shall give and bequeath any moneys not exceeding in the whole the said sum of \$ _____, or the value thereof, shall pay, or cause to be paid, all and every such moneys, so bequeathed as aforesaid by the said M. W., in such manner as shall be by her appointed; **THEN** this obligation to be void, otherwise to remain in full force and virtue.

689. CONDITION *to permit a WIFE to LIVE SEPARATE from her HUSBAND.*

WHEREAS Jane A., the wife of the above bounden A. A., now lives separate and apart from her said husband, and follows the business and employment of making and selling bonnets, and the said A. A. hath agreed that his said wife shall have and receive all benefit arising therefrom, or from any other trade or business which she may think fit to follow, to and for her own separate use and support, wherewith he, the said A. A., is not to intermeddle, or have any profit or advantage therefrom, *so as* she, the said Jane A., do not

[SEAL.]
[SEAL.]

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and shall not contract any debt or debts for which the person or effects of her said husband shall or may be sued, charged, or incumbered, by any means whatever;

Now THE CONDITION of this obligation is such that, if the said A. A. do and shall, from time to time and at all times during the natural life of the said Jane A., permit and suffer her, the said Jane A., to live separate and apart from him, and to have and receive all profit, benefit, and advantage arising or which shall arise from her said trade or business of making and selling bonnets, or any other trade or business which she shall follow or employ herself in, to and for her own separate use, support, and maintenance, without any account, suit, trouble, or molestation, whatsoever, and without acting, doing, or causing or permitting to be done, any act, matter, or thing, whatsoever, whereby or wherewith, or by means or occasion whereof, the said Jane A. shall or may be molested or incumbered, by any ways or means whatsoever. Or, if the said A. A., his heirs, executors, or administrators, or his or their goods or chattels, lands or tenements, shall, at any time or times hereafter, be sued, attached, or otherwise charged or incumbered, for or by reason or means of any debt or debts which his said wife hath contracted, or shall or may contract; THEN, and in either of the said cases, this obligation shall be void, otherwise to remain in full force and virtue.

690. CONDITION to MARRY a WOMAN; or, in DEFAULT thereof, to PAY a SUM of MONEY.

THE CONDITION of this obligation is such that, if the above bounden A. B. do, on or before the _____ day of _____ next, according to the rules and ceremonies of the _____ church, marry and take to wife E. D., daughter of the said C. D., [if the said E. D. will thereunto assent] or if it shall happen that the said A. B. shall not marry and take to wife the said E. D., as aforesaid, if then he, the said A. B., do and shall pay, or cause to be paid, unto the said E. D., her executors, administrators, or assigns, the sum of \$ _____ of lawful money of Canada, on the _____ day of _____ next ensuing the said _____ day of _____, above mentioned and limited for the said marriage; THEN this obligation shall be void, otherwise be and remain in full force and virtue.

691. CONDITION of BOND to BANKERS, to SECURE a FLOATING BALANCE of ACCOUNT.

THE CONDITION of the above written bond or obligation is such

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that, if the above bounden A. B. and C. D., or either of them, or either of their heirs, executors, or administrators, do and shall, on demand thereof in writing, to be made by the partner or partners for the time being carrying on the business of the said bankers, E. and Co., under the present or any future partnership, or to the last partner or partners for the time being in the same partnership, or his or their representative or representatives, pay, or cause to be paid, unto the partner or partners for the time being in such partnership, such sum or sums of money [not exceeding in the whole the sum of \$] as at the time of such demand shall be due from the said A. B. and C. D., or the survivor of them, his heirs, executors, or administrators, to the partner or partners for the time being, or the last partner or partners in the said banking concern, or his or their executors or administrators, on or as part of the balance of the account between the said A. B. and C. D., or the survivor of them, his heirs, executors, or administrators, and such banking partner or partners, his or their executors or administrators, either for principal money or interest, or money lent or advanced, bills accepted or discounted, or on any other account whatsoever; THEN this obligation shall be void, otherwise be and remain in full force and virtue.

692. NOTE of HAND as COLLATERAL SECURITY, which may be given instead of BOND on SMALL MORTGAGES.

[§ .]
 SIX MONTHS after date I promise to pay Mr. _____ or order the sum of \$ _____, with lawful interest, [or with interest at the rate of, &c.,] value received, being the same principal money and interest as are mentioned in a certain [indenture, bearing even date herewith, and made or expressed to be made, &c.,] conditional surrender, of even date herewith, passed by me [and W., my wife,] of certain hereditaments, in the county of _____, TO THE USE OF the said (mortgagee) his heirs and assigns.
 (NOT TO BE ATTESTED.)

A. B.

693. BOND to SECURE an ANNUITY for the GRANTOR'S [or GRANTEE'S] LIFE.

I (obligor) bind myself, my heirs, executors, and administrators, to _____, his executors, administrators, and assigns, for the payment to him and them of \$ _____
 SEALED with my seal. DATED, &c.

The above written obligation is conditioned to be void in case

FORMS.—BONDS.

the above bounden V., his heirs, executors, or administrators, shall pay to the above named _____, his executors, administrators, or assigns, during the life of the said V., an annuity of \$ _____, by equal half-yearly payments, commencing the _____ day of _____ next.

694. BOND to SECURE an ANNUITY during the SUCCESSIVE LIVES of the GRANTEE and his WIFE.

I (*obligor*) bind myself, my heirs, executors, and administrators, to _____, his executors, administrators, and assigns, for the payment to him and them of \$ _____

SEALED, &c. DATED, &c.

The above written obligation is conditioned to be void in case the above bounden V., his heirs, executors, or administrators, shall pay to the above named _____, or his assigns, during his life, and after his death to _____, his wife, [if she shall survive him,] or her assigns, during her life, an annuity of \$ _____, by equal half-yearly payments, commencing the _____ day of _____ next.

695. FURTHER CHARGE.

On Bank Stock and Leasehold Premises.

THIS INDENTURE, made the _____ day of _____, 185 _____, between A. B., of the one part, and C. D., of the other part.

WHEREAS, by an indenture bearing date the _____ day of _____, and made between the said A. B., of the one part, and the said C. D., of the other part, in consideration of \$ _____ advanced to the said A. B. by the said C. D., he, the said A. B., assigned unto the said C. D., his executors, administrators, and assigns, a certain sum of \$ _____, *bank stock*, standing in the name of E. F. in the books of the Bank of _____, and representing a sum of \$ _____ currency, together with the benefit of all investments thereof; AND ALSO all those *leasehold messuages*, or dwelling-houses and premises, situate and being Nos. _____ street,

; To HOLD the said sum of \$ _____ unto the said C. D., his executors, administrators, and assigns, and to hold the said leasehold premises unto the said C. D., his executors, administrators, and assigns, for all the residue of the respective terms therein; AND, in the indenture now being recited, is contained a proviso for reassignment of the said money and premises, on payment by the said A. B., his executors, administrators, or assigns, of the sum of \$ _____, with interest thereon, in the meantime, after the rate, on the day and in manner therein mentioned;

FURTHER CHARGE.

AND WHEREAS the said principal sum of \$ _____ remains due and owing to the said C. D. upon the security of the herein before mentioned indenture, together with the current interest thereon;

AND WHEREAS the said C. D. hath, at the request of the said A. B., agreed to lend him the further sum of \$ _____ on having the repayment thereof, with interest thereon after the rate herein after mentioned, secured in manner herein after appearing;

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of \$ _____ paid by the said C. D. to the said A. B., on the execution hereof, [the receipt whereof the said A. B. doth hereby acknowledge,] he, the said A. B., doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he, the said A. B., his heirs, executors, or administrators, shall and will pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, the sum of \$ _____, with interest for the same after the rate of _____ per centum, on the _____ day of _____ next, without any deduction whatsoever; AND, in case the said sum of \$ _____ shall not be paid on the said _____ day of _____ next, shall and will thenceforth, during the continuance of this present security, pay, or cause to be paid, unto the said C. D., his executors or administrators, interest, after the rate aforesaid, for the said sum of \$ _____, or for so much thereof as shall for the time being remain unpaid, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____, in every year;

AND IT IS HEREBY AGREED AND DECLARED, and the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that the herein before mentioned sum of \$ _____, so represented by the said sum of \$ _____ bank stock, as aforesaid, and also the messuages and other premises by the herein before recited indenture assigned, or intended so to be, with their rights, easements, and appurtenances, shall respectively be and remain a security for, and stand charged and chargeable with, the payment to the said C. D., his executors, administrators, or assigns, as well of the said sum of \$ _____, and interest for the same, according to the covenant herein before contained of the said A. B., as of the before mentioned sum of \$ _____, and all interest due and to grow due for the same; AND that the said stock, money, securities, messuages, and premises, respectively, shall not in any wise be redeemed or redeemable, but, upon payment by the said A. B., his heirs, executors, administrators, or assigns, as well of the said sum of \$ _____, and interest for the same, as aforesaid, as of the said sum of \$ _____, and the interest due and to grow due for the same;

FORMS.—FURTHER CHARGE.

AND IT IS HEREBY AGREED AND DECLARED that the *power of sale*, in the herein before recited indenture contained, for better securing the payment of the said sum of \$, and interest, and all trusts and provisions in relation thereto, shall extend and be applicable, so as to be a further security for the said sum of \$, and interest, in the same manner as if the said sum of \$ had formed part of the principal money secured by the herein before mentioned indenture.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED, } in the presence of	E. F. }	A. B. [SEAL.]
		C. D. [SEAL.]

696. FURTHER CHARGE on FREEHOLDS, [by INDORSEMENT.]

THIS INDENTURE, made the day of , 185 , between the within named (*mortgagor*.) of the one part, and the within named A. B., of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of \$500, paid to the said M. by the said A. B., the said M., for himself, his heirs, executors, and administrators, covenants with the said A. B., his executors and administrators, that the said M., his heirs, executors, administrators, or assigns, will pay to the said A. B., his executors, administrators, or assigns, \$, with interest after the rate of per cent. per annum, on the day of next.

(2.) THE SAID (*mortgagor*.) for himself, his heirs, executors, and administrators, covenants with the said A. B., his executors and administrators, that the said M., his heirs, executors, or administrators, will, on demand, reimburse the said A. B., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the day of , and the day of ;

BUT SO THAT payment of interest on such last mentioned moneys, after the rate of per cent. per annum, within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(3.) FOR THE CONSIDERATION AFORESAID, the said M. grants unto the said A. B., his heirs, executors, administrators, and assigns, that the said premises, by the within written indenture expressed to be granted, shall [in addition to \$ now due, with the current interest, on the security of the same indenture] be charged with

ASSIGNMENT OF LEASEHOLD.

the sum of \$, and interest secured by the foregoing covenant, and not be redeemable until satisfaction of such covenant; AND FURTHER, that the power of sale, and the incidental powers and clauses, in the within written indenture contained, shall be applicable as a security for the said sum of \$500, and interest, as if the same had been moneys by the within written indenture made chargeable on the premises.

IN WITNESS WHEREOF, &c., (as in n. 695.)

697. ASSIGNMENT of LEASEHOLDS on a SALE.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, (venditor,) of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, (purchaser,) of the other part.

WHEREAS, by an indenture of lease, dated the _____ day of _____, and expressed to be made between (parties,) all that, &c., (parcels from the lease,) with the appurtenances, were demised to the said G. H., his executors, administrators, and assigns, for the term of _____ years from the _____ day of _____, at the yearly rent by the same indenture reserved, and subject to certain covenants and conditions therein contained, and by the lessee, his executors, administrators, and assigns, to be observed and performed;

AND WHEREAS the said premises are now vested in the said A. B., for the residue of the said term of _____ years;

AND WHEREAS the said A. B. hath agreed with the said C. D. for the sale to him, for the sum of \$ _____, of the premises aforesaid, for the residue of the said term, and subject to the rent, covenants, and conditions aforesaid, but free from other incumbrances;

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of \$ _____ to the said A. B. this day paid by the said C. D., [the receipt whereof the said A. B. doth hereby acknowledge,] he, the said A. B., doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL AND SINGULAR the said _____, hereditaments and premises, by the said indenture of the _____ day of _____ (lease) expressed to be demised, with their rights, easements, and appurtenances, and ALL THE ESTATE AND INTEREST of the said A. B. in the said premises; To hold the said premises unto the said C. D., his executors, administrator, and assigns, for the residue of the said term of _____ years, at the rent and subject to the covenants and conditions in the said lease reserved and contained, and henceforth

FORMS.

by the lessee, his executors, administrators, and assigns, to be paid, observed, and performed.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, that the rent, covenants, and conditions, in the said lease reserved and contained, and by the lessee, his executors, administrators, and assigns, to be paid, observed, and performed, have been paid, observed, and performed, up to the date of these presents.

AND THAT, notwithstanding any thing by the said A. B. done or knowingly suffered, he, the said A. B., now hath power to assign ALL AND SINGULAR the said premises unto the said C. D., his executors, administrators, and assigns, for the term, and subject as and in manner aforesaid, free from incumbrances.

AND THAT he, the said A. B., his executors and administrators, and every other person lawfully or equitably claiming through or in trust for him, will, at all times, at the cost of the said C. D., his executors, administrators, or assigns, execute and do all such assurances and acts, for further or better assuring all or any of the said premises unto the said C. D., his executors, administrators, and assigns, for the then residue of the said term, subject as and in manner aforesaid, as by the said C. D., his executors, administrators, or assigns, shall be reasonably required.

AND THE SAID C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors and administrators, that he, the said C. D., his executors, administrators, or assigns, will henceforth pay the said yearly rent by the said lease reserved, and observe and perform all the covenants and conditions therein contained, and by the lessee, his executors, administrators, or assigns, henceforth to be observed and performed, and will keep the said A. B., his heirs, executors, and administrators, indemnified against all actions, suits, expenses, and claims, on account of the non-payment of the said rent, or any part thereof, or the breach, or non-observance, or non-performance of the said covenants and conditions, or any of them.

IN WITNESS, &c., (as in n. 695.)

698. ASSIGNMENT of a POLICY of ASSURANCE.

THIS INDENTURE, made this _____ day of _____, between
 A. B., of _____, in the county of _____,
 and Province of Canada, _____, (vender,) of the one part, and
 C. D., of _____, of _____, in the county of _____,
 270

ASSIGNMENT OF POLICY OF ASSURANCE.

and Province of Canada, _____, (*purchaser*), of the other part, witnesseth as follows:—

THAT, IN CONSIDERATION of the sum of \$ _____ to the said A. B. this day paid by the said C. D., [the receipt whereof he, the said A. B., doth hereby acknowledge,] he, the said A. B., doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT policy of assurance on the life of him, the said A. B., granted by the _____ Assurance Society, dated the day of _____, numbered _____, for the sum of \$ _____, and under the annual premium of _____; AND all moneys assured or to become payable by or under the said policy, and the full benefit thereof, and ALL THE ESTATE AND INTEREST of the said A. B. in the said premises; TO HOLD the said premises unto the said C. D., his executors, administrators, and assigns.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that, notwithstanding any thing by him, the said A. B., done, or omitted, or knowingly suffered, the aforesaid policy is now valid and in full force, for the said sum of \$ _____, and for all bonuses and additions [if any] which have been added or made thereto; AND THAT, notwithstanding any such thing as aforesaid, he, the said A. B., now hath power to assign the said premises unto the said C. D., his executors, administrators, and assigns, in manner aforesaid, and free from incumbrances.

AND THAT he, the said A. B., will not do, or omit, or knowingly suffer any thing whereby the said policy may be vitiated or rendered void or voidable, or the said C. D., his executors, administrators, and assigns, may be prevented from receiving the said sum of \$ _____, or any bonuses or additions thereto, or any part thereof, respectively.

AND THAT, if the said A. B. shall do or suffer any thing whereby any additional premium or payment shall become payable, for keeping the said policy in force, then he, the said A. B., will, from time to time and at all times, duly and punctually pay such additional premium or payment, so as to keep the said policy in force.

AND THAT he, the said A. B., his executors and administrators, and every person lawfully or equitably claiming through or in trust for the said A. B., his executors or administrators, will, at all times, at the cost of the said C. D., his executors, administrators, or assigns, execute and do such assurances and acts, for more effectually assuring the said premises unto the said C. D., his executors, administrators, and assigns, in manner aforesaid, or for enabling him or them to recover and receive payment of the same, respectively, as by him or them shall be reasonably required.

IN WITNESS, &c., (*as in n. 695.*)

FORMS.

699. TRANSFER of a MORTGAGE, the MORTGAGOR not being a PARTY.

THIS INDENTURE, made the _____ day of _____ between A. B., of _____, of _____, in the county of _____, and Province of Canada, _____, (mortgagee,) of the one part, and C. D., of _____, of _____, in the county of _____, and province aforesaid, _____, (transferee,) of the other part, witnesseth as follows:—

WHEREAS, by an indenture dated the _____ day of _____ and expressed to be made between X. Y., of _____, of the one part, and the said A. B., of the other part, in consideration of the sum of \$ _____ by the said A. B. paid to the said X. Y., the said X. Y. did grant unto the said A. B., his heirs and assigns, the hereditaments intended to be hereby granted; To HOLD the same UNTO and TO THE USE of the said A. B., his heirs and assigns, subject to a proviso, in the indenture now in recital contained, for redemption of the same premises on payment by the said X. Y., his heirs, executors, administrators, or assigns, unto the said A. B., his executors, administrators, or assigns, of the sum of \$ _____, with interest for the same, after the rate and at the time therein mentioned;

AND WHEREAS the said sum of \$ _____, together with \$ _____ for interest thereon, from the _____ day of _____ last, is now owing to the said A. B. on the said security;

AND WHEREAS the said C. D. has agreed to pay the said A. B. the said sums of \$ _____ and \$ _____, making together the sum of \$ _____, upon having such transfer of the said mortgage debt, and of the securities of the same, as is herein after contained;

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of \$ _____ this day paid to the said A. B. by the said C. D., [the receipt whereof the said A. B. doth hereby acknowledge,] he, the said A. B., doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT the said sum of \$ _____ (the principal) now owing to the said A. B. on the security aforesaid, and all interest due and to accrue due for the same; AND the full benefit of the covenants entered into by the said (mortgagor) in the said indenture of the _____ day of _____, (the mortgage,) and of all other securities for the same premises; AND ALL THE ESTATE AND INTEREST of the said A. B. in the premises, TOGETHER with power for the said C. D., his executors, administrators, and assigns, to sue and give receipts for the said sum of \$ _____, and all interest due and to accrue due for the same, in the name or names of the said A. B., his executors or administrators; To HOLD the said premises unto the said C. D., his executors, administrators, and assigns, absolutely.

ASSIGNMENTS.

AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement, and for the consideration aforesaid, the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, ALL, &c., situate in the _____ of _____, and ALL AND SINGULAR other the hereditaments by the said indenture of the _____ day of _____ expressed to be granted, [or released, or appointed, or appointed and granted, &c.]; TOGETHER with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof, or appurtenant thereto, and ALL THE ESTATE AND INTEREST of the said A. B. and C. D. in the said premises; To HOLD the said premises UNTO and TO THE USE of the said C. D., his heirs and assigns; SUBJECT to the equity of redemption subsisting therein under the said indenture of the _____ day of _____, (the mortgage,) and with the benefit of the power of sale therein contained.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs, executors, and administrators, that the said sum of _____ dollars, with interest thereon from the said _____ day of _____, is now owing to him, the said A. B., on the aforesaid security, and that he, the said A. B., hath not done or knowingly suffered any thing whereby the said moneys, hereditaments, and premises, or any part thereof, respectively, are or can be impeached, incumbered, or affected, in any wise howsoever.

IN WITNESS, &c., (as in n. 695.)

700. ASSIGNMENT of LEASEHOLD PROPERTY.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____, (vendor,) of the one part, and C. D., of _____, (purchaser,) of the other part, witnesseth as follows:—

WHEREAS, by indenture of lease, bearing date the _____ day of _____, and made between G. H., of the one part, and the said A. B., of the other part, for the considerations therein mentioned, ALL, &c., (description of the property as given in the lease,) and their respective appurtenances, were demised by the said G. H. unto the said A. B., his executors, administrators, and assigns, from the _____ day of _____ then last past, for the term of _____ years, at the yearly rent of \$ _____, and under and subject to the covenants, conditions, and agreements in the said indenture of lease contained;

AND WHEREAS the said A. B. hath contracted and agreed with

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FORMS.

the said C. D., for the sale to him of the said hereditaments and premises comprised in and demised by the said recited indenture of lease of the _____ day of _____, with the appurtenances, for the residue now to come of the said term of _____ years, at and for the price or sum of \$ _____;

NOW THIS INDENTURE WITNESSETH that, in pursuance and performance of the said agreement, and for the considerations aforesaid, he, the said A. B., by these presents doth assign unto the said C. D., his executors, administrators, and assigns, ALL AND SINGULAR the said messuages, tenements, pieces or parcels of land, hereditaments, and premises comprised in and demised by the said recited indenture of the _____ day of _____, with their appurtenances, AND ALL THE ESTATE, right, title, interest, term and terms yet to come and unexpired, possibility, property, possession, claim, and demand, whatsoever, both at law and in equity, of him, the said A. B., in, to, out of, or upon the same hereditaments and premises and every part thereof; TO HAVE AND TO HOLD the said messuages, tenements, pieces or parcels of land, hereditaments, and premises, herein before assigned, or expressed or intended so to be, unto the said C. D., his executors, administrators, and assigns, for and during all the residue and remainder now to come and unexpired of the said term of _____ years, at the rent and under and subject to the covenants, conditions, and agreements by and in the said indenture of lease of the _____ day of _____ reserved and contained, and which henceforth, on the part of the lessee, his executors, administrators, or assigns, are or ought to be paid, observed, or performed.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said C. D., his executors, administrators, and assigns, in manner following: that is to say, that, for and notwithstanding any act, deed, matter, or thing, whatsoever, by him, the said A. B., or by any person or persons lawfully claiming from, under, or in trust for him, made, done, omitted, committed, or executed, or knowingly or willingly suffered, to the contrary, the said recited indenture of lease, at the time of the execution of these presents, is a good and effectual lease in the law of the said hereditaments and premises hereby assigned, and has not in any respect become forfeited or surrendered, or become void or voidable.

AND THAT the rent, covenants, conditions, and agreements, by and in the said indenture of lease reserved and contained, have, on the tenant's or lessee's part, been duly paid, observed, or performed, up to the _____ day of _____

AND THAT for and notwithstanding any such act, deed, matter, or thing, as aforesaid, he, the said A. B., now hath in himself good right and absolute authority to assign the said hereditaments and

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ASSIGNMENTS.

premises hereby assigned or expressed, or intended so to be, unto the said C. D., his executors, administrators, and assigns, for all the residue of the said term of _____ years, in manner aforesaid, and according to the true intent and meaning of these presents.

AND THAT it shall be lawful for the said C. D., his executors, administrators, and assigns, at all times hereafter, during the said term of _____ years, peaceably and quietly to enter into, and have, hold, occupy, possess, and enjoy the same hereditaments and premises, with their appurtenances, and to receive the rents and profits thereof, and of every part thereof, to and for his and their use and benefit, without any lawful let, suit, trouble, eviction, distress, or demand, whatsoever, of or by him, the said A. B., his executors or administrators, or any person or persons claiming or to claim from, under, or in trust for him, them, or any of them; AND THAT free and clear, and freely and clearly exonerated and discharged, or by the said A. B., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all former and other estates, titles, troubles, charges, and incumbrances, whatsoever, either already or to be hereafter had, made, done, committed, or suffered by the said A. B., his executors, or administrators, or by any other person or persons lawfully claiming or to claim from, under, or in trust for him, them, or any of them.

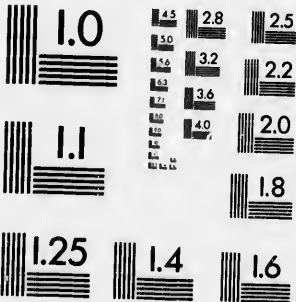
AND FURTHER, that the said A. B., his executors and administrators, and all other persons having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest, at law or in equity, in, to, or out of the said hereditaments and premises, hereby assigned, or expressed or intended so to be, or any of them, or any part thereof, from, under, or in trust for the said A. B., his executors or administrators, shall and will, from time to time and at all times hereafter, during the said term of _____ years, upon every reasonable request, and at the proper costs and charges of the said C. D., his executors, administrators, and assigns, make and perfect, or cause to be made and perfected, all such further and other lawful and reasonable acts, deeds, assignments, and assurances in the law, whatsoever, for the further, better, more perfectly and absolutely assigning and assuring of the said hereditaments and premises, hereby assigned, or expressed or intended so to be, with their appurtenances, unto the said C. D., his executors, administrators, or assigns, for the remainder which shall be then to come and unexpired of the said term of _____ years, as by the said C. D., his executors, administrators, or assigns, or his or their counsel, shall be advised and required.

AND THE SAID C. D. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors and administrators, that he, the said C. D., his executors, ad-



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FORMS.

ministrators, and assigns, shall and will, at all times hereafter during the said term of _____ years, pay, or cause to be paid, the yearly rent, by the said recited indenture of lease reserved, which shall henceforth grow due and payable in respect of the premises hereby assigned, and also observe, perform, and keep ALL AND SINGULAR the covenants, conditions, and agreements, in the said indenture of lease contained, and which henceforth, on the part of the tenant, lessee, or the assignee of the premises hereby demised, are or ought to be observed, performed, and kept, and shall and will, from time to time and at all times hereafter, save, defend, and keep harmless and indemnify the said A. B., his heirs, executors, and administrators, and his and their estates and effects, from and against the payment of the said rent, and the performance of the said covenants, conditions, and agreements, and from and against all actions, suits, cause and causes of action and suit, costs, expenses, damages, claims, and demands, whatsoever, for or on account of the same, or in any wise relating thereto.

IN WITNESS, &c., (as in n. 695.)

701. ASSIGNMENT of LEASEHOLDS for YEARS [one lease] by an ASSIGNEE of the TERM.

THIS INDENTURE, made the _____ day of _____, between M. N., of _____, (*vendor*), of the one part, and P. T., of _____, (*purchaser*), of the other part, witnesseth as follows:—

THE SAID M. N., in consideration of \$ _____, paid to him by the said P. T., assigns unto the said P. T., his executors and administrators, ALL AND SINGULAR (*description of the property*), [with their legal or usual appurtenances,] during the subsisting residue of the term of _____ years created by a lease, [dated, &c.,] from A. B., of _____, to C. D., of _____, and now by mesne assignments and operations of law vested in the said M. N.;

THE SAID M. N., (*vendor*), for himself, his heirs, executors, and administrators, covenants with the said (*purchaser*), his executors, administrators, and assigns, that, notwithstanding any thing by the said M. N. done or knowingly suffered, the said lease is subsisting unprejudiced, and the said M. N. is entitled to execute this assignment of the premises, free from incumbrances and liability under the said lease, up to the present date; AND that he, and every person claiming under or in trust for him, will, at the cost of the said P. T., his executors, administrators, and assigns, do all acts required for perfecting such assignment.

THE SAID P. T., for himself, his heirs, executors, and administrators, covenants with the said M. N., his executors and administrators,

ASSIGNMENTS.

that the said P. T., his executors, administrators, and assigns, will discharge and keep the said M. N., his heirs, executors, and administrators, indemnified against all liabilities under the said lease, subsequently to the present date.

IN WITNESS, &c., (*as in n. 695.*)

702. DEMISE of LEASEHOLDS by the ORIGINAL LESSEE, LEAVING a FEW DAYS' REVERSION in HIM.

This form will be the same as an ordinary lease, but will repeat verbatim the covenant and clauses of the original lease, and the term will be limited,—

“To hold the said premises unto the said C. D., his executors, administrators, and assigns, for the whole of the unexpired term subsisting in the said premises, saving and excepting thereout the last three days thereof.”

N. B.—If the owner of a term in leaseholds is not the *original* lessee, he can discharge himself from all liability to his lessor by assigning the *whole* of his term to another, and such an assignment is frequently made to a pauper for that very purpose; but an original [or first] lessee can not so discharge himself, but continues liable to the original lessor, notwithstanding any assignment which he may make. He has no power during the residue of the term to compel his assignee to observe the covenants of the original lease, and may be involved in ruinous expense by his neglect of them, and therefore it is more judicious, in disposing of such property, to execute an *underlease*, only retaining a nominal reversion, so as to give a *right of re-entry* on default made by the underlessee.

703. ASSIGNMENT of LIFE POLICY.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____, (*vendor*), of the one part, and C. D., of _____, (*purchaser*), of the other part, witnesseth as follows:—

(1.) THE SAID A. B., in consideration of \$ _____, paid to him by the said C. D., *assigns* unto the said C. D., his executors and administrators, a policy for \$ _____ on the life of the said A. B., effected in his name, on the _____ day of _____, with the

Society, and numbered _____, with all moneys ultimately payable thereon, and power for the said C. D., his executors, administrators, and assigns, in the name of the said A. B., his executors

FORMS.

and administrators, to recover, receive, and give receipts for the same premises.

(2.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors, administrators, and assigns, that, notwithstanding any thing by the said A. B. done or knowingly suffered, he is entitled to execute this assignment of the premises, free from incumbrances, and that he, and every person claiming under or in trust for him, will, at the cost of the said C. D., his executors, administrators, or assigns, do all acts required for perfecting such assignment, or facilitating the recovery of the said premises.

IN WITNESS, &c., (*as in n. 695.*)

704. TRANSFER of MORTGAGE of FREEHOLDS by INDORSEMENT, MORTGAGOR *not* JOINING.

THIS INDENTURE, made the _____ day of _____, between the within named A. B., of the one part, and C. D., of _____, of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of § _____, paid by the said C. D. to the said A. B., in discharge of the principal and current interest now due on the security of the within written indenture, the said A. B. assigns unto the said C. D., his executors and administrators, the principal moneys and interest secured by the within written indenture, and all securities for the same, with power for the said C. D., his executors, administrators, or assigns, or his or their substitute or substitutes, in the name or names of the said A. B., his executors, and administrators, to sue for, receive, and give receipts for the same premises.

(2.) FOR THE CONSIDERATION AFORESAID, the said A. B. grants unto the said C. D., and his heirs, the premises by the within written indenture granted, subject to the subsisting equity of redemption under the same indenture.

(3.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs [executors, administrators] and assigns, that the said A. B. hath done or knowingly suffered nothing whereby the premises are or may be incumbered or prejudicially affected.

IN WITNESS, &c., (*as in n. 695.*)

705. TRANSFER of MORTGAGE of FREEHOLDS by INDORSEMENT, MORTGAGOR JOINING.

THIS INDENTURE, made the _____ day of _____, between

TRANSFERS.

the within named A. B., (*mortgagee*), of the first part; the within named (*mortgagor*), of the second part; and C. D., (*transferee*), of the third part; witnesseth as follows:—

(1) IN CONSIDERATION of § , paid by the said C. D. to the said A. B., at the request of the said M., in discharge of the principal now due on the security of the within written indenture, and of the payment by the said M. to the said A. B. of all interest due thereon up to this date, the said M., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said M., his heirs, executors, or administrators, will pay to the said C. D., his executors, administrators, or assigns, § , with interest after the rate of per cent. per annum, on the day of

(2) FOR THE CONSIDERATION AFORESAID, the said A. B., by the request of the said M., grants, and the said M. grants and confirms unto the said C. D., and his heirs, the premises expressed to be granted by the within written indenture, discharged from all moneys thereby secured, excepting so far as the same may enure as a protection against any mesne incumbrances.

(3) PROVIDED THAT, if the foregoing covenant shall be satisfied on the day of , the said (*mortgagor*), his executors, administrators, and assigns, shall be entitled to a surrender of the premises, at his and their cost.

(4) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs [executors, administrators] and assigns, that the said A. B. hath done or knowingly suffered nothing whereby the premises are or may be incumbered, or prejudicially affected.

(5) THE SAID (*mortgagor*), for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that the said M. is entitled to execute this grant of the premises, free from incumbrances, and that such grant shall, if required, be perfected at the cost [excepting as regards foreclosed or sold premises] of the said M., or his estate.

(6) THE SAID (*mortgagor*), for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said M., his heirs, executors, or administrators, will, on demand, reimburse the said C. D., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest, after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the day of ; BUT SO THAT payment of interest on such last mentioned moneys, after the rate of per cent. per annum, within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

FORMS.

(7.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale, [or attempted sale,] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said (mortgagor,) his executors, administrators, or assigns, and that [unless some interest shall be forty days in arrear] no sale shall be made without six calendar months' written notice to the said M., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said M., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

IN WITNESS, &c., (as in n. 695.)

706. TRANSFER of FREEHOLDS by EXECUTOR and HEIR of MORTGAGEE, MORTGAGOR JOINING and RECEIVING a FURTHER ADVANCE, [not INDORSED.]

THIS INDENTURE, made the _____ day of _____, between A. B., (heir,) of the first part; C. D., of the second part; (mortgagor,) of the third part; and R. S., of the fourth part; witnesseth as follows:—

(1.) IN CONSIDERATION of _____ dollars, at the request of the said M., paid by the said R. S. to the said C. D., as sole executor of the will [dated, &c.,] of X. Y., in discharge of the principal now due on the after mentioned security, and of the payment by the said R. S. to the said C. D. of all interest due thereon up to this date; AND also in consideration of \$ _____, to the said M. paid by the said R. S., the said (mortgagor,) for himself, his heirs, executors, and administrators, covenants with the said R. S., his executors and administrators, that the said M., his heirs, executors, administrators, or assigns, will pay to the said R. S., his executors, administrators, or assigns, \$ _____, with interest after the rate of _____ per cent. per annum, on the _____ day of _____ next.

(2.) FOR THE CONSIDERATIONS AFORESAID, the said A. B., [at the request of the said M.,] as to such of the after mentioned premises as are comprised in a mortgage security in fee, [dated, &c.,] for \$ _____, from the said M. to the said X. Y., and are now vested in the said A. B. as his heir at law, and by the direction of the said C. D., grants; and the said M., as to all the premises, grants and con-

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TRANSFERS.

firm into the said R. S., and his heirs, the hereditaments described in the schedule hereto, with their legal or usual appurtenances, discharged from all moneys secured by the said mortgage, excepting so far as the same may emure as a protection against any mesne incumbrances.

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the said day of , the said (*mortgagor.*) his heirs and assigns, shall be entitled to a reconveyance of the premises, at his and their cost.

(4.) EACH OF THE SAID A. B. and C. D., for himself, his heirs, executors, and administrators, covenants with the said R. S., his heirs [executors, administrators] and assigns, that they, the said A. B. and C. D., respectively, have done or knowingly suffered nothing whereby the premises are or may be incumbered, or prejudicially affected.

(5.) THE SAID (*mortgagor.*) for himself, his heirs, executors, and administrators, covenants with the said R. S., his heirs and assigns, that the said M. is entitled to execute this grant of the premises, free from incumbrances, and that such grant shall, if required, be perfected, at the cost [excepting as regards foreclosed or sold premises] of the said M., or his estate.

(6.) THE SAID (*mortgagor.*) for himself, his heirs, executors, and administrators, covenants with the said R. S., his executors and administrators, that the said M., his heirs, executors, or administrators, will, on demand, reimburse the said R. S., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest, after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the day of and the day of ;

BUT SO THAT payment of interest on such last mentioned moneys, after the rate of § per cent. per annum, within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(7.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale, [or attempted sale,] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception.] PROVIDED that the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said (*mortgagor.*) his executors, administrators, or assigns, and that [unless some interest shall be forty days in arrear] no sale shall be made without six calendar months' written notice to the said M., his executors, administrators, or assigns; such pay-

FORMS.

ment and notice, as aforesaid, to the executors or administrators of the said M., being sufficient as against all persons interested in the equity of redemption, [without reference to the nature of the premises.]

IN WITNESS, &c., (*as in n. 695.*)

707. ASSIGNMENT of a TRADER'S BUSINESS and STOCK for a SUM of MONEY.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, of the one part, and C. D., of _____ of _____, of the other part, witnesseth as follows:—

(1.) THE SAID A. B., in consideration of \$ _____, paid to him by the said C. D., assigns unto the said C. D., his executors and administrators, the good will of the business of _____, heretofore carried on by the said A. B., at _____, with the book-debts and stock in trade of the same business, respectively specified in the two parts of the first schedule hereto, and with power for the said C. D., his executors, administrators, and assigns, in the name of the said A. B., his executors or administrators, to recover, receive, and give receipts for the said debts.

(2.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors, administrators, and assigns, that, notwithstanding any thing by the said A. B. done or knowingly suffered, he is entitled to execute this assignment of the premises, free from all incumbrances, and that he, and every person claiming under or in trust for him, will, at the cost of the said C. D., his executors, administrators, or assigns, do all acts required for perfecting such assignment or facilitating the recovery of the said premises, and also for introducing him and them to the customers of the said A. B.; AND FURTHER, that the said A. B. will not carry on nor permit his name to be used in the business of a _____, at any place within _____ miles from the _____ of _____, aforesaid.

(3.) THE SAID C. D., for himself, his heirs, executors, and administrators, covenants with the said A. B., his executors and administrators, that the said C. D., his heirs, executors, and administrators, will discharge and keep the said A. B., his heirs, executors, and administrators, indemnified against the liabilities specified in the second schedule hereto, but so that this covenant shall not be enforced in any other respect so long as the said A. B., his heirs, executors, and administrators, are kept so indemnified, as aforesaid.

IN WITNESS, &c., (*as in n. 695.*)

ASSIGNMENTS.

708. ASSIGNMENT of the GOOD WILL of a TRADE or BUSINESS.

THIS INDENTURE, made the _____ day of _____, 18____, between A. B., of _____, of the one part, and C. D., of _____, of the other part, witnesseth as follows:—

WHEREAS the said A. B. has, for some time past, carried on the trade or business of _____, at No. _____ street aforesaid;

AND WHEREAS the said A. B. hath contracted with the said C. D. for the sale to him of the good will and custom of the said trade or business of _____, as carried on by him, for the sum of \$ _____, and the said A. B. has agreed to enter into the covenants herein after contained;

NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of \$ _____, to the said A. B. paid by the said C. D., on the execution thereof, the [receipt whereof the said A. B. doth hereby acknowledge,] and therefrom doth discharge the said C. D., his executors, administrators, and assigns, he, the said A. B., doth hereby bargain, sell, and assign, unto the said C. D., his executors, administrators, and assigns, the good will and custom of the said business of a _____, as carried on by the said A. B., at No. _____ street aforesaid, and all the interest of the said A. B. therein; To have, hold, and enjoy the said good will, custom, and premises hereby assigned unto the said C. D., his executors, administrators, and assigns, absolutely.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he, the said A. B., now hath in himself good right to assign the said good will, custom, and premises, in manner aforesaid; AND that the same shall be enjoyed by the said C. D., his executors, administrators, and assigns, free from incumbrances; AND also that he, the said A. B., shall not nor will, at any time or times within the period of seven years from the date hereof, either by himself alone or jointly with or as agent, journeyman, or assistant for any person or persons whatsoever, either directly or indirectly, or upon any account or pretense whatsoever, set up, exercise, or carry on, or be employed in carrying on, the trade or business of a _____, within ten miles from No. _____ street aforesaid, and shall not nor will, either by himself or by

with any other person or persons, do or cause to be done any willful act or thing to the prejudice of the said trade or business of a _____, hereby assigned as hereafter carried on and conducted by the said C. D., his executors, administrators, and assigns; but, on the contrary, shall and will, to the utmost of his power, endeavor to promote the interest of the said C. D. amongst the customers of the said A. B., and otherwise.

IN WITNESS, &c., (as in n. 695.)

FORMS.

709. ASSIGNMENT of an ASSURANCE POLICY by INDORSEMENT, in PURSUANCE of a COVENANT in a MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the _____ of _____, in the county of _____, in the within policy of insurance named, in consideration and pursuance of the covenant in that behalf contained in a certain indenture of mortgage, dated the _____ day of _____, one thousand eight hundred and _____, and made between me, the said A. B., and C. B., my wife, of the one part, and C. D. and E. F., both of the _____ of _____, in the county of _____, trustees as therein mentioned, of the other part, do hereby assign unto the said C. D. and E. F., their executors, administrators, and assigns, the said annexed policy, and all moneys thereby secured, and all my right, title, and interest therein or thereto; To hold the same, subject to the provisions of the said mortgage.

In WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____, one thousand eight hundred and fifty-_____.

SIGNED, SEALED, AND DELIVERED }
in the presence of }
G. H. }

A. B. [SEAL.]

710. ANOTHER FORM.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the _____ of _____, in the county of _____, in the within policy named, do by these presents grant and assign to C. D., also within named, his executors, administrators, and assigns, the said within policy, and the money thereby assured, and all my right, title, and interest therein or thereto; upon condition, however, that, if a certain indenture of mortgage, bearing date the day of _____, one thousand eight hundred and _____, and executed by me, the said A. B., and _____, my wife, to the said C. D., shall be well and truly paid and satisfied, according to the terms and conditions thereof; THEN this assignment [made in pursuance of my covenant in the said mortgage contained] shall cease and be void.

As WITNESS my hand and seal, this _____ day of _____, one thousand eight hundred and _____.

WITNESS: }
E. F. }

[Signed,]

A. B. [SEAL.]

FORMS.

712. ASSIGNMENT of a POLICY of INSURANCE by INDORSEMENT.

KNOW ALL MEN BY THESE PRESENTS: That I, the within named A. B., for and in consideration of the sum of _____, to me paid by C. D., of, &c., [the receipt whereof is hereby acknowledged,] do by these presents absolutely grant and assign to the said C. D. all my right, property, interest, claim, and demand in and to the within policy of insurance, which have already arisen, or which may hereafter arise, thereon, with full power to use my name so far as may be necessary to enable him fully to avail himself of the interest herein assigned, or hereby intended to be assigned. The conveyance herein made, and the powers hereby given, are for myself and my legal representatives, to the said C. D. and his legal representatives.

IN WITNESS, &c., (as in n. 711.)

713. ASSIGNMENT of AGREEMENT to PURCHASE.

To be Indorsed upon or Annexed to the Original.

WHEREAS the within named C. D. has paid to the within named A. B. the sum of _____, being the amount of the first installments of the purchase money within mentioned, together with all interest upon such purchase money up to the _____ day of _____ last, according to the terms and provisions of the within articles, and there now remains to be paid the sum of _____ only, by _____ equal annual installments of _____ each, with interest from the _____ day of _____ last;

AND WHEREAS the said C. D. hath contracted and agreed with E. F., of _____, for the sale to him of the within mentioned premises, [and the improvements thereon,] and all his right and title thereto and estate and interest thereon, under or by virtue of the within written agreement, at the price or sum of _____; BUT SUBJECT, NEVERTHELESS, to the payment by him, the said E. F., his heirs, executors, or administrators, unto the said A. B., his executors or administrators, of the said sum of _____, residue of the original purchase money aforesaid, and interest thereon from the period aforesaid;

NOW THESE PRESENTS WITNESS that, in pursuance of such agreement, and in consideration of the sum of _____, to the said C. D. paid by the said E. F., at or before the execution hereof, [the receipt whereof he, the said C. D., doth hereby acknowledge,] he, the said C. D., doth by these presents grant and assign, unto the said E. F., his heirs and assigns, ALL AND SINGULAR the within mentioned and described parcel or tract of land and premises, together

ASSIGNMENTS.

with all the right, title, and interest of him, the said C. D., of, in, and to the within articles of agreement, covenants, and the lands and premises therein referred to, and all improvements thereon, and all benefit and advantage to arise therefrom, or from the penal sum of _____ thereby secured. To hold the said assigned premises unto and to the use of the said E. F., his heirs, executors, administrators, and assigns.

AND THE SAID C. D. doth hereby constitute and appoint the said E. F., his heirs, executors, administrators, and assigns, his true and lawful attorney and attorneys, irrevocable, for him, the said C. D., and in his name, but for the sole use and benefit of the said E. F., his heirs, executors, and administrators, to demand, sue for, recover, and receive of and from the within named A. B., his heirs, executors, or administrators, all such sum or sums of money and damages as shall or may at any time or times hereafter accrue or grow due to him, the said C. D., his heirs, executors, administrators, or assigns, under or by virtue of the said recited articles of agreement and covenants, or any matter, clause, or thing therein contained, by reason or on account of the breach or default of him, the said A. B., his heirs, executors, or administrators, in relation thereto; THE SAID C. D. hereby also covenanting with the said E. F., his heirs, executors, and administrators, that he hath not done or suffered, nor will he do or suffer, any act, matter, or thing whereby the said E. F., his heirs, executors, or administrators, may be hindered from commencing and prosecuting any action or actions, suit or suits, at law or in equity, for the recovery of any principal money or damages, under or by virtue of the said articles of agreement and covenants referred to, or enforcing the performance of the said articles of agreement, or obtaining such other satisfaction as can or may be had or obtained for the same by virtue thereof.

AND THE SAID E. F. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs, executors, and administrators, that he, the said E. F., his heirs, executors, or administrators, will pay to the said A. B., his executors or administrators, the aforesaid sum of _____, residue of the purchase money aforesaid, and all the interest thereon now or hereafter to become due by the installments and at the times mentioned and provided therefor in and by the said recited articles of agreement, and therefrom will indemnify and forever save harmless the said C. D., his heirs, executors, and administrators, and his and their goods and chattels, lands and tenements, by these presents.

IN WITNESS, &c., (as in n. 711.)

(Receipt for consideration to be indorsed or subscribed.)

by INDORSE-

within named _____, to me paid _____, [do _____] do _____ said C. D. all _____ to the with- _____ or which may _____ name so far as _____ of the inter- _____ ed. The con- _____ for myself _____ is legal repre-

CHASE.

al.
within named _____
e first _____
together with _____
day of _____
of the with- _____
of _____
each, with _____

agreed with _____
n mentioned _____
is right and _____
by virtue of _____
; But _____
id E. F., his _____
his execu- _____
side of the _____
n from the _____

such agree- _____
e said C. D. _____
hereof, [the _____
[ledge,] he, _____
n, unto the _____
within men- _____
es, together _____

FORMS.

714. ASSIGNMENT of a BOND by INDORSEMENT.

KNOW ALL MEN, &c. : That, for and in consideration of the sum of _____, by E. F., of _____, to the within mentioned obligee, C. D., paid, [the receipt whereof is hereby acknowledged,] he, the said C. D., doth by these presents assign unto the said E. F., his executors, administrators, and assigns, the within written bond or obligation, and all principal and interest money thereby secured and now due, or hereafter to become due, thereon, and all benefit and advantage whatever to be obtained by virtue thereof, and all the right, title, interest, property, claim, and demand, whatsoever, of him, the said C. D., of, in, to, or out of the said bond and moneys, together with the said bond. To HOLD the said bond and moneys UNTO and TO THE USE of the said E. F., his executors, administrators, and assigns.

AND THE SAID C. D. doth hereby make, constitute, and appoint the said E. F., his executors, administrators, and assigns, the true and lawful attorney and attorneys, irrevocable, of him, the said C. D., in his name, but to and for the sole use and benefit of the said E. F., his executors, administrators, and assigns, to ask, demand, and receive of and from the within named A. B., the obligor in the within bond or obligation named, his heirs, executors, administrators, or assigns, all principal and interest moneys now due, or to accrue due, upon the said bond, and to sue and prosecute any action, suit, judgment, or execution thereupon, and to give full receipts, releases, and discharges for all or any of the said moneys, and generally to do all lawful acts and things, as well for the recovering and receiving as also for the releasing and discharging of ALL AND SINGULAR the said hereby assigned bond, moneys, and premises, as fully and effectually, to all intents and purposes, as he, the said C. D., his executors, administrators, or assigns, could do if personally present.

AND THE SAID C. D. doth hereby, for himself, his executors, and administrators, covenant with the said E. F., his executors, administrators, and assigns, to ratify, allow, and confirm all and whatsoever the said E. F., his executors, administrators, or assigns, shall lawfully do or cause to be done, in or about the premises, by virtue of these presents.

AND THE SAID C. D., for himself, his executors, and administrators, doth hereby further covenant with the said E. F., his executors, administrators, and assigns, that the within mentioned sum of _____ remains justly due and owing upon the said bond, and that he, the said C. D., hath not received or discharged all or any of the said moneys due, or to grow due, on the said bond, nor will release, nonsuit, vacate, or disavow any suit or other legal proceedings made or prosecuted by virtue of these presents, for recovery of the same, without the license of the said E. F., his executors, administrators,

ASSIGNMENTS.

or assigns, first had and obtained in writing, nor will revoke, invalidate, hinder, or make void these presents, or any authority or power hereby given, without such license as aforesaid.

IN WITNESS, &c., (as in n. 711.)

715. ASSIGNMENT of CROWN LANDS.

KNOW ALL MEN, &c.: That I, A. B., of the of in the county of , and Province of Canada, for and in consideration of the sum of , to me paid by C. D., of the of , in the county of , and province aforesaid, [the receipt whereof is hereby acknowledged,] do by these presents assign and set over to the said C. D., his heirs and assigns, all my estate, right, title, interest, claim, and demand, whatsoever, of, in, and to that certain parcel or tract of land and premises situate in the township of , in the county of , and province aforesaid, containing by admeasurement acres, be the same more or less, being composed of lot , number , in the concession of the township aforesaid. [Insert, if necessary: Subject to the conditions as to settlement and otherwise of the crown lands department, which are to be performed.]

To hold the same, with all and every the benefit that may or can be derived from the said acres of land, unto the said heirs and assigns, forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of , in the year of our Lord one thousand eight hundred and

SIGNED, SEALED, AND DELIVERED }
in the presence of }
E. F. }

A. B. [SEAL.]

CANADA.—County of to wit: E. F., of the of , in the county of , maketh oath and saith that he was personally present and did see the within named A. B. duly sign and seal, and as his act and deed deliver, the within assignment on the day of the date thereof, and that he, this deponent, is a subscribing witness thereto.

Sworn before me, at , this day of 18 .

A Commissioner for taking affidavits in and for the said county.

FORMS.

716. ASSIGNMENT of LEASE.

Shorter Form.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, of the first part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, of the second part, witnesseth as follows:—

THAT, IN CONSIDERATION of the sum of _____ dollars, now paid by the said C. D. to the said A. B., [the receipt whereof is hereby acknowledged,] he, the said A. B., doth hereby grant and assign unto the said C. D., his executors, administrators, and assigns, ALL AND SINGULAR the premises comprised in and demised by a certain indenture of lease, bearing date the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, and made between _____, which said premises are more particularly known and described as follows, that is to say: ALL AND SINGULAR th certain parcel or tract of land and premises, lying and being _____, together with the appurtenances. To HOLD the same UNTO the said C. D., his executors, administrators, and assigns, henceforth for and during the residue of the term of years from the _____ day of _____, 18____, thereby granted, and for all other the estate, term, and interest [if any] of the said A. B. therein. 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 A. B., for himself, his heirs, executors, and administrators, doth hereby covenant with the said C. D., his executors, administrators, and assigns, that, notwithstanding any act of the said A. B., he hath now power to assign the said premises in manner aforesaid. AND that, subject to the payment of the said rent, and the performance of the said lessee's covenants, it shall be lawful for the said C. D., his executors, administrators, and assigns, peaceably and quietly to hold and enjoy the said premises hereby assigned during the residue of the term granted by the said indenture of lease, without any interruption by the said A. B., or any other persons claiming under him, free from all charges and incumbrances whatsoever of him, the said A. B.

AND THAT HE, the said A. B., and all persons lawfully claiming under him, will, at all times hereafter, at the request and costs of the said C. D., his executors, administrators, and assigns, assign and confirm to him and them the said premises, for the residue of the said term, as the said C. D., his executors, administrators, or assigns, shall direct.

AND THE SAID C. D., for himself, his heirs, executors, and admin-
290

ASSIGNMENTS.

istrators, doth hereby covenant with the said A. B., his executors and administrators, that he, the said C. D., his executors, administrators, or assigns, will, from time to time, pay the rent and perform the lessee's covenants in the said indenture of lease, and indemnify and save harmless the said A. B., his heirs, executors, and administrators, from all losses and expenses in respect thereof.

IN WITNESS, &c., (as in n. 715.)

717. ASSIGNMENT of LEASE by ADMINISTRATOR.

KNOW ALL MEN BY THESE PRESENTS: That A. B., of _____, administrator of ALL AND SINGULAR the goods and chattels, rights and credits of the within named C. D., deceased, for and in consideration of the sum of _____, to him paid by E. F., of _____ [the receipt whereof is hereby acknowledged,] doth [with the consent of the within named X. Y., testified by his executing these presents,] by these presents assign and set over unto the said E. F., his executors, administrators, and assigns, ALL AND SINGULAR the parcel or tract of land and premises comprised in the within written indenture of lease, and all the estate, right, title, and interest which he, the said A. B., as administrator of the said C. D. as aforesaid or otherwise, now hath, or at any time hereafter shall or may have, of, in, or to all or any of the said premises, by virtue of the said indenture of lease or otherwise, as administrator of the said C. D. To HOLD the said parcel or tract of land, and ALL AND SINGULAR other the premises, with their and every of their appurtenances, unto the said E. F., his executors, administrators, and assigns, for and during all the unexpired residue of the within mentioned term of _____ years; SUBJECT, NEVERTHELESS, to the yearly rent of _____, in and by the said indenture of lease reserved and contained, and to become due and payable, and to all and every the covenants, clauses, provisoes, and agreements therein contained.

AND THE SAID A. B., for himself, his heirs, executors, and administrators, doth hereby covenant with the said E. F., his executors, administrators, and assigns, that he, the said A. B., hath not, at any time heretofore, done or suffered any act, deed, matter, or thing, whatsoever, whereby, or by means whereof, the said parcel or tract of land and premises hereby assigned are, is, or can be in any way impeached, charged, affected, or incumbered, in title, estate, or otherwise howsoever.

IN WITNESS, &c., (as in n. 715.)

FORMS.

718. ASSIGNMENT of MORTGAGE under the STATUTE.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, in pursuance of the act to facilitate the conveyance of real property, between A. B., of the first part, C. D., of the second part, and L. B., of the third part.

WHEREAS, by an indenture of mortgage, bearing date the day of _____, in the year of our Lord one thousand eight hundred and _____, and made between _____, in consideration of the sum of _____ dollars, the said mortgagor therein named did grant, bargain, sell, convey, and assure (*copy the words of grant in the mortgage*) unto the said _____, his heirs and assigns, forever, ALL AND SINGULAR th_____ certain parcel or tract of land and premises, situate in the _____; SUBJECT to a proviso for redemption of the said premises on payment of the said principal sum and interest on the days and times and in manner therein mentioned;

AND WHEREAS the said A. B. hath agreed with the said C. D. for the absolute sale to him of all principal moneys and interest now due and to become due on the said indenture of mortgage, and all interest of the said A. B. of and in the lands and premises thereby conveyed, at the price or sum of _____ dollars;

AND WHEREAS there is now due upon the said mortgage, for principal money, the sum of _____ dollars, with interest from the day of _____, one thousand eight hundred and _____;

NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of _____ dollars, now paid by the said C. D. to the said A. B., [the receipt whereof is hereby acknowledged,] he, the said A. B., doth grant and assign unto the said C. D., his heirs and assigns, ALL AND SINGULAR the said lands, tenements, hereditaments, and premises comprised in and mortgaged by the said herein before in part recited indenture of mortgage, with their and every of their appurtenances, and all the estate and interest of the said A. B. therein; TOGETHER with the said indenture of mortgage, and the benefit and advantage of all and every the clauses, covenants, matters, and things therein contained; AND together also with the said principal sum and interest thereby secured, and now due and payable, or to become due and payable, under and by virtue thereof.

TO HOLD the same, and every part and parcel thereof, UNTO and TO THE USE of the said C. D., his heirs, executors, administrators, and assigns, free from all incumbrances made or done by the said A. B.; BUT SUBJECT, NEVERTHELESS, to such right or equity of redemption as is now subsisting in the said lands and premises, on payment of the said principal moneys and interest, under and by virtue of the said indenture of mortgage.

ASSIGNMENTS.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs, executors, administrators, and assigns, that the said mortgage is now a good, valid, and subsisting security for the principal money and interest hereby assigned, and that the same are now due and unpaid.

AND THAT he hath good right to assign and convey the said mortgage and premises unto the said C. D., in manner aforesaid.

AND THAT THE SAID C. D. shall have quiet possession of the said premises hereby assigned, without any interruption by the said A. B., or any person claiming under him, free from all incumbrances.

AND THAT THE SAID A. B., his heirs, executors, and administrators, will execute such further assurances of the said premises as may be requisite.

AND THE SAID A. B. doth hereby constitute and appoint the said C. D., his heirs, executors, administrators, and assigns, the true and lawful attorney and attorneys, irrevocable, of him, the said A. B., his heirs, executors, administrators, or assigns, for him and in his or their name or names, but for the sole use, benefit, and advantage of the said C. D., his heirs, executors, administrators, or assigns, to ask, demand, sue for, recover, and receive of and from the said mortgagor in the said mortgage named, his heirs, executors, and administrators, all such principal and interest moneys as are now or shall hereafter become due and owing upon the said mortgage, and on non-payment thereof, or any part thereof, to institute and prosecute, or proceed with any action, suit, or execution now pending, as he may think proper, and on payment thereof, or any part thereof, to make, seal, execute, and deliver receipts, releases, acquittances, and discharges, and generally to do, perform, and execute all such acts, deeds, matters, and things for recovering the said principal and interest, or foreclosing the said mortgage, or obtaining the possession of the said lands and premises, or for releasing the said mortgage, as fully and effectually, to all intents and purposes, as the said A. B., his heirs, executors, or administrators, could do if personally present; THE SAID A. B., for himself, his heirs, executors, and administrators, hereby ratifying and confirming, and covenanting and agreeing to ratify and confirm, ail and whatsoever the said C. D., his heirs, executors, administrators, or assigns, shall lawfully do or cause to be done in or about the premises by virtue hereof; PROVIDED he or they do and shall save harmless and indemnify, and keep harmless and indemnified, the said A. B., his heirs, executors, and administrators, and his and their lands and tenements, goods and chattels, of, from, and against all loss, damage, costs, charges, and expenses by reason or on account of any proceeding to be taken in pursuance of the power

FORMS.

hereby vested and granted by him to the said C. D., his heirs, ex-
ecutors, administrators, or assigns.

AND THE SAID L. B. hereby bars her dower in the said lands.
IN WITNESS, &c., (as in n. 715.)

719. ASSIGNMENT OF MORTGAGE.

By Indorsement.—Short Form.

THIS INDENTURE, made the _____ day of _____, in the
year of our Lord one thousand eight hundred and _____, be-
tween A. B., within named, of the first part, and C. D., of _____,
of the second part, witnesseth:—

THAT THE SAID A. B., for divers good considerations him there-
unto moving, and for the further consideration of the sum of five
shillings to him truly paid by the said C. D., [the receipt whereof is
hereby acknowledged,] doth by these presents grant and assign to
the said C. D., his heirs, executors, administrators, and assigns, all
the right, title, interest, claim, and demand, whatsoever, of him, the
said A. B., of, in, and to the lands and tenements mentioned and
described in the within mortgage; AND ALSO to all sum and sums of
money secured and payable there-by, and now remaining unpaid.
To HOLD the same, and to ask, demand, sue for, and recover the
same, as fully, to all intents and purposes, as he, the said A. B., now
holds and is entitled to the same.

IN WITNESS WHEREOF, &c., (as in n. 715.)

720. GENERAL ASSIGNMENT.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town
of _____, in the county of _____, and Province of
Canada, (state occupation,) for value received, have sold, and by
these presents do grant, assign, and convey, unto C. D., of _____,
and province aforesaid, all the notes, accounts, dues, debts, and de-
mands specified in the schedule herenunto annexed, marked "sched-
ule A." To HOLD the same UNTO the said C. D., his executors, ad-
ministrators, and assigns, to and for the use of the said C. D.; hereby
constituting and appointing the said C. D. my true and lawful
attorney, irrevocable, in my name, place, and stead, for the purpose
aforesaid, to ask, demand, sue for, attach, levy, recover, and receive
all such sum and sums of money which now are or may hereafter
become due, owing, and payable for or on account of all or any of
the notes, accounts, dues, debts, and demands above assigned;

ASSIGNMENTS.

giving and granting unto my said attorney full power and authority to do and perform all and every act and thing, whatsoever, requisite and necessary, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation; hereby ratifying and confirming all that the said attorney, or his substitute, shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day of _____, one thousand eight hundred and _____.

SIGNED, SEALED, AND DELIVERED }
in the presence of } A. B. [SEAL]
E. F. }

721. ASSIGNMENT of a BOND.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of _____, in the county of _____, and Province of Canada, (*state occupation*.) for and in consideration of the sum of _____ dollars, lawful money of the Province of Canada, to me in hand paid by C. D., of _____, and province aforesaid, [the receipt whereof is hereby acknowledged,] do hereby bargain, sell, and assign, unto the said C. D., his executors, administrators, and assigns, a certain written bond or obligation, and the condition thereof, bearing date the day of _____, one thousand eight hundred and _____, executed by E. F. to me, the said A. B., and all sum and sums of money due or to grow due thereon; AND I do hereby covenant with the said C. D. that there is now due on the said bond or obligation, according to the condition thereof, for principal and interest, the sum of _____ dollars; AND I hereby authorize the said C. D., in my name, to recover, receive, and give receipts for the money due and that may grow due thereon, as aforesaid.

IN WITNESS, &c., (*as in n. 720.*)

722. ASSIGNMENT of JUDGMENT.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and fifty-_____, between A. B., of the _____ of _____, in the county of _____, and Province of Canada, (*state occupation*.) of the first part, and C. D., of _____, and province aforesaid, of the second part.

WHEREAS the said A. B., on the _____ day of _____, one thousand eight hundred and _____, recovered by judgment, in

FORMS.

the court of the Province of Canada, against E. F., of
 , the sum of dollars, damages and costs;

NOW THEREFORE THIS INDENTURE WITNESSETH that the said A. B., in consideration of dollars, to him paid by the said C. D., doth hereby assign, transfer, and set over, unto the said C. D., and his assigns, the said judgment, and all sum and sums of money that may be had or obtained by means thereof, or any proceedings to be had thereupon. AND the said A. B. doth hereby constitute and appoint the said C. D., and his assigns, his true and lawful attorney and attorneys, irrevocable, with power of substitution and revocation, for the use and at the proper cost and charge of the said C. D., to ask, demand, and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment, and on payment to acknowledge satisfaction or discharge the same; hereby ratifying and confirming all that his said attorney or attorneys shall lawfully do or cause to be done in the premises. AND the said A. B. doth covenant that that there is now due on the said judgment the sum of dollars, and that he will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein; the said C. D. saving the said A. B. harmless of and from all costs and charges in the premises.

IN WITNESS WHEREOF, the said A. B. hath hereunto set his hand and seal, the day and year first above written.

SIGNED, SEALED, AND DELIVERED

in presence of
 G. H.

A. B. [SEAL.]

723. A SHORT ASSIGNMENT of JUDGMENT.

In the Court of Queen's Bench:
 A. B., plaintiff, } Judgment for on a bond, dated the
 vs. day of , 18 . Con-
 E. F., defendant. } ditioned for the payment of and interest:
 costs taxed at . Judgment signed August 2, 18 , in the
 office of the court of

IN CONSIDERATION of dollars, to me paid, I do hereby sell, assign, and transfer to C. D. the judgment above mentioned, for his use and benefit; hereby authorizing him to collect and enforce payment thereof, in my name, or otherwise, but at his own costs and charges. AND COVENANTING that the sum of dollars, with interest from the day of , in the year , besides the costs, is due thereon.

IN WITNESS, &c., (as in n. 720.)

ASSIGNMENTS.

724. THE SAME, *in* ANOTHER FORM.

County Court of the county of _____ :
 A. B., plaintiff, } Judgment signed 31st July, 1847, for
 vs. } \$210.27, damages and costs.
 E. F., defendant. } For value received, I do hereby assign, trans-
 fer, and set over the above mentioned judgment to C. D., for his
 use, and at his risk, costs, and charges in all respects.
 DATED the _____ day of _____, 18____.
 WITNESS: }
 L. M. } A. B. [SEAL.]

725. ASSIGNMENT of BOND and MORTGAGE *in* FEE.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the
 of _____, in the county of _____, and Province of
 Canada, farmer, in consideration of the sum of _____ dollars, to
 me paid by C. D., of _____ of _____, in the county of
 _____, and province aforesaid, [the receipt whereof is
 hereby acknowledged,] do by these presents grant, bargain, sell, assign,
 transfer, and set over, unto the said C. D., a certain indenture of mort-
 gage bearing date the _____ day of _____, one thousand eight
 hundred and _____, made and executed by E. F., of _____
 of _____, in the county of _____, and Province of Canada,
 and M., his wife, to me, together with the bond of the said E. F., [or
 of G. H., of _____ of _____, in the county of _____,
 Province of Canada, _____], conditioned for the due performance
 of the covenants therein contained, and all moneys secured by the
 same instruments, and the lands and premises mentioned in the
 said mortgage. To HOLD the same UNTO the said C. D., his heirs, ex-
 ceptors, administrators, and assigns, for his and their use and
 benefit; SUBJECT ONLY to the proviso in the said mortgage men-
 tioned. AND I do hereby make, constitute, and appoint the said
 C. D. my true and lawful attorney irrevocable, in my name or oth-
 erwise, but at his own proper costs and charges, to recover, receive,
 and give discharges for the same premises.

AND I do hereby *covenant* with the said C. D. that there is now
 due and owing upon the said bond and mortgage the sum of _____
 dollars, with interest from the _____ day of _____, 18____;
 and that I have good right to grant, sell, transfer, and assign the
 same, as aforesaid.

IN WITNESS, &c., (as in n. 720.)

FORMS.

726. ASSIGNMENT of BOND and MORTGAGE, INDORSED.

IN CONSIDERATION of _____ dollars, to me in hand paid by C. D., of the town of _____, in the county of _____ and Province of Canada, I, A. B., within named and described, do hereby grant and assign unto the said C. D. the within indenture of mortgage, together with the bond accompanying the same, and the lands and premises in the said mortgage mentioned, together with all moneys thereby and by the said bond secured. To HOLD same UNTO and TO THE USE of the said C. D., his heirs, executors, administrators, and assigns, respectively; hereby authorizing him (power of attorney, as in n. 722, changing tense and person.)

IN WITNESS, &c., (as in n. 715.) A. B. [SEAL.]

727. ASSIGNMENT of MORTGAGE and BOND as COLLATERAL SECURITY.

THIS INDENTURE, made the _____ day of _____, one thousand eight hundred and _____, between A. B., of the _____, in the county of _____, and Province of Canada, _____, of the first part, and C. D., of the _____ of _____, in the county of _____, and province aforesaid, _____, of the second part, witnesseth:—

THAT THE SAID A. B., in consideration of the sum of _____, to him paid by the said C. D., [or in consideration of the covenants and agreements contained in a certain indenture, dated the day of _____, 18____, and made between _____] doth hereby grant and assign unto the said C. D., his heirs and assigns, a certain indenture of mortgage, dated the _____ day of _____, one thousand eight hundred and _____, and made and executed by _____, of _____, in the county of _____, to X. Y., of _____, and the moneys thereby secured, and the lands and premises thereby granted, together with the bond accompanying the same. To HOLD the said premises UNTO and TO THE USE of the said C. D., his heirs, executors, administrators, and assigns.

BUT THIS INDENTURE is, nevertheless, made upon this express condition, that, if the said A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, the sum of _____ dollars, on or before the _____ day of _____, 18____, with interest from the date hereof, this indenture shall be void and of no effect; it being made for the purpose of securing the payment of the said moneys, and for no other purpose whatever: AND in case the said C. D., his heirs, executors, administrators, or assigns, shall

ASSIGNMENTS.

INDORSED.

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B. [SEAL.]

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collect and receive the money due on said mortgage hereby assigned, he or they shall, after retaining the said sum of dollars, with the interest thereon, and his or their reasonable costs and charges in that behalf expended, pay the surplus [if any] to the said A. B., his heirs, executors, administrators, or assigns.

IN WITNESS WHEREOF, &c., (as in n. 695.) A. B. [SEAL.]
C. D. [SEAL.]

728. ASSIGNMENT of LEASE.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town of _____, in the county of _____, and Province of Canada, _____, for and in consideration of the sum of _____ dollars, lawful money of the Province of Canada, to me paid by C. D., of the town of _____, in the county of _____, and province aforesaid, _____, do by these presents grant, convey, assign, transfer, and set over, unto the said C. D., a certain indenture of lease, bearing date the _____ day of _____, one thousand eight hundred and _____, made by L. M., of _____, to me, the said A. B., of a certain dwelling-house and lot, situate in _____, with ALL AND SINGULAR the premises therein mentioned and described, and the buildings thereon, together with the appurtenances. To hold the same unto the said C. D., his heirs, executors, administrators, and assigns, from the _____ day of _____ next, for and during all the residue unexpired of the term of _____ years mentioned therein; SUBJECT, NEVERTHELESS, to the rents, covenants, conditions, and provisoes therein contained. AND I do hereby covenant and agree with the said C. D. that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back-rents, taxes, assessments, and incumbrances, whatsoever.

IN WITNESS, &c., (as in n. 715.)

729. THE SAME, by INDORSEMENT.

IN CONSIDERATION of the sum of _____ dollars, to me in hand paid by C. D., of _____, [the receipt whereof I hereby acknowledge,] I do by these presents bargain, sell, assign, and set over, unto the said C. D., his heirs and assigns, the within written indenture of lease, and all my estate, right, title, interest, claim, property, and demand of, in, and to the lands, tenements, hereditaments, and premises therein mentioned, which I now have, by means of the said indenture, or otherwise; SUBJECT, NEVERTHELESS, to the rents and covenants in the said indenture contained.

IN WITNESS, &c., (as in n. 715.)

FORMS.

730. ASSIGNMENT of CONTRACT for the SALE of REAL ESTATE.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the
of , in the county of , and Prov-
ince of Canada, , for and in consideration of the sum
of dollars, lawful money of the said Province, to me
paid by C. D., of the town of , in the county of
, and province aforesaid, , do by these presents sell,
transfer, assign, and set over, unto the said C. D., a contract for
the sale of certain real estate, being part of lot No. , in the
town of , in the county of , aforesaid, [or situ-
ate in, &c., and described as follows: *giving the description in full,*]
which said contract was made and executed by E. F., of
to me, the said A. B., and bears date the day of
18 . To HOLD the same UNTO and to the USE of the said C. D.,
his heirs, executors, administrators, and assigns; SUBJECT, NEVEN-
THELESS, to the covenants, conditions, and payments therein men-
tioned. AND I hereby authorize and empower the said C. D., upon
his performance of the said covenants and conditions, to demand
and receive of the said E. F. the deed covenanted to be given in
the said contract, in the same manner, to all intents and purposes,
as I myself might or could do were these presents not executed.

IN WITNESS, &c., (as in n. 715.)

731. THE SAME, by INDORSEMENT.

IN CONSIDERATION of the sum of dollars, to me in
hand paid by C. D., of the town of , in the county
of , and Province of Canada, , [the receipt whereof
is hereby acknowledged,] I do by these presents bargain, sell, assign,
and set over, unto the said C. D., his heirs and assigns, the within
contract, and all my estate, right, title, interest, claim, property, and
demand, of, in, and to the same, and the premises therein de-
scribed; SUBJECT, NEVERTHELESS, &c., (as in n. 730, to the end.)
A. B. [SEAL.]

IN WITNESS WHEREOF, (as in n. 715.)

732. ASSIGNMENT of BAIL BOND.

[When the plaintiff deems it expedient to proceed against the
bail given by defendant, he may demand of the sheriff an assign-
ment of the bail bond, and the sheriff will execute such assignment
in manner following.]

KNOW ALL MEN BY THESE PRESENTS: That I, A. P., the sheriff
within named, do assign and set over to A. B., the plaintiff therein
named, at his request, the within bail bond, or obligation, pursuant

ASSIGNMENTS.

to the statute in such case made and provided. Dated _____, this
 day of _____, 18 _____,

SIGNED, SEALED, AND DELIVERED }
 in the presence of }
 G. H. }

A. P., sheriff. [SEAL.]

733. ASSIGNMENT of a DEBT [or DEBTS] or WAGES.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town
 of _____, in the county of _____, and Province of Canada,
 (state occupation,) for and in consideration of the sum of _____
 dollars, to me paid by C. D., of the town of _____, in the
 county of _____, and province aforesaid, (state occupation),
 [the receipt whereof is hereby acknowledged,] do by these presents
 sell, assign, transfer, and set over, unto the said C. D., a certain debt
 [or debts] (if debts, refer to schedule.) due to me from E. F., of, &c.,
 amounting to the sum of _____ dollars, goods sold and delivered,
 [or work, labor, and services,] with full power to sue for, collect, and
 discharge, or sell and assign the same, in my name, but at his own
 costs and charges, [or my cost and charge.] And I do hereby cove-
 nant that the said sum of _____ dollars is justly due as aforesaid,
 and that I have not done, and will not do any act to hinder or
 prevent the collection of the same by the said C. D.

IN WITNESS, &c., (as in n. 715.)

SIGNED, SEALED, AND DELIVERED }
 in presence of }
 L. M. }

A. B. [SEAL.]

734. ASSIGNMENT of POLICY of INSURANCE.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town
 of _____, in the county of _____, and Province of
 Canada, (state occupation,) in the annexed policy named, for and in
 consideration of the sum of _____, to me in hand paid by C. D.,
 of the town of _____, in the county of _____, and province
 aforesaid, (state occupation,) [the receipt whereof is hereby acknow-
 ledged,] do by these presents sell, assign, transfer, and set over, unto
 the said C. D., the annexed policy of insurance, and all sum and
 sums of money, interest, benefit, and advantage, whatsoever, now
 due or hereafter to arise, or to be had or made, by virtue thereof.
 To HOLD the same unto the said C. D., and his assigns.

IN WITNESS, &c., (as in n. 715.)

A. B. [SEAL.]

The above assignment is approved.

M. R., president [or secretary]
 of the _____
 Insurance Company.

FORMS.

735. ASSIGNMENT of POLICY as SECURITY.

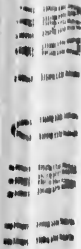
KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town of _____, in the county of _____, and Province of Canada, (state occupation,) in the annexed policy named, for and in consideration of the sum of _____, to me in hand paid by C. D., of the town of _____, in the county of _____, and province aforesaid, (state occupation,) [the receipt whereof is hereby acknowledged,] do by these presents sell, assign, transfer, and set over, unto the said C. D., the annexed policy of insurance, and all sum and sums of money, interest, benefit, and advantage, whatsoever, now due or hereafter to arise, or to be had or made, by virtue thereof. To HOLD the same unto the said C. D., and his assigns, forever.

UPON THE CONDITION, however, that, if a certain promissory note [or other undertaking] for the sum of _____ dollars, bearing date the _____ day of _____, made by the said A. B. to the said C. D., is well and truly paid, according to the terms thereof, then this assignment is to be void.

IN WITNESS, &c., (as in n. 715; adding the approval in n. 734, if necessary.)

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A. B. [SEAL.]



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B. [SEAL.]

CHAPTER VI. OF SECURITIES.

BILLS OF SALE.—CHATTEL MORTGAGES.—CONFESSIONS OF JUDGMENT.

The recent changes in the law with respect to this class of securities are so important that it is deemed advisable to insert the statutory provisions now in force here, before giving the precedents.

REVISED STATUTES, 1859, CAP. XXV., p. 307.

736. AN ACT for the RELIEF of INSOLVENT DEBTORS, which
is to be called the INDIGENT DEBTOR'S ACT.

* * * * *

FRAUDULENT PREFERENCE.

(30.) In case any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntary or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem* or warrant of attorney to confess judgment, with intent in giving such confession, *cognovit actionem* or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part, or with intent thereby to give one or more of the creditors of such person a preference over his other creditors, or over any one or more of such creditors, every such confession, *cognovit actionem* or warrant of attorney to confess judgment, shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution. 22 V., c. 96, s. 18.

Confessions or warrants to confess judgment given by insolvents, to defeat or delay creditor, or to give one preference over the other, to be void.

(31.) In case any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, makes or causes to be made any gift, conveyance, assignment, or transfer of any of his goods, chattels, or effects, or delivers or makes over, or causes to be delivered or made over, any bills, bonds, notes, or other securities

Assignments, transfers, &c., made by insolvents, to defeat creditors, or to give preference, shall be void.

THE INDIGENT DEBTOR'S ACT.

or property, with intent to defeat or delay the creditors of such person, or with intent of giving one or more of the creditors of such person a preference over his other creditors, or over any one or more of such creditors, every such gift, conveyance, assignment, transfer, or delivery shall be null and void as against the creditors of such person; but nothing herein contained shall invalidate or make void any deed of assignment made and executed by any debtor for the purpose of paying and satisfying, rateably and proportionably, and without preference or priority, all the creditors of such debtor their just debts; and nothing herein contained shall invalidate or make void any *bonâ fide* sale of goods in the ordinary course of trade or calling to innocent purchasers. 22 V., c. 96, s. 19.

Destroying or altering books, &c., to defraud creditors, to be a misdemeanor.

(32.) Any person who destroys, alters, mutilates, or falsifies any of his books, papers, writings, or securities, or makes, or is privy to the making, of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, or any one or more of them, shall be deemed guilty of a misdemeanor; and, on being convicted thereof, shall be liable to be imprisoned in any common gaol for any term not exceeding six months, and such offence may be tried before any court of Oyer and Terminer or General Gaol Delivery. 22 V., c. 96, s. 20.

Punishment

Making assignments, or concealing, or disposing of goods, to defraud creditors, to be a misdemeanor.

(33.) Any person who makes or causes to be made any gift, conveyance, assignment, sale, transfer, or delivery of any of his lands, hereditaments, goods, or chattels, or who removes, conceals, or disposes of any of his goods, chattels, property, or effects of any description, with intent to defraud his creditors, or any of them, and any person who receives such property, real or personal, with such intent, shall be deemed guilty of a misdemeanor; and, on being convicted thereof, shall be liable to be imprisoned for any term not exceeding twelve months, and to be fined in any sum not exceeding two hundred pounds, and such offence may be tried before any court of Oyer and Terminer or General Gaol Delivery. 22 V., c. 96, s. 21.

Punishment.

Short title.

(34.) This act shall be known and cited as "The Indigent Debtor's Act."

THE COMMON LAW PROCEDURE ACT.

REVISED STATUTES, 1859, CAP. XXII., p. 195.

737. AN ACT to REGULATE the PROCEDURE of the SUPERIOR COURTS of COMMON LAW and of the COUNTY COURTS, known as and in all proceedings may be cited as THE COMMON LAW PROCEDURE ACT.

* * * * *

CONFESSIONS FILING THE SAME, AND JUDGMENTS THEREON.

(240.) Final judgment upon a *cognovit actionem* or warrant of attorney to confess judgment, given or executed before the suing out of any process, may, at the option of the plaintiff, be entered in any office of either of the said Superior Courts, and, in like manner and like circumstances, final judgment may be entered on a *cognovit actionem* or warrant of attorney to confess judgment, for an amount not exceeding one hundred pounds, in any County Court, unless some particular office or some particular County Court for that purpose be expressly stated in the cognovit or warrant. 19 V., c. 90, s. 6; 19 V., c. 43, s. 10.

(241.) No confession of judgment or *cognovit actionem* shall be valid or effectual to support any judgment or writ of execution, unless, within one month after the same has been given, the same or a sworn copy thereof be filed of record in the proper office of the court in the county in which the person giving such confession of judgment or *cognovit actionem* resides; and a book shall be kept in every such office, to be called the Cognovit Book, in which shall be entered the names of the plaintiff and defendant in every such confession or cognovit, the amount of the true debt or arrangement secured thereby, the time when judgment may be entered and execution issued thereon, and the day when such confession or cognovit, or copy thereof, is filed in the said office; and such book shall be open to inspection by any person, during office-hours, on the payment of a fee of one shilling. 20 V., c. 57, s. 17.

Confessions and cognovits given after this act, to be registered.

(261.) The sheriff or other officer, to whom any writ of *fiery facias* against the lands and tenements of any mortgagor of real estate is directed, may seize or take in execution, sell, and convey, [in like manner as any other real estate might be seized or taken in execution, sold, and conveyed,] all the legal and equitable interest of mortgagors may be sold in execution.

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THE COMMON LAW PROCEDURE ACT.

of such mortgagor in the mortgaged lands and tenements. 12 V., c. 73, s. 1.

Effect of such sale.

(262.) The effect of such seizure or taking in execution, sale, and conveyance of any such mortgaged lands and tenements shall be to vest in the purchaser, his heirs and assigns, all the legal and equitable interest of the mortgagor therein at the time the writ was placed in the hands of the sheriff or other officer to whom the same is directed as well as at the time of such sale, and to vest in such purchaser, his heirs and assigns, the same rights as such mortgagor would have had if such sale had not taken place; and the purchaser, his heirs or assigns, may pay, remove, or satisfy any mortgage, charge, or lien which at the time of such sale existed upon the lands or tenements so sold, in like manner as the mortgagor might have done, and thereupon the purchaser, his heirs and assigns, shall acquire the same estate, right, and title as the mortgagor would have acquired in case the payment, removal, or satisfaction had been effected by the mortgagor; and on payment of the mortgage money to the mortgagee by the purchaser, his heirs or assigns, the mortgagee, his heirs or assigns, shall, if required, give to such purchaser, his heirs or assigns, at his or their charge, a certificate of payment or satisfaction of such mortgage, which certificate may be in the following form, that is to say: 12 V., c. 73, s. 2.

Rights of the purchaser.

To the registrar of the county of
 I, A. B., of _____, do certify that C. D., of _____, who hath become the purchaser of the interest of E. F., of _____, hath satisfied all money due upon a certain mortgage made by the said E. F. to me, bearing date the _____ day of _____, one thousand eight hundred and _____, and registered at _____ of the clock in the forenoon (as the case may be,) of the _____ day of _____, in the same year, (or as the case may be,) and that such mortgage is therefore discharged.

As witness my hand, this _____ day of _____, 18 ____ .
 (Signed,) A. B.

E. H., of _____, }
 G. H., of _____, } witnesses.

And such certificate shall be of the like effect, and shall be acted upon by registrars and others to the same extent as if the same had been given to the mortgagor, his heirs, executors, administrators, or assigns.

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SALE OF LANDS.

(263.) Any mortgagee of lands and tenements so sold, or the heirs or assigns of such mortgagee, [whether plaintiff or defendant in the judgment whereon the writ of *fiery facias* under which such sale takes place has issued,] may be the purchaser at such sale, and shall acquire the same estate, interest, and rights thereby as any other purchaser; but, in the event of the mortgagee becoming such purchaser, he shall give to the mortgagor a release of the mortgage debt, and if any other person becomes such purchaser, and if the mortgagee enforces payment of the mortgage debt against the mortgagor, then such purchaser shall repay the amount of such debt and interest to the mortgagor; and, in default of payment thereof within one month after demand, the mortgagor may recover from such purchaser the amount of such debt and interest in an action for money had and received, and, until such debt and interest are repaid to the mortgagor, he shall have a charge therefor upon the mortgaged lands. 12 V., c. 73, s. 3.

(264.) On any writ, precept, or warrant of execution against goods and chattels, the sheriff or other officer to whom the same is directed may seize and sell the interest or *equity of redemption* in any goods or chattels of the party against whom the writ has issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure. 20 V., c. 3, s. 11; and see 12 V., c. 73, s. 1.

(271.) Before the sale of real estate upon execution against lands and tenements, the sheriff shall publish an advertisement of sale in the *Canada Gazette* at least six times, specifying: 2 Geo. 4, c. 1, s. 20.

- (1.) The particular property to be sold;
- (2.) The names of the plaintiff and defendant;
- (3.) The time and place of the intended sale.

And he shall, for three months next preceeding the sale, also publish such advertisement in a public newspaper of the county in which the lands lie, or shall for three months put up and continue a notice of such sale in the office of the clerk of the peace, or on the door of the court-house or place in which the court of General Quarter Sessions for such county are usually holden; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day.

(272.) The advertisement in the official gazette of

Mortgagees may become purchasers at sheriff's sales.

The interest of a mortgagor in goods mortgaged may be sold in execution.

Notice of sale of lands in execution.

Notice in gazette

FORMS.

zette shall constitute incipient execution. any lands for sale under a writ of execution during the currency of the writ [giving some reasonably definite description of the land in such advertisement,] shall be deemed a sufficient commencement of the execution to enable the same to be completed by a sale and conveyance of the lands after the writ has become returnable. 19 V., c. 43, s. 188.

If sheriff leaves office, his successor to execute writs against lands. (273.) If the sheriff goes out of office during the currency of any writ of execution against lands, and before the sale, such writ shall be executed, and the sale and conveyance of the lands be made, by his successor in office, and not by the old sheriff; but any sheriff may, after he has gone out of office, execute any deed or conveyance necessary to effectuate and complete a sale of lands made by him while in office. 19 V., c. 43, s. 187.

738. BILL of SALE.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between A. B., of _____, of the first part, and C. D., of _____, of the second part, witnesseth as follows:—

WHEREAS the said A. B. is possessed of the _____, herein after set forth and enumerated, and hath contracted with the said C. D. for the sale to _____ of the same, at the sum of _____ dollars;

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of _____, paid by the said C. D. to the said A. B., [the receipt whereof is hereby acknowledged,] he, the said A. B., doth by these presents assign, transfer, and set over, unto the said C. D., his executors, administrators, and assigns, all those the said _____, and all the right, title, interest, property, claim, and demand, whatsoever, of him, the said A. B., of, in, to, and out of the same, and every part thereof.

TO HOLD the said herein before assigned premises, and every part thereof, with the appurtenances, and all the right, title, and interest of the said A. B. therein, as aforesaid, UNTO and TO THE USE of the said C. D., his executors, administrators, and assigns.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he, the said A. B., is now rightfully and absolutely possessed of, and entitled to, the said

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BILLS OF SALE.

hereby assigned premises, and every part thereof, and that he hath in himself good right to assign the same unto the said C. D., his executors, administrators, and assigns, in manner aforesaid; AND that the said C. D., his executors, administrators, and assigns, shall, from time to time and at all times hereafter, peaceably and quietly hold and enjoy the said hereby assigned premises, and every part thereof, to and for his own use and benefit, without any manner of hinderance, interruption, molestation, claim, or demand, whatsoever, of, from, or by him, the said A. B., or any person or persons whomsoever; AND that free and clear, and freely and absolutely released and discharged, or otherwise, at the costs of the said A. B., effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges, and incumbrances, whatsoever; AND moreover, that he, the said A. B., and all persons rightfully claiming or to claim any estate, right, title, or interest, of, in, or to the said hereby assigned premises, or any part thereof, will, from time to time and at all times hereafter, upon every reasonable request of the said C. D., his executors, administrators, or assigns, but at the costs and charges of the said C. D., do and execute, or cause to be done and executed, all such further acts, deeds, and assurances for the more effectually assigning and assuring the said hereby assigned premises unto the said C. D., his executors, administrators, and assigns, in manner aforesaid, as by the said C. D., his executors, administrators, or assigns, shall be reasonably required.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED }
in presence of
E. F.

A. B. [SEAL.]

CANADA. count of to wit: I, C. D., in the within bill of sale named, make oath and say, that the sale thereby made is *bonâ fide*, and for good consideration, namely (*set out the particular consideration clearly,*) and not for the purpose of holding or enabling me, this deponent, to hold the goods mentioned therein against the creditors of the said bargainer.

SWORN before me, at , this day of C. D.,
A. D., 18 .

A Commissioner for taking affidavits in the Queen's Bench, in and for the

CANADA. count of to wit: I M. N., of ,

FORMS.

make oath and say, that I was personally present, and did see the annexed bill of sale duly signed, sealed, and delivered by _____, the parties thereto, and that I, this deponent, am a subscribing witness to the same, and that the name M. N., set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at _____

Sworn before me, at _____, this _____ day of _____, A. D., 18 _____ M. N.

A Commissioner for taking affidavits in the Queen's Bench, in and for the said County of _____

739. BILL of SALE.

Another Form.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and fifty-_____ between A. B., of _____, of the one part, and C. D., of _____, of the other part, witnesseth as follows:—

WHEREAS the said A. B. hath contracted with the said C. D. for the absolute sale to him of the goods and chattels mentioned and described in the schedule hereto, at or for the price or sum of _____ dollars;

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the said sum of _____ dollars, by the said C. D. to the said A. B. paid, [the receipt whereof is hereby acknowledged,] he, the said A. B., doth by these presents assign, unto the said C. D., his executors, administrators, and assigns, ALL AND SINGULAR the goods and chattels mentioned and described in the said schedule, together with all advantages, privileges, and emoluments to arise therefrom, or thereunto in any wise appertaining. To HOLD the said goods and chattels, and ALL AND SINGULAR other the premises hereby assigned, with their appurtenances, unto the said C. D., his executors, administrators, and assigns, for his and their absolute use and benefit. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that it shall be lawful for the said C. D., his executors, administrators, and assigns, at all times hereafter, to hold and enjoy the said goods and chattels hereby assigned, without any let, suit, hinderance, disturbance, claim, or demand, whatsoever, of, from, or by any person or persons whomsoever.

IN WITNESS WHEREOF, &c., (as in n. 738.)

The schedule to which the foregoing indenture refers.

BILLS OF SALE.

BE IT REMEMBERED that, on the _____ day of _____, in the year first within written, a delivery was made by the within mentioned A. B. to the within mentioned C. D. of the within mentioned or referred to, a _____ being delivered to the said C. D. in the name of the whole, in the presence of _____

WITNESS _____, of _____, in the _____ of _____.

(Add the two affidavits at the foot of 738.)

740. BILL of SALE and CHATTEL MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the _____ of _____, in the county of _____, in consideration of one dollar to me paid by C. D., of _____ of _____, [the receipt whereof I hereby acknowledge,] do by these presents grant and assign, unto the said C. D., and his assigns, the following goods, chattels, and property, to wit: (specify the articles, or refer to them as in a schedule annexed, 741.)

WHEREAS I, the said A. B., am justly indebted to the said C. D., in the sum of one hundred and ten dollars, on account, for money had and received, and goods sold and delivered, [or on a promissory note, dated, &c., and due _____ months from date,] to be paid to the said C. D., or his assigns, on the _____ day of _____, 18____, with the legal interest thereon, from the day of the date hereof;

NOW THE CONDITION of the above bill of sale is such that, if the said A. B. shall pay to the said C. D., or to his agent, attorney, or assignee, the above demand, [or demands,] at the time and in the manner aforesaid, and shall keep and perform the covenants and agreements above contained, on his part to be kept and performed, THEN the above bill of sale shall be void; OTHERWISE, on the neglect and failure of the said A. B. to pay the said demand, [or demands,] or to keep and perform the said covenants and agreements, THEN and in that case the said C. D., and his assigns, are hereby authorized and empowered to sell the above described goods, chattels, and property, [or the goods, &c., described in the schedule hereunto annexed, as aforesaid,] or any part thereof, by public auction or private contract, at his or their option, and to retain from the proceeds of such sale, in his or their hands, sufficient to pay and satisfy the whole amount of the above mentioned demand, [or demands,] with the legal interest thereon which shall be due at the time of such sale, and all costs, charges, and expenses incurred by the said C. D., or his assigns, in consequence of the neglect and failure of the said A. B., as aforesaid; RENDERING the surplus, if any, to the said A. B., or to his heirs, executors, administrators, or assigns, on demand.

FORMS.

THE SAID C. D., and his assigns, are hereby authorized, for further security, to take the said goods, chattels, and property into his or their possession at any time he or they may think proper.

IN WITNESS, &c., (*as in n. 738.*)

A. B. [SEAL.]

741. BILL of SALE.*

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town of _____, in the county of _____, and Province of _____, Canada, for and in consideration of the sum of _____ dollars, lawful money of the Province of Canada, to me paid by C. D., of the town of _____, in the county of _____, and province aforesaid, (*state occupation.*) [the receipt whereof is hereby acknowledged, have bargained and sold, and do by these presents grant and convey, unto the said C. D., his executors, administrators, and assigns, one equal undivided half of six acres of wheat, now growing on the farm of E. F., in the town of _____ aforesaid, one chestnut horse, and twenty sheep, belonging to me and now in my possession, at the place last aforesaid. To HOLD the same UNTO the said C. D., his executors, administrators, and assigns. AND I do, for myself, my heirs, executors, and administrators, covenant and agree with the said C. D., his executors, administrators, and assigns, to warrant and defend the sale of the said property, goods, and chattels, hereby made unto him, the said C. D., his executors, administrators, and assigns, against all and every person and persons whomsoever.*

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____, one thousand eight hundred and _____

SIGNED, SEALED, AND DELIVERED }
in presence of }
G. H.

A. B. [SEAL.]

742. BILL of SALE in consideration of MAINTENANCE.

THIS INDENTURE, made the _____ day of _____, one _____

*If the property conveyed consists of a great number of articles, it is better to refer to them in the bill of sale as "All the goods, wares and merchandise, chattels and effects, mentioned and described in the schedule annexed, marked" *Schedule A*, and to annex a schedule in which they are particularly enumerated and described.

The conveyance should be expressly under the provisions of the act 20 Vic., c. 3, which declares that no bill of sale shall be valid unless accompanied by an actual, visible, and continued change of possession, or unless the same be filed in the office of the clerk of the county court, within five days from the time of execution, and accompanied by an affidavit that the same is *bona fide* and for good consideration, and not for the purpose of defeating the creditors of the bargainer. See the statute. See also the form of affidavit at n. 738.

BILLS OF SALE.

thousand eight hundred and _____, between A. B., of _____, in the county of _____, and Province of Canada, _____, of the first part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, of the second part, witnesseth:—

THAT THE SAID A. B., in consideration of the covenants herein after contained, to be performed by the said C. D., and of the sum of one dollar to him paid by the said C. D., [the receipt whereof is hereby acknowledged,] hath bargained and sold, and by these presents doth grant and convey, unto the said C. D., his executors, administrators, and assigns, (*here describe the property or refer to a schedule of it,*) belonging to him, the said A. B., and now in his possession, (*name here the place or premises in and about which the property is situated.*) To HOLD the same UNTO the said C. D., his executors, administrators, and assigns.

AND THE SAID A. B. doth, for himself, his heirs, executors, and administrators, covenant and agree with the said C. D., his executors, administrators, and assigns, to warrant and defend the sale of the said property, goods, and chattels, hereby made unto him, the said C. D., his executors, administrators, and assigns, against all and every person and persons whomsoever.

AND, IN CONSIDERATION of the premises, the said C. D. doth hereby covenant and agree with the said A. B., his executors and administrators, that he will support and maintain, and comfortably and sufficiently clothe, the said A. B., and in all respects care and provide for him for and during the remainder of his natural life; AND that he, the said C. D., will pay unto the said A. B. the sum of _____ dollars, on the first day of January in each and every year during the said time: PROVIDED ALWAYS that the said C. D. shall be forever released and discharged from the covenants above contained, on his part to be performed, if the said A. B. shall refuse to reside in the county of _____ aforesaid, except such refusal be occasioned by inability to obtain comfortable and sufficient board, lodging, and maintenance in the said county.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED

in presence of
G. H.

A. B. [SEAL.]
C. D. [SEAL.]

743. BILL of SALE of REGISTERED VESSEL.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of _____, owner of the brig, or vessel, called the _____, of the burden of _____

FORMS.

tons, or thereabouts, now lying at the port of _____ for and in consideration of the sum of _____ dollars, to me paid by C. D., of the place aforesaid, [the receipt whereof I hereby acknowledge,] have bargained and sold, and by these presents do bargain and sell, unto the said C. D., his executors, administrators, and assigns, all the hull or body of said brig, or vessel, together with the masts, bowsprit, sails, boats, anchors, cables, spars, and all other necessaries thereunto appertaining and belonging; the certificate of the registry of which said brig, or vessel, is as follows, to wit: (*copy certificate of registry.*) To hold the said brig, or vessel, and appurtenances thereunto belonging, unto and to the use of the said C. D., his executors, administrators, and assigns.

AND I do, for myself, my heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, to warrant and defend the said brig, or vessel, and all before mentioned appurtenances, against all and every person and persons whomsoever.

IN WITNESS, &c., (*as in n. 742.*)

(*The two affidavits, as in n. 738.*)

744. MORTGAGE of CHATTELS in a DWELLING-HOUSE.

Insurance Clause.

THIS INDENTURE, made the _____ day of _____, between M. N., of _____ of _____, in the county of _____ and Province of Canada, _____, (*mortgagor.*) of the one part, and C. D., of _____ of _____, in the county of _____ and province aforesaid, of the other part, witnesseth as follows:—

(1.) IN CONSIDERATION of _____ dollars, paid to the said M. N. by the said C. D., the said M. N., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors, and administrators, that the said M. N., his heirs, executors, administrators, or assigns, will pay to the said C. D., his executors, administrators, or assigns, _____ dollars, with interest after the rate of _____ per cent. per annum, on the _____ day of _____

(2.) FOR THE CONSIDERATION AFORESAID, the said M. N. assigns unto the said C. D., his executors and administrators, the effects now in or about _____ house, near _____ in _____, or the out-buildings and stables thereof, [and which are specified in the schedule hereto.]

(3.) PROVIDED THAT, if the foregoing covenant shall be satisfied on the _____ day of _____, the said M. N., his executors, administrators, and assigns, shall be entitled to a reassignment of the premises, [during the subsisting term therein,] at his and their cost.

BILLS OF SALE.

(4.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors, administrators, and assigns, that the said M. N. is entitled to execute this assignment of the premises, free from incumbrances, and that he and all necessary persons will, at the cost of the said M. N., and his estate, do all acts required for perfecting such assignment: [PROVIDED THAT the said M. N., his executors, administrators, or assigns, shall not, excepting in the event of some interest being ten days unpaid after a written demand, be required to pay the said principal before the _____ day of _____, or such earlier day as the holders or holder of this security shall by _____ calendar months' previous written notice appoint, the said M. N., his executors, administrators, and assigns, being entitled meanwhile to the possession and use of the premises.]

(5.) THE SAID M. N., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said M. N., his heirs, executors, or administrators, will, on demand, reimburse the said C. D., his executors, administrators, or assigns, all expenses under the subsequent powers, with interest after the rate aforesaid, and will pay to him or them interest, after the rate aforesaid, on all principal moneys continuing secured hereon, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____; BUT SO THAT payment of interest on such last mentioned moneys, after the rate of _____ per cent. per annum, within seven days next after each of the said half-yearly days, shall satisfy this covenant as regards the interest payable on such half-yearly day.

(6.) THE HOLDERS OR HOLDER of this security [whether varied or not on transfer] may sell the premises, and, upon every sale [or attempted sale] and assurance thereof, may deal with the premises, and the purchase moneys thereof, as absolute owners or owner, excepting as mentioned in the next proviso, [but so that, as regards the purchaser's protection, such ownership shall be deemed absolute without exception:] PROVIDED THAT the purchase money shall be paid [after discharging all expenses and all moneys continuing hereby secured] to the said M. N., his executors, administrators, or assigns, and that [unless some interest shall be forty days in arrear] no sale shall be made without _____ calendar months' written notice to the said M. N., his executors, administrators, or assigns, such payment and notice as aforesaid, to the executors or administrators of the said M. N., being sufficient as against all persons interested in the equity of redemption.

(7.) THEY OR HE may also, unless the current year's receipt for a fire insurance of _____ dollars on the premises shall be produced to them or him on demand, effect such insurance in any office, and may also, in substitution for every policy comprised in this security

FORMS.

which shall lapse or become void or voidable, effect in any office an insurance on the *life* of the said M. N., for an amount equal to the aggregate moneys then hereby secured, and the clauses and powers herein contained [in reference to the said policy of _____ dollars] shall apply to every such substituted policy.

(8.) ALL EXPENSES under the preceding powers, [other than the power of sale,] with interest after the rate aforesaid, shall constitute a charge on the premises, the moneys arising therefrom being applicable as the purchase moneys aforesaid: PROVIDED THAT the aggregate of such expenses as aforesaid, exclusive of fire insurance, and of the said sum of _____ dollars, [and such further advances as aforesaid,] shall not exceed _____ dollars.

IN WITNESS, &c., (as in n. 742.)

745. CHATTEL MORTGAGE.

Future advances, under 20 Vic., ch. 3, s. 5.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, of the first part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, of the second part, witnesseth:—

THAT WHEREAS (here recite "the terms, nature, and effect of the agreement, and the amount of the liability intended to be created," as prescribed by the statute. If the mortgage is taken to secure C. D., as indorser of promissory notes for A. B., the notes should be severally recited.)

NOW, THEREFORE, the said A. B., for the consideration herein before recited, and in pursuance of the said agreement, doth by these presents grant and assign, unto the said C. D., his executors, administrators, and assigns, ALL AND SINGULAR the goods, chattels, furniture, and household stuffs, particularly mentioned and described in the schedule hereunto annexed, marked A. To HOLD ALL AND SINGULAR the said goods and chattels UNTO and TO THE USE of the said C. D., his executors, administrators, and assigns. PROVIDED ALWAYS that, if the said A. B., his executors or administrators, shall well and truly _____, and shall well and truly save harmless the said C. D. from _____, then these presents and every matter and thing herein contained shall cease, determine, and be utterly void, to all intents and purposes, any thing herein contained to the contrary thereof in any wise notwithstanding. AND THE SAID A. B., for himself, his executors and administrators, ALL AND SINGULAR the said goods, chattels, and property, by these presents unto the

CHATTEL MORTGAGES.

said C. D., his executors, administrators, and assigns, against him, the said A. B., his heirs, executors, and administrators, and against all and every other person and persons whomsoever, will warrant and defend. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, or, in case the said A. B. shall attempt to sell or dispose of, or in any way part with, the possession of the said goods and chattels, or any of them, or to remove the same, or any part thereof, out of the , without the consent of the said C. D., his executors, administrators, or assigns, to such sale, removal, or disposal thereof first had and obtained in writing, then and in such case it shall be lawful for the said C. D., his executors, administrators, or assigns, with his or their servant or servants, and with such other assistant or assistants as he or they may require, at any time during the day, to enter into or upon any lands, tenements, houses, and premises, wheresoever the said goods and chattels, or any part thereof, may be, and for such persons to break and force open any doors, locks, bolts, fastenings, hinges, gates, fences, houses, buildings, inclosures, and places, for the purpose of taking possession of and removing the said goods and chattels; AND upon, and from and after, the taking possession of such goods and chattels as aforesaid, it shall be lawful, and the said C. D., his executors, administrators, or assigns, and each or any of them, is and are hereby authorised and empowered to sell the said goods and chattels, or any of them, or any part thereof, by public auction or private contract, as to him or any of them may seem meet, and from and out of the proceeds of such sale in the first place to pay and reimburse him and them all such sum and sums of money as may then be due by virtue of these presents, and all such expenses as may have been incurred by the said C. D., his executors, administrators, or assigns, in consequence of the default, neglect, or failure of the said A. B., his executors, administrators, or assigns, in payment of the said sum of money, with interest thereon as above mentioned, and in the next place to pay unto the said A. B., his executors or administrators, all such surplus as may remain after such sale, and after payment of all such sum or sums of money, and interest thereon, as may be due by virtue of these presents at the time of such seizure, and after the payment of the costs and charges and expenses incurred by such seizure and sale as aforesaid.

PROVIDED ALWAYS, nevertheless, that it shall not be incumbent on the said C. D., his executors, administrators, or assigns, to sell and dispose of the said goods and chattels; but that, in case of default , it shall be lawful for the said C. D., his executors, administrators, or assigns, peaceably and quietly to hold and enjoy the said goods and chattels, without the let, molestation, eviction,

CHATTEL MORTGAGES.

ministrators, shall pay, or cause to be paid, the said promissory note, [or notes] so as aforesaid indorsed by the said C. D., a copy of which said promissory note [or notes] is set out in the recital to this indenture; AND shall pay, or cause to be paid, all and every other note or notes which may hereafter be indorsed by the said C. D., for the accommodation of the said A. B., by way of renewal of the said note, in the said recital to this indenture set forth, or otherwise howsoever, and indemnify and save harmless the said A. B. from all loss, costs, charges, damages, or expenses, in respect of the said note, [or notes,] or renewals thereof; THEN, &c.

That the within mortgage was executed in good faith, and for the express purpose of securing C. D., the said mortgagee therein named, against the payment of the amount of such his liability for the said mortgage, by reason of the said promissory note [or notes] therein recited, or any future note or notes which he may indorse for the accommodation of the said A. B., whether as renewals of the said recited promissory note or otherwise; AND not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against such mortgagor.

747. CHATTEL MORTGAGE to SECURE a PROMISSORY NOTE.

THIS INDENTURE, made the _____ day of _____, (as before, then add:)

PROVIDED ALWAYS that, if the said A. B. shall well and truly pay unto the said C. D., or his assigns, at maturity, the full amount, principal and interest, of a certain promissory note, executed by the said A. B., for the sum of _____ dollars, bearing date the day of _____, 18____, payable three months after date, and now held by the said C. D.; THEN this conveyance shall be void, otherwise to remain in full force and effect. (Add clause in regard to default and possession, if necessary.)

IN WITNESS WHEREOF, &c., (as in n. 742.) A. B. [SEAL.]

748. CHATTEL MORTGAGE.

Mortgagor to retain possession until default, and proviso enabling mortgagee to take possession in case of default.

THIS INDENTURE, made the _____ day of _____, (as before, and then add this proviso:)

FORMS.

PROVIDED ALWAYS that, until default by the said A. B. in the performance of the conditions aforesaid, it shall be lawful for him to keep possession of the property above mentioned and described, and to use and enjoy the same; BUT, if the said A. B. shall attempt to sell the same, or any part thereof, or to remove the same out of the county of _____, without notice to the said C. D., or his assigns, and without his or their assent to such sale or removal, to be expressed in writing, THEN it shall be lawful for the said C. D., or his assigns, to take immediate possession of the whole of said property, to his or their own use. (*Conclude as before.*)

749. NOTICE of SALE on CHATTEL MORTGAGE.

Mortgage Sale.

By virtue of a chattel mortgage, executed by A. B. to C. D., dated the _____ day of _____, 18____, and filed in the office of the clerk of the County Court of the county of _____ on the _____ day of _____, in the year _____, and upon which default has been made, I shall sell the property therein mentioned and described, viz., (*mention the articles.*) at public auction, at the house of _____, in the city [or town] of _____ aforesaid, on the _____ day of _____ instant, [or next,] at ten o'clock in the forenoon of that day. DATED at _____, the _____ day of _____, 18____.

C. D., mortgagee, [or E. F., assignee.]

750. CONFESSION of JUDGMENT.

To accompany Chattel Mortgage.

In the Queen's Bench.
A. B. } We confess the debt in this cause, amounting
against } to the sum of \$ _____, and that the plaintiff
C. D. and E. F. } has sustained damages to the amount of one shilling on account of the detaining thereof, besides his costs and charges in this behalf, to be taxed by the master, and judgment may be forthwith entered up for said debt and costs, and we, and each of us, hereby agree to pay said debt, with interest thereon, by the following installments, that is to say: the sum of \$ _____, part thereof within _____ years from the _____ day of _____ of the present month of _____, by equal quarterly payments of \$ _____ each, on the _____ day of _____, the _____ day of _____, and the _____ day of _____, in each year, together with interest after the rate of _____ per cent., to be paid with each of such quarterly payments,
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WARRANT OF ATTORNEY.

upon the whole principal money then remaining unsatisfied, until the whole amount of said debt and interest be fully paid and satisfied; which said debt and interest are also secured by a *chattel mortgage*, executed by us to the said A. B., bearing even date herewith, and payable at the days and times above mentioned. AND it is hereby agreed that no execution shall issue on the said judgment until default be made by us, or either of us, in the payment of the said installments, or any of them, or some part thereof, respectively, on the days and at the times when they respectively become due and payable as aforesaid, *when* the plaintiff shall be at liberty thereupon forthwith to sue out execution for the same, or for the whole of the said debt and costs then remaining unpaid, notwithstanding the periods for the payment of the *residue* of the said installments shall not have arrived, together with officers' fees, sheriff's poundage, costs of levying, and all other incidental expenses. AND we hereby undertake not to bring any writ of error in this case, or file any bill in equity, or do any other matter or thing whereby plaintiff may be delayed entering up his judgment; AND ALSO that it shall not, at any time or in any event, be necessary, previous to issuing said execution, to revive said judgment, or to sue out or execute any writ of *scire facias*.

AS WITNESS our hands, this _____ day of _____, one thousand eight hundred and _____

C. D.
E. F.

SIGNED by the above named C. D. and E. F., in my presence; and I declare myself to be attorney for the said C. D. and E. F., and that I subscribe my name as such attorney.
M. N.

AFFIDAVIT to be INDORSED on the ABOVE.

In the
Between _____, of _____, of _____, plaintiff,
and _____, of _____, of _____, defendant.
I, _____, of _____, of _____, gentleman,
make oath and say:

That the within cognovit bears date and was executed by the above named defendant, _____, of _____, of _____, in my presence, on the _____ day of _____, 18 _____, and that the name _____, set and subscribed as the witness attesting the signature of the said defendant thereto, is my handwriting, and that I was so present and so attested such signature of the defendant, as attorney for him and at his request.

Sworn before me, at _____, this _____ day of _____, 18 _____.

X. Y.

A Commissioner for taking affidavits in the Queen's Bench, in and for the county of _____

U

BONDS.

751. WARRANT of ATTORNEY to CONFESS JUDGMENT.

To E. F., of _____, and G. H., of _____, attorneys of
her Majesty's court of Queen's Bench at _____, jointly and
severally, or to any other attorney of the same court.

THESE ARE TO DESIRE AND AUTHORIZE you, the attorneys above
named, or any of you, or any other attorney of the said court of
Queen's Bench aforesaid, to appear for me. A. B., of _____, as
of _____ term last or some subsequent term in the said court,
then and there to receive a declaration for me in an action of debt
for \$ _____, for money borrowed, at the suit of C. D., of _____,
and thereupon to confess the said action, or else to suffer a judgment
by *nil dicit*, or otherwise, to pass against me in the same action, and
to be thereupon forthwith entered up against me, of record of the
same court, for the sum of \$ _____ and costs of suit; AND I, the
said A. B., do hereby further authorize and empower you, the said
attorneys, or any one of you, after the said judgment shall be en-
tered up as aforesaid, for me and in my name, and as my act and
deed, to sign, seal, and execute a good and sufficient release in the
law to the said C. D., his heirs, executors, and administrators, of all
and all manner of error and errors, writ and writs of errors, and all
benefit and advantage thereof, and all misprisions of error and errors,
defects and imperfections, whatsoever, had, made, committed, done,
or suffered, or to be had, made, committed, done, or suffered, in,
about, or concerning the aforesaid judgment, or in, about, touching,
or concerning any writ, warrant, process, declaration, plea, entry, or
other proceedings whatsoever, of or any way concerning the same;
AND it shall not be at any time necessary to revive the said judg-
ment by writ of *scire facias*, or do any other act, matter, or thing
to keep the same on foot, although the same shall have been entered
on record for the space of one year or upward: AND whatsoever
you, my said attorneys, or any one of you, shall do, or cause to be
done, in the premises, or any of them, this shall be to you, and to
every of you, a sufficient warrant or authority.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the
day of _____, in the year of our Lord one thousand
eight hundred and fifty- _____ A. B.

I, L. M., do hereby declare myself to be attorney for and on
behalf of the said A. B.

752. COMPOSITION with CREDITORS.

TO ALL TO WHOM THESE PRESENTS SHALL COME: We, whose names
are hereunder written and seals affixed, creditors of A. B., of the

JUDGMENT.

, attorneys of
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ey for and on

whose names
 A. B., of the

COMPOSITION DEEDS.

of
 , in the county of
 , and Prov-
 ince of Canada,
 , send greeting:—

WHEREAS the said A. B. does justly owe and is indebted unto us,
 his said several creditors, in divers sums of money; but, by reason
 of sundry losses, disappointments, and other damages, happened
 unto the said A. B., he is unable to pay and satisfy us of our full
 debts and just claims and demands, and therefore we, the said cred-
 itors, have resolved and agreed to undergo a certain loss, and to ac-
 cept of _____ cents for every dollar owing by the said A. B. to us,
 the several and respective creditors aforesaid, to be paid in *full sat-
 isfaction* and *discharge* of our several and respective debts;

Now KNOW YE that we, the said creditors of the said A. B., do,
 for ourselves, severally and respectively, and for our several and
 respective heirs, executors, and administrators, covenant, promise,
 compound, and agree, to and with the said A. B., by these presents,
 that we, the said several and respective creditors, shall and will ac-
 cept, receive, and take, of and from the said A. B., for each and
 every dollar that the said A. B. does owe and is indebted to us, the
 said several and respective creditors, the sum of _____ cents, in full
 discharge and satisfaction of the several debts and sums of money
 that the said A. B. does owe and stand indebted unto us; to be
 paid unto us, the said several and respective creditors, within the
 time or space of _____ months next after the date of these presents;
 AND WE, the said several and respective creditors, do severally and
 respectively covenant, promise, and agree, to and with the said A. B.,
 that he, the said A. B., shall and may, from time to time and at all
 times within the said time or space of _____ months next ensuing
 the date hereof, assign, sell, or otherwise dispose of all his goods
 and chattels, wares and merchandise, at his own free will and pleas-
 ure, for and toward the payment and satisfaction of the said
 _____ cents for every dollar the said A. B. does owe and is indebted unto
 us, as aforesaid; AND that neither we, the said several and respective
 creditors, nor any of us, shall or will, at any time or times hereafter,
 sue, arrest, molest, or trouble the said A. B., or his goods and chat-
 tels, for any debt or other thing now due and owing to us, or any
 of us, his respective creditors; So AS the said A. B. well and truly
 pay, or cause to be paid, the said sum of _____ cents for every dol-
 lar he does owe and stand indebted to us, respectively, within the
 said time or space of _____ months next ensuing the date hereof;
 AND all and every of the grants, covenants, agreements, and condi-
 tions hereiⁿ contained shall extend to and bind our several execu-
 tors, administrators, and assigns.

IN WITNESS, &c., (as in n. 751.)

753. DEED of COMPOSITION with CREDITORS.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, of the first part; C. D., of _____ of _____, in the county of _____, and E. F., of _____ of _____, in the county of _____, and province aforesaid, _____, of the second part; and the other persons whose names and seals are hereunder signed and set, [being creditors of the said A. B.,] of the third part, witnesseth as follows:—

(1.) THE SAID A. B. assigns unto the said C. D. and E. F., their executors and administrators, all the personal property of the said A. B., with power for the said C. D. and E. F., and the survivors of them, his executors or administrators, or their or his assigns, or his or their substitute or substitutes, in the name of the said A. B., his executors or administrators, to recover, receive, and give receipts for the same premises; UPON TRUST that the said C. D. and E. F., and the survivor of them, his executors or administrators, or their or his assigns, shall realize the said premises, either by sale or otherwise, [with absolute discretion as to the conditions, time, and mode of sale, and with power to buy in and rescind the premises, to contract and rescind contracts, and to execute assurances,] and shall pay the moneys realized, with all intermediate income, [after satisfying all expenses of the trust and of the preparation of these presents,] to the creditors of the said A. B., rateably according to their respective debts. PROVIDED (1.) That the said trustees, or trustee, may allow the said A. B. to retain any wearing apparel, or household furniture; may employ, at such remuneration as they or he shall think fit, any person or persons [including the said A. B.] in winding up the affairs of the said A. B.; may abandon or compound any suit or action; and may, at all times, pay in full any creditor whose debt is under _____ dollars. (2.) THAT all moneys for the time being in the trustee's hands, above _____ dollars, shall be paid into the banking-house of Messrs. _____ . (3.) THAT the trustees' receipts shall discharge all persons paying purchase or other money, or transferring trust property from liability in regard to the application thereof. (4.) THAT the surviving and continuing trustees and trustee [or the executors or administrators of the last surviving or continuing trustee] may appoint one or more persons in the place and with the powers of every original or future trustee who shall die, be abroad, retire, or refuse or become incapable to act, the premises being, on each appointment, either revested or not at discretion. The vacancies may be supplied either at the same or several times and in any order, and any one or more may be left unsupplied; and every refusing or retiring trustee shall be deemed

COMPOSITION DEEDS.

ITORS.
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continuing for the purpose of supplying [if willing] his own or any other then subsisting vacancy. (5.) THAT no trustee shall be responsible for omitting to realize any of the premises, notwithstanding any consequent loss or expiration of interest. (6.) THAT every trustee, who shall be a solicitor or attorney, [including the said _____,] shall be entitled to the same professional remuneration as if he had not been a trustee.

(2.) IN CONSIDERATION of the foregoing assignment, the said parties hereto of the second and third parts *release* the said A. B., his heirs, executors, and administrators, from all debts or claims due from him to the said parties hereto of the second and third parts, respectively, and from all legal and equitable proceedings for recovering and enforcing the same.

(3.) PROVIDED (1.) THAT no creditor's *specific security*, of which he shall have delivered a written account to the said trustees or trustee, shall be prejudiced by these presents; but so that no creditor, holding a specific security, shall be entitled to a dividend in respect of any debt not so secured, unless he shall vest the security or securities held by him in the said trustees or trustee, upon the trusts and subject to the clauses and provisoes herein expressed.

(2.) THAT, unless executed on or before the _____ day of _____, by all creditors of the said A. B., [whose debts are above _____ dollars,] these presents shall become inoperative for all purposes, and the said A. B., his executors or administrators, shall be entitled, at his and their cost, to a *reassignment* of the premises hereby assigned [so far as the same shall not have been realized] and to all moneys then in the trustees' or their bankers' hands.

(3.) THAT if, while these presents shall continue in operation, the said A. B. shall be arrested, or any legal or equitable proceedings be commenced, by a creditor or creditors who have not executed the same, the said trustees and trustee shall bail the said A. B., and discharge [with or without defending the same, and either by way of compromise or not,] such creditor's debt or debts, with all the expenses.

IN WITNESS, &c., (as in n. 751.)

CHAPTER VII.

LEASES AND AGREEMENTS FOR LEASES.

NOTES.

754. *It is far better to execute a lease at once* than to take the double trouble of an *agreement* to be followed by a lease, because an *explicit* agreement requires nearly as much care in drafting as the lease itself, and one that is *not* explicit leaves an opening for misunderstandings, which frequently cause vexation and expense; still, as there are circumstances in which an agreement may be preferred, the following hints are suggested for guidance at a time when haste might cause some important points to be forgotten.

755. *Written agreements* are always to be preferred, and should state clearly what is intended to be done.

(1.) Take care by due inquiry that the lessor really has a term as great as that which he proposes to grant.

(2.) If the lease is to be executed under a *power of leasing*, care must be taken that the contract is not inconsistent with the power.

(3.) If the lessor is himself a lessee, and subject to any *unusual covenants*, they should be distinctly set out, and that the purchaser is to be subject to them.

756. *If lessor is tenant in tail*, it should be ascertained whether he has issue likely to succeed and to endure as long as the proposed term; for, though the 32 Hen. viii., c. 28, enables tenants in tail to grant leases for 21 years, or for 3 lives, which shall be binding on the issue in tail, [see also Revised Statutes, Cap. LXXXIII., s. 4.] the remainder-man or reversioner is not bound by them.

757. *A husband seized in right of his wife* may grant leases under the same statute; but a *contract* for a lease will not be enforced against a wife who survives her husband, or against her *heirs*, at whatever time she may die.

758. *If lessor does not intend to show his title*, that should be stated; for, though the lessee cannot enforce its production, so neither can the lessor enforce specific performance without it, unless such production is expressly waived in the contract.

759. *Entry by lessee* before a lease executed will be held to be a *waiver* of the right to investigate the lessor's title, and so will acts of *ownership*, but a *special agreement* may prevent this.

760. *The term should be clearly defined*, for it is essential that a term have a certain beginning and a certain ending; still, the happening of an uncertain event may put an end to it, as in the case of a lease for ninety-nine years, determinable upon a life or lives.

ON AGREEMENTS FOR LEASES.

If the term is to be determinable at certain periods before its expiration by efflux of time, the proviso should say "*either by the lessor or the lessee*," otherwise the privilege will belong to the *lessee* only; and such determination should, for the protection of the lessor, be conditional on the payment of the rent and other outgoings, and the due performance of the covenants by the lessee.

761. *The amount of rent and times of payment should be specified*; and, if any abatement is intended in case of fire or other accident, that should be stated; for the covenant for *quiet enjoyment* will not imply that lessor is to rebuild or repair.

762. *By whom taxes and all other outgoings are to be paid* should also be stated.

763. *How the premises are to be kept in repair* is an essential item in the agreement, otherwise the burden of repairs will fall upon the lessee, except such as are caused by reasonable wear and tear; but he is not compellable to rebuild premises which are burnt down, [though he may be to pay the *rent* for them,] or which have become ruinous by any other accident, and it has been held that a tenant, under a written agreement to keep a house in tenatable repair during the term, is justified in quitting it during the term, and without notice, if the premises become unwholesome for want of *sufficient drainage*, and the fault cannot be remedied without unreasonable expense and labor on his part.

764. *The precise covenants which are to be in the lease* should be stated, instead of saying "the usual covenants," which leaves room for disputes.

765. *To keep in repair* as well as to *leave in repair* should be expressly stipulated, otherwise, however ruinous the condition of the premises during the term, no action will lie; and *right of entry* should be reserved to inspect the state of the premises, and that tenant on notice will make all needful repairs.

766. *Not to assign without license* should be extended also to *underletting*, because an *underlease* is no breach of a covenant not to *assign*; and, if breach is to avoid the term, that must be stated, otherwise, though liable to an action, the tenant will retain the term. Sometimes, in such case, instead of forfeiting the term, the lessor exacts payment of a certain sum of money.

767. *As to carrying on certain trades*, this prohibition should state *what* trades, and say also, "or any other noisome or offensive trade or business whatsoever," (n. 843,) using the word *business* as well as *trade*; but, if it is intended to prohibit *any* kind of trade, the best way is not to mention any in particular, but that *no* trade shall be carried on upon the premises. (See n. 846.)

768. *Ordinary form for a lease of a dwelling-house, is given in n. 840.* And, if the house be *furnished*, there should be a proviso as to breakages, and that the lease of the furniture shall be determinable if such

NOTES.—AGREEMENTS FOR LEASES.

furniture be taken in execution of any process against the goods of the lessee; otherwise the lessor has no right to recover the furniture, nor any remedy against the lessee during the term; but under such a stipulation the landlord may *determine the lease* and *unmaintain trover* for the goods.

769. *Covenants for renewal* should be clearly stated, as they are construed strictly, and in favor of the lessee; *e. g.*, a covenant to renew under the same covenants as are in the original lease is satisfied, both at law and in equity, by tender of a lease for the same term at a like rent, and with all the covenants *except that to renew*. If, therefore, the lease is to contain a *perpetual* right to renew, or more than *one* renewal, that must be stated, and so if the right is to be restricted. (*See the forms.*)

770. *Terms for letting a farm* should be equally explicit, as in the case of any tenements or hereditaments.

771. *Leases and agreements for leases*.—A lease required by law to be in writing is *void* by 8 and 9 Vic., c. 106, in England, and 14, 15 Vic., c. 7, s. 4, in Canada, unless made by *deed*; but parol leases, not exceeding three years, and wherein the rent is two-thirds the value, are not required by law to be in writing, and therefore are not within the statute.

Under a mere agreement, the landlord may eject the tenant whenever he pleases; but, on the other hand, unless the tenant have *paid* rent, the landlord has no power of distress, but can only sue for use and occupation.

772. *The lessor's solicitor* prepares the lease at the expense of the lessee; but, for want of privity between them, an action for costs will not lie except against the lessor, and *he* may sue the lessee. If lessor require a *counterpart*, he must pay the costs; but the object of this may be achieved by *both* parties executing the lease and depositing it with a *third* party, on behalf of both.

773. *Where there is lease and counterpart*, the latter should be executed by the *lessee only*; for then the lessor is *not* bound to give evidence of the execution of the *original* in an action against the lessee, which he *is* bound to do if the part in his possession is executed by *both*.

PREMISES of the LEASE.

774. *As to the parties*.—If the lease is executed by attorney, the principal must be the demising party, and the delivery must be as the act and deed of the principal.

775. *If intended lessor dies pending the contract*, the granting parties must be his real or personal representatives, as though the lease were an absolute conveyance, or assignment.

776. *If the intended lessee so dies*, the lease must be to his executors or administrators; or to his legatee, with their concurrence.

PREMISES OF A LEASE.

777. *As to recitals*, which are rare in leases and always brief, see remarks *n.* 325; and even if the lease is under a *power*, the instrument creating the power is *often* only mentioned or but briefly referred to in the clause of demise, as that the lessor, "in exercise of "a power limited to him by a certain indenture, &c., dated, &c., "(setting out dates and names,) doth by this present deed appoint, "and also grant and demise, &c."

778. *The operative words* are "grant, demise, lease, set, and to farm let," but "grant, demise, and lease," or "grant and demise," are most usual; but any of the other terms are of equal force, and *words of limitation* are not necessary, though often inserted.

779. *In leases by tenant for life and reversioner*, the tenant should "grant and demise," and the reversioner should "ratify and confirm;" and so, if mortgagee and mortgagor concur in a lease of the mortgaged premises, the mortgagee must "demise," and the mortgagor "confirm."

780. *Lease of a wife's lands*.—The husband may lease under 22 Hen. 8, c. 28, but the wife must demise jointly with him; but, if the husband and wife are *jointly* seized, *semble* that the wife need not be made a demising party.

781. *Buildings and improvements* pass with the land, and therefore need not be particularized; though, if they did not *exist* at the time of a former lease, it is usual to name them.

The demise of a *house* carries the *garden* with it.

782. *General words*, as "all houses, outhouses, edifices, buildings, ways, &c.," are sometimes used to supply any omissions in the description, but they do not make an accurate description unnecessary; and, if any kind of *easement* is to be granted, as the use of a pump, it should be *specially* granted for the *whole term* of the lease, otherwise the pump might possibly be removed during the term.

783. "*Appurtenances*" will pass turbarry granted to a house, a sheep-walk, cartilage, and garden, and *semble* any lands usually let with the house for the same rent.

784. "*Belonging and appertaining*" have both the same meaning, and neither will cover what once formed part of the premises but is now severed from them; therefore it may be necessary to say "now or at any time heretofore demised, used, occupied, or enjoyed therewith."

785. *Fixtures*, if meant to be included in the demise, should be distinctly specified, and it is best done in a schedule at the end of the deed.

786. *The reversion clause* is omitted in purchase deeds, and may with even more propriety be omitted in leases.

787. *All-estate clause* is inconsistent and must be omitted, except where a lessee assigns to a sub-lessee.

788. *All-deeds clause* must also be omitted.

789. *Exceptions* must be carefully described; for, wherever a doubt arises, it will be construed in favor of the lessee, and will never be construed so as to frustrate the grant. Therefore an exception can only be of *part* of the whole thing named; for a demise of farms, A and B, *excepting* B, would be bad, and B would pass nevertheless. And so of a house and shop, *excepting the shop*, the exception would be void, and the shop would pass.

790. *Right of way* reserved must be fully described and every purpose named.

791. *Right of entry* to inspect repairs or state of cultivation is usually reserved; but, in leases of dwelling-houses, it is usual to limit the right to certain stated periods in a covenant by the lessee, in which he undertakes to amend any want of repairs upon notice.

792. *The habendum* should define with precision the commencement, duration, and determination of the term.

793. *A term limited to commence from the date of the lease* will be construed inclusive or exclusive of the date, as will best give effect to the deed and not destroy it.

794. *Concurrent leases*.—If a second lease be granted of the same premises for a longer term during the continuance of the first, it becomes concurrent with the existing lease, in point of interest and computation of time, and operates as an immediate lease of the reversion, which will in general pass the right to the rent under the former lease.

795. *A term of seven, fourteen, or twenty-one years*, as the lessee shall think proper, is a certain lease for seven years; and, if the lessee continues in possession after the expiration of seven years, the lease is then good for fourteen years; and, if he continue in possession after fourteen years, it is then good for twenty-one years.

796. *A term determinable on lives* should be granted for a certain period, as ninety-nine years, provided the persons named shall so long live, and the limitation should extend to the survivors or survivor of them, to prevent doubt as to whether the term were to endure only during the *joint* lives of all who are named.

797. *If lessor has only a limited or uncertain interest in the premises*, then qualify the grant to the lessee thus: "provided the estate "and interest of the said lessor in the said premises shall so long "continue."

798. *An underlease* is frequently granted by limiting the term to commence a *day earlier* than the term in the original lease, so that it may expire a day earlier, and leave a reversion in the sub-lessor.

799. *The reddendum* should be carefully worded, or the rent may fail altogether; as if lessor, having a *freehold* interest, reserve the rent to himself and his *executors*; or if, having only a *term* of years, he reserve the rent to himself and his *heirs*, without limiting it dur-

OF LEASES.

ing the term. In both these cases the rent would fail on the death of the lessor. The best plan is to reserve the rent *generally* during the term.

800. *Leases by mortgagee and mortgagor*, the latter being in possession. Here the rent must be made payable to the mortgagee, his heirs or assigns, or his executors or administrators, according to the nature of the estate which he has in the premises, subject to the equity of redemption; and, in case of redemption thereof, to the mortgagor, his heirs and assigns, and then should be added a proviso that mortgagor shall receive the rents until mortgagee shall give notice to the tenants to the contrary, and that mortgagor's receipt shall be a discharge.

A *power of distraint* must also be given to the mortgagor, since he has not such power in him for want of privity of estate between himself and the lessee.

801. *In leases by husband and wife of wife's lands*, the rent is made payable to husband and wife, and to the heirs of the wife.

802. *Leases by tenant in tail* reserve the rent to the lessor, and the heirs in tail, according to the limitation in the entail.

803. *In leases by tenant for life and reversioner*, the rent is reserved to the tenant for life, and his assigns, during his life, and thereafter to the reversioner.

804. *A proportionate part of the rent* is usually reserved, in case the lease is determined by lessor, for breach of covenant or other sufficient cause, and this requires an additional reddendum.

805. *Where lands and goods are let together* there must be two reddendum clauses; one to the lessor, his heirs and assigns, as to the lands, and the other to the lessor, his executors, administrators, and assigns, in respect of the goods. Otherwise, if the lessor dies, the heir will receive the whole rent, and the parties entitled to the goods will have no benefit from them during the term.

806. *The time of the first payment of rent*, whether quarterly or half-yearly, should always be expressed.

807. *Penal rents*, for carrying on trades or doing any other act prohibited by the lease, should be reserved *as rents*, and not as a *penalty*, otherwise equity may relieve the lessee.

808. *Corn rents* are sometimes reserved; so that the rent varies substantially with the varied productiveness of the farm in different seasons.

COVENANTS.

809. *Covenants* in a lease should always *run with the land*, because then the assignee of the term will be personally liable under them; but for this it is necessary that the lessor have the *legal* estate in the premises. If, therefore, *mortgagee* and *mortgagor* make a lease, the covenants to pay rent and taxes, and keep and leave the preim-

USUAL COVENANTS.

ises in repair, must be with the *mortgagee only*, and in return the mortgagee must covenant for quiet enjoyment by the lessee.

810. *In leases of dwelling-houses the usual covenants of the tenant are to pay rent and taxes, to keep and leave the interior of the premises in repair, and to deliver up possession at the end of the term. The landlord covenants to repair the exterior of the premises, and that lessor shall have peaceable enjoyment during the term. Insurance against fire is not a usual covenant, and cannot be enforced on the lessee.*

811. *A covenant to pay rent, though implied in the words "yielding and paying," is usually inserted in a lease; and, if the rent is to be paid at times not customary, such times should be stated as "the yearly sum of _____ dollars, by twelve equal monthly payments, &c."*

812. *If house and furniture are let together, the lease should contain two reddendums, as mentioned at n. 805.*

813. *Additional rent on commission of certain acts. (See n. 807.)*

814. *Rent of wife's lands in lease by husband and wife. (See n. 801 and form 859.)*

815. *Rent to tenant for life and reversioner. (See n. 860.)*

816. *If a surety concurs. (See the form n. 861.)*

817. *To pay rates and taxes, see form of this covenant, when lessee pays, n. 844, 845, 846, and 863; when lessor, n. 855.*

818. *To keep and leave premises in repair. (See n. 864, and furniture 865, 866.)*

In this covenant the word "keep" is essential, for otherwise, whatever the dilapidation, there would be no breach until the end of the term; but the lessee is not liable for fair wear and tear, and he should expressly agree with the lessor not to be liable for violent accidents. (See n. 843 (13,) 850 (4).)

819. *If furniture is let with a house, the lessee covenants as in form 865.*

820. *Landlord's repairs should be distinctly expressed; and, if the lessee may do them on landlord's default, and deduct the cost from the rent, that should be expressly declared.*

821. *If lessee is to insure against fire, it should be made imperative on him to produce the receipts and vouchers of payment immediately after payment. (See n. 846.)*

822. *The usual covenants in a farm lease are contained in form n. 845.*

823. *A right of entry in the last year of the term is usually reserved to the landlord, to enable an incoming tenant to prepare for future crops.*

824. *The usual covenants by lessor in building leases are to pay rent and taxes, and to keep and leave the premises in tenantable repair. All the rest are special, and vary with every particular case.*

PROVISOES.—ATTORNMENTS.

825. *The usual covenant of a lessor seized in fee* is that lessee shall have quiet enjoyment; but, if he have only a *term of years*, then his covenants are more extensive: as that the lease he holds under is valid; that the rents and covenants have been duly paid and performed; that he has good right to underlet; for quiet enjoyment, freedom from incumbrances, and further assurance; to produce the original lease to his lessee, to pay the rents and perform the covenants in said lease, and indemnify the underlessee therefrom; to which is often added, that the underlessee shall not be liable to pay his lessor any rent before the latter shall *produce a receipt for the last year's rent under the original lease*.

826. *To rebuild the premises*, if destroyed by accident, is also a proper covenant of the lessor in many cases.

PROVISOES.

827. The common provisos are:—

(1.) To avoid the term for non-payment of rent.

(2.) For avoidance on breach or non-performance of covenants by the lessor.

(3.) For determining the term by either party on an agreed notice.

(4.) For cesser, or suspension of rent, in case the premises are destroyed by accident.

828. *Power of re-entry on non-payment of rent* is very important, and the usual conditions precedent are set out in form *n. 875*.

829. *In leases determinable on lives*, it is common to provide for determination of the term if lessee fails to show the existence of the lives; and, as to proof of existence or presumption of death, see the statutes 19 Car. ii., c. 6, sec. 2; and, as to reinstatement after undue eviction, the same statute, sec. 5 and generally 6 Anne, c. 18.

830. *As to cesser of rent*, if the premises are destroyed, see *n. 818*.

ATTORNMENTS.

831. *Attornments are dispensed with* in most cases under the statute 4 Anne, c. 16; but sometimes they are *necessary*, as if tenant hold under a lease granted *after the mortgage*, for then attornment to the mortgagee is necessary to give him *power to distrain*, which he cannot do without it, though he may evict the tenant without notice as a trespasser; but, if the lease is prior to the mortgage, a *simple notice* by the mortgagee to the tenant to pay him the rents is sufficient, for such notice operates at common law as an attornment, and *relates* to the time of the grant and to all rents not then actually paid over to the mortgagor.

For several forms of attornments, see *n. 900a, 900b, 900c, 900d*.

OF LEASES.

832. *Sometimes mortgagor attorns to mortgagee.* (See form n. 903e.)

833. *For attornment by tenant, whom mortgagee has recovered against in ejectment, see form n. 904a.*

EASEMENTS.

834. *Easements* are usually granted and contained in the same conveyance with the property to which they appertain, or they pass as appurtenant to the dominant tenement itself; but some easements, as rights of way, or the use of a drain or water-course, are sometimes granted separately.

835. *A grant under seal* is necessary to the conveyance of an *estoppel*; for, if made by *parol*, it may be revoked at any time, even though the licensee may have expended large sums of money on the land of its continuance. If, however, A has acquired an easement in addition to the ordinary rights of property, he may *relinquish* it by *parol* and be bound thereby: as if he have, by grant or prescription, acquired a right to ancient lights which overlook the property of B, and he gives B *parol* license to build in front of them on *his own land*, and B builds accordingly, the license cannot be revoked; but, if B gives A a similar license to turn a spout upon *his* land, that license may be revoked, for this would be the imposition of a burden upon the land in derogation of the ordinary rights of property; and even in the first instance the act permitted must be *actually performed*, therefore *semble* that, if the extinguishment of an easement depends upon a *repetition* of acts, a *parol* license would not be sufficient.

836. *A grant of right of way*, if intended to run with the land, must be restricted to such purposes as are connected with the enjoyment of the land, which is only to pass and repass to and from it; and therefore a grant of right of way "*for all purposes whatsoever*" will not run with the land, or entitle an assignee to any benefit under it.

The form n. 1345, contains the most usual limitations and stipulations of this kind of grant; among which it should always be expressly stated *by whom the repairs are to be made*, a burden which usually falls upon the grantee.

837. *Where the right to the soil is granted* as well as of the way, it is usually by demise, at a yearly rent, for a term of years.

838. *If the right is to be free of all restraint*, see form n. 1346.

839. *The usual form of a release of right of way* will be found in n. 1347.

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FORMS.

840. AGREEMENT for a LEASE for a YEAR, and so from YEAR to YEAR, [DETERMINABLE on a SIX MONTH'S NOTICE by either LANDLORD or TENANT.]

(1.) ARTICLES OF AGREEMENT made and entered into, this day of _____, A. D. 18____, between A. B., of _____, in the county of _____, and Province of Canada, _____, (*lessor*), for himself, his heirs, executors, and administrators, of the one part, and C. D., of _____, in the county of _____, and province aforesaid, (*lessee*), for himself, his executors, administrators, and assigns, of the other part.

(2.) THE SAID A. B. doth hereby agree to let, and the said C. D. to take, all that messuage, tenement, or dwelling-house, with the outhouses, garden, and appurtenances thereunto belonging, situate and being No. _____, in _____ street, in the _____ of _____, in the _____ of _____, in the occupation of _____, esquire, but now untenanted, for the term of one year, from the day of the date thereof, and so on, from year to year, until the tenancy shall be determined by six calendar months' previous notice in writing by either party to the other, such notice to expire either at Michaelmas or Lady-day; which notice shall in all cases determine the current year of the tenancy.

(3.) THAT the rent to be paid for the said premises shall be _____ dollars a year, without deduction, and shall be payable by four equal quarterly payments, on the _____ day of _____, the _____ day of _____, the _____ day of _____, and the _____ day of _____; the first quarterly payment to be made on the _____ day of _____ next.

(4.) AND ALSO that the said C. D. shall keep and leave the said premises in as good a state of repair and condition as the same are now in, reasonable wear and tear, and accidents by fire, flood, storm, or tempest, only excepted.

(5.) AND, LASTLY, it is hereby agreed that this instrument shall operate as an agreement for a lease, and not as a lease.

IN WITNESS WHEREOF, the said parties hereunto have set their hands, the day and year first above written.

SIGNED in presence of }
E. F.

A. B.
C. D.

FORMS.

841. AGREEMENT for a LEASE, LESSEE to REPAIR and INSURE.

KNOW ALL MEN BY THESE PRESENTS: That A. B., of the _____ of _____, in the county of _____, and Province of Canada, esquire, hereby agrees to let, and C. D., of the _____ of _____, in the county of _____, and province aforesaid, farmer, agrees to take, ALL THAT, &c., (*parcels*), and the rights, easements, and appurtenances therewith held, used, or enjoyed, for _____ years from the _____ day of _____, one thousand eight hundred and _____, at the yearly rent of _____ dollars, clear of all existing and future taxes, rates, and outgoings, and to be payable, by equal half-yearly payments, on the _____ day of _____ and _____ in every year, the first of such payments to be made on the _____ day of _____ next.

AND THAT THE SAID C. D. shall keep the said premises, and at the end of the term give them up, in the same order and repair as they now are in, and shall keep them insured against loss by fire in a sum not less than _____ dollars, and, when required, produce the policy of such insurance, and the receipts for the premiums.

IN WITNESS, &c., (*as in n. 840.*)

842. AGREEMENT for a LEASE, CONTAINING all the USUAL COVENANTS.

ARTICLES OF AGREEMENT made and entered into, this _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, of the other part, witnesseth as follows:—

THAT THE SAID A. B. shall let, and the said C. D. shall take, ALL THAT, &c., (*parcels*), with the fixtures now in, upon, or belonging to the same, and the rights, easements, and appurtenances therewith held, used, or enjoyed, for the term of _____ years from the _____ day of _____, at the yearly rent, clear of all existing and future taxes, rates, and outgoings, of _____ dollars, to be payable, by four equal payments, on the _____ day of _____, the _____ day of _____, the _____ day of _____, and the _____ day of _____ in every year; the first of such payments to be made on the _____ day of _____ next.

THAT THE SAID A. B., his heirs or assigns, will, on the request of the said C. D., his executors, administrators, or assigns, execute a

AGREEMENTS FOR A LEASE.

proper lease of the said premises to the said C. D., his executors, administrators, or assigns, for the term and at the rent aforesaid, to be payable as aforesaid.

THAT THE SAID lease shall contain covenants on the part of the said C. D., his executors, administrators, and assigns, for payment of the said net yearly rent of _____ dollars, on the days and in manner aforesaid; AND for payment of all existing and future taxes, rates, and outgoings; AND to keep the said premises in good and sufficient condition and repair; AND in such good and sufficient condition and repair to deliver up the same, with all new fixtures and other additions, to the said A. B., his heirs or assigns, at the expiration or other sooner determination of the said term; AND to keep the said messuage and buildings insured against loss by fire in a sum not less than _____ dollars; AND at all times, when required, to produce the policy or policies of such insurance, and the receipts for the premiums in respect of the same, to the said A. B., his heirs or assigns; AND ALSO not to assign or underlet the said premises without license in writing from the said A. B., his heirs or assigns; AND not to carry on, or permit to be carried on, on the said premises, any noisome or offensive trade, business, or occupation.

THAT THE SAID lease shall also contain a proviso for re-entry by the said A. B., his heirs or assigns, on non-payment of the said yearly rent of _____ dollars, or any part thereof, for twenty-one days next after any of the said days on which the same, or any part thereof, shall become due, and whether the same shall have been legally demanded or not, or on the non-observance or non-performance of any of the covenants in the said lease to be contained, and on the part of the said C. D., his executors, administrators, or assigns, to be observed or performed.

THAT THE SAID lease shall contain a covenant, on the part of the said A. B., his heirs or assigns, that the said C. D., his executors, administrators, and assigns, may, on due payment by him and them of the said yearly rent to be reserved as aforesaid, and on the observance and performance of the covenants in the said lease to be contained, and on his and their part to be observed and performed, quietly enjoy the premises to be demised, without eviction or disturbance by the said A. B., his heirs or assigns, or any person lawfully claiming through or in trust for him or them.

THAT THE SAID C. D., his executors, administrators, or assigns, shall duly execute and deliver to the said A. B., his heirs or assigns, a counterpart of the said lease.

THAT THE SAID lease and counterpart shall be prepared by the solicitor of the said A. B., his heirs or assigns, and that the expenses of preparing and executing this agreement and the said lease and counterpart, and all other incidental expenses, shall be paid by the

AGREEMENT FOR LEASE.

(5.) ALSO TO PAY all rates, taxes, and assessments which shall be made on the said premises, or on the tenant or occupier thereof, including rates [if any] for paving, lighting, and sewers.

(6.) ALSO to keep the said messuage and premises, during the said term, in as good a state and condition as the same are now in, and so leave and deliver up the same at the end or sooner determination of the said term, fair wear and tear, and accidents by fire, flood, storm, or tempest excepted.

(7.) ALSO not to assign or underlet the said messuage and premises, or any part of the same, without the previous consent in writing of the said A. B., his heirs or assigns.

(8.) ALSO not to use or exercise, or permit to be carried on, the trade or business of a tavern-keeper, licensed victualler, retailer of spirituous liquors, beer-shop keeper, eating-house keeper, oyster seller, tea or coffee-house keeper, tripe boiler or seller, vendor of coals, tallow chandler, tallow melter, soap boiler, sugar baker, working hatter, common brewer, distiller, slaughterman, butcher, baker, dyer, fellmonger, fishmonger, pipemaker, trunkmaker, coachmaker, working brazier, tinman, plumber, painter, oilman, smith, farrier, tanner, tawer, currier, or any other noisome or offensive trade or business whatsoever, or convert the said premises into a school or a private lunatic asylum; or to bring, or suffer to be brought, placed, or lodged, upon the said premises, or upon any part of the same, any pitch, tar, turpentine, vitriol, tallow, oil, flax, hemp, or gunpowder, or any other goods or materials of such a nature or quality as may in any way tend to invalidate any insurance against damage by fire now or hereafter to be made on the said premises.

(9.) ALSO that the said lease shall contain a proviso for determining the said term at the end of the first three, five, or seven years thereof, at the option of the said A. B. or C. D., upon giving to the other of them six calendar months' notice in writing.

(10.) ALSO that the said lease shall contain a proviso empowering the said A. B. to re-enter on the said premises, and avoid the said term, in case of non-payment of the reserved rent by the space of twenty-one days after the same shall become payable; or in case of non-performance of any of the covenants of the said lease on the part of the said C. D. to be observed and performed.

(11.) ALSO a proviso for the abatement or suspension of the rent during such time as the said premises may remain untenable or useless in consequence of destruction or damage by fire, flood, storm, or tempest.

(12.) ALSO a covenant on the part of the said A. B., his heirs or assigns, to rebuild or repair such premises, so destroyed or damaged by fire, flood, or tempest, as aforesaid, as soon as conveniently may be after such accidents shall occur.

(13.) AND IT IS HEREBY FURTHER AGREED that, notwithstanding

FORMS.

the said messuage and premises shall be so destroyed or damaged, by fire, flood, storm, or tempest, as aforesaid, either before the commencement or during the continuance of the said term, this agreement shall not be avoided thereby, but shall, nevertheless, continue in force in the same manner as if those accidents had never taken place, but subject to such suspension or abatement of the rent during such time as the said premises shall remain wholly or partially useless or untenable; and, in case any dispute shall arise respecting the amount of such suspension or abatement, the same shall be determined by the award of two arbitrators and an umpire, in the usual manner.

(14.) AND IT IS HEREBY MOREOVER AGREED that the said A. B. shall covenant that, subject to the payment of the rents and performance of the covenants by the said C. D., the said C. D., his executors, administrators, and assigns, shall peaceably and quietly hold and enjoy the said premises for the term thereby demised.

(15.) AND, LASTLY, it is hereby agreed that this instrument shall operate as an agreement for a lease, and not as a lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands, the day and year first above written.

SIGNED in presence of }
E. F. }

A. B.
C. D.

844. AGREEMENT for LETTING a HOUSE for THREE YEARS, with USUAL STIPULATIONS.

(1.) MEMORANDUM OF AN AGREEMENT made and entered into, this day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, (*landlord*), of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, _____, (*tenant*), of the other part.

(2.) THE SAID A. B. hereby agrees to let, and the said C. D. hereby agrees to take, from the _____ day of _____, for the term of three years, ALL, &c., (*describe the property*.) at the yearly rent of _____ dollars, payable by four equal quarterly payments, on the _____ day of _____, the _____ day of _____, the _____ day of _____, and the _____ day of _____ in every year; the first payment to be made on the _____ day of _____ next.

(3.) THE SAID C. D. agrees to pay the said rent at the several days and times as aforesaid.

(4.) ALSO to pay the rates, taxes, and all outgoings of every kind and description, whether local or parliamentary, which, during the

AGREEMENTS FOR LEASES.

said term, shall be charged, assessed, or imposed upon the said premises, or the landlord or tenant in respect thereof.

(5.) Also to keep the glass of the windows and all internal parts of the said premises in repair, and so leave the same at the end of the said term, accidents by fire, flood, or tempest only excepted.

(6.) AND ALSO shall not assign, underlet, or part with the possession of the said premises without the consent in writing of the said A. B., nor use the same other than and except as a private dwelling-house.

(7.) AND THE SAID A. B. agrees to keep all the external parts of the said premises in good repair.

(8.) AND IT IS HEREBY ALSO MUTUALLY AGREED between the said A. B. and C. D. that a lease, pursuant to the above terms, and containing a covenant for payment of the rent on the several days herein before mentioned, and all other usual clauses, covenants, conditions, and agreements, shall be at any time prepared and executed by the said A. B., at the request and costs of the said C. D., and shall also contain a proviso that, if the said rent shall be unpaid twenty days after any or either of the said days of payment, or if the said C. D. shall make default in performing any of the covenants, conditions, and agreements to be contained in the said lease, on his part to be observed and performed, it shall be lawful for the said A. B. to re-enter and determine the tenancy of the said C. D.

(9.) ALSO that the said term hereby agreed to be granted shall, at the option of the said A. B., determine, and the said A. B. have an immediate right of entry, in case the said C. D. shall assign, underlet, or part with the possession of the said premises, without such license as aforesaid, or in case the said C. D. shall become bankrupt, or take or attempt to take the benefit of any act for the relief of insolvent debtors, or shall permit any writ of execution to be levied upon his goods.

(10.) PROVIDED ALWAYS that this instrument shall not operate as a lease or present demise of the said premises, or any part thereof, but as an agreement for a lease.

AS WITNESS our hands, this _____ day of _____, 18 ____ .
SIGNED, &c., (as in n. 843.)

845. TERMS between LANDLORD and TENANT for LETTING
a MESSAGE FARM.

(1.) TERM to be (*insert duration of term.*) commencing on the _____ of _____, and so to continue until the landlord, or his agent, or the tenant, shall determine the same by giving six
29* 341

FORMS.

calendar months' previous notice in writing to that effect to the other, such notice to expire on the _____ day of _____.

(2.) RENT to be \$ _____ a year, to be paid by four equal quarterly payments, on the _____ day of _____, the _____ day of _____, the _____ day of _____, and the _____ day of _____.

(3.) THE TENANT also to pay the taxes, and all outgoings of every kind and description, which during the said term shall be charged, assessed, or imposed upon the said premises, or on the landlord or tenant in respect thereof.

(4.) THE LANDLORD to keep in repair the roofs, walls, beams, and stanchions of the said dwelling-house, barn, and outhouses belonging to the said premises; AND the tenant to keep in repair the glass of the windows of the dwelling-house, and all the internal repairs and paintings, and so leave the same at the expiration of the said term, [reasonable wear and tear, and accidents by fire, flood, or tempest, only excepted.]

(5.) THE TENANT also to maintain, keep, and leave in repair all gates, posts, stiles, rails, and palings; also to amend and repair, and so leave at the expiration of the said term, all the embankments, walls, and other fences; and cleanse and scour the ditches, drains, and water-courses in or upon the said premises, when the same shall become necessary.

(6.) THE TENANT to keep the tillage-land of the said premises in due course of husbandry, and not to sell or dispose of any manure which shall arise upon the said farm, but shall consume the whole of such manure upon the said premises; and shall not mow any part of the meadow-land of the said farm more than once in one year; and in all respects shall manage the said premises in a proper and husbandry-like manner.

(7.) THE TENANT not to assign or underlet the said premises, or any part thereof, or permit the same to be occupied by any other person, without the previous consent in writing of the landlord.

(8.) THE SAID TERM to determine, and the landlord to have immediate right of re-entry, in case the tenant shall assign or underlet the said premises, or any part thereof, or permit the same to be occupied by any other person, without such license as aforesaid; or in case the tenant shall become bankrupt, or take or attempt to take the benefit of any act or acts for the relief of insolvent debtors, or shall permit any writ of execution to be levied on his goods.

(9.) THAT this instrument shall operate as an agreement for a lease, and not as a lease.

(10.) A. B., of _____, (landlord,) and C. D., of _____, (tenant,) each of them, for himself, his heirs, executors, administrators, and assigns, mutually agree with each other that the said A. B. and C. D., respectively, and their respective heirs, executors, administrators, and assigns, will, from time to time and at all times

LEASES.

during the continuance of the *term* hereby agreed to be granted, make the payments and duly observe and perform all and every the articles, stipulations, and agreements above mentioned, on his and their respective parts to be observed, paid, and performed.

IN WITNESS WHEREOF, they have hereunto respectively set their hands, this day of , 18 .

SIGNED, &c., (as in n. 843.)

846. LEASE of a DWELLING-HOUSE for TWENTY-ONE YEARS determinable.—NOTICE at the end of SEVEN or FOURTEEN YEARS.—COVENANTS by LESSEE not to ASSIGN, or UNDERLET, or USE the HOUSE except as a DWELLING-HOUSE.—COVENANTS by LESSEE to INSURE, &c., &c.

THIS INDENTURE, made the day of , between A. B., of of , in the county of , and Province of Canada, , (lessor,) of the one part, and C. D., of of , in the county of , and province aforesaid, , (lessee,) of the other part, witnesseth:—

THAT, IN CONSIDERATION of the rent and covenants herein after reserved and contained, and on the part of the said C. D., his executors, administrators, and assigns, to be paid, observed, and performed, he, the said A. B., doth hereby *demise* and *lease* unto the said C. D., his executors, administrators, and assigns, ALL THAT messuage or dwelling-house, &c., (*property*.) TOGETHER with all passages, water-courses, rights, easements, and appurtenances thereunto belonging. To HOLD the said piece or parcel of ground, messuage, or tenement, and ALL AND SINGULAR other the premises hereby demised, or expressed or intended so to be, unto the said C. D., his executors, administrators, and assigns, for the term of years from the day of . YIELDING AND PAYING therefor, yearly and every year during the said term, unto the said A. B., his executors, administrators, and assigns, the clear rent of dollars, by four equal quarterly payments, on the day of , the day of , the day of , and the day of , free and clear of and from all parliamentary and other taxes, rates, assessments, and outgoing, whatsoever; the first quarterly payment thereof to be made on the day of next ensuing.

AND THE SAID C. D. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors, administrators, and assigns, that he, the said C. D., his executors, administrators, and assigns, will, from time to time during the said term, pay, or cause to be paid, unto the said A. B., his execu-

FORMS.

tors, administrators, and assigns, the said yearly rent of \$ _____, on the days and in manner herein before mentioned, without any deduction whatsoever; and also pay and discharge all present and future taxes, charges, and assessments whatsoever upon the said hereby demised premises, or any part thereof, or on the occupier or occupiers, owner or owners, thereof.

AND, FURTHER, THAT the said C. D., his executors, administrators, and assigns, shall and will peaceably and quietly permit the said A. B., his executors, administrators, and assigns, with or without workmen and others, twice in every year during the said term, at convenient times in the day-time, into and upon the said hereby demised premises, or any part or parts thereof, to enter, and view and examine the state and condition thereof, and of all such decays, defects, and wants of reparation as shall be found upon every such view and examination, to give to the said C. D., his executors, administrators, or assigns, or leave at or in the said demised premises, or any part thereof, to and for the said C. D., his executors, administrators, and assigns, notice in writing to repair and amend the same, within the space of six calendar months then next following, within which said space of six calendar months he, the said C. D., his executors, administrators, or assigns, will repair and amend all and every the same decays, defects, and wants of reparation accordingly as shall be mentioned in such notice.

AND ALSO that the said C. D., his executors, administrators, or assigns, shall and will, at his or their own costs, immediately after the execution of these presents, insure, or cause to be insured, and at all times afterward during the said term, determinable as herein after mentioned, keep insured the said messuage, tenement, and buildings hereby demised from loss or damage by fire, in the name or names of the said A. B., his executors, administrators, or assigns, in the

Insurance Office, or in some other offices to be appointed by the said A. B., his executors, administrators, or assigns, in a sufficient sum to cover the value of the said messuage, or tenement, and buildings, and shall and will for that purpose pay, or cause to be paid, the premium or premiums, sum or sums of money, which may become due and payable in respect of every such insurance, and shall, from time to time, when required, produce to the said A. B., his executors, administrators, or assigns, the receipt or receipts for the payment of such premium or premiums, sum or sums of money, for such insurance.

AND THAT ALL MONEYS which shall be received from time to time, under or by virtue of any such insurance as aforesaid, shall be forthwith laid out and applied in or toward the rebuilding and repairing the said messuage or tenement and premises so to be insured, or such part thereof as shall be burnt down or damaged by fire.

AND THAT the said C. D., his executors or administrators, shall

LEASES.

not assign, nor underlet, nor part with the possession of the said messuage or tenement and premises hereby demised, or any part thereof, without the consent in writing of the said A. B., his executors, administrators, or assigns, for that purpose being first had and obtained. AND shall not, nor will, at any time during the said term, carry on, or permit to be carried on, any trade or business in or upon the said demised premises, or any of them, or permit the said messuage or tenement to be occupied in any other manner than as a private dwelling-house. AND THAT the said C. D., his executors, administrators, and assigns, will at all times during the said term, at his and their own costs and charges, well and sufficiently repair, support, maintain, and keep the said messuage or tenement and premises hereby demised, with their and every of their appurtenances, with all manner of necessary reparations and amendments whatsoever, when, where, and so often as occasion shall require; AND the said messuage or tenement and premises, being so well and sufficiently repaired, supported, maintained, and kept, shall and will, at the end or earlier determination of the said term of _____ years which shall first happen, peaceably and quietly yield and give up unto the said A. B., his executors, administrators, or assigns.

PROVIDED ALSO that, if the said C. D., his executors, administrators, or assigns, shall be desirous of determining the said term of twenty-one years at the end of the first seven years or fourteen years of the said term, and of such his or their desire shall deliver to the said A. B., his executors, administrators, or assigns, or leave at his or their usual places of abode, not less than six calendar months' notice, on or before the expiration of seven or fourteen years, and shall pay and discharge all arrears of rent, and perform and fulfill all and every the covenants and conditions herein before contained, and on his or their part to be performed and fulfilled, then, and in such case, at the end of such seven or fourteen years, as the case may be, the said term hereby granted shall absolutely cease and determine.

PROVIDED ALWAYS that, if the said yearly rent of _____ dollars, or any part thereof, shall be in arrear for the space of twenty-one days next after any of the said days whereon the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if all or any of the covenants and agreements herein before contained on the part of the said C. D., his executors, administrators, and assigns, shall not be observed and performed by him, his executors, administrators, and assigns, according to the true intent and meaning of these presents, then, and in any of the said cases, it shall be lawful for the said A. B., his executors, administrators, and assigns, at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole, to

FORMS.

re-enter, and the same to have again, repossess, and enjoy, as in his or their first or former estate.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his executors, administrators, and assigns, that he, the said C. D., his executors, administrators, and assigns, paying the said yearly rent of _____ dollars, in manner aforesaid, and observing and performing ALL AND SINGULAR the covenants and agreements herein before contained, on his or their part to be performed, shall and may peaceably and quietly hold, occupy, and enjoy the said messuage or tenement and premises hereby demised, or intended so to be, with their appurtenances, for and during the said term hereby granted, without any eviction or any other disturbance by the said A. B., his executors, administrators, or assigns, or any other person or persons claiming or to claim by, from, or under him, them, or any of them.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first mentioned.

SIGNED, SEALED, AND DELIVERED	}	A. B. [SEAL.]
in the presence of		C. D. [SEAL.]
E. F.		

847. LEASE of a FARM.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, (*lessor*), of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, _____, (*lessee*), of the other part, witnesseth as follows:—

THAT THE SAID A. B. doth hereby *demise* unto the said C. D., his executors, administrators, and assigns, ALL THAT farm and lands in the _____ of _____, in the county of _____, called _____ farm, with the farm-house and other buildings thereon, the particulars whereof are specified in the schedule hereunder written, TOGETHER with all ways, water-courses, rights, privileges, easements, commodities, and appurtenances, whatsoever, to the said hereditaments or any part thereof belonging, or usually held or enjoyed therewith; EXCEPT and reserved, nevertheless, out of this demise, all timber and other trees, and the right to enter and cut and remove the same. TO HOLD the said premises, except as aforesaid, unto the said C. D., his executors, administrators, and assigns, for the term of _____ years from the date of these presents; RENDERING THEREFOR, during the said term, the yearly rent of _____

LEASES.

dollars, clear of all present and future taxes and deductions, by equal payments, on the _____ day of _____ and the _____ day of _____ in every year; the first of such payments to be made on the _____ day of _____ next.

AND THE SAID C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators, or assigns, during the said term, will pay the yearly rent herein before reserved, on the days and in manner aforesaid; AND WILL bear and pay all taxes and outgoings, of whatever kind, now payable or hereafter to become payable, whether by the landlord or tenant, in respect of the said premises; AND WILL keep the said farm-house and buildings insured against loss or damage by fire, in such office as the said A. B., his heirs or assigns, shall approve, and will, when required, produce the policy of such insurance, and the current year's receipt for the premium thereon, to the said A. B., his heirs or assigns; AND WILL keep the said farm-house and buildings, and all things in and about the same, and all fences, ditches, drains, water-courses, gates, fixtures, and things upon or about the said farm and lands, in good condition and complete repair, and without any alteration, except such as the said A. B., his heirs or assigns, shall approve of; AND WILL cultivate, manure, and manage the said farm and lands in a fair and proper manner, according to the most approved course of husbandry; AND WILL, at the expiration or sooner determination of the said term, yield up the said premises in such good condition and repair, and in fair and proper order, as aforesaid, unto the said A. B., his heirs or assigns; AND THAT the said A. B., his heirs and assigns, and his and their agents, surveyors, and workmen, may, at all reasonable times during the said term, enter upon the said premises, to inspect the same, and to cut and remove timber and other trees; AND THAT the said C. D., his executors, administrators, or assigns, will not assign or underlet the said premises, or any part thereof, without the consent in writing of the said A. B., his heirs or assigns.

PROVIDED ALWAYS that, on any breach or non-observance of any of the covenants herein before contained, the said A. B., his heirs or assigns, may re-enter upon the said premises, and repossess and hold the same, as if this demise had not been made.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his executors, administrators, and assigns, that he and they, performing and observing all the covenants herein before contained, may hold and enjoy the said premises during the said term, without any interruption by the said A. B., his heirs or assigns, or any person lawfully claiming under him or them.

IN WITNESS WHEREOF, &c., (as in n. 846.)

FORMS.

848. LEASE of a HOUSE in a TOWN.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, (*lessor*), of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, _____, (*lessee*), of the other part, witnesseth as follows:—

THAT THE SAID A. B. doth hereby *demise* unto the said C. D., his executors, administrators, and assigns, ALL THAT dwelling, numbered _____, in _____ street, in the _____ of _____, in the _____ of _____, with the yards, out-buildings, and ground held therewith, (*add further description, if necessary, to describe the premises with reasonable certainty*.) [TOGETHER with all ways, lights, sewers, water-courses, rights, privileges, easements, advantages, and appurtenances thereto belonging, or usually held or enjoyed therewith; EXCEPT, nevertheless, out of this demise, ALL, &c., (*insert any reservation of a right of water-course from adjoining houses, or the like*.)] TO HOLD the said premises, except as aforesaid, unto the said C. D., his executors, administrators, and assigns, for the term of _____ years from the date of these presents; RENDERING THEREFOR, during the said term, the yearly rent of _____ dollars, clear of all present and future rates, taxes, and deductions, by equal payments, on the _____ day of _____ and the _____ day of _____ in every year; the first of such payments to be made on the _____ day of _____ next.

AND THE SAID C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators, or assigns, during the said term, will pay the yearly rent herein before reserved, on the days and in manner aforesaid;

AND WILL bear and pay all rates, taxes, and outgoings, now payable or hereafter to become payable, whether by the landlord or tenant, in respect of the said premises;

AND WILL keep the said premises insured against loss or damage by fire, in such office as the said A. B., his heirs or assigns, shall approve, and will, when required, produce the policy of such insurance, and the current year's receipt for the premium thereon, to the said A. B., his heirs or assigns;

AND WILL keep the said premises in good condition and complete repair, and without any alteration, except such as the said A. B., his heirs or assigns, shall approve of;

AND, at the expiration or sooner determination of the said term, will yield up the same unto the said A. B., his heirs and assigns;

AND THAT THE SAID A. B., his heirs and assigns, and his and their agents, surveyors, and workmen, may, at all reasonable times

LEASES.

during the said term, enter upon the said premises, to inspect the same;

AND THAT no offensive business or occupation, or nuisance, shall be carried on or committed on the said premises, and that the same shall be used as a private dwelling-house only; AND that the said C. D., his executors, administrators, or assigns, will not assign or underlet the said premises without the consent in writing of the said A. B., his heirs or assigns.

PROVIDED ALWAYS that, on any breach or non-observance of any of the covenants herein before contained, the said A. B., his heirs or assigns, may re-enter upon the said premises, and repossess and hold the same, as if this demise had not been made.

AND THE SAID A. B. doth hereby, for himself, his executors, administrators, and assigns, covenant with the said C. D., his executors, administrators, and assigns, that he and they, performing and observing all the covenants herein before contained, may hold and enjoy the said premises during the said term, without any interruption by the said A. B., his heirs or assigns, or any person lawfully claiming under him or them.

IN WITNESS WHEREOF, &c., (as in n. 846.)

849. LEASE of a HOUSE.

THIS INDENTURE, made the _____ day of _____, between L. N., of _____, in the county of _____, and Province of Canada, _____, (lessor,) of the one part, and C. D., of _____, in the county of _____, and province aforesaid, _____, of the other part, witnesseth as follows:—

(1.) THE SAID L. N. demises unto the said C. D., his executors and administrators, the premises described in the first schedule hereto, [and delineated and colored _____ in the plan drawn in the margin hereof,] with their appurtenances, from the _____ day of _____, for the term of twenty-one years, at the yearly rent of _____ dollars, payable by equal quarterly payments, commencing the _____ day of _____ next.

(2.) THE SAID C. D., for himself, his heirs, executors, and administrators, covenants with the said A. B., his heirs and assigns, [herein after called "the lessors,"] that the said C. D., his executors and administrators, [herein after called "the lessees,"] will pay the rent aforesaid, at the times aforesaid, and defray all outgoings chargeable by law upon the premises; will, at the lessee's cost, maintain [and at the expiration of the term deliver up] the premises in good order and repair; will, at the like cost, execute, with-

LEASES.

province aforesaid, _____, of the other part, witnesseth as follows:—

(1.) THE SAID A. B. demises unto the said C. D., his executors and administrators, [with the reservations specified in the first schedule hereto,] the house and premises No. _____, in the county of _____, with the yard, out-buildings, and appurtenances, from the _____ day of _____, for the term of _____ years, at the yearly rent of _____ dollars, payable by equal quarterly payments, commencing the _____ day of _____ next.

(2.) THE SAID C. D., for himself, his heirs, executors, and administrators, covenants with the said A. B., his executors, administrators, and assigns, [herein after called "*the lessors*,"] that the said C. D., his executors and administrators, [herein after called "*the lessees*,"] will pay the rent aforesaid, at the time aforesaid, and defray all outgoing charges chargeable by law upon the premises; will, at the lessor's cost, maintain [and at the expiration or determination of the term deliver up] the premises in good order and repair [reasonable wear and inevitable accident excepted;] will, at the like cost, execute, without notice, such works and at such times as specified in the first part of the second schedule hereto, and also execute all repairs [not within the foregoing exception] which shall be required by written notice from the lessors within three calendar months from such notice being left on the premises; and will not assign or alter the premises, or use the same as a school, or for any purpose of trade or manufacture.

(3.) PROVIDED (1.) That the lessors may at all times enter upon and inspect the premises, and may also [if the lessees shall fail in discharging any of their said liabilities] enter upon and repossess the premises, as if this lease had not been executed; (2.) THAT this lease may be determined at the end of the first *seven* or *fourteen* years by six calendar months' written notice on either side, but so that no such notice by the lessees shall be valid unless their said liabilities shall be discharged before the expiration thereof.

(4.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said lessees that, their said liabilities being discharged, they or he shall occupy the premises, without interruption from the lessors; and, further, that the lessees will, at their or his cost, execute such works and at such times as specified in the second part of the said second schedule, and keep the premises insured against fire in _____ dollars, in the _____ Office, and also will produce, on demand, every current year's receipt for such insurance, and lay out all moneys received from such insurance in reinstating the premises, making good any deficiency thereof for that purpose. Provided that the said rent shall be suspended while the premises are uninhabitable, through fire.

IN WITNESS, &c., (as in n. 846.)

FORMS.

THE FIRST SCHEDULE.

RESERVATIONS FROM THE DEMISE.

- (1.) The free running of water and soil from the adjacent houses through the main sewer on the premises.
- (2.) The free use by all residents in the adjoining house [No.] of the well and pump on the premises; such use to be by a pump-handle, on the premises No. , and to be subject to the payment of a moiety of the repairs of the pump and well.

THE SECOND SCHEDULE.

PART I.

WORKS TO BE EXECUTED BY THE LESSEES.

- (1.) Twice in every seven years of the term, external painting, in two coats of oils.
- (2.) Once in every seven years, excepting the first seven, external painting, in three coats of oils, [graining and varnishing as at present.]

PART II.

WORKS TO BE EXECUTED BY THE LESSORS.

- (1.) Cesspools to be emptied as often as necessary.
- (2.) Within one calendar month from this date, papering throughout the house; the same quality of paper [to be selected by the lessees] as at present.

851. AGREEMENT for a THREE YEARS' TENANCY of a HOUSE.

AGREEMENT, made this _____ day of _____, 18____, between A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, (*lessor*), of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, (*lessee*), of the other part, witnesseth as follows:—

(1.) THE SAID A. B. lets, and the said C. D. takes, the premises described in the first schedule hereto, with their appurtenances, from the day preceeding the date hereof, for the term of three years, at the yearly rent of _____ dollars, payable by equal quarterly payments, commencing the _____ day of _____ next.

(2.) THE SAID C. D., his executors and administrators, [herein after called "*the lessees*,"] shall defray all outgoings chargeable by law upon the premises, and shall maintain [and at the expiration of the term deliver up] the same in good order and repair [reasonable wear and inevitable accident excepted;] shall, at the lessee's cost,

LEASES.

execute, without notice, such works, and at such times, as specified in the first part of the second schedule hereto, and also execute all repairs [not within the foregoing exception] which shall be required by written notice from the said A. B., his executors, administrators, and assigns, [herein after called "the lessors,"] within three calendar months from such notice being left on the premises; and shall not alter the premises, or assign, or [for more than three calendar months together] underlet the same, or use the same for any purpose of trade, manufactures, or education, except the taking of three [or fewer] pupils.

(3.) THE PREMISES shall be insured in _____ dollars, in the Office, in the joint names of the lessors and lessees, the moneys received from insurance being applied in reinstating the premises, and the premises and the rent suspended while the premises shall be uninhabitable, through fire.

(4.) THE LESSORS may, twice in the year, enter upon and inspect the premises, and may also [if the lessees shall fail in discharging any of their said liabilities] enter upon and repossess the premises, as if these presents had not been executed.

(5.) THE LESSORS will, at their own cost, execute, within _____ weeks from this date, the works specified in the second part of the said second schedule.

IN WITNESS, &c., (as in n. 846.)

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

PART I.

WORKS TO BE EXECUTED BY THE LESSEES.

External painting, in two coats of oils, once in the term.
Cesspools to be emptied as often as necessary

PART II.

(Any present repairs, &c., required may be specified.)

852. LEASE of GROUND, on which only ONE HOUSE is to be BUILT.

THIS INDENTURE, made the _____ day of _____, 18 _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, (lessor,) of the one part, and C. D., of _____ of _____, in the county of _____

W _____ 30*

FORMS.

, and province aforesaid, (*lessee*), of the other part, witnesseth as follows:—

(1.) THE SAID A. B. demises unto the said C. D., his executors or administrators, [with the reservations specified in the first schedule hereto,] the piece of land described in the second schedule hereto, [and delineated and colored in the plan drawn in the margin hereof,] with the legal or usual appurtenances, from the _____ day of _____, for the term of ninety-nine years, at the yearly rent [during the first two years] of a peppercorn, afterward of \$ _____, payable by equal quarterly payments, commencing the day of _____ next.

(2.) THE SAID A. B., for himself, his heirs, executors, administrators, and assigns, covenants with the said C. D., his heirs and assigns, that the said A. B. hath done or knowingly suffered nothing whereby the premises are or may be incumbered or prejudicially affected.

(3.) THAT THE SAID C. D., his executors, administrators, and assigns, [herein after called "*the lessees*,"] will pay to the said A. B. his heirs and assigns, [herein after called "*the lessors*,"] the rent aforesaid, at the times aforesaid, and defray all outgoings chargeable by law upon the said land, or the erections herein after mentioned; WILL, at the lessees' cost, within _____ years from the date hereof, erect on the said land a dwelling-house and out-buildings, according to the elevation plans and specifications contained on _____ sheets of paper, [respectively signed by the said _____, and annexed to the third schedule hereto;] WILL, at the like cost, maintain [and at the expiration of the term deliver up] the said erections in good order and repair; WILL, at the like cost, execute all repairs required by written notice from the lessors, within three calendar months from the day such notice is left on the premises; WILL keep the premises insured against fire in _____ dollars, in the lessor's name or names, at such place as he or they shall select, [and on demand produce every current year's receipt for such insurance,] and apply the moneys received from insurance in reinstating the premises, [making good any deficiency.]

(4.) THE SAID C. D., for himself, his heirs, executors, and administrators, covenants with the said A. B., his heirs [executors, administrators] and assigns, that he, the said C. D., has done or knowingly suffered nothing whereby the premises are or may be incumbered or prejudicially affected; AND that the said demised premises and erections shall not be altered or used for any purpose of education, trade, or manufacture.

(5.) PROVIDED (1.) That the lessors may at all times enter upon and inspect the premises, and may also [if the lessees shall fail in discharging any of their said liabilities] enter upon and repossess the premises as if this lease had not been executed; (2.) THAT this

LEASES.

lease may be determined at the end of the first *seven or fourteen* years by six calendar months' written notice on either side, but so that no such notice by the lessees shall be valid, unless their said liabilities shall be discharged before the expiration thereof.

(6.) THE SAID (*lessor*.) for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that, the lessees' said liabilities being discharged, they or he shall occupy the premises, without interruption from the lessors.

(7.) DISPUTES under these presents shall be referred to *two arbitrators*, whose written determination thereon [or that of an umpire chosen by themselves in case of difference] shall conclude the disputing parties. WITHIN thirty days from written notice of arbitration, each disputing party shall name an arbitrator; if *either* shall fail to do so, *both* arbitrators shall be named by the *other* party. The arbitrators, or their umpire, may call in any professional assistance; may require the personal attendance and examination on oath of the parties and those claiming under them, and the production of all documents relative to the dispute; and may determine by whom the expenses of arbitration shall be defrayed, together with the amount thereof.

IN WITNESS, &c., (*as in n. 846.*)

853 SHORT LEASE *under STATUTE of FARM or TOWN* PROPERTY.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and fifty-_____, in pursuance of an act to facilitate the leasing of lands and tenements, between A. B., _____, of the _____ of _____ county of _____, and Province of Canada, of the first part, and C. D., _____, of the _____ of _____ county of _____, and province aforesaid, of the second part, witnesseth as follows:—

THAT, IN CONSIDERATION of the rents, covenants, and agreements herein after reserved and contained, and on the part of the said C. D., his executors, administrators, and assigns, to be paid, observed and performed, he, the said A. B., by these presents doth *demise and lease*, unto the said C. D., his executors, administrators, and assigns, all that messuage or tenement situate, [or all that parcel or tract of land situate] lying, and being (*here insert a description of the premises with sufficient certainty.*) TOGETHER with all the rights, members, and appurtenances, whatsoever, to the said premises belonging or appertaining. TO HAVE AND TO HOLD the said demised premises, for

FORMS.

and during the term of _____, to be computed from the day of _____, one thousand eight 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 A. B., his heirs, executors, administrators, or assigns, the sum of _____ dollars, to be payable _____, on the following days and times, that is to say: _____; the first of such payments to become due and to be made on the _____ day of _____ next.

AND THE SAID C. D., for himself, his heirs, executors, administrators, and assigns, hereby covenants with the said A. B., his heirs and assigns, (1.) To pay rent; (2.) AND to pay taxes; (3.) AND to repair; (4.) AND to keep up fences; (5.) AND not cut down timber; (6.) AND that the said A. B. may enter and view state of repair, and that the said C. D. will repair according to notice; (7.) AND will not assign or sub-let without leave; (8.) AND that he will leave the premises in good repair; (9.) Proviso for re-entry by the said A. B., on non-payment of rent or non-performance of covenants; (10.) THE SAID A. B. covenants with the said C. D. for quiet enjoyment.

(If the demised premises consist of a farm and its appurtenances, the lease will end here: or there may be inserted the usual covenants in farm leases, as to farm the land in a husbandry-like manner, &c., &c. BUT, if the premises are a dwelling-house, or other town property, it will be proper to omit some of the covenants, as number 5, and any other according to the nature of the agreement, and the covenant number 11, now next following, may be inserted.)

(11.) AND the said C. D. covenants with the said A. B. that, if the said term hereby granted shall be at any time seized, or taken in execution, or in attachment, by any creditor of the said C. D., or if the said C. D., shall make any 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 quarter's rent shall immediately become due and payable, and the said term hereby demised shall immediately be forfeited and become void; BUT the said last mentioned rent shall nevertheless be payable, and the said A. B., his heirs and assigns, may enter and take possession of the said premises.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED }
in presence of }
E. F. }

A. B. [SEAL]
C. D. [SEAL]

COVENANTS IN LEASES.

854. COVENANT *by LESSOR for RENEWING a LEASE, with or without FURTHER RENEWAL.*

AND ALSO that he, the said (*lessor*), his heirs or assigns, [executors, administrators, or assigns,] shall and will, at the costs and charges of the said (*lessee*), his executors, administrators, and assigns, and if requested by him so to do _____ months before the expiration of this demise, grant another lease to him and them for the further term of [fourteen] years, to commence from the expiration of the term hereby granted, at and under the same yearly rent [or the yearly rent of, &c.,] and containing therein the like covenants and provisos as are in these presents contained, [save and except this covenant for renewal, *if only one renewal*, or including a like covenant for renewal as the present covenant in the same or any other renewed lease.] He, the said (*lessee*), his executors, administrators, or assigns, executing at the same time a counterpart thereof, and paying the fine or sum of \$ _____ on execution of such lease, [and the like on every future lease.]

855. COVENANT *by LESSOR to PAY TAXES.*

AND THE SAID A. B., for himself, his heirs, executors, administrators, and assigns, hereby covenants and agrees with the said C. D., his executors, administrators, and assigns, that the said A. B., his heirs or assigns, shall and will discharge and pay, as they severally and respectively become due, all taxes, rates, and other outgoings, whatsoever, which now are or shall at any time or times hereafter during the said term hereby granted be taxed, charged, or imposed upon the said demised premises, or any part thereof; Or will from time to time allow the said C. D., his executors, administrators, and assigns, to deduct and retain the amount of such taxes, assessments, and impositions out of the rent which shall have become payable by him or them in respect of the same premises by virtue of these presents, whether such taxes, rates, and outgoings shall have accrued and become payable for or in respect of and within the same period as the rent out of which the same shall be deducted, or not.

856. PROVISOR *for RENEWAL upon the DROPPING of any LIVES within the NINETY-NINE YEARS' TERM.*

"PROVIDED ALWAYS, and it is hereby further covenanted and agreed, by and between the said parties to these presents, that, upon the death of any or either of the lives above named, on whose

FORMS.

decease this lease is determinable, or any other life or lives that may be granted by any future lease or leases [not exceeding three] of the said demised premises, provided the same shall happen at any time within the term of ninety-nine years from the date hereof, and also provided the said (*lessee*,) his executors, administrators, or assigns, shall make application for that purpose in writing to the said (*lessor*,) his heirs or assigns, or his or their steward or agent, within the space of six calendar months next after the death of each life so dying within the space of ninety-nine years, as aforesaid, but not otherwise, he, the said (*lessor*,) his heirs or assigns, shall and will grant and execute a reversionary lease of the said hereby demised premises unto the said (*lessee*,) his executors, administrators, and assigns, for a further term of ninety-nine years, to be determinable on the death of such person as the said (*lessee*,) his executors, administrators, or assigns, shall think proper to nominate, and at and under such rent, covenants, and conditions as are herein contained, except the covenant for the renewal of the estate and interest of the said (*lessee*,) his executors, administrators, or assigns, of and in the said premises."

857. PROVISO that LESSOR shall not be COMPELLED to GRANT more than THREE LIVES on any LEASES.

"PROVIDED, NEVERTHELESS, that the said (*lessor*,) his heirs or assigns, shall not, by virtue of any thing herein contained, be compelled to grant more than three such reversionary leases for ninety-nine years each, determinable on one life, to be nominated in each lease."

858. COVENANT for QUIET ENJOYMENT.

THE SAID (*lessor*,) for himself, his heirs, executors, and administrators, covenants with the said (*lessee*,) his executors and administrators, that, the lessee's said liabilities being discharged, they or he shall occupy the premises, without interruption from the lessors.

859. COVENANT of LESSEE to PAY RENT in LEASE by HUSBAND and WIFE of WIFE'S LANDS.

AND THE SAID (*lessee*,) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*husband*,) and (*christian name*,) his wife, and the heirs of the said (*wife's name*

COVENANTS IN LEASES.

in full), that he, the said (*lessee*), his executors, administrators, or assigns, shall and will, from time to time during the said term, duly pay unto the said (*husband*), and (*christian name*), the wife of the said (*husband*), the said yearly rent, by equal half-yearly payments, at the respective times herein before appointed for payment thereof.

860. COVENANT *by LESSEE with TENANT for LIFE and REVERSIONER to PAY RENT.*

AND THE SAID (*lessee*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*lessee for life*), his executors, administrators, and assigns, and also with the said (*reversioner*), his heirs and assigns, that he, the said (*lessee*), his heirs, executors, or administrators, will, during the said term, pay unto the said (*lessee for life*), and his assigns, during his life, and, in case of his decease during the continuance of the said term, pay unto the said (*reversioner*), his heirs or assigns, the said herein before reserved rent of \$, by equal quarterly payments, at the respective times herein before appointed for payment thereof.

861. COVENANT *to PAY RENT.—SURETY CONCURRING.*

AND THE SAID (*lessee*) and (*name of surety*), as surety for the said (*lessee*), do hereby, for themselves, their heirs, executors, and administrators, jointly and severally covenant with the said (*lessor*), his heirs and assigns, that they, the said (*lessee*) and (*surety*), or one of them, his executors, administrators, or assigns, will punctually and truly pay unto the said (*lessor*), his heirs or assigns, the said yearly rent or sum of \$, by four equal quarterly payments, at the several times herein before mentioned for payment thereof.

862. *To MANAGE and CULTIVATE LAND in HUSBANDRY-LIKE MANNER.—GENERAL COVENANT.*

AND ALSO shall and will, at all times during this demise, farm, till, manure, crop, cultivate, and manage the lands hereby demised in a good husbandry-like manner, and, on the expiration or determination of this demise, so leave and yield up the same, and other the hereditaments and premises hereby demised, and shall be allowed,

FORMS.

on the expiration of this demise, for all matters and things usually paid for, as between incoming and outgoing tenant in the county of

863. COVENANT *to PAY TAXES.*

AND ALSO shall and will pay all rates, taxes, and all other outgoings which during the said term shall be payable in respect of the said demised premises.

864. COVENANT *to KEEP and LEAVE PREMISES in REPAIR.*

AND ALSO that the said (*lessee*), his executors, administrators, or assigns, shall and will, from time to time and at all times during the said term, when and as often as occasion shall require, at his or their own costs, well and sufficiently maintain, amend, repair, and preserve the said dwelling-house and premises in as good a state and condition as the same are now, fair wear and tear, and accidents by fire, flood, storm, or tempest only excepted.

865. COVENANT *to KEEP and LEAVE FURNITURE in REPAIR.*

AND ALSO shall and will, at all times during the said term, carefully preserve the said fixtures and household furniture from being lost or in any way damaged; and shall and will keep and preserve the same in the like state and condition as they are in at present, and make good all such articles as shall be broken, lost, or destroyed; and, at the expiration or sooner determination of the said term, will deliver up the said messuage or dwelling-house, fixtures, and household furniture in as good a state of preservation as the same are now, except as aforesaid, and excepting also such articles as are broken, lost, or destroyed, as aforesaid, and, in lieu thereof, such articles as shall have been substituted in their place, as herein before mentioned; and shall not nor will remove, nor suffer to be removed, any of the said fixtures, or household furniture, from off the said demised premises.

866. *To TAKE DUE CARE of HOUSE REPAIRED by LESSOR, and of FURNITURE.*

AND ALSO that he, the said (*lessee*), his executors, administrators, and assigns, shall and will, during this demise, take due care

COVENANTS IN LEASES.

of the messuage and buildings hereby demised, and of the furniture and household goods in and about the same, and hereby demised therewith, and prevent the same from becoming out of repair, defaced, or injured, further than the same shall so become by reasonable and careful use and enjoyment.

867. To PAY for DEPRECIATION in VALUE of FIXTURES
beyond CERTAIN PER CENTAGE.

AND ALSO that he, the said (*lessee*), his executors, administrators, or assigns, shall and will, on the expiration of this demise, pay to the said (*lessor*), his heirs [or executors, administrators] or assigns, for all depreciation in value of the hereby demised fixtures, from the commencement of this demise, beyond one-fifth part of the present value thereof, being the sum of _____ dollars, the same to be fixed by reference, [as herein after mentioned,] or in the usual manner, or by, &c.

868. NOT to MAKE any ALTERATIONS in BUILDINGS without
LESSOR'S CONSENT.

AND ALSO shall not, nor will, at any time or times during this demise, make, or permit, or suffer to be made, any alteration in the said messuage, or other the buildings hereby demised, without the previous consent in writing of the said (*lessor*), his heirs [or executors, administrators] or assigns, first had and obtained.

869. By LESSEE not to do ACT AFFECTING INSURANCE.

AND ALSO that he, the said (*lessee*), his executors, administrators, or assigns, shall not, nor will, at any time or times during this demise, do, or suffer to be done or allowed, any act, matter, or thing, whatsoever, whereby the insurance of the said premises against damage by fire may be made void or voidable; AND shall not, nor will, do or suffer therein any act, matter, or thing, whereby the rate of premium on such insurance would be increased, without giving to the said (*lessor*), his heirs [or executors, administrators] or assigns, written notice thereof, with sufficient time for him or them to have the insurance altered accordingly; AND that he, the said (*lessee*), his executors, administrators, and assigns, shall and will, from time to time, repay the said (*lessor*), his heirs, executors, administrators, or assigns, on demand, all such sum or sums as he or they

FORMS.

shall pay for increased premium, or the expense of effecting any new policies or keeping on foot the same, by reason or in consequence of such acts, matters, or things.

870. NOT to ASSIGN or UNDERLET *without* CONSENT.

AND THAT THE SAID (*lessee*), his executors or administrators, shall not, nor will, during this demise, assign, underlet, or part with the possession of the hereby demised premises, or any part thereof, or his or their interest therein, otherwise than by will, without the consent in writing of the said (*lessor*), his heirs [executors, administrators] or assigns, first had and obtained for that purpose, and which license and consent shall not extend or be construed to extend [unless given generally and unrestrictedly] to any future assignment or underletting.

871. To REBUILD HOUSES *in* PLACE of OLD HOUSES TAKEN DOWN.

AND ALSO that he, the said (*lessee*), his executors, administrators, or assigns, shall and will rebuild, on the said demised land, within two years from the date of these presents, and agreeably with the plans, elevations, and specifications herunto annexed and signed by the said parties hereto, and with new and good materials, [three] dwelling-houses, with [stables, coach-houses, outhouses, and appendages;] and shall and will lay out and expend, in and about the erecting, building, and completing each and every of such messuages, with the appendages, the sum of _____ dollars at the least, and produce and show to the said (*lessor*), his heirs or assigns, or his or their agents, proper bills and receipts for the same.

(Or) three houses of the _____ class, in a substantial manner, and with new and good materials, and shall lay out and expend thereon, &c., and shall finish the same with all requisite appendages and conveniences, and properly paint, grain, and paper, and otherwise decorate the same, and make the same fit for habitation, to the reasonable satisfaction of the surveyor of the said (*lessor*), his heirs or assigns.

872. COVENANT from LESSEE that no kind of BUSINESS *whatsoever* shall be CARRIED ON UPON the DEMISED PREMISES.

“AND ALSO that the said (*lessee*), his executors, administrators, or assigns, shall not, at any time during the continuance of the

COVENANTS IN LEASES.

said term hereby granted, convert the said premises, or any part thereof, into, or use, occupy, or employ, or permit the same to be used, occupied, or employed, as a shop, warehouse, or store, for the purpose of carrying on any art, manufactory, trade, or business, whatsoever, nor use, nor permit, nor suffer the said demised premises, or any part thereof, to be used otherwise than as a private dwelling-house."

CONSENT.

Administrators, shall or part with the part thereof, or will, without the executors, administrators, at purpose, and construed to extend any future as-

873. PROVISIO *to VIEW STATE of REPAIRS, and for RE-ENTERING on DEFAULT.*

PROVIDED that the lessors may at all times enter upon and inspect the premises, and may also, [if the lessees shall fail in discharging any of their said liabilities,] enter upon and repossess the premises, as if this lease had not been executed.

HOUSES TAKEN

Administrators, ed land, within eably with the d and signed by aterials, [three] es, and append- and about the f such messen- ars at the least, s or assigns, or same.

874. PROVISIO *for DETERMINATION of TERM on NOTICE.*

THAT THIS LEASE may be determined at the end of the first seven or fourteen years, by six calendar months' written notice on either side; but so that no such notice by the lessees shall be valid, unless their said liabilities shall be discharged before the expiration thereof.

875. PROVISIO *for RE-ENTRY on NON-PAYMENT of RENT or BREACH of COVENANT.*

PROVIDED ALWAYS that, if the rent hereby reserved shall be unpaid for the space of twenty-one days next after any of the days herein before appointed for payment thereof, being demanded, and no sufficient distress shall be found on the said demised premises, or if breach shall happen to be made in all, any, or either of the covenants herein before contained, on the part of the said (*lessee*.) his executors, administrators, or assigns, to be performed, it shall be lawful for the said (*lessor*.) his heirs or assigns, to re-enter and determine the said term hereby granted, and to hold and enjoy the said demised premises, as in his or their first or former estate.

BUSINESS what- PREMISES.

rs, administra- tinnance of the

876. ARBITRATION CLAUSE.

PROVIDED LASTLY, that, should any disputes or differences arise between the said parties hereto, the same shall from time to time

COVENANTS IN LEASES.

be referred to the arbitrament of two indifferent persons, one to be chosen by the lessor and the other by the lessee, for the time being, or the umpire of such two persons in case of their disagreement; AND, should either party refuse or neglect to appoint a referee within ten days after notice in writing for that purpose, the decision of the referee first appointed shall be binding, and the award made under any such referee as aforesaid shall be binding and conclusive on all parties interested.

877. ANOTHER.

DISPUTES under these presents shall be referred to two arbitrators, whose written determination thereon, [or that of an umpire chosen by themselves in case of difference,] shall conclude the disputing parties. Within thirty days from written notice of arbitration, each disputing party shall name an arbitrator; if either shall fail to do so, both arbitrators shall be named by the other party. The arbitrators, or their umpire, may call in any professional assistance; may require the personal attendance and examination on oath of the parties and those claiming under them, and the production of all documents relative to the dispute; and may determine by whom the expenses of arbitration shall be defrayed, together with the amount thereof.

REVISED STATUTES, 1859, CAP. XCII., p. 910.

878. AN ACT respecting SHORT FORMS of LEASES.

Her Majesty, by and with the advice and consent of the legislative council and assembly of Canada, enacts as follows:—

Where words of column one of the second schedule are employed, the deed to have the same effect as if the words in column two were inserted.

(1.) When a deed, made according to the forms set forth in the first schedule to this act, or any other deed expressed to be made in pursuance of this act, or referring thereto, contains any of the forms or words contained in column one of the second schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect, and be construed, as if it contained the form of words contained in column two of the same schedule, and distinguished by the same number as is annexed to the form of words used in the deed; but it shall not be neces-

STATUTE RESPECTING SHORT FORMS OF LEASES.

sary, in any such deed, to insert any such number. 14, 15 V., c. 8, s. 1.

(2.) Any deed, or part of a deed, which fails to take effect by virtue of this act, shall, nevertheless, be as effectual to bind the parties thereto, so far as the rules of law and equity will permit, as if this act had not been made. 14, 15 V., c. 8, s. 3.

Deeds failing to take effect under this act to be as valid as if act was not made.

(3.) Every such deed, unless an exception be specially made therein, shall be held and construed to include all outhouses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances, whatsoever, to the lands and tenements therein comprised belonging, or in any wise appertaining. 14, 15 V., c. 8, s. 2.

Deed to include all houses, &c.

SCHEDULES TO WHICH THIS ACT REFERS.

THE FIRST SCHEDULE.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, in pursuance of the act respecting short forms of leases, between _____ of the first part, and _____ of the second part, witnesseth:—

THAT, IN CONSIDERATION of the rents, covenants, and agreements, herein after 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 the first part, hath [or have] demised and leased, and by these presents do [or doth] 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 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 eight hundred and _____, and from thenceforth next ensuing, and fully to be complete and ended.

STATUTE RESPECTING SHORT FORMS OF LEASES.

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] executors, administrators, or assigns, the sum of _____, to be payable on the following days and times, that is to say: on &c., _____; the first of such payments to become due and be made on the day of _____ next.

THE SECOND SCHEDULE.

DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

In the case of the Leasing of Lands and Tenants.

(1.) Parties who use any of the forms in the first column of this schedule may substitute, for the words "lessee" or "lessor," any name or names; and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

(2.) Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the form in the first column of the 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 express qualification 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.) Where the premises demised are of freehold tenure, the covenants 1 to 8 shall be taken to be made with, and the proviso 9 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.

(1.) That the said (*lessee*) covenants with the said (*lessor*) to pay rent.

COLUMN TWO.

(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 re-

LEASES.

STATUTE RESPECTING SHORT FORMS OF LEASES.

COLUMN TWO.

COLUMN ONE.

served, in manner herein before mentioned, without any deduction whatsoever.

(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 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 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.

(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 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 fire-wood, or for the purpose of clearance, as herein set forth.

(6.) 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 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, his executors, administrators, and assigns, will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly.

(7.) 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, his heirs or assigns, first had and obtained.

(8.) And, further, the lessee will, at the expiration or other sooner determination of the said term, peaceably

STATUTE RESPECTING SHORT FORMS OF LEASES.

COLUMN ONE.

leave the premises in good repair.

(9.) Proviso for re-entry by the said (lessor) on non-payment of rent or non-performance of covenants.

(10.) The said (lessor) covenants with the said (lessee) for quiet enjoyment.

COLUMN TWO.

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 only excepted.

(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 the lessee, his executors, administrators, or assigns, then, and in 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; any thing herein after contained to the contrary notwithstanding.

(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 herein before 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.

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lessor, the said appurtenances, together with fixtures thereon, and condition, and insurance by fire only

whereby expressly provided, or any part thereof, after any of the rents have been paid, the same shall be made therefor performance of any duties contained in the Statutes, or Administrators, or other laws, it shall be deemed, into and out of any part thereof, and the same to be of his or their estate contained to the

for himself, his assigns, covenantors, and assigns, and as- signed hereby re- ceive herein before on may peaceably premises for the interruption or dis- turbance, adminis- tration or persons in, them, or any

CHAPTER VIII. LANDLORD AND TENANT.

(See Leases.)

879. AGREEMENT for a YEARLY TENANCY of a HOUSE.

AGREEMENT made, this _____ day of _____, between
A. B. _____ of _____, in the county of _____,
and _____ of Canada, _____, (lessor,) of the one part, and
C. D. _____ of _____, in the county of _____,
and _____ province aforesaid, _____, of the other part, witnesseth
as follows:—

(1.) THE SAID A. B. lets to the said C. D., from the _____ day of _____, [as yearly tenant,] and the said C. D. takes, as such tenant, the premises described in the schedule hereto, with their appurtenances, at the yearly rent of _____ dollars, payable by equal quarterly payments, commencing the _____ day of _____ next.

(2.) THE SAID C. D. shall, at the expiration or determination of the tenancy, deliver up the premises in good order and repair, reasonable wear and inevitable accident excepted.

IN WITNESS, &c., (as in n. 853.)

880. AGREEMENT for LETTING a FURNISHED HOUSE.

AGREEMENT made, this _____ day of _____, between
A. B., of _____ of _____, in the county of _____,
and _____ Province of Canada, _____, (lessor,) of the one part, and
C. D., of _____ of _____, in the county of _____,
and _____ province aforesaid, _____, of the other part, witnesseth as
follows:—

(1.) THE SAID A. B. lets, and the said C. D. takes, for the period of _____ weeks from the _____ day of _____, the house of the said A. B., at _____ in _____ shire, with the stabling, grounds, and gardens, and the effects specified in an inventory signed by the said C. D., paying for the above period the rent of _____ dollars.

(2.) THE SAID C. D. is to replace all effects lost, broken, or rendered unfit for use during his occupation, and all windows broken during such occupation.



LANDLORD AND TENANT.

(3.) THE SAID C. D. is to pay the wages of _____ servants, left in the house, and to defray all outgoing.

(4.) THE SAID C. D. may continue the tenancy [subject to the foregoing stipulations] from the expiration of the said period of _____ weeks from the further period of _____, paying _____ dollars rent for such further period.

IN WITNESS, &c., (as in n. 853.)

881. TENANTS' AGREEMENT.

THIS AGREEMENT, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, witnesseth as follows:—

THAT I have hired and taken from A. B. his house and lot, known as No. _____, in _____ street, in the _____ of _____, with the appurtenances, for the term of one year, to commence the _____ day of _____ next, at the yearly rent of _____ dollars, payable quarterly. (Insert the clause in relation to taxes, if necessary.) AND I do hereby promise to make punctual payment of the rent, in manner aforesaid, except in case the premises become untenable from fire or any other cause, when the rent is to cease. AND I do further promise to quit and surrender the premises, at the expiration of the term, in as good state and condition as reasonable use and wear thereof will permit, damage by the elements only excepted.

As witness my hand, this _____ day of _____, one thousand eight hundred and _____.

SIGNED in presence of } C. D.
G. H.

882. SECURITY for RENT, [to be WRITTEN at the FOOT of the TENANTS' AGREEMENT.]

IN CONSIDERATION of the letting of the premises above described, and for the sum of one dollar, to me paid by C. D., therein named, I do hereby become surety for the punctual payment of the rent, and performance of the covenants, in the above written agreement mentioned, to be paid and performed by C. D., as therein set forth; AND, if any default shall at any time be made therein, I do hereby promise and agree to pay unto the landlord, in said agreement named, the said rent, or any arrears thereof that may be due, and fully satisfy the conditions of the said agreement, and all damages

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that may accrue by reason of the non-fulfillment thereof, without requiring notice or proof of demand being made.

As witness my hand and seal, the _____ day of _____, 19____

SIGNED in presence of }
G. H. }

E. F. [SEAL.]

883. LANDLORD'S CERTIFICATE of TENANCY.

THIS IS TO CERTIFY that I have, this _____ day of _____, one thousand eight hundred and _____, let, unto C. D., my house and lot, known as No. _____, in _____ street, in the _____ of _____, with the appurtenances, and the sole and uninterrupted use and occupation thereof, for one year, to commence the _____ day of _____ next, at the yearly rent of _____ dollars, payable quarterly. (Add, with all taxes and assessments, where the same are to be paid by the tenant.)

IN WITNESS, &c., (as in n. 881.)

A. B.

884. LANDLORD'S CERTIFICATE, where TENANT is NOT to UNDERLET, or OCCUPY for any BUSINESS deemed EXTRA HAZARDOUS.

THIS IS TO CERTIFY that I, A. B., have let, unto C. D., the premises known as No. _____, in _____ street, in the _____ of _____, for the term of one year from the _____ day of _____ next, at the yearly rent of _____ dollars, payable quarterly.*

PROVIDED ALWAYS that the premises are not to be used or occupied for any business deemed extra hazardous on account of fire; nor shall the same, or any part thereof, be let or underlet, except with my consent in writing, under the penalty of forfeiture and damages.

IN WITNESS, &c., (as in n. 881.)

A. B.

885. TENANT'S AGREEMENT to the ABOVE.

THIS IS TO CERTIFY, &c., (as in n. 884 to the *, changing the person, &c., and then add:)

AND I do hereby engage not to let or underlet the whole or any part of the said premises, or to use the same for any business deemed extra hazardous on account of fire, without the written

LANDLORD AND TENANT.

consent of the landlord, under the penalty of forfeiture and damages.

IN WITNESS, &c., (*as in n. 881.*)

886. AGREEMENT *for a LEASE.*

THIS AGREEMENT, made the _____ day of _____, one thousand eight hundred and _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, _____, of the other part, witnesseth as follows:—

THAT THE SAID A. B. hereby agrees to *demise* and *let*, to the said C. D., by indenture, to be executed on the _____ day of _____ next, the dwelling-house and lot now occupied by the said A. B., in the village of _____. To HOLD the same UNTO the said C. D., his executors, administrators, and assigns, from the _____ day of _____, for and during the term of five years, at or under the yearly rent of one hundred dollars, payable quarterly, clear of all taxes and assessments; *in which lease* there shall be contained covenants, on the part of the said C. D., his executors, administrators, and assigns, to pay rent, [except the premises are destroyed by fire, when the rent is to cease until they are rebuilt,] and all taxes and assessments; to keep the premises in good repair, [damages by fire excepted;] not to carry on any offensive business upon the same; and to deliver up peaceable possession of the said premises at the expiration of the term aforesaid. AND the said lease shall also contain covenants on the part of the said A. B., his heirs and assigns, for quiet enjoyment; to renew said lease, at the expiration of the term aforesaid, at the request of the _____ C. D., to be made fifteen days prior to the time of such expiration or a further term of five years; and that, in case the said premises shall be destroyed by fire, the said A. B. will forthwith proceed to rebuild the same.

AND it is agreed, between the aforesaid parties, that the costs and charges of making and executing the said lease, and duplicate thereof, shall be equally borne and divided between them.

IN WITNESS WHEREOF, the said parties have hereunto set their hands, the day and year first above written.

SIGNED in presence of }
G. H. } A. B.
C. D.

[If sealed, this agreement will operate as a present demise.]

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887. AGREEMENT *between a HOUSE-KEEPER and LODGER.*

THIS AGREEMENT, by and between A. B., of _____ of _____, in the county of _____, and Province of Canada, and C. D., of _____, in the county of _____ and province aforesaid, _____, made the _____ day of _____, witnesseth as follows:—

THAT THE SAID A. B., in consideration of the agreement herein after contained, to be performed by C. D., has let, to the said C. D., the entire first floor, and one room in the attic story, or garret, with the use of the offices, and of the yard, for drying linen, or beating carpets or clothes, being part of the dwelling-house now occupied by the said A. B., situate in the village of _____ [or known as number _____, in _____ street, in the city of _____,] for and during the term of two years from the day of the date hereof. To HOLD to the said C. D., for the said term of two years, at the yearly rent of _____ dollars, payable quarterly to the said A. B. AND, in consideration of the premises, the said C. D. agrees to pay to the said A. B. the aforesaid yearly rent of _____ dollars, at the times above limited for the payment thereof; and, at the end of the said term, or in case of any default in such payment, to yield and deliver up to the said A. B., or his assigns, on request, the quiet and peaceable possession of the premises above described, and leave them in as good condition and repair as they shall be on his taking possession thereof, reasonable wear excepted.

IN WITNESS WHEREOF, &c., (as in n. 886.)

A. B.
C. D.

888. INDENTURE of LEASE.

THIS INDENTURE, made the _____ day of _____, one thousand eight hundred and _____, between A. B., of _____, of _____, in the county of _____, and Province of Canada, _____, of the first part, and C. D., of _____, of _____, in the county of _____, and province aforesaid, _____, of the second part, witnesseth as follows:—

THAT THE SAID A. B., for and in consideration of the rents, covenants, and agreements herein after mentioned, reserved, and contained, on the part and behalf of the said C. D., his executors, administrators, or assigns, to be paid, kept, and performed, doth by these presents grant, demise, and to farm let, unto the said C. D., his executors, administrators, and assigns, ALL AND SINGULAR (*give description of premises.*) To HOLD the said premises, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from the _____ day of _____, one thousand eight hundred and _____, * for and during and until the full end and

LANDLORD AND TENANT.

term of ten years, next ensuing, [or for and during the natural life of E. F.]; YIELDING AND PAYING therefor, unto the said A. B., his heirs and assigns, yearly and every year during the said term hereby granted, the yearly rent or sum of _____ dollars, lawful money of Canada, in equal quarterly [or half yearly] payments, to wit: on the first day of May, August, November, and February, in each and every year during the said term.

PROVIDED ALWAYS that, if the yearly rent above reserved, or any part thereof, shall be unpaid for the space of _____ days after any day of payment whereon the same ought to be paid as aforesaid or if default shall be made in any of the covenants herein contained, on the part and behalf of the said C. D., his executors, administrators, and assigns, to be kept and performed, then and from thenceforth it shall be lawful for the said A. B., his heirs or assigns, into and upon the said demised premises, and every part thereof, wholly to re-enter, and the same to have again, repossess, and enjoy, as in his or their first and former estate, any thing herein before contained to the contrary thereof in any wise notwithstanding.

AND THE SAID C. D., for himself, his heirs, executors, and administrators, doth hereby covenant and agree, with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators, or assigns, will, yearly and every year during the term hereby granted, pay, or cause to be paid, unto the said A. B., his heirs or assigns, the said yearly rent above reserved, on the days and in the manner aforesaid, without any deduction. [If necessary, insert: AND that the said C. D., his executors, administrators, or assigns, will, at their own proper costs and charges, pay and discharge all such taxes, duties, and assessments, whatsoever, as may, during the said term hereby granted, be charged, assessed, or imposed upon the said demised premises.] AND that, on the last day of the said term, or other sooner determination of the estate hereby granted, the said C. D., his executors, administrators, or assigns, will peaceably and quietly leave, surrender, and yield up, unto the said A. B., his heirs or assigns, ALL AND SINGULAR the said demised premises.

AND THE SAID A. B., for himself, his heirs, and assigns, doth hereby covenant and agree that the said C. D., his executors, administrators, or assigns, paying the said yearly rent and performing the covenants and agreements aforesaid, on his and their part to be performed, the said C. D., his executors, administrators, and assigns, shall, at all times during the said term hereby granted, peaceably and quietly have, hold, and enjoy the said demised premises, without any manner of let, suit, trouble, or hinderance of or from the said A. B., his heirs or assigns, or any other person or persons whomsoever.

IN WITNESS WHEREOF, &c., (as in n. 890.)

A. B. [SEAL.]
C. D. [SEAL.]

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889. FARMING LEASE on SHARES, with AGREEMENT to RENEW.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, (as in n. 888 to the habendum, and then add :) To HOLD the said premises unto the said C. D., his heirs, executors, and administrators, for his and their sole and proper use and benefit, for and during (set out the term;) TOGETHER with all the tenements and hereditaments thereunto appertaining, and all the stock and farming utensils, of every name and nature, now being in or upon the same, belonging to the said A. B.

IN CONSIDERATION WHEREOF, the said C. D. hereby covenants and agrees, with the said A. B., that he will occupy, till, and in all respects cultivate the premises above mentioned, during the term aforesaid, in a husband-like manner, and according to the usual course of husbandry practiced in the neighborhood; THAT he will not commit any waste or damage, or suffer any to be done; THAT he will keep the fences and buildings on the said premises in good repair, reasonable wear thereof and damages by the elements excepted; AND that he will deliver to the said A. B., his heirs, executors, or administrators, or to his or their order, *one equal half* of all the proceeds and crops produced on the said farm and premises, of every name, kind, and description—to be divided on the said premises, in the mow, stack, or half-bushel, according to the usual course and custom of making such divisions in the neighborhood, and in a reasonable time after such crops shall have been gathered and harvested.

IT IS FURTHER UNDERSTOOD AND AGREED, between the aforesaid parties, that the said A. B. shall find *one equal half* of all seed or seeds necessary to be sown on said premises, and pay all taxes and assessments upon the same; THAT the said C. D. is to do, or cause to be done, all necessary work and labor in and about the cultivation of the said premises; THAT he is to have full permission to inclose, pasture, or till and cultivate the said premises, so far as the same may be done without injury to the reversion, and cut all necessary timber for fire-wood, farming purposes, and repairing fences; AND THAT he is to give up and yield peaceable possession of the said premises, at the expiration of his said term; [if the lease is executed by a person having only a life estate, insert: AND THAT the said term shall be determined and ended by the death of the said A. B. at any time within the said period of _____ years.]

AND THE SAID A. B., in consideration of the premises, and of the sum of one dollar, to him in hand paid by the said C. D., hereby promises and agrees, to and with the said C. D., to make and execute unto him a new lease, similar in all respects to this, and for a

LANDLORD AND TENANT.

similar period of _____ years, of the premises aforesaid, upon the request in writing of the said C. D., made within twenty days prior to the expiration of the term granted by these presents.

IN WITNESS WHEREOF, &c., (*as in n. 890.*)

A. B. [SEAL.]
C. D. [SEAL.]

890. INDENTURE of LEASE.

Short Form Under the Statute.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, in pursuance of the act to facilitate the leasing of lands and tenements, between A. B., of the _____ of _____, in the county of _____, and Province of Canada, _____, of the first part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, _____, of the second part, witnesseth as follows:—

THAT, IN CONSIDERATION of the yearly rents, covenants, and conditions herein after respectively reserved and contained by the said lessee, his executors, administrators, and assigns, to be respectively paid, observed, and performed, the said lessor hath demised and leased, and by these presents doth demise and lease, unto the said lessee ALL that certain parcel or tract of land and premises, situate, lying, and being in the _____, TOGETHER with all the rights, members, and appurtenances whatsoever, to the said premises belonging or appertaining. To HAVE AND TO HOLD the said hereby demised premises, with their appurtenances, unto the said lessee, his executors, administrators, and assigns, for the term of _____ years, to be computed from the _____ day of _____, one thousand eight hundred and _____; YIELDING AND PAYING therefor, unto the said lessor, his heirs or assigns, the clear yearly rent or sum of _____ dollars, of lawful money of Canada, in even portions, on the _____ day of _____ and _____ in each and every year during the continuance of the said term, without any deduction, defalcation, or abatement, whatsoever; the first payment to be made on the _____ day of _____.

AND THE SAID C. D., for himself, his heirs, executors, administrators, and assigns, hereby covenants with the said lessor, his heirs and assigns, to pay rent, and to pay taxes, and to repair; AND to keep up fences, and not to cut down timber; AND that the said lessor may enter, and view state of repair; AND that the said lessee will repair according to notice; AND will not assign or sub-let without leave; AND will not carry on any business that shall be deemed a nuisance on the said premises; AND that he will leave the premises in good repair; AND also that, if the term hereby granted shall be

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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 any 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 quarter's rent shall immediately become due and payable, and the said term shall immediately become forfeit and void, but the next current quarter's rent shall, nevertheless, be at once due and payable.

PROVISO for re-entry by the said lessor on non-payment of rent, or on non-performance of covenants, or seizure or forfeiture of the said term for any of the causes aforesaid.

THE SAID lessor covenants with the said lessee for quiet enjoyment.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, this _____ day of _____, A. D. 18 _____.

SIGNED, SEALED, AND DELIVERED	}	A. B. [SEAL.]
in the presence of		C. D. [SEAL.]
E. F.		

891. STATUTORY LEASE.

Another Form.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, in pursuance of the act to facilitate the leasing of lands and tenements, between A. B., of _____ of _____, in the county of _____, and Province of Canada, (*lessor.*) _____, of the first part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, (*lessee.*) _____, of the second part, witnesseth as follows:—

THAT, IN CONSIDERATION of the rents, covenants, and agreements herein after reserved and contained, on the part of the said C. D., his executors, administrators, and assigns, to be paid, kept, and performed, he, the said A. B., hath demised and leased, and by these presents doth demise and lease, unto the said C. D., his executors, administrators, and assigns, ALL, &c., (*description.*) TOGETHER with the appurtenances. TO HAVE AND TO HOLD the same unto the said C. D., his executors, administrators, and assigns, from the day of _____, one thousand eight hundred and _____, for and during and unto the full end and term of _____ years from thence next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefor, unto the said A. B., his heirs, executors, administrators, or assigns, the clear yearly rent or sum of _____ dollars, of lawful money of Canada, _____, in each and every year during the said term, without any deduction whatsoever; the

LANDLORD AND TENANT.

first payment to be made on the _____ day of _____ next
ensuing the date hereof.

AND THE SAID C. D. covenants with the said A. B. to pay rent,
and to pay taxes, and to repair, and to keep up fences, and not to
cut down timber; and that the said A. B. may enter and view state
of repair; and that the said C. D. will repair according to notice,
and will not assign or sub-let without leave; and that he will
leave the premises in good repair; and will not carry on any busi-
ness that shall be deemed a nuisance on the said premises.

THE SAID A. B. covenants with the said C. D. for quiet enjoy-
ment.

IN WITNESS, &c., (as in n. 890.)

892. LEASE of PART of a HOUSE.

MEMORANDUM OF AN AGREEMENT, made and entered into the
day of _____, one thousand eight hundred and _____,
by and between A. B., of the _____ of _____,
county of _____, and Province of Canada, _____, in the
one part, and C. D., of the _____ of _____, in the county
of _____, and province aforesaid, _____, of the other part.

THE SAID A. B. agrees to let, and the said C. D. agrees to take,
the rooms or apartments following, that is to say: _____, being
part of a house and premises in which the said A. B. now resides,
situate and being No. _____, in _____ street, in the
of _____.

TO HAVE AND TO HOLD the said rooms and apart-
ments for and during the term of half a year, to commence from
the _____ day of _____ instant, at and for the yearly rent
of _____ dollars, lawful money of Canada, payable monthly, by
even and equal portions; the first payment to be made on the
day of _____ next ensuing the date hereof.

AND IT IS FURTHER AGREED THAT, at the expiration of the said
term of half a year, the said C. D. may hold, occupy, and enjoy the
said rooms or apartments, from month to month, for so long a time
as the said C. D. and A. B. shall agree, at the rent above specified;
AND that each party be at liberty to quit possession on giving the
other a month's notice in writing.

AND IT IS ALSO FURTHER AGREED THAT, when the said C. D. shall
quit the premises, he shall leave them in as good condition and
repair as they shall be in on his taking possession thereof, reason-
able wear excepted.

IN WITNESS, &c., (as in n. 886.)

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893. DISTRESS WARRANT.

To E. F., my bailiff in this behalf.

DISTRAIN the goods and chattels liable to be distrained for rent, in and upon the _____, now or lately in the tenure or occupation of C. D., situate _____, in the county of _____, and Province of Canada, for the sum of _____ dollars, being _____ rent due to me for the same, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____. AND, for the purpose aforesaid, distrain, within the time, in the manner, and with the forms prescribed by law, all such goods and chattels of the said C. D., wheresoever they shall be found, as have been carried off the said premises, but are, nevertheless, liable, by law, to be seized as a distress for the rent aforesaid; AND proceed thereupon for the recovery of the said rent, as the law directs; AND for your so doing this shall be your sufficient warrant and authority.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____, in the year of our Lord one thousand eight hundred and _____.

WITNESS:

A. B. [SEAL.]

894. NOTICE of SALE under DISTRESS.

NOTICE is hereby given that the cattle, goods, and chattels distrained for rent, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by me, _____, as bailiff to _____, the landlord of the premises of _____, the tenant, will be sold by public auction, on the _____ day of _____, 18____, at _____ o'clock. Which cattle, goods, and chattels are as follows, that is to say: (*description.*)
TORONTO, _____ day of _____, 18____.

895. HEADING of INVENTORY TAKEN by BAILIFF.

AN INVENTORY of the several goods and chattels distrained by me, _____, the _____ day of _____, 18____, in the house, outhouses, and lands of _____, situate _____, by authority and on behalf of A. B., your landlord, for the sum of _____ dollars, being _____ rent due to the said A. B., on the _____ day of _____, 18____.
In the dwelling-house (*description.*) On the premises (*description.*)

LANDLORD AND TENANT.

896. NOTICE to TENANT.

Mr. C. D., TAKE NOTICE: That, as the bailiff to A. B., your landlord, I have this day distrained, on the premises above mentioned, the several goods and chattels specified in the above inventory, for the sum of _____, being _____ rent due to the said _____ on the _____ day of _____, one thousand eight hundred and _____, for the said premises; AND THAT, unless you pay the said rent, with the charges of distraining for the same, or replevy, within five days from the date thereof, the said goods and chattels will be appraised and sold, according to law.

GIVEN under my hand, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____.

WITNESS: }
L. R. }

M. N., bailiff.

897. NOTICE to QUIT.

To Mr. J. P., or whom else it may concern.

I HEREBY GIVE YOU NOTICE: That I require you to quit, and deliver up to me, on or before the _____ day of _____ now next ensuing, the peaceable and quiet possession of all that messuage or tenement, with the shed, and out-buildings, and front garden, containing 1 a. 2 r. 3 p., and all that piece or parcel of arable land, containing 1 a. 2 r. 3 p., situate in the _____ of _____ in the county of _____, which you now hold of me as tenant; or otherwise that you deliver up the said messuage or tenement, lands and premises, to me, at the end of your tenancy, which shall expire after the end of one half-year from the date hereof.

DATED this _____ day of _____, one thousand eight hundred and _____.

Yours, &c., _____ A. B.
By C. D., his agent.

898. NOTICE to QUIT, by the TENANT.

PLEASE TAKE NOTICE: That, on the _____ day of _____ next, I shall quit and remove from and render unto you the possession of the premises I now occupy, known as house and lot No. _____, in _____ street, in the _____ of _____

DATED this _____ day of _____, one thousand eight hundred and _____.

To A. B., landlord.
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Yours, &c., _____ C. D.

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899. SURRENDER of a TERM of YEARS to the REVERSIONER.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, _____, of the other part, witnesseth as follows:—

WHEREAS the said C. D., by his indenture of lease, bearing date _____, did demise and to farm let, &c., (*recite the property and term as in the lease.*)

NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of _____ dollars, to the said A. B. in hand paid, at the sealing and delivery of these presents, by the said C. D., and to the intent and purpose that the term of the said A. B., in the said lands and premises, may be wholly merged and extinguished, he, the said A. B., doth by these presents grant and surrender unto the said C. D., and his heirs, all the said lands and premises in the said indenture of lease contained and demised, AND ALL THE ESTATE, right, title, interest, term of years, property, claim, and demand, whatsoever, of him, the said A. B., of, in, to, or out of the same, or any part or parcel thereof. To hold the said lands and premises UNTO and TO THE USE of the said C. D., his heirs and assigns.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said C. D., his heirs and assigns, that he, the said A. B., hath not, at any time heretofore, done, committed, executed, permitted, or knowingly suffered any act, deed, matter, or thing, whatsoever, whereby or by reason whereof his said term in the said lands and premises, is, or can be in any wise impeached, charged, affected or incumbered.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____.

SIGNED, SEALED, AND DELIVERED }
in presence of }
E. F. }

A. B. [SEAL]
C. D. [SEAL]

900. SURRENDER of a LEASE to the LESSOR, by INDORSEMENT.

KNOW ALL MEN BY THESE PRESENTS: That I, the within named A. B., in consideration of _____ dollars, to me in hand paid, at or before the sealing and delivery of these presents, do, for myself, my executors and administrators, bargain, sell, surrender, and yield up, from the day of the date thereof, unto the within named C. D., and

FORMS.

his heirs, [or his excentors and administrators,] *as well* the within indenture of lease *as* the lands and premises therein mentioned, and the term of years therein yet to come, with all my right, title, and interest thereto; AND I do hereby covenant that the same are free and clear of all incumbrances of what kind soever, at any time by me, or my privy, consent, or procurement, done, committed, or knowingly suffered.

WITNESS my hand and seal, this _____ day of _____,
 one thousand eight hundred and _____
 SIGNED AND SEALED }
 in presence of }
 E. F. } A. B. [SEAL.]

(900a.) ATTORNMENT *by several* TENANTS *with CONSENT of* the MORTGAGOR.

WE, whose names are hereunto subscribed, being severally tenants in possession of the several estates, lands, and tenements, specified, and set opposite to our respective names, in the schedule here under-written, as tenants of (*mortgagor*.) of _____, at the request, and by the direction of the said (*mortgagor*.) testified by his signature hereto, *do hereby* severally attorn, and become tenants of the said estates, lands, and tenements, unto (*mortgagee*.) of _____, to whom the same were by a certain indenture, dated the _____ day of _____, 18____, and made between the said (*mortgagor*.) of the one part, and the said (*mortgagee*.) of the other part, conveyed and assured unto the said (*mortgagee*.) his heirs and assigns, for securing to him, his excentors, administrators, and assigns, the money therein expressed, to be advanced by him as therein mentioned. AND we do hereby severally undertake and agree to pay the rent payable in respect of the said premises, as, and whenever the same shall become due, as in the said schedule, expressed unto the said (*mortgagee*.) or his representatives who for the time being, through or under him, shall be entitled to receive the same, or unto his, or their agents, or agent, lawfully authorized and appointed by him, or them, to receive the same.

IN TESTIMONY WHEREOF, we have this day paid unto the said (*mortgagee*.) the sum of *one dollar* in consideration of the said agreement, and in part of the said rents, payable by us in respect of the said estates and premises.

AS WITNESS, our hands, this _____ day of _____, in the year of our Lord one thousand eight hundred and _____

SIGNED in the presence of }
 G. H. } Mortgagor.
 A. B.
 C. D.
 E. F.

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THE SCHEDULE ABOVE REFERRED TO.

Tenants Name.	Names of Tenants.	Town, Village, or Township, and County.	Yearly Rents.	When Payable.

(900b.) COMMON FORM of ATTORNMENT by SEVERAL TENANTS.

WE, whose names are herennto subscribed, being severally tenants of the several lands, tenements, and premises set opposite to our respective names in the schednle here underwritten, do hereby severally agree to pay the respective rents payable for the same premises, whenever, and as the same shall become due, and as in the said schednle, expressed unto the said A. B., or his representatives for the time being, who, through, or under him, shall be entitled to receive the same, or unto his, or their agent, or agents, lawfully authorized by him, or them, to receive the same.

IN WITNESS WHEREOF, we have severally paid unto the said A. B., the sum of *one dollar*, in the name of attornment, and in part of the said rents.

CONCLUSION and SCHEDULE, (as in n. 900a.)

FORMS.

900c. CLAUSE of ATTORNMENT by MORTGAGOR to MORTGAGEE in a Mortgage Deed.

"AND for the better enabling the said (*mortgagee*) to receive and enforce payment of the interest hereby reserved on the several days herein before appointed for payment thereof, the said (*mortgagor*) does hereby *attorn* and become tenant to the said (*mortgagee*) at the yearly rent of \$ (the same as the amount of the interest) to be paid in two equal half yearly payments, on the day of , and in every year during the continuance of this mortgage security."

900d. ATTORNMENT by a TENANT to a MORTGAGEE after a JUDGMENT recovered by him in an action of EJECTMENT.

WHEREAS, (*mortgagee*) of in , has lately obtained a judgment in an action of ejectment brought against me for (here set out the parcels as described in the judgment) now in my possession, situate within the of , in the county of , which said premises have been conveyed to the said (*mortgagee*), his heirs and assigns, by a certain indenture, dated the day of , in the year of our Lord one thousand eight hundred and , and made between (*mortgagor*) of of , of the one part, and the said (*mortgagee*) of the other part.

Now, I do hereby attorn and become tenant to the said (*mortgagee*) for or in respect of the several messuages, farms, and tenements, specified and set forth in the schedule hereto annexed; AND I hereby further agree to pay the yearly rent of \$, for and in respect of the said premises as and whenever the same shall become due unto the said (*mortgagee*), his heirs, or assigns, or his or their agent or agents lawfully authorized by him or them to receive the same, and in testimony of such attornment have paid to the said (*mortgagee*) the sum of one dollar in part of the said rent payable by me; AND I do hereby further agree on the expiration or sooner determination of my lease in the said premises, to deliver up the possession of the same unto the said (*mortgagor*), his heirs or assigns, and that I will not pay such rents nor deliver up possession of the said premises, or any of them, or any part of the same, to any other person or persons whomsoever, unless compelled so to do by the judgment, order, or decree of some court of law or equity.

IN WITNESS, &c., (as in n. 900a.)

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CHAPTER IX.

MARRIAGE ARTICLES.

NOTES.

901. *A deed of settlement* is usually prepared at once without previous articles where the property is inconsiderable, and this is to be recommended in every case where it is practicable.

902. *Marriage settlements are valid as against creditors*, whether executed before or after the marriage, if they are in pursuance of articles entered into *before* marriage, and this without reference to the settlor being in debt or not at the time of the settlement. (*Campion vs. Cotton*, 17 Ves., 263.) And *semble* that an *agreement* in consideration of marriage, and to settle after-acquired property, will be good against creditors, though the settlor were in debt at the time of the agreement; but the settlor himself may defeat it by conveyance to a purchaser for valuable consideration, even though he have express notice of the prior settlement.

903. *Marriage articles are within the 29 Car. ii., c. 3, s. 4*, and must therefore be signed by the party to be charged; but they may be established through the medium of *letters*, as in the case of agreements to purchase real estate. And if *intended* to be written, and that intent is prevented by the fraud of one of the parties, equity will compel performance; and so if there has been part performance of an unwritten agreement, as where the wife, under such agreement, was permitted to enjoy the interest of a certain sum for her separate use during the marriage, equity will enforce specific performance; but *marriage itself* is not part performance.

904. *The construction of marriage articles* by courts of equity is not merely technical, but according to the *intention* of the parties, and that intention is held to be mainly a provision for the issue; therefore, when the *words* of the articles would confer an *estate tail* on the settlor which he might *bar* and defeat, equity will direct a strict settlement, and cut down the settlor's estate to a *life estate* only. Daughters also are included in the general term "issue," and estates will be decreed to be limited to them accordingly.

905. *The recital* is usually confined to that of the intended marriage, except where it is desirable to show the interest which the settlor takes in the property, or the power which he has of making the settlement; but, if the articles are in consideration of a mutual settlement, the deeds or agreements should be briefly recited.

MARRIAGE ARTICLES.

906. *In strict settlements* the property is usually settled on the intended husband for life, with a rent charge to the wife, if she survive him, remainder to the children of the marriage in tail, with power to raise portions for younger children, to grant leases, and the usual powers of sale and exchange.

These objects are effected in the following manner:—

(1.) The property is conveyed to trustees to *uses* by name, and their heirs, *to the use* of the trustees of the *term*, [who are different persons, and must be named,] their executors, administrators, and assigns, for a long term of years, upon the trusts mentioned.

(2.) That, subject thereto, the property is to be *to the use* of the intended husband for life, without impeachment of waste.

(3.) That, after his death, the wife shall have a *rent charge* by way of *jointure* out of the premises, stating the periods of payment, and giving her the usual powers of distress and entry.

(4.) *Estates tail* are next limited, whether special or otherwise, and also, if daughters take, whether they are to take successive estates or as tenants in common; and, in the latter case, cross remainders usually take place, and should be stated, with a final limitation of the ultimate remainder.

(5.) Next comes the agreement to raise *portions* for the younger children; the consent of parents thereto, if necessary, and the precise amount, and the mode of raising them, [as by sale or otherwise,] are carefully set out.

(6.) *Powers of leasing*, if granted, should state the *term* for which the property is to be let, and whether, as is usual, the power is to be restricted to granting leases in possession.

(7.) *Powers of sale and exchange* are now given to the trustees to uses; and, if any of the premises consist of an undivided estate, a *power of partition* should be added, for it is doubtful whether a mere power of sale will authorize a partition.

The articles conclude by providing—

(8.) Power to appoint *new trustees*, and all other usual powers contained in such settlements.

907. *Any proviso intended to defeat a part or all of the settled estates* on the happening of an event, as the bankruptcy of the husband, must be in the *articles*, otherwise it cannot be put in a settlement executed after marriage; but it is important to note that, under the bankrupt laws in England, the property of the intended wife, and that only, or the husband's property to an equal amount in lien thereof, may be so settled as to survive the bankruptcy.

908. *A power of revocation*, if general, will avoid the settlement, as against strangers, under 27 Eliz., c. 4, s. 15, but the statute does not extend to *personal* estate. And a power in sale and exchange clauses intended to effectuate the settlement, as to revoke old uses, will not cause such avoidance, nor will a power of revocation de-

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MARRIAGE SETTLEMENTS.

pendent on the consent of others, over whom the settlor has no control; but a general power to mortgage or lease on fines will avoid the settlement.

909. *Ordinary settlements* on husband and wife, and their issue, should clearly define the estates and interests, and *powers of appointment* should be so given as to leave no doubt whether they are joint or several; and, if joint, whether to the survivor, and, if so, whether to be exercised by *will* as well as deed; and, if the power be to the wife only, whether it is to be exercised as well *coverte* as sole.

Limitations *in default of appointment* next follow, and the *pin-money* of the wife, if any, should be precisely stated, and the particular property to be charged with it; and the limitations or trusts in favor of the issue of the marriage require equal precision.

910. *Stock in public funds* cannot pass by a deed of assignment at law, and therefore the practice is to transfer it into the *names of the trustees* of the settlement upon the trusts therein declared.

911. *If future acquired property* is intended to be embraced by the settlement, it must be expressly stated, and this is usually the case where the intended wife has future expectancies, which are not intended to be under the control of her husband.

912. *If property is to be settled to the separate use of the wife*, it should be stipulated, if real estate, that it shall be conveyed, and, if personalty, assigned to trustees in trust for her until the marriage, and after marriage in trust during the joint lives of her and her husband to pay the rents and profits, or interests and dividends, as she, by any writing, but not by way of anticipation, may appoint, and in default of appointment into her own hands, for her sole and separate use, free from the debts or control of her husband; and if he die before her, then in trust for her, her heirs, executors, or administrators, according to the nature of the property; but if she die first, then upon such trusts as she shall by will appoint, and in default of appointment in trust for the children of the marriage, and if no children then for her heirs or next of kin.

MARRIAGE SETTLEMENTS.

913. *The title* of the property to be settled should be investigated, and all outstanding legal estates, if any, should be got in; for, otherwise, the settlor, by mortgaging the property to some one who had no notice of the settlement, might defeat the settlement to the extent of the mortgage. Incumbrances also should be cleared off; and, if it cannot be otherwise done, a power to sell part of the property, for the purpose of paying them off, should be reserved.

914. *When the settlor* is tenant in tail, and a disentailing deed is necessary to enable him to make the settlement, it is better done by a separate instrument.

MARRIAGE SETTLEMENTS.

915. *If money secured by mortgage* is part of the settlement, two deeds will be necessary—one to transfer the mortgage and mortgaged premises to the trustees of the settlement, to stand possessed of the same upon the trusts declared therein, and the *other* to declare the trusts of the settlement; because, as all deeds of *transfer* of mortgage form part of the *mortgagor's title*, he is entitled, on redeeming the mortgage, to have every deed of conveyance or transfer of the premises *delivered to him*. And the same in the case of *railway shares*: one deed, duly registered on the books of the railway company, and indorsed accordingly, must transfer the shares to the trustees; and another—*i. e.*, the deed of settlement itself—must declare the trusts on which the shares are held.

916. *Assignment of personal securities* should always contain a power of attorney to sue for and enforce payment, and also a power to compound or compromise such debts.

917. *If moneys to be settled are payable at some future period*, the settlor enters into a covenant with the trustees concerning the same, and sometimes gives a *bond* as additional security.

918. *Where moneys advanced to the husband* are secured by a policy on his life, the policy should be assigned to the trustees, with a covenant that the settlor will keep up the policy at his own cost, and a power to the trustees to do so out of the trust moneys in case of his default.

919. *Provision for the children of the wife by a former marriage* should be made in the deed of settlement, or by some instrument in which her intended husband concurs. This is the prudent course, though not absolutely necessary; for though, after a treaty of marriage has commenced, an intended wife cannot dispose of her property, real or personal, without the consent of her intended husband, this case of making reasonable provision for the children of a former marriage is an *exception*; but still it is far better to make such provision openly than in such a way as to appear like a fraud on the marriage.

920. *The settlement should be strictly in conformity with the articles*, otherwise equity will set it aside and decree a settlement in conformity; but, if the settlement is made *before* marriage, and is not expressed to be in pursuance of previous articles, equity will not rectify discrepancies, but presume that the parties had abandoned the articles, and made a fresh arrangement; but, whether before or after marriage, a settlement expressed to be made in pursuance of articles will be rectified in equity, even against a purchaser for valuable consideration, *with notice* of the articles.

921. *All persons* having any estate or interest in the settled property, or intended to be *bound* by the settlement, should be made parties to it, and execute it, or perform some act by which they recognize its authority; but the better way is for the trustees, and every other party, to execute the deed.

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922. *The profession or trade and abode* of the parties should be particularly set out, since many years may elapse before the settlement is acted upon: this will assist the discovery of the trustees and others taking an interest under the deed.

923. *The recitals* are always short, and may be entirely dispensed with in ordinary cases; but, if the settlement is *in exercise of a power*, the deed or will creating such power should be recited, so as to show that the terms of the power have been strictly complied with. And so also, where an annuity is the subject of the settlement, the instrument creating the annuity should be recited, and the same rule applies to *personal securities* and policies of assurance, the nature of which should be plainly set out in recital; and to a settlement of the wife's property to defeat *bankrupt laws*, in which case the title of the property to be settled should be historically recited; then the agreement for the marriage, and that the wife's fortune, naming the amount, was to be paid to the husband in consideration of the settlement therein after contained, and that such fortune had been *actually* paid over.

924. *The testatum*.—The marriage is a sufficient *consideration* when the settlement is executed *before* marriage, or in pursuance of articles made before marriage; but where there is real estate, a nominal consideration of five shillings is usually put in, and where the intended wife's fortune is part of the consideration, or where there is a mutual settlement, the amount and nature of the consideration should be stated.

925. *The habendum* should always be to the trustees in joint tenancy, so that the whole estate may go to the survivor in case of death; and, if the property is freehold, the limitation should be to the trustees, and their heirs, to the uses, trusts, &c., therein after declared. Care must be taken not to limit the estate in such terms as would execute the uses in the trustees; and therefore the words "unto and to the use of the trustees" must not be used, for they would give them the legal estate, and the estates arising out of their seizin would be merely equitable.

926. *Leaseholds for lives* may be settled in the same way as freeholds; but, in the case of leaseholds *for years*, whether for an absolute term or determinable on lives, there is no mode of limitation by which the beneficiaries can be made to take a legal estate.

927. *Declarations of uses and trusts* are usually in the following order:—

(1.) For the settlor, in case of his death after the execution of the settlement but before the marriage. A rare occurrence, but one that has happened.

(2.) The use of a rent charge, [if any,] by way of jointure for the wife, or provision for the husband, or any other purpose, with powers of distress and entry.

MARRIAGE SETTLEMENTS.

(3.) Any term of years, created for any purpose of the settlement, should come next.

(4.) In strict settlements now follow limitations to the settlor for life, remainder to trustees to preserve contingent remainders, remainder to first and other sons of the marriage in tail, remainder to the use of daughters as tenants in common in tail, with cross remainders between them, and an ultimate remainder to the right heirs of the settlor.

928. *Sons of any future marriage* are usually objects of the settlement before the daughters of the intended marriage; and, when this is desired, a limitation to the first and other sons by any future marriage must come before the limitation to the daughters of the intended marriage.

929. *Trustees to preserve contingent remainders* are not actually necessary in England, since the 8 and 9 Vic., c. 106, which expressly enacts that contingent remainders shall not fail by the destruction of the prior particular estate. The clause is, however, usually inserted *pro majori cantate*, and, when used, should always limit the estate of the trustees *for the life* of the preceding tenant for life, otherwise they will take the legal fee. As to certain contingent remainders in Canada, see Revised Statutes, Cap. XC., p. 902.

Sometimes a term of ninety-nine years is limited to the husband, if he shall so long live, instead of a life estate, to prevent the estate tail being barred without consent of the trustees; for then the freehold vests in them during the term, and *scemle* that they could not consent to bar the estate tail without the direction of the Court of Chancery.

930. *Without impeachment of waste* is a usual condition of the life estate, or term limited to the husband. This enables him to work mines and quarries already open, but *not to open new ones*; to cut down timber in a husband-like manner, with due regard to the beauty of the place, but not to cut down young trees, or trees for ornament or shelter to the mansion; nor to pull down houses, or even to allow them to go to ruin for want of repairs.

931. *A life estate to the wife* is sometimes given in lieu of a rent-charge on the whole or part of the estate; and, if freehold, then without impeachment of waste.

932. *Leaseholds* for years cannot be entailed, and therefore they are settled to hold to the trustees upon such trusts as nearest correspond to the uses declared of the freehold.

933. *Declaration of trusts of terms* follow the uses and trusts to the parties taking beneficially under the settlement.

934. *When real estate is not entailed* it is generally limited to the use of the husband, with a provision for the wife in the manner before mentioned, and a power of appointment is given to the husband and wife, or the survivor, among the children of the marriage; and, in default of appointment, the property is limited to

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the children in equal shares, as tenants in common in fee, with cross remainders and powers of maintenance and advancement, and in case there are no children, an absolute power of appointment is limited to the settlor, to whom, in default of appointment, the ultimate use is also limited.

935. *A hotch-pot clause* is usually inserted where there is a power of appointment in favor of the children. (See n. 966, 967.)

936. *Real estate is often settled in trust for sale* where it is not of great value, and is settled with personal estate, upon the same trusts, and for the benefit of the same persons. The lands are then limited to the trustees with the consent of the husband and wife, or of the survivor, to sell the same, give receipts for the moneys, and stand possessed of the same for the trusts of the settlement.

937. *The wife's real estate* is settled to her separate use, in the manner described in n. 912.

938. *A power of appointment* over the legal estate may be reserved to a *married woman* who has a *legal estate in fee* in the same premises. (See form n. 962.) An erroneous supposition to the contrary was the origin of the practice of vesting the legal estate in *trustees*; but, when it is intended to prevent both her and her husband from alienating the annual profits during her lifetime, the estate should always be vested in trustees, upon trust to pay the rents into her hands for her separate use, and *without the power of anticipation*. If this be omitted, she may by one sweeping appointment pass away her whole interest; but this restriction is effective *only during coverture*, for in widowhood she regains her power of alienation, which is again suspended if she marry again.

939. *As to future acquired property of the wife* see n. 911.

940. *The usual trusts of personal property* are life interests to the husband and wife, with a power of appointment in favor of the children, who, in default thereof, take equally as tenants in common; and, if there are no children, the settlor takes an absolute power of appointment, which, if he do not exercise, it is transmitted to his, or to his wife's, personal representatives. Provisions for the maintenance and advancement of the children during their minority are also usual.

941. *If the settled property moves from the intended husband*, the usual form will be found at n. 937.

942. *Powers of appointment* in favor of children are usually joint, to the husband and wife during their life, and to the *survivor* of them; and, if this latter clause be omitted, the power will cease on the death of either. If it is intended that the survivor may exercise the power by *will* as well as deed, that should be stated.

943. *Trusts in favor of children* are usually for such of them as, if sons, attain the age of twenty-one; or, if daughters, attain that age or marry.

MARRIAGE SETTLEMENTS.

944. *Next of kin* means "*kindred of blood*," so that a husband is not included in those terms. If, therefore, the husband is intended to take under the ultimate trusts, the trusts should be declared for the wife's executors or administrators, when he, if in either character, will be entitled; but if it be intended to exclude him, then the ultimate trusts should be for the wife's next of kin.

945. *Power to grant leases in possession only* should be clearly so stated, and that no *fine-premium* or *fore-gift* should be taken for making the same; and that every such lease shall contain a proviso for re-entry for non-payment of the rent for, say, twenty-one days; and that the lessee shall covenant to pay the same, and execute the lease, or a counterpart, and so that he shall not be dispossessible for waste.

946. *Where it has been customary to grant renewals of leases*, a power to do so, on the terms which have been usual, is generally inserted in the settlement.

947. *Power to grant building-leases* is very desirable in many cases.

948. *Power to trustees to give receipts* is best given by declaring that the receipt of the trustees or trustee for the time being shall be a discharge for all money expressed to have been received by them under the trusts of the settlement; but, if the names of the trustees are mentioned, the power should be extended to the survivor of them, and "to other the trustees or trustee for the time being of these presents;" for, where the trustees are mentioned by name, every trustee who accepted the trusts must concur in the receipt, even though he have released his estate to the other trustees, but the above method will obviate this objection.

949. *In the appointment of new trustees* it should be provided that, immediately on appointment, all the trust estates shall be conveyed to and invested in them, and that every new trustee, before as well as after such conveyance, shall have the same power as if he had been originally appointed a trustee by the deed of settlement itself. The latter part of this clause is important, because a mere appointment does not of itself make the appointee a complete trustee, nor can he act as such until the estate is vested in him by an actual conveyance or assignment of the property.

950. *The clause of indemnity to trustees* against the acts of co-trustees, and for involuntary losses, and for liabilities under receipts given for conformity, &c., &c., &c., usually ends the settlement; but it is of no real use, for courts of equity pay little regard to it. The responsibilities of trustees, from which they cannot be shielded by any proviso, are indeed so great that it is surprising that persons who are aware of them will undertake so thankless, so troublesome, so unprofitable, and so dangerous an office. That it is so frequently undertaken, nevertheless, and its duties satisfactorily per-

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SEPARATION DEEDS.

formed, under circumstances which require far more sagacity and courage than the ordinary business of the trustees themselves, is a bright instance of what is best in human nature, to which we feel bound to pay a just tribute of admiration.

A trustee is *not accountable* if, *with the consent* of the *cestuis que trust*, he permit a co-trustee to keep moneys in his hands which he misapplies, at least so far as the consenting *cestui que trust* is concerned; nor is he accountable, if *all parties* consent, though the person holding the money become insolvent; nor where the money is deposited with a *banker* who fails, when such deposit is made from *necessity*, or in conformity to *common usage*. 15 L. T. Rep., 530.

POST NUPTIAL and VOLUNTARY SETTLEMENTS.

951. *Settlements not made in pursuance of articles entered into before marriage* are merely voluntary, and do not bind the creditors of the settlor, nor a purchaser for valuable consideration, though they bind the settlor himself. *One exception* to this rule occurs in post nuptial settlements made under a decree or order of the Court of Chancery, in cases where a man has married a minor, without consent of her parents or guardians.

952. *A power of revocation* contained in a voluntary settlement has been held to transform the deed into a will, (*Attorney-General v. Jones*, Pri., 360;) but this was overruled by Pepys, M. R., afterwards Lord Cottenham, in the subsequent case of *Thompson v. Browne*, [3 Myl and Kee.]

953. *A deed of gift* can only comprehend such property as the settlor is possessed of when he makes it, and therefore is not suited to the disposition of fluctuating property; this inconvenience may be avoided by making out a schedule of the property comprehended in the deed, and disposing, by will made at the same time and in which the settlement is recited, of any other property upon the same trusts as those in the settlement.

SEPARATION DEEDS.

954. Perhaps the establishment of courts of marriage and divorce, like those in England, may alter many rules of practice with regard to deeds of separation, which the ecclesiastical courts at home constantly refused to recognize, as being, in fact, an anomalous species of divorce, and in the mean time we omit further notice of them for want of space in the present volume.

FORMS.

955. MARRIAGE ARTICLES.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, and Province of Canada, _____, of the first part; E. D., of _____ of _____, daughter of _____, of the second part; and C. D., of _____ of _____, and E. F., of _____ of _____, of the third part, witnesseth:—

THAT WHEREAS the said E. D. is seized in fee of and in certain lands and tenements, with their appurtenances, situate, lying, and being (*describe the situation of the property carefully*);

AND WHEREAS a marriage is shortly intended to be solemnized between the said A. B. and E. D., with whom the said A. B. is to have and receive _____ dollars in money, over and besides the lands, &c., above mentioned, as and for her marriage portion;

NOW THEREFORE it is covenanted and agreed, by and between the said parties to these presents, as follows:—

First, the said A. B., for himself, his heirs, executors, and administrators, doth covenant and agree with the said C. D. and E. F., their heirs and assigns, that they, the said A. B., and E. D., his intended wife, in case the said intended marriage shall be solemnized, by some good and sufficient conveyance or conveyances, will settle and assure the aforesaid lands and tenements, with the appurtenances, whercof she, the said E. D., is seized as aforesaid, on and to the said C. D. and E. F., TO THE USE of the said A. B. during the term of his natural life; AND from and after the decease of the said A. B., then TO THE USE of the said E. D., his intended wife, for and during the term of her natural life; AND from and after her decease, then TO THE USE of the heirs of the body of the said E. D.; AND on the default of such issue, then TO THE USE of the said E. D., her heirs and assigns, and to and for no other use, intent, or purpose, whatsoever.

AND, secondly, for as much as the said A. B. is not at present seized or possessed of any estate sufficient to make a jointure for the said E. D. equivalent to her fortune, the said A. B. doth, for himself, his heirs, executors, and administrators, covenant, grant, and agree, to and with the said C. D. and E. F., their heirs and assigns, that, in case the said intended marriage shall take effect, he, the said A. B., shall and will, by his last will and testament, in writing or otherwise, give and assure unto the said E. D. the sum of _____ dollars, of lawful money of Canada, to be by her received and taken, to her own proper use and benefit, in case she shall survive the said A. B.

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IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year above written.

SIGNED, SEALED, AND DELIVERED
in presence of
G. H.

A. B. [SEAL.]
E. D. [SEAL.]
&c., &c.

956. SETTLEMENT of an ESTATE, in CONTEMPLATION of MARRIAGE.

THIS INDENTURE, made the _____ day of _____, between E. D., of _____ of _____, in the county of _____, and Province of Canada, _____, of the first part; C. D., of _____ of _____, of the second part; and A. B., of _____ of _____, of the third part, witnesseth:—

THAT WHEREAS a marriage is intended to be solemnized between the said parties of the first and third parts, and the said E. D. is possessed of certain personal estate, to wit: the sum of _____ dollars, which is now deposited in the _____ Bank, in the city of _____, and _____ shares of the capital stock of the _____ Insurance Company, in _____;

NOW THEREFORE, in consideration of the premises, and of one dollar paid by the said C. D. to the said E. D., [the receipt whereof is hereby acknowledged,] the said E. D. doth hereby assign, transfer, and set over, to the said C. D., his executors and administrators, all the moneys, property, and effects above mentioned. To HOLD the same to him, the said C. D., his executors and administrators, upon the special trusts and for the uses and purposes following, to wit:

(1.) THAT, until the solemnization of the said marriage, the said C. D. shall pay over to the said E. D., or shall empower her to receive, for her own use, all the income, profits, and dividends arising from the said moneys and effects, and from any other estate which may be substituted therefor, as is herein after provided.

(2.) THAT, from and after the solemnization of the said marriage, and during the coverture of the said E. D., the said C. D. shall receive and collect the income, profits, and dividends of the said trust moneys and effects, or of any other substituted estate, so often and whenever the same shall be payable; and, after deducting all necessary expenses, shall pay over the same, or so much thereof as she shall not direct to be added to the principal, for the purpose of accumulation, to the said E. D., upon her sole and separate receipt therefor, and free from the control or interference of her said husband, or any other person whomsoever.

(3.) THAT, in case of the decease of the said E. D., after the solemn-

MARRIAGE ARTICLES.

nization of the said marriage, and during the life of her said husband, the said money and effects shall be transferred and paid over, by the said trustee, to such person or persons as she, the said E. D., by an instrument or note in writing, subscribed by her in the presence of at least two competent witnesses, shall order and appoint to receive the same; AND in default of her making such appointment, the same shall be transferred and paid to the said A. B.; AND in case of his decease before the said property shall be actually transferred and paid over to him, THEN to such person or persons as would be the legal representatives of the said E. D. by the statute for the distribution of intestate estates.

(4.) THAT, in the event of the decease of the said A. B. during the lifetime of the said E. D., all the property then held in trust under this indenture shall be transferred and conveyed back to the said E. D.; AND, until so transferred, the trustee shall pay over to her, or empower her to receive, the income, profits, and dividends of the same, for her own use.

(5.) THAT the said trustee shall have power, with the approbation or at the request of the said E. D., expressed in writing, to sell and dispose of the said trust estate, or any part of it, and the proceeds to invest in other personal or real estate, according to the written direction of the said E. D.; AND the estate so purchased shall be had and held by the trustee upon the same trusts and for the same uses and purposes as aforesaid.

(6.) THAT, in case of the decease of the party of the second part, or of his resignation of said trust, he, or his executors or administrators, shall convey, transfer, and pay over the whole of the trust estate then held by him, to such person or persons as may be appointed in writing, by the said E. D., to be the trustee or trustees under this indenture; AND such new trustee or trustees shall have all the powers, and shall hold the trust estate, subject to all the provisions herein set forth and expressed; AND the receipt of such new trustee or trustees for the trust property shall be a complete acquittance and discharge to the said C. D., his executors and administrators; AND, in like manner, other new trustees may be appointed from time to time, as occasion may require.

AND the said C. D. doth hereby signify his acceptance of the said moneys and effects, and doth engage to hold and manage the same, upon the trusts and for the uses herein mentioned.

AND the said A. B. doth hereby signify his assent to the provisions of this indenture, and doth covenant with the said C. D., and his successors in the said trust, to permit the said E. D., after the solemnization of the said intended marriage, to receive the aforesaid income, profits, and dividends, to her sole and separate use, and freely to dispose of the trust estate, by her will, or by her testa-

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mentary appointment, and not to interfere with the said trust estate, otherwise than in conformity to the provisions of this indenture.

IN WITNESS WHEREOF, &c., (*as in n. 955.*)

E. D. [SEAL.]
C. D. [SEAL.]
A. B. [SEAL.]

957. AGREEMENT *for SETTLEMENT, before MARRIAGE.*

THIS AGREEMENT, made and entered into this _____ day of _____, between A. B., of _____ of _____ county of _____, and Province of Canada, _____ of the first part; E. D., of _____ of _____, of the second part; and C. D., of _____ of _____, of the third part, witnesseth:—

THAT WHEREAS a marriage is about to be had and solemnized between the said A. B. and E. D.; AND the said A. B. is desirous of making provision for a fit and proper settlement, to and for the use and benefit of the said E. D., his intended wife;

NOW THEREFORE the said A. B. doth hereby agree that, if the said marriage shall be had and solemnized as aforesaid, he shall or will, on or before the _____ day of _____ next, assign, transfer, and set over, unto C. D., (above mentioned and described,) by good and sufficient transfers, assignments, and conveyances, _____ shares of the capital stock of the _____ Railway Company, now owned by and belonging to the said A. B.; AND also the sum of _____ dollars in money. To HOLD the same UNTO the said C. D., to and for the sole and separate use and benefit of the said E. D., during the term of her natural life.

AND IT IS FURTHER AGREED between the said parties that, in case the said C. D. shall refuse to accept the said trust, then the said shares, stock and money as aforesaid, shall be transferred, assigned, and set over unto such person as shall be nominated in writing by the said E. D. as such trustee, in the place and stead of the said C. D., to be held by him to and for the use and benefit of the said E. D., as aforesaid; AND that the articles of settlement, to be executed in pursuance hereof, shall contain a provision for the appointment of a trustee to fill any vacancy which may transpire, except as above provided, by the nomination in writing of the said E. D.

IN WITNESS, &c., (*as in n. 955.*)

A. B. [SEAL.]
E. D. [SEAL.]
C. D. [SEAL.]

[Special conditions and provisions may be inserted in this agreement, extending the benefit of the trust to the children of the parties. *See n. 965.*]

MARRIAGE DEEDS.

958. JOINTURE *in LIEU of DOWER.*

THIS INDENTURE, made and entered into this _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, of the first part; E. D., of _____ of _____, of the second part; and C. D., of _____ of _____, (*trustee for the intended wife*), of the third part, witnesseth:—

THAT THE SAID A. B., in consideration of a marriage about to be had and solemnized between him, the said A. B., and the said E. D., does, for himself, his heirs, and assigns, covenant, grant, and agree, to and with the said C. D., his heirs and assigns, that he, the said A. B., his heirs and assigns, shall and will, forever hereafter, stand seized of and in a certain tract or parcel of land, with the appurtenances, situate in the town of _____, in the county of _____, and Province of Canada, aforesaid, and bounded as described as follows, (*description*), to the uses following, that is to say: TO THE USE of the said A. B. for and during the term of his natural life, without impeachment of waste, and after his marriage with the said E. D.; AND after his decease, TO HER USE, so long as she shall remain his widow and unmarried, [*or during her natural life*] without impeachment of waste, for her *jointure*, and in lieu and satisfaction of her whole *dower* in the estate of the said A. B.; AND after his decease, and the expiration of her estate, TO THE USE of his heirs and assigns forever.

AND THE SAID E. D., in consideration of the premises, and in consideration of the sum of one dollar, paid to her by the said A. B., does, for herself, her heirs, executors, and administrators, covenant and agree, with the said A. B., that the lands so assigned to her shall be in full satisfaction of her dower in his estate, and shall bar her from claiming the same, if she shall survive, after said marriage; AND FURTHER, if the said marriage shall be had, and she shall survive him, that she will not claim any share in his personal estate, unless some part thereof be given to her by his will, or some act done by him subsequent to the execution of these presents.

IN WITNESS WHEREOF, (*as in n. 955.*)

959. APPOINTMENT *by DEED* [*before or after marriage*] *by TENANT for LIFE in possession under a WILL, of a JOINTURE RENT-CHARGE to a WIFE.*

I, A. B., in exercise of my power under the will [dated, &c.,] of X. Y., as tenant for life, in possession of the real estate thereby limited in use, appoint that [in case an intended marriage between me and C. D., of _____, spinster, shall take effect] the real

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estate shall, after my death, and subject to the subsisting limitations under the said will, [or any appointment or appointments by virtue thereof,] which precede the limitation under which I am entitled as such tenant for life as aforesaid, [but in priority to any portion sum and interest, or yearly sum in lieu thereof, now or hereafter appointed by me under the 1000 years term limited by the said will,] remain to the use that the said C. D. may, if she shall survive me, receive during her life a rent-charge of _____ dollars, payable by equal quarterly payments, commencing at the end of three calendar months from my death, and may recover all arrears thereof, [exceeding forty days' arrears,] and all expenses of recovery, by entry and possession, or perception of rents and profits of the premises.

IN WITNESS, &c.)

A. B. [SEAL.]

960. APPOINTMENT *by DEED by HUSBAND and WIFE* [under a PERSONAL SETTLEMENT] *of the WHOLE TRUST PROPERTY among all CHILDREN, in UNEQUAL SHARES.*

We, A. B., and (*Christian name*), my wife, [formerly _____, spinster,] in exercise of our power under our marriage settlement, [dated, &c.,] appoint that the trust premises therein comprised [and which are specified, according to their present investments, in the schedule hereto] shall, after the death of the survivor of us, be held, As to _____ dollars, in trust for C. D., one of the children of the said marriage; As to _____ dollars, in trust for E. F. and G. H., [two others of such children,] equally; AND as to the residue, in trust for X. Y., the only other child now living of the said marriage.

IN WITNESS WHEREOF, we have herenunto set our hands and seals, this _____ day of _____, in the year of our Lord one thousand eight hundred and _____

961. APPOINTMENT *by DEED by HUSBAND surviving* [under a PERSONAL SETTLEMENT] *of the WHOLE TRUST PROPERTY equally among all CHILDREN but one, reserving a POWER of NEW APPOINTMENT.*

I, A. B., in exercise of my power under my marriage settlement [dated, &c.,] with C. B., deceased, formerly M. N., spinster, appoint that _____ dollars, now representing the trust premises therein comprised and secured by a mortgage, [dated, &c., and expressed to be made between, &c.,] shall, after my death, be held in trust for

MARRIAGE DEEDS.

such children and child of the said marriage, and in such manner, as I shall by deed, will, or codicil appoint; AND, so far as the same shall be unappointed, in trust, in equal shares, for C. D., E. F., and G. H., who [with X. Y.] are the only children born of the said marriage.

IN WITNESS, &c., (*as in n. 960.*)

962. APPOINTMENT *by DEED by a MARRIED WOMAN* [*under a POWER on a WILL*] *of the WHOLE TRUST PROPERTY among all CHILDREN, giving specific parts of the PROPERTY to the RESPECTIVE CHILDREN.*

I, A. B., the wife of C. B., [formerly A. N., spinster,] in exercise of my power under the will [dated, &c.,] of X. Y., appoint that the trust premises therein comprised [and which are specified according to their present investments in the schedule hereto] shall, after my death, be held, As to dollars per cent. consolidated bank annuities, in trust for my son, C. D.; As to the mortgage debt of dollars, mentioned in the said schedule, in trust for my son, E. F.; AND, as to the mortgage debt of dollars, therein mentioned, in trust in equal shares for my daughters, L. M. and N. O., who are my only other children now living.

IN WITNESS, &c., (*as in n. 960.*)

963. APPOINTMENT *by DEED* [*by WIFE surviving*] *under a MARRIAGE SETTLEMENT* [*or WILL*] *of part of the TRUST PROPERTY.*

I, A. B., of , widow, [formerly A. N., spinster,] in exercise of my power under my marriage settlement [dated, &c.,] with X. Y., appoint that dollars per cent. consolidated bank annuities [part of dollars like annuities now composing the trust funds comprised therein] shall, after my death, be held in trust for C. D., one of the children of the said marriage.

IN WITNESS, &c., (*as in n. 960.*)

964. APPOINTMENT *before MARRIAGE by the TENANT for LIFE* [*under a MARRIAGE SETTLEMENT of REAL ESTATE*] *of PORTIONS to the CHILDREN of a SECOND MARRIAGE.*

I, A. B., in exercise of my power under my marriage settlement

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[dated, &c.,] with E. B., deceased, [formerly A. N., spinster,] appoint that, in case an intended marriage between me and C. D. shall take effect, the trustees or trustee of the 1000 years term, limited by the said settlement, shall [subject to the trusts of the said term preceding my said power] execute to X and Y, [in the same settlement named,] or the survivor of them, his executors or administrators, or the trustees or trustee for the time being of the same premises, upon the attaining twenty-one years by the first child of my marriage with the said C. D., who shall attain that age, or upon my death, [whichever shall last happen,] a mortgage or further charge, with power of sale, for the portion sum of \$50,000, [of which \$7,500 shall not be called in until more than one child of my last mentioned marriage shall have attained twenty-one years, and a further sum of \$7,500 shall not be called in until more than two children of the same marriage shall have attained twenty-one years,] with interest after the rate of per cent. per annum, payable half-yearly, on the total amount of the said portion sum of \$50,000; AND shall also [subject as aforesaid] pay to the said X. and Y., and the survivor of them, his executors or administrators, half-yearly, during the interval which may elapse between my death and the execution of such mortgage or further charge, [or such part thereof as any child of my last mentioned marriage shall be living,] a yearly sum equal to what the interest on the same portion sum would amount to if such mortgage or further charge were then executed.

IN WITNESS, &c., (as in n. 960.)

965. SETTLEMENT OF REAL ESTATE ON MARRIAGE.

THIS INDENTURE, made the _____ day of _____ Parties.
 _____, one thousand eight hundred and _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, (intended husband,) of the first part; C. D., of _____ of _____, in the county of _____, and province aforesaid, (intended wife,) of the second part; and E. F., of _____ of _____, in the county of _____, and province aforesaid, and G. H., of _____ of _____, in the county of _____, and province aforesaid, (trustees,) of the third part, witnesseth as follows:—

THAT, IN CONSIDERATION of a marriage intended to be shortly solemnized between the said A. B. and C. D., he, the said A. B., with the approbation of the said

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MARRIAGE SETTLEMENTS.

Conveyance of C. D., doth hereby grant unto the said E. F. and G. H.,
 freeholds. and their heirs, ALL AND SINGULAR, &c., [or the hereditaments described in the schedule hereto annexed,] TOGETHER with all ways, lights, sewers, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof, or appurtenant thereto.

General words.

Habendum.
 To the use of settlor till marriage.
 After marriage to uses in favor of husband, wife, and children.

To HOLD the said premises UNTO the said E. F. and G. H., and their heirs, TO THE USE of the said A. B., and his heirs, until the said intended marriage; AND AFTER the solemnization thereof, TO THE USE of the said A. B., and his assigns, during his life, without impeachment of waste; AND AFTER his death, TO THE USE of the said C. D., and her assigns, during her life, without impeachment of waste; AND AFTER the death of the said C. D., TO THE USE of the child, or all or such one or more of the children, of the said intended marriage, for such estates or estate and in such manner and form in every respect as the said A. B. and C. D. shall by any deed or deeds appoint; AND IN DEFAULT of and until such appointment, and so far as such appointment shall not extend, IF there shall be only one child of the said intended marriage, TO THE USE of such only child, and the heirs of his or her body; BUT IF there shall be more than one child of the said intended marriage, then TO THE USE of all the children of the said intended marriage, and the heirs of their respective bodies, in equal shares, as tenants in common; AND IF any one or more of the said children shall die without issue, then, as well as to the share or shares of the child or children so dying as to the share or shares that shall have survived or accrued to such child or children, or to the heirs of his, her, or their body or respective bodies, TO THE USE of the others or other of the said children, and the heirs of their, his, or her respective bodies or body; AND IF more than one, in equal shares; AND FOR DEFAULT of such issue, TO THE USE of the said A. B., his heirs and assigns, for ever.

In default of issue, to husband in fee.

Provision for application of rents and profits during the minorities of the children.

AND IT IS HEREBY DECLARED that, after the death of the said A. B. and C. D., so long as any child of the said intended marriage shall be under the age of twenty-one years, the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall receive the rents and profits of and man-

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age the said premises, and may fell timber for repair or sale, or otherwise, and may accept surrenders from, and make allowances to, and arrangements with, tenants and others, and do all such things as may to them or him seem expedient for the due management thereof; AND, after deducting the expenses of management, repairs, insurance, and other outgoings, [if there be or can be any charge on the premises, add: "and keeping down any annual sum or sums, and the interest on any principal sum or sums, charged on the premises,"] shall pay to such of the children of the said intended marriage as shall for the time being have attained the age of twenty-one years his, her, or their share or respective shares of the said net rents and profits; AND shall, out of the share thereof of every or any of the said children who shall for the time being be under the age of twenty-one years, pay the whole, or such sum or sums as the said trustees or trustee shall think proper, for or toward the maintenance or education of every such minor, [either directly or by payment to his or her guardian or guardians, to be applied by such guardian or guardians, without accounting to the said trustees or trustee;] AND shall accumulate the residue [if any] of every or any such share of the said rents and profits in the way of compound interest by investing the same, and all the resulting income thereof, in their or his names or name, in or upon (*here describe the stocks or funds, or manner of investment,*) with power to resort to such accumulations respectively, at any time or times during the minority of the child from whose share the same respectively shall have arisen, for the maintenance or education of such child; AND, subject without prejudice to the provision for resorting to the said accumulations, for maintenance and education as aforesaid, shall hold all the said residue of every such share of the said rents and profits, and the stocks, funds, and securities in or upon which the same may be invested, upon such trusts as the same would be held upon if the same were moneys arising from sales under the power of sale hereinafter contained, or stocks, funds, or securities purchased therewith.

PROVIDED ALWAYS that the said A. R., during his life, and after his death the said C. D., during her life, and after the death of the said A. B. and C. D. the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor,

Power of leasing.

MARRIAGE SETTLEMENTS.

during the minority of any child of the said intended marriage, may at any time or times appoint, by way of lease, at rack rent, all or any of the said premises, for any term of years absolute not exceeding twenty-one years, to take effect in possession.*

Power of sale or exchange.

PROVIDED ALSO that the said E. F. and G. II., or the survivor of them, and the executors or administrators of such survivor, (*herein after called the trustees or trustee,*) may, at any time or times during the life of the said A. B., with his consent in writing, and after his death during the life of the said C. D., with her consent in writing, and after the death of the said A. B. and C. D. during the minority of any child of the said intended marriage, at the discretion of them, the said trustees or trustee, [but subject to any leases which may have been granted under the power herein before contained,] dispose of, either by way of sale or in exchange for other hereditaments in the said Province of Canada, all or any of the said premises, upon such terms and under such conditions as the said trustees or trustee shall think fit, and may buy in or rescind any contract for sale or exchange, and resell or again exchange, without being responsible for loss occasioned thereby, and may revoke the uses, trusts, and powers then subsisting in or of the hereditaments so sold or disposed of in exchange, and appoint the same to such uses and in such manner as shall be expedient to effectuate such sale or exchange.

Trustees' receipt clause.

AND IT IS HEREBY DECLARED that the receipt of the said trustees or trustee for any moneys paid to them or him upon any sale, or for equality of exchange, under the power of sale and exchange herein before contained, shall effectually discharge the persons paying the same therefor from, and from being concerned to see to, the application thereof, or being accountable for the non-application or misapplication thereof.

Indemnity to purchaser.

Moneys arising under power of sale and exchange,

AND IT IS HEREBY DECLARED that the said trustees or trustee shall, with such consent or at such discretion as aforesaid, lay out the money received upon any sale or for equality of exchange† in the purchase of free-

* If the land contain stone or minerals, power should be given to grant mining leases. If it comprises sites suitable for building, or houses likely to need repairs, power should be given to grant leases for building and to repair.

† It is usual to state that the trustees of the power of sale or exchange may pay or receive money for equality of exchange; but, as the power to pay or receive is incident to the power of exchange, [*Bertram v. Whichcote*, 6 Sim., 86.] the provision is unnecessary.

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hold hereditaments of inheritance in [Upper] Canada, how disposed of and shall settle, or cause the same to be settled, to the uses, upon the trusts, and subject to the powers hereby limited, as far as the deaths of parties and other intervening circumstances will permit.

AND IT IS HEREBY FURTHER DECLARED that, until the money to be received upon any sale, or for equality of exchange, shall be laid out as aforesaid, the said trustee or trustee may, with such consent or at such discretion as aforesaid, invest the same, in their or his names or name, in (*here describe the stocks or funds in which such moneys may be invested,*) and vary the same, if any, as he or they shall think fit; AND THAT the annual income of such stocks, funds, or securities shall be paid and applied to such person or persons, for such purposes and in such manner as the rents and profits of the hereditaments to be purchased therewith, as aforesaid, would be payable or applicable in case such purchase and settlement as aforesaid were actually made.*

AND IT IS HEREBY DECLARED that, if the said trustee or trustee Power to appoint hereby appointed, or any of them, or any trustee or point new trustee. shall die or desire to be discharged, or refuse or become incapable to act, then and so often the said A. B. and C. D., or the survivor of them, or [after the death of such survivor] the surviving or continuing trustee or trustee for the time being, [and for this purpose retiring or refusing trustee, or a retiring or refusing trustee, shall, if willing to act in the execution of this power, be considered continuing trustee, or a continuing trustee,] or the acting executors or administrators of the last surviving or continuing trustee, may appoint any other person or persons to be a trustee or trustees in the stead of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act; AND, upon every such appointment, the said trust premises shall be so transferred that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustee, or solely, as the case may require; and every

*This power of sale or exchange is only applicable to *small* estates and simple settlements. If the estate is, or under powers of charging may become, subject to incumbrances, there must be provisions for allowing money arising from sales to be applied in discharge of incumbrances, and for purchasing and selling lands of all tenures, and that the power shall overreach all charges to be created under the powers or term of years, except sales or mortgages actually made.

MARRIAGE SETTLEMENTS.

such new trustee shall [either before or after the said trust premises shall have become so vested] have the same powers, authorities, and discretions as if he had been hereby originally appointed a trustee.

Trustees' indemnity clause.

AND IT IS HEREBY DECLARED that the trustees or trustee for the time being of these presents shall be chargeable only with such moneys as they or he respectively shall actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person, in whose hands any of the moneys shall be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses; AND that the said trustees or trustee for the time being may reimburse themselves, or himself, out of the moneys which shall come to their or his hands, under the trusts aforesaid, all expenses to be incurred in or about the execution of the aforesaid trusts.

Covenant for right to convey.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their heirs and assigns, that, notwithstanding any thing by him, the said A. B., or any of his ancestors, done or knowingly suffered, he, the said A. B., now hath power to grant ALL AND SINGULAR the said premises, herein before expressed to be hereby granted, to the uses and in manner aforesaid, free from incumbrances.

For further assurance.

AND THAT HE, the said A. B., and his heirs, and every person lawfully or equitably claiming any estate or interest in the premises, through or in trust for him, or any of his ancestors, will, at all times, at the cost of the trust estate, execute and do all such assurances and acts for further or better assuring all or any of the said premises, respectively, to the several uses and in manner aforesaid, as by the said trustees or trustee, or any person interested in the premises, shall be reasonably required.

IN WITNESS, &c., (as in n. 960.) A. B. [SEAL.]

The schedule to which the above written indenture refers.

*When real estate is desired to be settled upon the children as the parents shall appoint, and, in default, equally, the best way is to convey the estate to the trustees, upon trust to sell and hold the money produced upon trusts to be declared by a settlement of even date. (See n. 966.) A settlement among children equally is almost invariably required for small properties, and therefore the above form is more suitable for this province, and for this collection of concise prece-

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FORMS.

966. SETTLEMENT, on MARRIAGE, of MONEY to arise from REAL ESTATE conveyed to TRUSTEES by a DEED of EVEN DATE in TRUST for SALE.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, (*intended husband*), of the first part; C. D., of _____ of _____, (*intended wife*), of the second part; and E. F., of _____ of _____, G. H., of _____ of _____, and I. K., of _____ of _____, (*trustees*), of the third part, witnesseth:—

WHEREAS a marriage is intended to be shortly solemnized between the said A. B. and C. D.;

AND WHEREAS, by an indenture bearing even date with, but executed before, these presents, and expressed to be made between (*parties*), certain hereditaments, in the _____ of _____, in the county of _____, have been conveyed to the use of the said E. F., G. H., and I. K., their heirs and assigns, in trust for the said A. B., his heirs and assigns, until the said intended marriage, and, after the solemnization thereof, upon trust for sale; and it is thereby declared that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall hold the net moneys to arise from such sale, and the net rent and profits, until sale of the said hereditaments, or of the unsold part thereof, upon the trusts to be declared thereof respectively by these presents;

NOW THIS INDENTURE WITNESSETH, and it is hereby declared, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor during his or her life, and, after the death of such survivor, at the discretion of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, (*herein after called the trustees or trustee*), invest the said net moneys to arise from any and every sale under the herein before recited indenture, in the names or name of the said trustees or trustee, in any of the public stocks or funds of the Province of Canada, or upon government or real securities in the said province, [or in or upon the shares, stocks, or

dents, than a strict settlement, with powers of jointuring and charging portions, and the like.

The precedent in the text may be converted into a simple strict settlement by changing the limitation to the children *equally* into a limitation to the *first* and other *sons* successively *in tail*, with remainder to the *first* and other *daughters* successively *in tail*; the preceding power of appointment being either omitted or retained. The language of the powers will require to be altered, by restraining their exercise, after the death of the tenant for life, to the minority of a child entitled under the limitations or appointments.

MARRIAGE SETTLEMENTS.

securities of any company in the said province, incorporated by royal charter or by act of Parliament, and paying a dividend; AND that the said trustees or trustee, if and when they or he shall think fit, may, with such consent, or at such discretion as aforesaid, vary the said stocks, funds, shares, or securities.

AND THAT THE SAID trustees or trustee shall pay the annual income of the said stocks, funds, shares, and securities, during the joint lives of the said A. B. and C. D., to the said C. D., for her separate use, independently of the said A. B., so that her receipts alone shall be sufficient discharges, and that she shall not have power to deprive herself thereof in *anticipation*; AND after the death of either of them, the said A. B. and C. D., to the survivor of them, during his or her life; AND after the death of such survivor, shall hold the said premises, and the annual income thereof, IN TRUST for the child, or for all or any such one or more of the children, of the said intended marriage, in such manner and form in every respect as the said A. B. and C. D. shall, by any deed or deeds, jointly appoint; AND in default of such appointment, and so far as no such appointment shall extend, as the survivor of the said A. B. and C. D. shall, by any deed or deeds, or by will or codicil, appoint; AND in default of any such appointment, and so far as no such appointment shall extend, IN TRUST for all the children, or any the child, of the said intended marriage, who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry, and, if more than one, in equal shares.

PROVIDED ALWAYS that no child, taking any part of the said premises under any such appointment as aforesaid, shall, in default of appointment to the contrary, be entitled to any share of that part of the said premises of which no such appointment shall be made, without bringing his or her appointed share into *hotchpot*.

PROVIDED ALWAYS that the said trustees or trustee may, after the decease of the survivor of the said A. B. and C. D., or in the lifetime of them, or the survivor of them, if they, he, or she shall so direct in writing, raise any part or parts of the then expectant, presumptive, or vested share or fortune of any child under the trusts herein before declared, not exceeding in the whole, for any such child, one-half part of his or her then expectant, presumptive, or vested share or fortune, and apply the same for his or her *advancement* or benefit.

AND IT IS HEREBY DECLARED that the said trustees or trustee shall, after the decease of the survivor of the said A. B. and C. D., apply the whole, or such part as the said trustees or trustee shall think fit, of the annual income of the share or fortune to which any child shall, for the time being, be entitled in expectancy under the trusts herein before declared, for or toward the maintenance or edu-

H. W. O. LAW
J. H. O. LAW

FORMS.

education of such child, either directly or to his or her guardians or guardian, without seeing to the application thereof, or requiring any account of the same; AND shall, during such suspense of absolute vesting, accumulate the residue [if any] thereof, in the way of compound interest, by investing the same, and the resulting income thereof, from time to time, in or upon any such stocks, funds, shares, or securities as are herein before mentioned, for the benefit of the person or persons who, under the trusts herein contained, shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulations of any preceding year or years, and apply the same for or toward the maintenance or education of the child or children who shall, for the time being, be presumptively entitled to the same respectively.

AND IT IS HEREBY DECLARED that, if there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then [without prejudice to the trusts herein before declared] the said trustees or trustee shall hold the said trust premises, and the annual income thereof, or so much thereof respectively as shall not have become vested, or been applied under any of the trusts or powers herein contained, upon the trusts following, that is to say: if the said C. D. shall survive the said A. B., then, after his death, and such default or failure of children as aforesaid, in trust for the said C. D.; but if the said C. D. shall die in the lifetime of the said A. B., then, after his death, and such default or failure of children as aforesaid, upon and for such trusts, intents, and purposes as the said C. D. shall, notwithstanding coverture, by will or codicil, appoint; and in default of such appointment, and so far as no such appointment shall extend, in trust for such person or persons as, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the decease of the said C. D., if she had died possessed thereof intestate, and without having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have been entitled under the same statutes.

AND IT IS HEREBY DECLARED that, until all the said hereditaments shall be sold, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall pay and apply the net rents and profits of the said hereditaments, or of the unsold part thereof, to the person or persons, for the purposes and in the manner, to whom and for and in which the annual income of the stocks, funds, shares, and securities aforesaid would be payable and applicable, if such hereditaments had then been sold, and the net moneys arising from such sale had been invested as aforesaid.

MARRIAGE SETTLEMENTS.

AND IT IS HEREBY DECLARED that the receipt in writing of the trustees or trustee, for any stocks, funds, shares, or securities, paid or transferred to them or him, in pursuance of these presents, or of the trusts thereof, shall effectually discharge the person or persons paying or transferring the same therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or mis-application thereof.

AND IT IS HEREBY DECLARED that, if the said trustees hereby appointed, or any of them, or any trustee or trustees to be appointed as herein after is mentioned, shall die, or desire to be discharged, or refuse or become incapable to act, then and so often the said A. B. and C. D., or the survivor of them, or [after the death of such survivor] the surviving or continuing trustees or trustee for the time being, [and for this purpose retiring or refusing trustees, or a retiring or refusing trustee, shall, if willing to act in the execution of this power, be considered continuing trustees or a continuing trustee,] or the acting executors or administrators of the last surviving or continuing trustee, may appoint any other person or persons to be a trustee or trustees in the stead of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act; AND upon every such appointment the said trust premises shall be so transferred that the same may become vested in the new trustee or trustees, jointly with the surviving or continuing trustees or trustee, or solely, as the case may require; and every such new trustee shall [either before or after the said trust premises shall have become so vested] have the same powers, authorities, and discretion as if he had been hereby originally appointed a trustee.

AND IT IS HEREBY DECLARED that the trustees or trustee for the time being of these presents shall be chargeable only with such moneys as they or he respectively shall actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person, in whose hands any of the trust moneys shall be placed, nor for the insufficiency or deficiency of any stocks, funds, shares, or securities, nor otherwise for involuntary losses; AND that the said trustees or trustee for the time being may reimburse themselves or himself, out of the moneys which shall come to their or his hands under the trusts aforesaid, all expenses to be incurred in or about the execution of the aforesaid trusts.

IN WITNESS WHEREOF, &c., (as in n. 955.)

967. SETTLEMENT of PERSONALTY.

THIS indenture, made the _____ day of _____, one thousand eight hundred and _____, between A. B., of the

J. W. O. LAW

FORMS.

of _____, in the county of _____, and Province of _____, Canada, carpenter, of the first part; C. D., of the same place, spinster, of the second part; and E. F., farmer, and G. H., gentleman, both of _____, in the county of _____, of the third part, witnesseth that, in consideration of an intended marriage between the said A. B. and C. D., it is agreed as follows:—

(1.) THE SAID E. F. and G. H. shall hold _____ dollars _____ dollars per cent. consolidated bank annuities transferred into their names by the said A. B., UPON TRUST that they, and the survivor of them, his executors or administrators, or their or his assigns, shall either retain or [subject, until the death of both the said A. B. and C. D., to the written consent of such of them as shall be living] realize the premises and the investments for the time being under this trust, and [subject as aforesaid] invest the moneys realized in or upon any stocks, funds, shares, or securities, not being (*name any objected to,*) or the personal security of any person.

(2.) THE SAID trustees or trustee shall [after the said marriage] pay the income of the said premises, during the joint lives of the said A. B. and C. D., to the said C. D., for her separate use [and so that no *anticipation* thereof shall be valid;] and, after the death of either of them, to the survivor, during his or her life.

(3.) SUBJECT to the foregoing trusts, the premises shall be HELD IN TRUST for such children or child of the marriage, and in such manner, as the said A. B. and C. D. shall, by deed, or the survivor shall, by deed, will, or codicil, appoint; and so far as the same shall be unappointed, IN TRUST for the children equally [or child, if but one,] of the marriage attaining twenty-one years, or [being daughters or a daughter] marrying, [but so that no child shall take any unappointed share without bringing his or her appointed share into *hotchpot*;] and, on failure of the foregoing trusts, IN TRUST for the said A. B., his executors and administrators.

(4.) THE SAID trustees or trustee may [without prejudice to the trusts preceding the creation of such interest] raise and apply, for any minor's benefit, half, or less, of his or her interest under the trust, and apply the income of any minor's interest for his or her maintenance and education [payment to a guardian being deemed such application;] and accumulate any surplus, upon the trusts and with the powers of the principal from which the same proceeded, or the income thereof.

(5.) PROVIDED (1.) THAT the trustees' receipts shall discharge persons paying or transferring trust property from liability in regard to the application thereof; (2.) THAT the said A. B. and C. D., and the survivor, and, after such survivor's death, the surviving or continuing trustees or trustee, or the executors or administrators of the last surviving or continuing trustee, may appoint one or more persons in the place and with the powers of every original or fu-

MARRIAGE SETTLEMENTS.

ture trustee who shall die, retire, or be abroad, or refuse or become incapable to act, the premises being on each appointment either re-vested or not at discretion. The vacancies may be supplied either at the same or several times, and in any order, and every refusing or retiring trustee shall be deemed continuing, for the purpose of supplying [if willing] his own or any other the subsisting vacancy.

IN WITNESS, &c., (as in n. 955.)

968. SETTLEMENT, on MARRIAGE, of REAL ESTATE upon the HUSBAND and WIFE successively for LIFE, with REMAINDER to the CHILDREN of the MARRIAGE, as the HUSBAND and WIFE, or the SURVIVOR, shall APPOINT; and, in DEFAULT, in EQUAL SHARES in TAIL as TENANTS in COMMON, with CROSS REMAINDERS.—POWERS of MANAGEMENT during MINORITIES, of LEASING, and of SALE and EXCHANGE.

THIS INDENTURE, made the _____ day of _____, one thousand eight hundred and _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, (*intended husband*), of the first part; C. D., of _____ of _____, in the county of _____, and province aforesaid, (*intended wife*), of the second part; and E. F., of _____ of _____, and G. H., of _____ of _____, in the county of _____, and province aforesaid, (*trustees*), of the third part, witnesseth as follows:—

THAT, IN CONSIDERATION of a marriage intended to be shortly solemnized between the said A. B. and C. D., he, the said A. B., with the approbation of the said C. D., doth hereby grant, unto the said E. F. and G. H., and their heirs, ALL THOSE, &c., (*describe the property by schedule*), TOGETHER with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or enjoyed, or reputed as part thereof or appurtenant thereto, AND ALL THE ESTATE AND INTEREST of the said A. B. and C. D. in the said premises. TO HOLD the said premises UNTO the said E. F. and G. H., and their heirs, TO THE USE of the said A. B., and his heirs, until the said intended marriage; AND AFTER the solemnization thereof, TO THE USE of the said A. B., and his assigns, during his life, without impeachment of waste; AND AFTER his death, TO THE USE of the said C. D., and her assigns, during her life, without impeachment of waste; AND AFTER the death of the said C. D., TO THE USE of the child, or all or such one or more of the children, of the said intended marriage, for such

J. W. O. LAW

FORMS.

estates or estate, and in such manner and form, in every respect, as the said A. B. and C. D. shall, by any deed or deeds appoint; AND IN DEFAULT of and until such appointment, and so far as no such appointment shall extend, as the survivor of the said A. B. and C. D. shall, by any deed or deeds, or by will or codicil, appoint; AND IN DEFAULT of and until such appointment, and so far as no such appointment shall extend, if there shall be only one child of the said intended marriage, TO THE USE of such only child, and the heirs of his or her body; BUT if there shall be more than one child of the said intended marriage, then TO THE USE of all the children of the said intended marriage, and the heirs of their respective bodies, in equal shares, as tenants in common; AND if any one or more of the said children shall die without issue, then, as well as to the original share or shares of the child or children so dying as to the share or shares that shall have survived or accrued to such child or children, or to the heirs of his, her, or their body or respective bodies, TO THE USE of the others or other of the said children, and the heirs of their, his, or her respective bodies or body; and, if more than one, in equal shares; AND FOR DEFAULT of such issue, TO THE USE of the said A. B., his heirs and assigns, for ever.

AND IT IS HEREBY DECLARED that, after the death of the said A. B. and C. D., so long as any child of the said intended marriage shall be under the age of twenty-one years, the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall receive the rents and profits of, and manage, the said premises, and may fell timber for repairs, or sale, or otherwise, and may accept surrenders from, and make allowances to, and arrangements with, tenants and others, and do all such other things as may to them or him seem expedient for the due management, thereof; AND, after deducting the expenses of management, repairs, insurance, and other outgoings, [if there be or can be any charge on the premises, add: "and keeping down any annual sum or sums, and the interest on any principal sum or sums, charged on the premises,"] shall pay to such of the children of the said intended marriage as shall for the time being have attained the age of twenty-one years, his, her, or their share or respective shares of the said net rents and profits; AND shall, out of the share thereof of every or any of the said children who shall for the time being be under the age of twenty-one years, pay the whole, or such sum or sums as the said trustees or trustee shall think proper, for or toward the maintenance or education of every such minor, [either directly or by payment to his or her guardian or guardians, to be applied by such guardian or guardians, without accounting to the said trustees or trustee;] AND shall accumulate the residue [if any] of every or any such share of the said rents and profits, in the way of compound

MARRIAGE SETTLEMENTS.

interest, by investing the same, and all the resulting income thereof, in their or his names or name, in or upon (*here name the approved securities,*) with power to resort to such accumulations respectively, at any time or times during the minority of the child from whose share the same respectively shall have arisen, for the maintenance or education of such child; AND, subject and without prejudice to the provision for resorting to the said accumulations for maintenance and education as aforesaid, shall hold all the said residue of every or any such share of the said rents and profits, and the stocks, funds, and securities in or upon which the same may be invested, upon such trusts as the same would be held upon if the same were moneys arising from sales under the power of sale herein after contained, or stocks, funds, or securities purchased therewith.

PROVIDED ALWAYS that the said A. B., during his life, and, after his death, the said C. D., during her life, and, after the death of the said A. B. and C. D., the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, during the minority of any child of the said intended marriage, may, at any time or times, appoint, by way of lease, at rack rent, all or any of the said premises for any term of years absolute, not exceeding twenty-one years, to take effect in possession.

PROVIDED ALSO that the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, (*herein after called the trustees or trustee,*) may, at any time or times during the life of the said A. B., with his consent in writing, and, after his death, during the life of the said C. D., with her consent in writing, and, after the death of the said A. B. and C. D., during the minority of any child of the said intended marriage, at the discretion of them, the said trustees or trustee, [but subject to any lease which may have been granted under the power herein after contained,] dispose of, either by way of sale or in exchange for other hereditaments in the Province of Canada, all or any of the said premises, upon such terms and under such conditions as the said trustees or trustee shall think fit, and may buy-in or rescind any contract for sale or exchange, and resell or again exchange, without being responsible for loss occasioned thereby, and may revoke the uses, trusts, and powers then subsisting in or of the hereditaments so sold or disposed of in exchange, and appoint the same to such uses and in such manner as shall be expedient to effectuate such sale or exchange.

AND IT IS HEREBY DECLARED that the receipt of the said trustees or trustee, for any moneys paid to them or him upon any sale, or for equality of exchange, under the power of sale and exchange herein before contained, shall effectually discharge the persons paying the same therefrom, and from being concerned to see to the application

U. W. O. LAW

FORMS.

thereof, or being accountable for the non-application or misapplication thereof.

AND IT IS HEREBY DECLARED that the said trustees or trustee shall, with such consent, or at such discretion as aforesaid, lay out the money received upon any sale, or for equality of exchange, in the purchase of freehold hereditaments of inheritance in the Province of Canada, and shall settle, or cause the same to be settled, to the uses, upon the trusts, and subject to the powers hereby limited, as far as the deaths of parties and other intervening circumstances will permit.

AND IT IS HEREBY FURTHER DECLARED that, until the money to be received upon any sale, or upon equality of exchange, shall be laid out as aforesaid, the said trustees or trustee may, with such consent or at such discretion as aforesaid, invest the same, in their or his names or name, in (*name any securities*;) and vary the same, if and as they or he shall think fit; AND THAT the annual income from such stocks, funds, and securities shall be paid and applied to such person or persons, for such purposes, and in such manner as the rents and profits of the hereditaments to be purchased therewith as aforesaid would be payable or applicable in case such purchase and settlement as aforesaid were then actually made.

AND IT IS HEREBY FURTHER DECLARED that the receipt in writing of the said trustees or trustee for any moneys, stocks, funds, shares, or securities paid or transferred to them or him, in pursuance of these presents, or of the trust thereof, shall effectually discharge the person or persons paying or transferring the same therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof.

AND IT IS HEREBY DECLARED that, if the said trustees hereby appointed, or any of them, or any trustee or trustees to be appointed as herein after is mentioned, shall die, or desire to be discharged, or refuse or become incapable to act, then and so often the said A. B. and C. D., or the survivor of them, or [after the death of such survivor] the surviving or continuing trustees or trustee for the time being, [and, for this purpose, retiring or refusing trustees, or a retiring or refusing trustee, shall, if willing to act in the execution of this power, be considered continuing trustees, or a continuing trustee,] or the acting executors or administrators of the last surviving or continuing trustee, may appoint any other person or persons to be a trustee or trustees in the stead of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act; AND, upon every such appointment, the said trust premises shall be so transferred that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustees or trustee, or solely, as the case may require: and every

MARRIAGE SETTLEMENTS.

such new trustee shall [either before or after the said trust premises shall have become so vested] have the same powers, authorities, and discretion as if he had been hereby originally appointed a trustee.

AND IT IS HEREBY DECLARED that the trustees or trustee for the time being of these presents shall be chargeable only with such moneys as they or he respectively shall actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person, in whose hands any of the trust moneys shall be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses; AND THAT the said trustees or trustee for the time being may reimburse themselves or himself, out of the moneys which shall come to their or his hands under the trusts aforesaid, all expenses to be incurred in or about the execution of the aforesaid trusts.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. II., their heirs and assigns, that, notwithstanding any thing by him, the said A. B., or any of his ancestors, done or knowingly suffered, he, the said A. B., now hath power to grant ALL AND SINGULAR the said premises herein before expressed to be hereby granted to the uses and in manner aforesaid, free from incumbrances, and to surrender the said premises herein before covenanted to be surrendered to the use of the said E. F. and G. II., their heirs and assigns, upon the trusts and in manner aforesaid, free from incumbrances; AND THAT he, the said A. B., and his heirs, and every person lawfully or equitably claiming any estate or interest in the premises through or in trust for him, or any of his ancestors, will, at all times, at the cost of the trust estate, execute and do all such assurances and acts, for further or better assuring all or any of the said premises respectively to the several uses and in manner aforesaid, as by the said trustees or trustee, or any person interested in the premises, shall be reasonably required.

IN WITNESS WHEREOF, &c., (as in n. 955.)

The effect of a settlement in trust for sale, [such sale, during the lives of the tenants for life, to be with their consent,] and a declaration that the rents till a sale shall go as the income of the funds would go, is tantamount to the settlement of the real estate in specie with the ordinary power of sale. A settlement among the children equally is almost invariably required for small, and not for large, properties, and it appeared to be more appropriate in this collection than a strict settlement, with powers of jointuring and charging portions, and the like.

The precedent in the text may be converted into a simple strict settlement, by changing the limitation to the children equally into a limitation to the first and other sons successively in tail, with remainder to the first and other daughters successively in tail, the preceding power of appointment being either omitted or retained. The language of the powers will require to be altered, by restraining their exercise, after the death of the tenants for life, to the minority of a child entitled under the limitations or appointments. See the precedent of a strict settlement in a will, *infra*.

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969. APPOINTMENT *on MARRIAGE of a REVERSIONARY LIFE*
ESTATE *in PERSONALTY to an INTENDED HUSBAND.*

I, A. B., of _____, spinster, in exercise of my power under the will [dated, &c.,] of X. Y., appoint that [in case an intended marriage between me and C. D. of _____, shall take effect] the trustees or trustee of the said will shall, after my death, pay the income of the trust premises therein comprised to the said C. D., [if he shall survive me,] during his life.

IN WITNESS WHEREOF, &c.

A. B. [SEAL.]

970. APPOINTMENT *of NEW TRUSTEES of a MARRIAGE SETTLEMENT, [to be INDORSED on the SETTLEMENT.]*

THIS INDENTURE, made the _____ day of _____, between the within named A. B., of _____ of _____, his wife, [at the date and execution of the within written indenture the within named C. D., of _____, spinster,] (*husband and wife, donees of the power.*) of the first part; the within named G. H., of _____, (*retiring trustee,*) of the second part; and J. K., of _____, and L. M., of _____, (*new trustees,*) of the third part, witnesseth as follows:—

WHEREAS the marriage in the within written indenture said to be intended was solemnized shortly after the date thereof;

AND WHEREAS the within named E. F. is dead, and the said G. H. desires to be discharged from the trusts of the within written indenture;

THIS INDENTURE WITNESSETH that they, the said A. B. and C. B., do hereby, in exercise of the power in this behalf in the within written indenture contained, appoint the said J. K. and L. M., respectively, to be trustees of the within written indenture, in the place of the said E. F. and G. H., respectively.

IT IS HEREBY DECLARED that the said J. K. and L. M., their executors, administrators, and assigns, shall hold the within mentioned (*name here the kind of property,*) which is intended to be transferred into their names immediately after the execution of these presents, and the annual income thereof, upon the trusts, and subject to the powers, upon and subject to which the same ought to be held by virtue of the within written indenture.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first mentioned.

APPOINTMENTS.

971. APPOINTMENT *by DEED*, [INDORSED *on the SALE DEED*.]

THIS INDENTURE, made the _____ day of _____, between E. F., of _____ of _____, in the county of _____, and Province of Canada, _____, of the one part, and M. N., O. P., and R. S., of _____ of _____, of the other part, witnesseth as follows:—

(1.) THE WITHIN NAMED A. B., having survived his wife, C. B., [formerly the within named C. T., spinster,] and died in the month of _____, the said E. F., in exercise of his power under the within written indenture, appoints the said M. N., O. P., and R. S. trustees thereof, in the place and with the powers respectively of the within named G. H., who has refused to act in, and has disclaimed the trusts of, the within written indenture, the within named I. K., who died in the month of _____, and the said E. F., who desires to retire from the trust.

(2.) THE SAID E. F. grants unto the said M. N., O. P., and R. S., and their heirs, the premises expressed to be granted by the within indenture, to THE USE of the said M. N., O. P., and R. S., and their heirs; nevertheless, UPON THE TRUSTS and subject to the clauses and provisos expressed in the within written indenture.

(3.) THE SAID E. F., for himself, his heirs, executors, and administrators, covenants with the said M. N., O. P., and R. S., their heirs [executors, administrators] and assigns, that the said E. F. hath done or knowingly suffered nothing whereby the premises are or may be incumbered or prejudicially affected.

IN WITNESS, &c., (*as in n. 970.*)

972. APPOINTMENT *by WRITING*, [INDORSED *on the SETTLEMENT DEED*.]

THE WITHIN NAMED A. B., having survived his wife, C. B., [formerly the within named C. T., spinster,] and died on the day of _____, I, the within named E. F., in exercise of my power under the within written indenture, appoint M. N., O. P., and R. S. trustees thereof, in the place and with the powers respectively of the within named G. H., who has refused to act in, and has disclaimed the trusts of, the within written indenture, the within named I. K., who died in the month of _____, and myself, who am desirous of retiring from the trust.

Signed, E. F.

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FORMS.

973. DISCLAIMER *under a SETTLEMENT*, [by INDORSEMENT.]

THESE PRESENTS WITNESS that I, the within named A. B., have never acted in the trusts and powers of the within written indenture, and that I disclaim all such trusts and powers, and all estate and interest in the premises therein comprised.

IN WITNESS WHEREOF, &c.

[SEAL.]

974. ARTICLES of SEPARATION.

THIS INDENTURE, made the _____ day of _____, 18____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, of the first part; E. B., his wife, of the second part; and C. D., of _____ of _____, of the third part, witnesseth:—

WHEREAS divers unhappy disputes and differences have arisen between the said A. B. and his said wife, for which reason they have consented and agreed to live separate and apart from each other during their natural life;

NOW THEREFORE the said A. B., in consideration of the premises, and in pursuance thereof, doth hereby covenant, promise, and agree, to and with the said C. D., and also to and with his said wife, that he shall and will allow and permit his said wife, E. B., to reside and be in such place and places, and in such family and families, as she may from time to time choose or think fit to do; AND that he shall not, nor will, at any time, sue, molest, disturb, or trouble any person whomsoever, for receiving, entertaining, or harboring her; AND that he will not claim, or demand, any of her money, jewels, plate, clothing, household goods, or furniture, which the said E. B. now hath in her power, custody, or possession, or which she shall or may at any time hereafter have, or which shall be devised or given to her, or that she may otherwise acquire; AND, FURTHER, that the said A. B., shall and will well and truly pay, or cause to be paid, unto the said C. D., for and toward the support and maintenance of his wife, the said E. B., the yearly sum of _____ dollars, free and clear of all charges and deductions whatsoever, for and during her natural life, payable quarterly, at or upon the first day of January, April, July, and October, in each and every year during her said natural life; where the said E. B. doth agree to take, in full satisfaction for her support and maintenance, and all alimony whatever. AND the said C. D., in consideration of the sum of one dollar, to him duly paid by the said A. B., doth covenant and agree, to and with the said A. B., to indemnify and bear him harmless of and from all

ARTICLES OF SEPARATION.

debts of his said wife, E. B., now contracted, or that may hereafter be contracted by her, or on her account; AND, if the said A. B. shall be compelled to pay any such debt or debts, the said C. D. hereby agrees to repay the same, on demand, to the said A. B., with all damages and loss that he may sustain thereby.

IN WITNESS, &c., (*as in n. 970.*)

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CHAPTER X. PARTNERSHIP DEEDS.

NOTES.

975. *Recitals.*—The date and parties being set out, a short recital states the agreement to become partners, the nature of the business, the time it has existed, or the manner in which it was previously conducted; and sometimes the recital shows the title to the premises in which the business is carried on, or when and how a patent was obtained which the partners are to work, or of what the machinery consists which is to be brought into the concern, and by whom it is owned respectively, and the value of it.

976. *The testatum* may be as in *n. 1042*; but, if one partner pay a consideration for the partnership, the amount must be set out here, and a receipt clause inserted as in a common purchase deed.

977. *The commencement and duration* of the partnership should be expressly stated. If no time is named for beginning, the *date of the articles* will be the *time of commencement*, and parol is not admissible to show that a future period was intended; and if no *time of duration* is fixed, any partner may dissolve the partnership at any time—but a six months' notice is often made necessary, and the duration is frequently made dependent on the *life* of the parties; but this is not necessary, because the *death* of any partner dissolves the partnership, however numerous the partners may be.

978. *The style of the firm* should be set out as it is intended to be used in the business, as A. B. & Co.; and then to sign in *any* other way will be a breach of covenant.

979. *The nature of the business* should be set out clearly. This is always desirable; and in cases where one of the partners carries on other business, it is very necessary.

980. *The place of business* is usually named and described, but generally with the qualification that the business is to be carried on there as long as the parties so agree, or that it shall be carried on there, or at such other place or places as the partners shall from time to time agree; and, if the premises belong to one of the partners, that, at the end of the term, possession shall be delivered up to the owner.

981. *The capital* advanced by each party should be stated, and in what manner it is to be contributed, and it should be declared that each shall stand possessed of the stock of the partnership in proportion to the capital advanced, and be allowed *interest* thereon;

PARTNERSHIP.

and that future contributions [if any] of capital shall be under similar conditions; for, without *interest* is thus secured to each partner by *express stipulation*, none would be payable, but all the partners would simply share the profits, to the manifest disadvantage of partners who advanced more than the rest.

982. *A return of premium* in proportion to the falling off of the business, if it happen to decline, is sometimes provided for.

983. *Profit and loss* is divided equally, if nothing is said; but it is always better to state the proportions, and it is usual to say that losses caused by the willful neglect or default of a partner shall be borne by him.

984. *A specified sum in lieu of profits* is sometimes allowed to one partner, [often to a dormant partner,] and it is usually stipulated that it shall be payable at all events, even out of the capital if the profits are not sufficient; and it may also be provided that the acting partners shall draw out not exceeding a certain sum, monthly or otherwise, for their subsistence, to be accounted for at every division of the profits.

985. *Proper accounts* are stipulated for, in suitable books; which, with all deeds, bonds, notes, securities, papers, and writings, are to be kept at the place of business, or other place of safety, as the partners may agree.

986. *Acting partners* should give *dormant* partners correct information of the business.

987. *Monthly balances of accounts* are usually stipulated for, especially where there are dormant partners, and that the active partners shall have custody of the cash, bills, notes, and securities.

988. *The conduct of the partners* in managing the business is stipulated to be faithful and diligent, and that each shall render a true account of all business transactions; and frequently that none of the partners shall engage in any other business; and, if it is desired that they should not do so, this clause ought never to be omitted.

989. *One partner* is sometimes to devote himself to the business *more than the others*; e. g., where a junior partner brings in little or no capital.

990. *Servants and apprentices* are not to be engaged or discharged by one partner without the consent of the others; and that any premiums received with apprentices shall be divided according to the shares of the partners in the capital.

991. *Indemnity of the partnership* against the *private debts* of each partner is usually provided, and that the partnership money and goods are to be used only on partnership accounts; and that bills of exchange and promissory notes shall not be drawn or accepted except in the regular course of business, and on account of the partnership.

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DISSOLUTION OF PARTNERSHIP.

992. *Extension of a term of partnership* is commonly effected by deed poll, indorsed on the original partnership deed.

DISSOLUTION of PARTNERSHIP and WINDING-UP.

993. *The recitals* state the terms of the original deed, and the mode in which the partnership is dissolved, as by *agreement*, by *effluxion of time*, or by *notice*: if the dissolution is by agreement,

994. *The testatum* should so state; and if by effluxion of time, it should be said to be in pursuance of the stipulations in the partnership deed; and if by notice, that also should be expressed.

995. *Any pecuniary consideration* paid on an assignment of partnership effects should be mentioned in the *second testatum*, by which the stock and effects are assigned.

996. *Attestation is not necessary*, since it will be sufficient to recite that the dissolution has been made and inserted in the Gazette; and this form is often used where some of the partners assign their shares in the stock and effects to the other copartners; and so, where one retires and receives a pecuniary consideration for his share, the arrangement including the mode of payment is recited, and then the testatum merely says "in consideration of the premises," or "for the consideration herein before expressed."

997. *As to the winding-up*, this is done either by collection of all credits, payment of all debts, and division of profits, or by retiring partners receiving the money-value of their shares from those who remain.

998. A *receiver* is sometimes appointed by the deed of dissolution, with the usual powers of an attorney to sue and give discharges. In this case the partners covenant that they will not themselves receive nor release outstanding credits, nor any suit or action for recovery of the same, and a final clause gives the receiver power to reimburse himself his expenses, and exonerates him from being responsible for more money than he actually receives, or for any banker or other person in whose hands money shall be placed for safe custody.

999. *Assignments from one partner to another*, for a money consideration, include a power of attorney for enforcing payment, giving releases, &c., with covenants by the assignor that he has not contracted any debt which may prejudice the partnership effects, nor received any credits which are not duly entered in the books, and that he will confirm all acts done in exercise of the power of attorney, for further assurance, and not to release actions, &c. On the other hand, the assignee covenants to discharge all partnership debts, and indemnify the assignor therefrom, and the deed concludes with a mutual release of all claims on account of the original partnership deed.

PARTNERSHIP.

1000. *A bond to secure payments* of the consideration money, when payable by instalments, may be properly adopted in many cases.

1001. *The form of notice* of dissolution under a power to dissolve after a given notice is simple. (See n. 1037.) If the retiring partner is to be indemnified from debts of the concern, he should prepare a deed of indemnity, and by a clause in the notice require that the continuing partner should execute the same when it is tendered to him, the retiring partner himself expressing his willingness to execute all such assignments as are in conformity with the original partnership deed. The notice should be dated and addressed to the party by his usual name and address.

1002. *Notice of expulsion for breach of covenant.* (See n. 1040.)

1003. *Notice of intention to purchase a share in the partnership on the dissolution thereof*, under a power reserved for that purpose, may be given in terms of the power. (See n. 1041.)

1004. *A general notice* of dissolution should be published in the Gazette, and local papers, and by special circular, to every person with whom the firm has done business, and the style of the new firm, if any should be set out. (See n. 1038.)

DEEDS of COMPOSITION.

1005. *The true state of the business affairs* should be first ascertained, and an accountant employed to ascertain it if necessary.

1006. *No favor must be shown to particular creditors*, except by consent of the other creditors, on pain of making the composition void both in law and equity.

1007. *If creditors agree* to execute a deed of composition, *semble* that they are bound, even at law, to the terms of the composition therein set forth, as per agreement, though they do not actually execute the deed. Also it has been held that a mere verbal assent is sufficient, and will estop a creditor from suing on his original cause of action, and assent to a deed of this kind may be implied as well as expressed. *Boothby v. Sowden*, 3 Camp., N. P. C., 175.

1008. *An agreement to compound under hand only* is binding in equity, but it is *nudum pactum* in law to agree in that form to accept a less sum in satisfaction of a greater, and therefore is not binding; and even the acceptance of payments will make no difference, without there be some new consideration or the payment is *guaranteed by a third person*. But, if the instrument be *under seal*, it is binding, at law as well as in equity; and therefore, though it is advisable at a meeting of creditors to obtain their signatures to a memorandum containing the terms of the composition, and thus bind them in equity, an instrument in due form and under seal should be immediately prepared, and it is important to notice that

W. W. O. LAW

DEEDS OF COMPOSITION.

a composition not made by deed under seal will not discharge a speciality debt.

1009. *The agreement may be in two forms:—*

(1.) Where time is to be given, or a sum less than the full amount is to be accepted in discharge of the debts, or the payment is to be secured by sureties.

(2.) Where the whole property is to be vested in trustees, for the benefit of creditors, then the whole terms of the trust deed should be set out in the agreement.

1010. *Under bankrupt laws* assurances of this kind are *acts of bankruptcy* if a petition of adjudication is filed within three calendar months after the execution of the deed. 2 Viet., c. 12, England.

1011. *Composition deeds are of various kinds*; as, where *extended time* is given; where a *surety* for the debtor is a concurring party; or where creditors agree to accept a *less amount* than their debts.

1012. *The amount of each creditor's claim* should be in the deed, or in a schedule annexed. Signature to a schedule in which the amount is left *blank* will bind the creditor as to *all existing debts* then owing him, though the deed expressly refers to those only which are in the annexed schedule.

1013. *Where a debtor is to carry on the business* under the direction of inspectors, the debtor is of the first part, the inspectors are of the second part, and the creditors the third part; and the manner of applying moneys received from the business is specially stated.

1014. *Creditors of small amount*, as, say \$50, are generally paid in full.

1015. *Power to extend letters of license* to a period beyond that fixed in the deed, without further consent of the creditors, may be properly inserted in most cases.

1016. *Where the property is assigned on trusts to sell*, the parties are, 1. The debtor; 2. The trustees; 3. *Two* creditors; 4. All the other creditors.

Two creditors are made parties of the third part, to enable them to covenant with the trustees for the due performance of the trusts; for, if such covenant were made by the whole body of creditors, every one of them would have to be made parties to any action against the trustees for breach of covenant, which would be highly inconvenient.

1017. *The recital* is usually confined to a statement of the agreement for composition, by which the debtor acknowledges himself indebted to the children in a schedule annexed in the sums opposite their respective names, and that, being desirous of paying all equally, he has agreed to convey his property upon trusts for sale for that purpose.

1018. *The property is conveyed or assigned*, according to its nature, in the same manner as property of the same kind is conveyed or

DEEDS OF COMPOSITION.

assigned to trustees for any other purpose, with a power of attorney authorizing the trustees to sue and give releases, and do *all other acts* necessary to carry the trusts into effect, and a power of substitution is frequently useful.

1019. *The trusts* are to collect the credits; sell the property; and then, out of the moneys received, to pay first the expenses of the composition deed, and of collecting the debts; and, where there is real estate, any costs for perfecting the title, or enforcing specific performance of contracts with purchasers; to pay all debts, and then pay over the surplus to the debtor.

1020. *The indemnity clause to purchasers* is most important, and should never be omitted when the deed embraces real estate. When the *receipts of the trustees* are made a sufficient discharge to purchasers, they are exonerated from seeing to the application of the purchase money, and the trustees can thus make an effectual conveyance without the concurrence of the rest of the creditors, although their names and debts are scheduled, and the effect is to enable the trustees to get the full market value for the property.

1021. *The declaration that the receipts of the trustees shall be conclusive* is best worded by saying that "the receipts of the acting trustees for the time being shall be a sufficient discharge," &c., instead of *naming* them; for otherwise even trustees who have ceased to act, and released their estate, must concur. But this declaration will not affect incumbrances prior to the deed of composition, without the incumbrancers themselves are made parties to the conveyance, and *semble* that such declaration is unnecessary in Canada since the 12 Vic., c. 71, s. 6, which expressly makes such receipts effectual discharges.

1022. *Power to compound debts* is also useful, and to refer disputes to arbitration.

1023. *Moneys collected* are usually paid into a banker's; and the trustees covenant to do this, and to give an account of the trust estate to the creditors.

1024. *The covenants by the creditors* are to grant a letter of license to the debtor to follow his own affairs; that any creditor suing him shall forfeit his debt; and to indemnify the trustees from all damages or liabilities which they may incur in the execution of the trusts.

1025. *Provisoes* are that creditors who do not execute within a *certain time* shall be excluded; but a *discretion* is reserved to the trustees to admit them afterward, and also to allow claims *accidentally omitted* in the schedule, but so as in neither case to disturb any dividend previously made.

Equity will hold that the assent of a creditor within the time limited, and his intention to act under the deed, will be sufficient, though he has not executed it; and even at law this has been so

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ARTICLES OF PARTNERSHIP.

ruled, (*Bradley v. Gregory*, 2 Camp., N. P. C., 283.) but not if assent has been obtained through any misrepresentation.

1026. *Proviso to submit disputes to arbitration* is usual, and will be found in the precedents.

1027. *Proviso that fraud or concealment on the part of the debtor shall vitiate letter of license* should always be inserted.

1028. *Power to change trustees* should also be taken.

FORMS.

1029. ARTICLES of COPARTNERSHIP.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and _____, of the one part, and C. D., of _____, in the county of _____, and province aforesaid, of the other part, witnesseth:—

(1.) THAT they, the said A. B. and C. D., will become and remain copartners in the business of _____, for the term of _____ years from the date of these presents, if both of them shall so long live.

(2.) THAT if, nevertheless, at the end of *seven years* from the date of these presents, either of the said partners shall be desirous that the said copartnership shall determine, and of such his desire shall give not less than *six calendar months' previous notice* in writing to the other of them, or shall leave such notice at the place where the said business shall for the time being be carried on, in such case, upon the end of the said seven years, the said copartnership shall determine.

(3.) THAT the firm and style of the said copartnership shall be (*state the style agreed upon.*)

(4.) THAT the business of the said copartnership shall be carried on at _____, or at such other place or places as the said copartners shall hereafter determine.

(5.) THAT both of them, the said A. B. and C. D., will, at all times, diligently employ themselves in the business of the said copartnership, and carry on the same for the greatest advantage.

(6.) THAT neither of them will, either directly or indirectly, engage in any business except the business of the said copartnership, and upon account thereof.

(7.) THAT neither of them shall take any apprentice, or hire or dismiss any clerk, traveller, workman, or servant without the consent of the other.

(8.) THAT the *capital* of the said copartnership shall consist

ARTICLES OF PARTNERSHIP.

of the sum of _____ dollars, to be brought in by the said A. B. and C. D., in equal shares, (or, if otherwise, state the proportions.)

(9.) THAT the said capital, and the profits arising therefrom, [including the premiums to be paid for any apprentice to be taken by either of the said copartners,] shall [subject as herein after is mentioned] be employed in the said business.

(10.) THAT the rent of the houses, mill, and buildings in aforesaid, or of any other buildings where the said business shall be carried on, and the cost of repairs and alterations, and all rates, taxes, payments for insurance, and other outgoings whatsoever in respect of the same, and the wages and remuneration of all persons employed in the said business, and all other moneys to become payable upon account of the said business, and all losses which shall happen in the same, shall be paid out of the capital of the said copartnership, and the profits arising therefrom; or, if the same shall be deficient, by the said copartners in equal shares.

(11.) THAT, where there shall be occasion to give any security or undertaking for the payment of money on account of the said copartnership, [except when the contrary shall, in the common course of business, be unavoidable,] the same shall be signed by both of the said copartners.

(12.) THAT, if [except in the case aforesaid] either of the said copartners shall give any such security or undertaking, which shall not be signed by the other of them, the same shall be deemed to be given on the separate account of the partner so giving it, and he shall satisfy the same out of his separate estate, and shall indemnify the other of them from all expenses on account thereof.

(13.) THAT, if either of the said copartners shall lend any of the moneys, or deliver upon credit any of the goods, of the said copartnership to any person or persons whom the other of them shall previously in writing have forbidden him to trust, the partner so lending or delivering shall pay to the said copartnership so much ready money as the full amount or value of the money or goods which he shall so lend or deliver.

(14.) THAT, if either of the said copartners shall buy any goods or articles exceeding the value of _____ dollars, without the previous consent in writing of the other, the other shall have the option either to take such goods or articles on account of the said copartnership, or to let the same remain the separate property of the copartner who shall have so bought the same.

(15.) THAT neither of the said copartners shall, without the previous consent in writing of the other, enter into any bond, or become bail or security, for any person, or subscribe any policy of insurance, or do or willingly suffer to be done any thing whereby

J. W. O. LAWYER

FORMS.

the capital or property of the said copartnership may be extended, or taken in execution.

(16.) THAT each of the said copartners will punctually pay his separate debts, and indemnify the other of them, and the capital and property of the said copartnership, against the same, and all expenses thereof.

(17.) THAT books of account shall be kept by the said copartners, and proper entries made therein of all the sales, purchases, receipts, payments, engagements, transactions, and property of the said copartnership; and the said books of account, and all securities, papers, and writings of the said copartnership shall be kept at the counting-house, in _____ aforesaid, or in such other place where the business shall be carried on, and each of the said copartners shall have free access, at all times, to examine and copy out the same.

(18.) THAT, on the _____ day of _____, in the year _____, and on the _____ day of _____, in every succeeding year, a general account shall be made and taken by the said copartners of all the sales, purchases, receipts, payments, engagements, and transactions of the said copartnership during the then preceding year, and of all the capital, property, engagements, and liabilities for the time being of the said copartnership; and the said general account shall, immediately after the same shall be made and taken, be written into two books, and be signed in each such book by each of the said copartners; and, after such signature, each of them shall keep one of the said books, and shall be bound by every such account, except that, if any manifest error be found therein by either of the said copartners, and signified to the other of them within twelve calendar months after the same shall have been so signed by both of them, such error shall be rectified.

(19.) THAT the said A. B. and C. D. shall be entitled to the net profits arising from the said business, and remaining after the payments herein before directed to be made thereout, in equal shares.

(20.) THAT in each year it shall be lawful for each of them, the said A. B. and C. D., to take out of the net profits of the said business, by equal quarterly payments, on the _____ day of _____, the _____ day of _____, the _____ day of _____, and the _____ day of _____, the sum of _____ dollars, for his separate use; but in case, at the end of any year, it shall appear, upon taking the general annual account, that the net profits of such year shall not have amounted to the sum of _____ dollars, [the total amount of the quarterly allowances to both partners,] in such case, immediately after such general annual account shall have been taken, each of them, the said A. B. and C. D., shall repay to the said copartnership the excess [if any] of the amount of the sums which he shall actually have received in respect of such quarterly

PARTNERSHIP ARTICLES.

payments, over the sum which he shall have been entitled to receive as his share of the net profits of the said business.

(21.) THAT, if either of the said copartners shall die during the said copartnership, his executors or administrators shall, if such death shall happen before the day herein before appointed for the first general annual account, be entitled to the capital brought in by such deceased partner; or, if the same shall happen after the day herein before appointed for the first annual account, shall be entitled to such sum of money as the share of the deceased partner of the capital and property of the said copartnership shall, upon the then last general annual account, amount to, or as such share would have amounted to in case such account had been taken on the day of _____, (*the proper day for taking such account*), immediately preceding such death; and, in either case, the executors or administrators of the deceased partner shall also be entitled to an allowance, after the rate of _____ per cent.

per annum, upon the capital, or share of capital, and property [as the case may be] of such deceased partner, in lieu of profits, from the commencement of the said copartnership, or from the then last general account, [as the case may be,] to the time of such death; and the surviving partner, his executors or administrators shall pay such allowance in lieu of profits on demand, and shall, within _____ next after the death of the deceased partner, execute and deliver to his executors or administrators a bond in a penalty double the principal, conditioned for the payment of the said principal sum, to which they shall become entitled as aforesaid, with interest thereon, after the rate of _____ per cent. per annum from such death, in manner following, that is to say: one-third part of such principal sum, with the interest on the same third part, at the end of six calendar months from the date of such bond; one other third part, with interest thereon, at the end of twelve calendar months from the date of such bond; and the remaining third part, with interest thereon, at the end of eighteen calendar months from the date of such bond.

(22.) THAT the surviving partner, his executors or administrators, shall also execute and deliver a bond, in a sufficient penalty, to the executors or administrators of the deceased partner, for indemnifying them, and the estate of the said deceased partner, from the debts, engagements, and liabilities of the said copartnership at or after such decease, and from all expenses on account of the same; and the executors or administrators of the deceased partner shall release and assign unto the surviving partner, his executors or administrators, all their share, right, title, and interest in the capital and property of the said copartnership, and empower him and them, as much as in them lies, to recover and receive the same.

U. W. O. LAW

FORMS.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, this _____ day of _____, 18 .

SIGNED, SEALED, AND DELIVERED }
 in presence of }
 E. F. } A. B. [SEAL.]
 C. D. [SEAL.]

1030. ARTICLES of PARTNERSHIP between THREE PERSONS, with UNEQUAL DIVISION of PROFITS.

AGREEMENT, entered into this _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, of the first part; C. D., of _____ of _____, of the second part; and E. F., of _____ of _____, of the third part, as follows:—

(1.) THE PARTIES shall constitute a partnership firm, under the style of _____, in the business of _____, for twenty-one years from the present date, subject to absolute determination at the end of the first *seven* or *fourteen* years by six calendar months' previous written notice, addressed to the firm, by either the said A. B. or the said C. D.

(2.) NO PARTNER shall do or suffer any thing whereby the partnership property may be liable to be taken in execution; nor shall any partner, without his copartner's written consent, become bail or surety for any person, nor be more than _____ weeks absent from the place of business of the partnership, or engage in any other business.

(3.) THE PARTNERSHIP capital shall consist of the stock in trade of the firm, for the time being, with the balance of _____ dollars, now standing to the credit of the firm at their bankers, [Messrs. _____.]

The said A. B. and C. D. shall be entitled, in equal shares, to four-fifths of the capital and profits, and the said E. F. to the remaining one-fifth, the outgoings of the business [so far as the profits and capital are insufficient to meet the same] being borne by the partners in the corresponding proportions.

(4.) THE LIABILITIES and engagements incurred, and credits allowed, by any partner, [exceeding the usual course of the partnership business,] shall be at his exclusive risk, and the partnership be indemnified out of his separate estate.

(5.) EACH PARTNER may draw [being the said A. B. or C. D.] _____ dollars, or [being the said E. F.] _____ dollars, quarterly, on account of his share of profits; but so that, at the expiration of each year in which the aggregate drawn on account shall have exceeded the aggregate nett profits, each partner shall refund

PARTNERSHIP ARTICLES.

to the partnership any excess drawn by him above his share of profits for the same year.

(6.) A **REST** shall be made, the partnership stock in trade taken, and the partnership accounts [both of capital and profits] balanced, at the expiration of each year of the term, commencing with the day of next; the accounts, when completed, being signed by all the partners, who shall be concluded by such signature, excepting as to manifest error detected within one year.

(7.) **AT THE EXPIRATION**, or absolute determination, of the partnership, a similar stock-taking and balancing of accounts to that stipulated by clause 6 shall be made, on the completion of which the partnership property shall be divided, [according to the proportions aforesaid,] and mutual releases and indemnities executed, between and by the parties.

(8.) A **PARTIAL DETERMINATION**, as to one partner only, shall ensue by his death or a breach of some stipulation in clause 2. In this event, his copartners or copartner shall carry on the business upon the terms of these presents [including this clause;] shall, at the then next stock-taking, ascertain the value of his share in the partnership property, and secure to him, his executors or administrators, by bond, the payment thereof, [and of his share in the profits from the time of such determination up to such stock-taking,] by four equal installments, at the expiration of the first and three succeeding half-years from the day of such stock-taking, [with interest, on each such half-yearly day, on the then unpaid amount, at per cent. per annum;] and shall execute to him and them an indemnity, by bond, against the partnership liabilities. **PROVIDED** that the determining partner, his executors or administrators, shall execute to his copartners or copartner a release of his partnership interest.

(9.) **DISPUTES** under these presents shall be referred to two arbitrators, whose determination thereon [or that of an umpire, chosen by themselves, in case of difference] shall conclude the disputing parties. Within thirty days from written notice of arbitration, each disputing party shall name an arbitrator; if either shall fail to do so, both arbitrators shall be named by the other party. The arbitrators, or their umpire, may call in any professional assistance; may require the personal attendance and examination on oath of the parties, and those claiming under them, and the production of all documents relative to the dispute; and may determine by whom the expenses of arbitration shall be defrayed, together with the amount thereof.

IN WITNESS, &c., (as in n. 1029.)

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FORMS.

1031. PARTNERSHIP *between* TWO FARMERS, *with* EQUAL DIVISION *of* PROFITS.—PURCHASE *of* HALF *the* STOCK *by* the PARTNER *entering* the BUSINESS, *and* PROVISION *for* the PURCHASE *of* a DECEASED PARTNER'S SHARE.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, farmer, of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, farmer, of the other part, witnesseth as follows:—

THAT, for effectuating the after mentioned agreement of partnership, the said A. B., in consideration of _____ dollars, paid to him by the said C. D., assigns unto the said C. D., his executors and administrators, one moiety of the good will of the farming business heretofore carried on by the said A. B., on the premises known as _____ farm, at _____, in _____ shire, with the live and dead stock employed in the said business.

AND, FURTHER, that the said A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors, administrators, and assigns, that, notwithstanding any thing by the said A. B. done or knowingly suffered, he is entitled to execute this assignment of the premises, free from incumbrances, and that he, and every person claiming under or in trust for him, will, at the cost of the said C. D., his executors, administrators, and assigns, do all acts required for perfecting such assignment, or facilitating the recovery of the said premises. It being further agreed that the parties shall constitute a partnership firm, [under the style of _____] in the business of farmers, upon the terms following, that is to say:—

(1.) THE PARTNERSHIP shall subsist for *fourteen years*, subject to determination at the end of the first seven years by six calendar months' previous written notice on either side, and at any time by the death of either partner.

(2.) THE PARTNERSHIP CAPITAL shall consist of the live and dead stock for the time being employed in the said premises, and of _____ dollars, paid in equal moieties by the parties, to the credit of the said firm, at their bankers, [Messrs. _____]. The parties shall be entitled to the capital and profits in equal shares, the outgoings of the business [so far as the profits and capital are insufficient to meet the same] being defrayed by the parties equally.

(3.) THE BUSINESS shall be carried on at _____ farm aforesaid, which the partnership shall rent of the said A. B., [excepting the dwelling-house, grounds, and walled garden, which are to be reserved for his private use,] as yearly tenants, from the _____ day of _____, at the rent of _____ dollars, payable by equal half-yearly payments, commencing the _____ day of _____.

PARTNERSHIP DEEDS.

PROVIDED (1.) That the said tenancy shall determine at the end of calendar months from the expiration, determination, or dissolution of the partnership; (2.) That the said C. D. shall not reside upon the said premises.

(4.) EACH PARTNER may draw dollars quarterly, on account of his share of profits, but so that, at the expiration of each year in which the aggregate drawn on account shall have exceeded the aggregate nett profits, each partner shall refund to the partnership any excess drawn by him above his share of profits for the same year.

(5.) A REST shall be made, the partnership stock in trade taken, and the partnership accounts [both of capital and profits] balanced, at the expiration of each year of the term, commencing with the day of next; the accounts, when completed, being signed by each partner, who shall be concluded by such signature, excepting as to manifest error detected within one year.

(6.) AT THE EXPIRATION or determination of the partnership, a similar stock-taking and balancing of accounts to that stipulated by clause 5 shall be made, on the completion of which the partnership property shall be equally divided, and mutual releases and indemnities executed, between and by the parties, their respective executors and administrators; unless [in case of determination] the non-determining partner shall be desirous of purchasing the other's share in the partnership property, and shall signify in writing such desire to him, his executors or administrators, within weeks from determination. In this event, the party purchasing shall, on completion of the stock-taking aforesaid, secure to the determining partner, his executors or administrators, by bond, the payment of his said share, [according to the value then ascertained,] by equal installments, at the expiration of the first and succeeding half-years from the determination, [with interest on each such half-yearly day on the then unpaid amount, at the rate of dollars per cent. per annum,] and shall also execute to him and them an indemnity, by bond, against the partnership liabilities. PROVIDED that the determining partner, his executors or administrators, shall execute to the party purchasing a release of his partnership interest.

(7.) DISPUTES under these presents shall be referred to two arbitrators, whose written determination thereon [or that of an umpire, chosen by themselves, in case of difference] shall conclude the disputing parties. Within thirty days from written notice of arbitration, each disputing party shall name an arbitrator; and if either shall fail to do so, both arbitrators shall be named by the other party. The arbitrators, or their umpire, may call in any professional assistance; may require the personal attendance and examination on oath of the parties, and those claiming under them, and the produc-

W. W. O. LAW
S. H. V. LAW

FORMS.

tion of all documents relative to the dispute; and may determine by whom the expenses of arbitration shall be defrayed, together with the amount thereof.

IN WITNESS, &c., (as in n. 1029.)

1032. AGREEMENT to RENEW a PARTNERSHIP by INDORSEMENT.

TO ALL TO WHOM THESE PRESENTS SHALL COME :

WHEREAS the partnership formed by and mentioned in the within articles of agreement has this day expired, [or will expire on the day of next,] by the limitations contained therein;

NOW KNOW YE that it is hereby agreed between the parties thereto that the said partnership shall be continued, on the same terms and with all the provisions and restrictions in the within agreement mentioned, for the further term of years from this date, [or from the day of next.]

AS WITNESS our hands and seals, this day of , one thousand eight hundred and

SIGNED, SEALED, AND DELIVERED }
in the presence of }
G. H. }

A. B. [SEAL.]
C. D. [SEAL.]

1033. PARTNERSHIP DEED.

Another Form.

ARTICLES OF AGREEMENT, made and entered into, this day of , A. D. 18 , between A. B., of of , in the county of , and Province of Canada, of the one part, and C. D., of of , in the county of , and province aforesaid, of the other part, witnesseth as follows:—

WHEREAS the said parties hereto respectively are desirous of entering into a copartnership, in the business of , at for the term and subject to the stipulations hereinafter expressed;

NOW, THEREFORE, THESE PRESENTS WITNESS that each of them, the said parties hereto respectively, for himself, his heirs, executors, and administrators, hereby covenants with the other of them, his executors and administrators, in manner following, that is to say:—

(1.) THAT the said parties hereto, respectively, shall henceforth be and continue partners together, in the said business of

PARTNERSHIP DEEDS.

for the full term of _____, to be computed from the day of _____, in the year of our Lord one thousand eight hundred and _____, if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

(2.) THAT the said business shall be carried on under the firm of _____

(3.) THAT the said partners shall be entitled to the profits of the said business, in the proportions following, that is to say: _____ . And that all losses in the said business shall be borne by them in the same proportions, [unless the same shall be occasioned by the willful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise.]

(4.) THAT the said partners shall each be at liberty, from time to time during the said partnership, to draw out of the said business, weekly, any sum or sums, not exceeding for each the sum of _____ dollars per annum, such sums to be duly charged to each of them respectively, and no greater amount to be drawn by either of the said partners except by mutual consent.

(5.) THAT all rents, taxes, salaries, wages, and other outgoings and expenses, incurred in respect of the said business, shall be paid and borne out of the profits of the said business.

(6.) THAT the said partners shall keep, or cause to be kept, proper and correct books of account, of all the partnership moneys received and paid, and all business transacted on partnership account, and of all other matters of which accounts ought to be kept, according to the usual and regular course of the said business; which said books shall be open to the inspection of both partners, or their legal representatives. A general balance or statement of the said accounts, stock in trade, and business, and of accounts between the said partners, shall be made and taken on the _____ day of _____ in each year of the said term, and oftener if required.

(7.) THAT the said partners shall be true and just to each other in all matters of the said copartnership, and shall, at all times during the continuance thereof, diligently and faithfully employ themselves respectively in the conduct and concerns of the said business, and devote their whole time exclusively thereto, and neither of them shall transact or be engaged in any other business or trade whatsoever. And the said partners, or either of them, during the continuance of the said copartnership, shall not, either in the name of the said partnership or individually in their own names, draw or accept any bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or willfully do, commit, or permit any act, matter, or thing by which, or by means of which, the said partnership moneys or effects shall be seized,

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FORMS.

attached, or taken in execution; and, in case either partner shall fail or make default in the performance of any of the agreements or articles of the said partnership, in so far as the same is or are to be observed by him, then the other partner shall represent in writing to such partner offending in what he may be so in default; and, in case the same shall not be rectified by a time to be specified for that purpose by the partner so representing, the said partnership shall thereupon, at once, or at any other time to be so specified as aforesaid by the partner offended against, be dissolved and determined accordingly.

(8.) THAT, in case either of the said partners shall die before the expiration of the term of the said copartnership, then the surviving partner shall, within six calendar months after such decease, settle and adjust, with the representative or representatives of such deceased partner, all accounts, matters, and things relating to the said copartnership, and that the said survivor may continue to carry on thenceforth, for his sole benefit, the said copartnership business.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED, AND DELIVERED)

in presence of)
G. H.)

A. B. [SEAL]
C. D. [SEAL]

1034. ASSIGNMENT of PARTNERSHIP PROPERTY by ONE PARTNER to ANOTHER, to DETERMINE the PARTNERSHIP.

WHEREAS a copartnership has heretofore existed between A. B. and C. D., both of the town of _____, in the county of _____, and Province of Canada, (*state occupation*.) under the firm-name of B. & D., which said copartnership is hereby dissolved and determined;

NOW, THEREFORE, THIS INDENTURE, made this _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by and between the said A. B., of the one part, and the said C. D., of the other part, witnesseth as follows:—

THAT THE SAID A. B. doth hereby sell, transfer, assign, and set over, unto the said C. D., his moiety or share of all the stock in trade, goods, merchandise, effects, and property, of every description, belonging to or owned by the said copartnership, wherever the same may be, TOGETHER with all debts, choses in action, and sums of money, due and owing to the said firm, from any and all persons whomsoever. To HOLD the same to the said C. D., and his assigns, in trust, for the following purposes, namely:—

PARTNERSHIP DEEDS.

THAT THE SAID C. D. shall sell and dispose of all the goods, property, and effects belonging to the said firm, at such time and in such manner as he may think prudent; AND shall, with reasonable diligence, collect all the debts and sums of money due and owing to the said firm; AND shall, out of the proceeds of the said sales, and with the moneys so collected, pay and discharge all the debts and sums of money now due and owing from the said firm, as far as the proceeds of said sales, and the sums of money collected, will go; AND, after fully satisfying all demands against the said firm, if there be any surplus, shall pay over one moiety thereof [or such proportionate part thereof as the said A. B. is entitled to under the deed of partnership between the said A. B. and C. D.] to the said A. B., or his representatives.

THAT THE SAID A. B. doth hereby constitute and appoint the said C. D. his attorney, irrevocable, in his, the said C. D.'s, own name, or in the name of the said firm, to demand, collect, sue for, and receive any and all debts and sums of money due and owing to the said firm; To institute and prosecute suits for the recovery of the said debts, or to compound the same, as he may judge most expedient; To defend any and all suits against the said firm; To execute all such discharges, releases, and acquittances as may be necessary; AND GENERALLY to do all such acts and things as may be necessary or proper for the full and complete settlement of all the business and concerns of the said copartnership.

AND THE SAID C. D., for himself, his heirs, executors, and administrators, hereby covenants with the said A. B., and his representatives, that he will sell and dispose of all the partnership property and effects, to the best advantage; THAT he will use his best diligence and endeavors to collect all debts and sums of money due and owing to the said firm; AND that he will truly and faithfully apply the proceeds of said sale, and the moneys collected, to the payment, discharge, and satisfaction of all debts and demands against the said firm, as far as the same will go; AND, after discharging all such debts, will pay over to the said A. B., or his representatives, one moiety of any surplus that may remain, [or such proportionate part thereof as he, the said A. B., is entitled to under the deed of partnership between the said A. B. and C. D.]; AND, FURTHER, that he will keep a full and accurate account of all moneys received by him for goods sold or debts collected, as well as of all moneys paid out, and will render a just, true, and full account thereof, to the said A. B., or his representatives.

AND THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his heirs and assigns, that, if it shall be found that the debts due and owing from the said firm exceed the amount of moneys received from the sale of the said partnership property and effects, and the debts collected, he will pay

FORMS.

unto the said C. D., or his assigns, one moiety of any balance that may then be found due and owing from the said firm.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, this _____ day of _____, one thousand eight hundred and _____

} SIGNED, SEALED, AND DELIVERED	}		
		in presence of	A. B. [SEAL.]
		G. H.	C. D. [SEAL.]

1035. DISSOLUTION of PARTNERSHIP between TWO PARTNERS, ONE CONTINUING in the BUSINESS.

THIS INDENTURE, made the _____ day of _____, between A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, of the one part, and C. D., of _____ of _____, in the county of _____, and province aforesaid, _____, of the other part, witnesseth as follows:—

(1.) FOR EFFECTUATING an agreement for determining the partnership business of _____, heretofore carried on by the said A. B. and C. D., under articles dated, &c., and in consideration of one moiety of the profits of such business up to the _____ day of _____ last having been received by the said A. B., [and of _____ dollars secured to him by the bond, bearing even date herewith, of the said C. D., being the value of the share of the said A. B., as ascertained by a stock-taking and account stated between the parties of the partnership property;] AND also in consideration of an indemnity against the partnership liabilities, by bond, bearing even date herewith, [in the penal sum of _____ dollars,] executed to the said A. B. by the said C. D.; THE SAID A. B. releases, unto the said C. D., his executors and administrators, all the interest of the said A. B. in the property and business of the said partnership, with power for the said C. D., his executors, administrators, and assigns, in the name of the said A. B., his executors or administrators, to recover, receive, and give receipts for the same premises.

(2.) THE SAID A. B., for himself, his heirs, executors, and administrators, covenants with the said C. D., his executors and administrators, that the said A. B., his heirs, executors, and administrators, will discharge and keep the said C. D., his heirs, executors, and administrators, indemnified against the liabilities specified in the second schedule hereto, but so that this covenant shall not be enforced in any other respect, so long as the said C. D., his heirs, executors, and administrators, are kept so indemnified as aforesaid.

(3.) FOR THE CONSIDERATION AFORESAID, each of the parties hereto releases the other of them, his heirs, executors, and adminis-

PARTNERSHIP DEEDS.

trators, from all claims in respect of the said partnership, and from all legal and equitable proceedings under the said articles or otherwise for enforcing the same. PROVIDED that this release shall not discharge the said C. D., his heirs, executors, or administrators, from his and their liability under the said bonds, of even date herewith.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, this _____ day of _____, in the year of our Lord one thousand eight hundred and _____.

SIGNED, SEALED, AND DELIVERED } A. B. [SEAL.]
in presence of } C. D. [SEAL.]
G. H. }

1036. AGREEMENT of DISSOLUTION, to be INDORSED on the PARTNERSHIP DEED.

BY MUTUAL CONSENT of the undersigned, the parties to the within agreement, the partnership thereby formed is wholly dissolved, except so far as it may be necessary to continue the same for the final liquidation and settlement of the business thereof; AND the said agreement is to continue in force until such final liquidation and settlement be made, and no longer, and for no other purpose.

IN WITNESS, &c., (as in n. 1035.)
A. B. [SEAL.]
C. D. [SEAL.]

1037. NOTICE to DISSOLVE PARTNERSHIP under a POWER.

SIR:—I DO HEREBY GIVE YOU NOTICE that it is my intention to dissolve the partnership now subsisting between us, on the _____ day of _____ next, [being at the expiration of six calendar months from the date hereof,] in pursuance of a power to that effect, contained in our deed of partnership.

As WITNESS my hand, this _____ day of _____, one thousand eight hundred and _____.
To Mr. C. D. _____ A. B.
(Add partner's usual address.)

1038. GAZETTE NOTICE of DISSOLUTION.

NOTICE IS HEREBY GIVEN that the partnership for some time past carried on by Messrs. A., B., and C., under the firm of A., B., C. & Co., at _____, was this day dissolved by mutual consent, and the business will from henceforth be carried on under the firm

J. W. O. LAW

FORMS.

of A. & Co. only, and the said Mr. A. is authorized to discharge all debts and to receive all credits on account of the said partnership concern.

1039. NOTICE of DISSOLUTION.

SIR:—I HEREBY GIVE YOU NOTICE that I do hereby dissolve the partnership now subsisting between us, on the _____ day of _____ next, and I do hereby require you, on or before the said day of _____ next, to render a true account of the said joint partnership concern, and of all matters and things connected therewith.

IN WITNESS, &c.

1040. NOTICE of EXPULSION from PARTNERSHIP.

SIR:—I DO HEREBY GIVE YOU NOTICE that it is my intention immediately to dissolve the partnership now subsisting between us, in pursuance of a power to that effect contained in our partnership deed, on account of your having, contrary to the several stipulations therein contained, willfully neglected to keep proper and just accounts, (or other kind of breach,) and of having committed several acts contrary to the said stipulations and agreements, whereby I am authorized, by giving you notice in writing to that effect, to expel you from the partnership, and I do therefore expel you from the partnership, and I do declare that the said partnership between us is this day dissolved, and that the business thereof shall, from henceforth, be carried on in my own name only; but without prejudice, nevertheless, to any remedies which either of us may be entitled to as against the other for the breach or non-performance of all or any of the covenants, stipulations, conditions, or agreements contained in our said partnership deed previously to the dissolution of our said partnership.

IN WITNESS, &c.

1041. NOTICE to PURCHASE SHARE in PARTNERSHIP when DETERMINED.

I HEREBY GIVE YOU NOTICE that it is my intention to purchase your share in the partnership which subsisted between us under a deed of partnership, dated the _____ day of _____, 18____, for a term of _____ years from thenceforth next ensuing, and which said term expired on the _____ day of _____ last,

PARTNERSHIP DEEDS.

in pursuance of the powers and upon the terms and conditions contained in the above mentioned deed of partnership.

IN WITNESS, &c.

1042. TESTATUM CLAUSE.

WITNESSETH that, in consideration of the mutual trust and confidence which the said A. B. and C. D. have in each other, each of them, the said A. B. and C. D., doth hereby, for himself, his heirs, executors, and administrators, mutually covenant and agree with the other of them, his executors and administrators, in manner following, that is to say:

442

U. W. O. LAW

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CHAPTER XI.

WILLS.

NOTES.

1043. *The mental capacity of the testator* should be ascertained by every one professionally employed to make a will, and in many cases this will involve the exercise of very nice discrimination. Age, sickness, or infirmity may make it doubtful whether the intended testator has sufficient mental consciousness to execute a will; and reasonable doubts as to this may have to contend with that natural humanity which prompts us to wish to assist a fellow creature to perform a very important duty which he had himself delayed too long.

1044. *The incapacity of a madman* exists only while he is mad; for, if a *lucid interval* occurs, he may make a valid will, and even an inquisition finding a man lunatic will not preclude proof that a will was executed in a lucid interval; nor will that proof be shut out even by the testator's confinement in a mad-house. See a case mentioned by Lord Eldon, in *McAdam v. Walker*, 1 Dow, 179.

1045. *Undue influence* should be carefully guarded against, and every care taken to insure the *free* expression of the testator's intention. Caution on this point will be particularly necessary when the instructions are given by a third party, and especially if he be an interested party. Sure and certain means should be taken to ascertain that the testator thoroughly understands the nature of the dispositions contained in the will before it is handed to him for execution.

1046. *If testator is in trade*, it should be ascertained how he means to dispose of it: if it is to be carried on, then by whom, and in what manner; if the managers are to have power to increase, diminish, or discontinue the same, according as it is profitable, or otherwise; if testator's widow is to take part in the management, and whether, if she marries again, her future husband is to interfere in the concern, or whether, to prevent that, the right of the widow herself should not cease on her marriage. If any member of the testator's family is to be admitted into the business, the terms should be clearly set out; and what is to be done if such relative declines to enter into the business; whether any other provision is to be made for him, and also whether any other person is to have the option of being admitted into the concern; and, if so, on what terms.

These suggestions are given as *specimens* of what a judicious ad-

NOTES ON

viser may offer to a man who wishes to make his will, sometimes in haste, and without sufficient collectedness at the time to think of all the points to be provided for or guarded against.

1047. *If the parties to be benefited are in trade*, the testator should be asked what is to be done in case of their insolvency; *e. g.*, whether their interests are to cease in that case, and, if so, what is to be done with the property.

1048. *If the estate is to be charged with debts or legacies*, or any other charges to which real estate is not otherwise liable, the testator should be asked whether he intends the charge to be upon the *whole* or only upon *some part* of such estate; and whether it is to be *primarily* liable, or only to be charged *in aid* of the personal estate, if that should prove inadequate; and whether the surplus is to be considered as real or personal property; and also to whom such surplus shall go.

1049. *If the same property is given to several persons*, then ask what particular portion each is to take; and, if they are to take in equal portions, whether they are to be joint tenants or tenants in common; and, if as tenants in common, whether the share of one who dies is to go to the survivors, and, if so, to what period the survivorship is to be referred.

1050. *As to estates tail*, the testator should be asked whether he means tail general or special; whether tail male, or whether *females* are to take; and, if so, whether in remainder one after the other, or as tenants in common; and, if as tenants in common, whether with cross remainders.

1051. *As to shifting clauses*, to provide for the estate passing from one party to another, in the happening of any contingent event, it should be ascertained whether, on the event happening, all or any of the appointments, theretofore made in pursuance of powers of appointment reserved to the person from whom the estate is to shift, shall become void or remain in force.

1052. *Leaseholds and other chattel property* cannot be limited in strict settlement, like freeholds, because the first person who would take an *estate tail* in freeholds would acquire an *absolute interest* in the term, which would be transmissible accordingly to his personal representatives, instead of descending to the heirs of his body; it is, therefore, advisable to ask the testator whether the trustees of the settlement are to have power to sell the leaseholds, and purchase freeholds, to be limited to the uses of the settlement.

1053. *If a condition is to be annexed to a devise, or if it is to depend on some contingent event*, the first question will be, whether such condition or contingency can be *legally* carried out, or whether it is void for remoteness, contrariety to public policy, or repugnance to the nature of the bequest; and, *next*, what is to be done with the profits in the mean time.

WILLS.

1054. *As to legacies*, the points to be ascertained are,

(1.) Whether they are to be *general* or *specific*.

(2.) Whether *vested* or *contingent*.

(3.) Whether a legacy, *lapsing* by death of the legatee before it vests, is to go to his representatives, or to another person, or to sink in the residue.

(4.) Whether, in case of such *lapse*, the testator bears in mind that the legatee may leave children, for whom some provision should be made.

(5.) What is to be done with the profits before the time of vesting.

(6.) Whether the legacy is intended as a satisfaction of any *debt* or *duty* which the testator is bound to discharge.

(7.) Whether, if the assets prove *deficient*, any of the legatees are to have a *preference*.

(8.) Whether a bequest to a debtor is intended as a release of his debt.

(9.) If a legacy is bequeathed by codicil, inquire whether the legatee has a legacy bequeathed to him by the will; and, if so, whether the one in the codicil is to be *instead* of that in the will, or in *addition* to it.

(10.) Who are to be executors, and whether they are to take beneficially under the will.

(11.) Who is to take the *residue*.

(12.) Whether the legatees are to take absolute, unconditional, or limited interests.

(13.) Whether legacies to *married women* are to be limited to their separate use; and, if so, with or without a power of appointment; and, if with such power, in whose favor, or to what extent, it is to be exercised.

1055. *Portions for children*.—As to these, the inquiries will be,

(1.) What particular property is to be burdened with the charge.

(2.) When, or at what age, the interest is to become vested.

(3.) Whether, before the income is vested, any portion of it is to be applied for maintenance, education, or advancement; what is to be done with the surplus; and whether any, and what part, of the *principal* may be so applied.

(4.) Whether, if more than one should die before his interest becomes vested, both the original and accruing shares shall survive to the other children.

(5.) Whether, in such case, the children of the deceased shall stand in his place, or his share go to the surviving legatees.

(6.) Whether, when any one has a power of appointing a provision for children, either amongst all or in favor of one, the children are to have the fund if no appointment is made.

(7.) Whether legacies to children are intended to be satisfied by

NOTES ON

portions given afterward, on their marriage, or for their advancement in life.

(8.) If testator's wife and children are provided for by giving the wife the income or profits during life or widowhood, and the capital to the children, on her decease or future marriage, inquire whether the widow's life interest is to be clothed with any trust for the maintenance and education of the children; and whether she is to have power to increase the shares of some of them, to the exclusion of the others.

1056. *Preambles* are usually omitted now, as having nothing to do with the proper business of a will, which is to dispose of the property of the testator, and which usually commences by declaring that it is the last and only will of the testator. A clause revoking all former wills is generally put at the end, but it appears that the word "only" will have the same effect as an express clause of revocation.

The executors may be appointed in any part of the will, but the end is the most customary.

1057. *Principal points to be attended to* :—

(1.) To describe the parties who are to take under the will, so as to put their identity beyond doubt.

(2.) To set out the property so that it cannot possibly be mistaken.

(3.) To limit estates, interests, powers, restrictions, trusts, and charges by such proper and technical terms as may prevent the possibility of litigation about their meaning.

1058. *The parties who are to take* should be described by both Christian and surname, and it is well to inquire if any of them have more than one Christian name; and, if a father and son are both named John Smith, and the son is intended to take, care should be taken to add the word "*Junior*."

If a person is so described that the description is equally applicable to another person, the bequest will fail, unless *parol* evidence can show which of them was intended. In such cases of *latent* ambiguity, *parol* is admissible; but not where the ambiguity is *patent*. If, however, the evidence is not conclusive, *neither* will be allowed to take, though they may agree to divide the property, or though one may resign his entire claim to the other!

1059. *Blanks* are never allowed to be filled up by the extrinsic evidence of intention; and, even where a bequest was made to Lady H., that was held equivalent to a blank, though strong circumstances in the will itself tended to show that Lady Hart was the person intended. (*Hunt v. Hart*, 3 Bro., cc. 311.)

1060. *In bequests to children* it should be stated whether *future-born* children are intended as well as existing children; whether such as are living at the time of the testator's death, or at the time

WILLS.

when the funds are *distributed*, are to take; and whether the share of each is to go to his representatives in case of his death.

Neglect on these points has been a fruitful source of litigation. The legal doctrine is, that where there is an *immediate* bequest to children as a class, so as to vest the possession in them *at the time of the testator's death*, those only who are in existence *at that time* will be within the description; but if distribution is to take place at some *future period*, as after the death of some person taking a previous life interest, or if a particular estate or interest is carved out of the property, then all the children who are alive when the division takes place will be entitled; the children who were living at the time of the testator's death take an immediate vested interest, which is transmissible to their representatives, if they die before the time of distribution, and a child *en ventre sa mere* at that time will share as if actually born; but to this there is *one* exception, *e. g.*, where, instead of a *particular fund* amongst all the children, a *specific legacy*, as \$500, is given to each, made payable as each comes to the age of twenty-one. In this case the bequest will be confined to such children only as were alive at the time of the testator's death, because of the inconvenience of deferring the distribution of the general personal estate until the eldest legatee became of age.

If only one answers the description, that one alone will take, to the exclusion of others who come into existence afterward.

1061. *If distribution is to be made when one child attains the age of twenty-one*, or at any other period named, those children only will take who were born *before* that time.

1062. *A bequest to the children of A. B.*, "born, or to be born, or begotten," is immediate as to such as are living at the time of the testator's death, and all who may be born during the lifetime of A. B. A bequest to children "*hereafter to be born*" does not exclude children *already* born; and, *semble* that "*born or living*" will include a child *en ventre sa mere*.

1063. *If distribution is delayed because the fund is subject to certain trusts*, that will not let in children born in the interval after the testator's death and the time of distribution, if the bequest is immediate, because such delay does not postpone the vesting.

1064. *Per capita or per stirpes*.—When a bequest is made to the children of different parents, it is important to know whether they are to take by *heads* or by *stocks*; that is, whether each *child* is to take alike, or whether each *parent* is to take equally, and the children of each parent are to divide their parent's share among them.

If the bequest is to the children of A. and B., they will take *by heads*, each alike; so that, if A. has one child and B. three, A.'s child will take a share only equal to one of B.'s children; and it will be

NOTES ON

the same if the bequest is to A. and the children of B. If the bequest is to A. and B., and their children, and A. and B. die before distribution, their children will take *per stirpes* (by stocks;) that is, the one child of A. will take all his parent's share, and the three children of B. will divide their parent's share among them; so that A.'s child will take three times as much as one of B.'s children.

If the bequest is to A. and B.'s children, or to any brother and sister's children, it will be read as a gift to A. and the children of B., and not to the children of both. If the latter is meant, the expression might be to A.'s and B.'s children, but a much better form would be to the children of A. and B.

1065. *Bequests to younger children* should clearly define which are to be so considered. If the bequest is by a parent, or by one *in loco parentis*, the words "younger children" are taken to mean all those, whether younger or not, who do not take the family estate, and to exclude the one who does take it. Nor does the rule apply to gifts not proceeding from a parent, or one *in loco parentis*, for there the interests vest in those who answer the description of "younger children" at the testator's death, or at any other period fixed by him, to the exclusion of children born afterward.

1066. *A bequest to the youngest child, or to the eldest child,* will vest in an only child.

1067. *Bequests to illegitimate children* require great care; because, in law, the term children means legitimate children only, so a bequest to the children of A. B., who has both legitimate and illegitimate children, will go to the legitimate children only, though all may be born of the same father and mother, and brought up together without any distinction; but any description which sufficiently identifies them will enable illegitimate children to take; as "my son John," when the testator has no legitimate son of that name. And so, if the bequest be to the children "now living" of a person who has only illegitimate children at the date of the will, they will take. And so, where a testator has four children, two legitimate and two illegitimate, a bequest to his four children *now living* will entitle all to take.

1068. *As to a future illegitimate child,* he will take if *en ventre sa mere*, and described with reference to the mother only; for, though paternity may be doubtful, the fact of birth may be easily ascertained; but it is, however, very doubtful whether a gift to future illegitimate children, however described, would take effect, because of its immorality.

1069. *Grandchildren will take under the name of children* where the gift would otherwise be inoperative for want of objects *e. g.*, if the bequest is to the children of A., who dies leaving only grand-

children, they will take rather than the bequest should fail; but, if the gift is to the children of A. and B., and A. has children, but B. has no child living at the time of distribution, A.'s children will take all, and the grandchildren of B. will be excluded; and this rule as to children will apply as between grandchildren and great-grandchildren.

1070. *A gift to the descendants or issue of a particular person* will comprehend all his descendants as children, &c., and they will take as joint tenants and *per capita*; *i. e.*, the children of the same generation will take in equal proportions.

1071. *A devise to the heirs of A. B.* will take effect in the person who answers that description at the time of the testator's death, but it is essential that A. B. die also, because a living man has no heirs; but, if the context shows that the term *heir* is not used in its strict legal signification, but merely as a description of the person who is to take, as, "to the heirs of the body now living," &c., or where any other form is used which implies not heir but *heir apparent*, the person so described will take. *Quare* as to the effect of such devises in Canada, where, by the abolition of the law of primogeniture, 14, 15 Vic., c. 6, s. 2, the children of intestates take equally, whether male or female. It would seem that we have here, strictly speaking, no heirs, or that all the children are as one heir; and, if so, that under such a devise they would take as tenants in common, by statute 14 and 15 Vic., c. 6, s. 17. The case seems analogous to that of several daughters taking as coheirresses.

1072. *As to personal estate*, a devise to the *heirs* of a person is construed to mean to his *next of kin*, and this construction will prevail, though the real estate is devised to the heirs, also provided that such limitations are by *distinct clauses*; but, if the party is made heir both of the real and personal estate, the heirs of the realty will take the personal also; and even where there is no male heir, and several daughters take as coheirresses, that will make no difference.

1073. *Heirs sometimes means children*, and was so held by Clarke, M. R., where one bequest was "to my sister B.'s children," and another "to my sister L.'s heirs."

1074. *A devise to the heir-at-law of the testator*, whether under that or any other description, was formerly void, and the heir would have taken by descent as heir, and not as devisee, unless the estate under the will were of a different quality to that which he could take by descent; but now, by 4 Will. iv., c. 1, s. 2. (*Canada*) the heir-at-law may take the same estate as devisee, and thus become himself the stock of descent.

1075. *Legal representatives* are synonymous with *next of kin*, and not the executors or administrators, (*Robinson v. Smith*, 6 Sim., 47;) but "legal representatives" may be words of limitation, as "to

A., and his legal representatives," where the bequest will be construed to mean to A., his executors and administrators, and thus pass the absolute interest to A.; and the construction will be the same if there is a precedent limitation to A. for life.

1076. *Executors and administrators do not take beneficially by a mere bequest to them in that character*; and, by the English statute 11 Geo. iv., and 1 Wm. iv, c. 40, they are expressly excluded from taking beneficially, by virtue of their office, even the *undisposed residue* of personal estate; but they may take beneficially under proper forms of bequest.

Whenever beneficial bequests are made to executors or trustees, it should be said whether they are in compensation for discharging the duties of their office, so as to prevent dispute as to their claim, in case they *renounce* or become *incapable* of the office.

The rule is that, if they do not *act* in the office, they cannot claim a bequest given to them by an official designation; but it is better to put doubt to rest by a plain declaration.

1077. *Next of kin* means next of *blood*, and therefore does not include a husband or wife, nor those who claim by representation; and, therefore, surviving brothers and sisters will exclude nephews and nieces. In a modern case, where an ultimate limitation was to the next of kin of E. M., at the time of her decease, and E. M. died leaving one child, and also her father and mother, Lord Langdale, M. R., decided that all should take equally as being of the same degree, for though the statutes of distribution postpone parents to children, all writers in English law agree that, in an ascending and descending line, the parents and the children of A. B. are of the same degree of kindred to A. B.

1078. *Relations* mean those who would be entitled under the statutes of distribution, and it makes no difference whether the estate be real or personal, or whether the term be used in the singular or plural number, nor even where the word *near* precedes the term relations; but, if the word be *nearest*, instead of *near*, then the next of kin alone will take, and all the rest will be excluded.

1079. *Family* is an uncertain word, and better not used; for sometimes it has been held to mean the heir upon whom the estate is to devolve; sometimes the children; sometimes relations, as next of kin; and sometimes as avoiding the bequest for uncertainty.

1080. *Servants* should be specifically named or described in any bequest to them, to prevent doubt.

1081. *A general devise of lands* will now, by the English statute 1 Vic., 26, pass both freehold and leasehold, unless a contrary intention plainly appear, and also it will include estates over which the testator has a *general power of appointment*; and so also a bequest of the personal estate in general terms will include any personal estate to which the description may extend. If, therefore, this sweeping construc-

tion is not intended, words of exception must qualify the devise. In Canada the word *land* is restricted to mean any thing or interest transmissible to heirs. See *Consol. statutes*, c. 82, s. 14.

1082. "*All my real estate*" will alone be sufficient to comprehend the whole of the testator's landed property, though a fuller description is generally given, except where brevity is desired; but *quære* whether brevity be desired or not, can there be any utility in rounding legal periods with many words, when four words will answer all the purpose?

1083. *Leaseholds* are more properly *not* left to pass under a general devise; because, being chattels, though chattels *real*, they do not come within the statute of uses, and therefore, if devised to the *trustees of the will*, such trustees could not, as a conduit pipe, pass the legal estate to the legatees of the term, but it would vest in them, and could only be divested by an assignment thereof to the legatees.

1084. *The legatees of a term* are usually very properly left *special executors* of this portion of the estate; a plan which relieves the general executors from all liabilities concerning it, a matter not infrequently of great importance to them, particularly where the rents of such premises bear any considerable proportion to the annual value of the property, or the leases contain any stringent or burdensome covenants for which executors continue liable; though, with their consent, the property has actually vested in the legatees.

1085. *If a term were renewed* after a specific bequest of it, the renewed term of the same premises would not have passed formerly under the devise, without words, such as "all his right, title, and interest," were added thereto, because the new term was looked upon as a new and other interest to that devised; but, *now* a will speaks from the time of the *death* of the testator, and not from their *date*; and therefore such additional words are not necessary to give effect to such a devise.

1086. *Estates vested in the testator, in trust or by way of mortgage*, will pass under a general devise of his real estate; but it is better to except them, and devise them to the trustees by a distinct clause toward the end of the will.

1087. *A simple devise of all the real and personal estate* will, however, comprehend *all* the testator's property; and it is often prudent to adopt this concise description where sickness or debility leaves the testator neither time nor strength for a lengthy document to be prepared and read over to him.

1088. *Lands contracted for by the testator*, but not yet conveyed to him, he sometimes wishes to devise, especially where a person has been let into possession under an agreement to purchase, and difficulties have arisen which make it doubtful whether a marketable title may ever be made to the premises. In such case, the first

WILLS OF CHATTELS.

thing is to ask the testator whether the intended devisee is to have the benefit of the *purchase money* if the contract is eventually *rescinded*; for, without express provision on that head, he will neither be entitled to the money intended to be paid for the land, nor to have other land bought for him in lieu of it. Nor will the devisee be allowed to waive objections to the title in order to get the land; because the only question for the court is, whether, at the time of the testator's death, there was an existing contract which he was *bound to perform*, for that alone will give the devisee a right to call for the personal estate to complete the purchase.

But if the contract is abandoned, neither in the contract nor for imperfection in the title, but for *other causes*, after the death of the testator, (as where his estate cannot supply the purchase money within the time agreed,) *then* the purchase money will not sink into the personal estate, but must be laid out in other lands, to the same use as the testator had devised the lands contracted for.

The best way is, where the testator means, as is usually the case, that the devisee shall have the benefit of the devise, at all events, to direct that, in case such contract fails for any cause, the money shall be laid out in other lands, to the same use; and that, until that can be done, the money shall be invested in some public stocks, for the benefit of the devisee.

1089. *Contrariwise, where devised property is contracted to be sold.* Here, if the testator intends the devisee to have the purchase money, should the contract be completed, he must say so *expressly*; because a contract by the testator to sell the premises, if of such a kind as equity will enforce, is an equitable *revocation of the devise*, which leaves the devisee nothing but a dry legal estate, and that he will be bound to convey to the purchaser on completion of the contract, while the purchase money will form part of the general personal estate.

1090. *If devised premises are charged with mortgages*, it should be said whether the devisee is to take *subject* to the incumbrance, or be discharged therefrom. Formerly, the personal estate being the primary fund for payment of debts of every kind, the heir or devisee was entitled to call upon that fund to discharge the mortgage; but the English statute, 17 Vic., c. 113, alters this, and makes the mortgaged premises themselves primarily liable in the hands of the heir or of a devisee. Hence the necessity of an express provision by the testator, if the law does not express his intention.

WILLS of CHATTELS.

1091. *A general bequest of personal estate* will comprehend every thing movable or immovable. Articles to be excepted should, therefore, be expressly named, taking care not to use a word which comprehends *all* of particular kind, when all is not intended; *e. g.*

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household furniture will include plate, linen, china, glass, &c. If, therefore, they are designed for another devise, they must be specially excepted; but if the testator means them to pass to the same devisee, and also his *wine* and *books*, he must name wine and books in addition to household furniture, or they will *not pass*, nor will *globes* and *mathematical* instruments. In such devises, therefore, too much care cannot be used to set out exactly what is intended to pass to each devisee.

1092. *Furniture devised as being in a particular house*, will only pass if it *remain there*; for, if testator remove it to another, the devisee will have no claim. It is better, therefore, to devise furniture generally, if it is intended to pass at all events.

Furniture will not include such articles as are used by an innkeeper for the business of a tavern, or the lodgings or accommodation of guests.

Plate will not pass under the word *utensils*.

Debts will not pass under the term *movables*.

Linen will be held to mean body-linen only, or table and bed-linen only, or both, according to the context.

1093. "*Farming stock*" will include live and dead stock of the farm, and also crops of growing-corn.

The terms "live and dead stock," if annexed to things belonging to the *house*, will include in-door stock only; but, if coupled with out-door things, then the out-door live and dead stock will pass.

1094. "*Stock in trade*" will include shop, goods, and utensils in trade, and perhaps money in the till.

1095. *Where testator appoints some one to succeed him in the business*, it is advisable to make a special executor as to all matters relating to the business, so that he may act effectually therein independently of the executors of the will.

1096. "*Money*," standing alone and unexplained, will mean cash, bank notes, money at the bankers, notes payable to bearer, exchequer bills, and bills of exchange *indorsed in blank*; but promissory notes, *not payable to bearer*, will not pass under that term, because they are mere *choses in action*; nor stock in the public funds. "*Ready money*" has a less extended meaning; for, though it will pass all ready money in the hands of the testator, or his banker, *scilicet* that it will not pass money in an agent's hands, the produce of effects sold by the testator.

1097. "*Securities for money*" will include bills of exchange, promissory notes, bond and mortgage debts, and also stock in the public funds; but it is doubtful whether *bank stock* will pass under this description, because the owner is thereby interested as a partner in a trading company.

Whether a *mortgage in fee* will pass under these words has been much controverted. The rule seems to be to look at the words of

WILLS OF CHATTELS.—LEGACY TO CREDITOR.

limitation where there are any; *e. g.*, such a bequest limited to trustees, their *executors*, administrators, and assigns, would not pass the fee, but to "*heirs*," or to "*heirs, executors, and administrators*," would pass the fee; but the best way is to set doubt at rest by a specific devise of the mortgaged estates.

1098. *A devise of shares in public companies, and stock in funds, &c.*, may be intended to be *specific*, and so as to fail if testator disposes of them in his lifetime; or to be *general*, so that the legatee may have the benefit of them or their value, at all events. The testator's intention should be ascertained, and the will made accordingly. In such cases the word *my*, as "*my stock*," or "*my shares in the Canal*," have been held to make the devise *specific*.

1099. *Debts*, when devised, are generally intended to pass at all events. If a debt is *released* by will to the debtor, and the debtor die *before* the testator, the release will *lapse*, and the representatives of the debtor will have it to pay, unless the terms of the release specially extend it to them also.

N. B.—The release of a *debt* is so far viewed as a specific bequest as not to be subject to abatement on a *deficiency of assets*.

1100. *A legacy to a creditor* of a sum as great or greater than the testator owes to him, will operate as a discharge of the debt, saving any apparent intention of a contrary kind; but if the property is of a *different kind*, that will repel the inference of satisfaction. Nor will a legacy extinguish a negotiable security, or an open running account, or a debt contracted after the date of the will, or the claim of a servant for his wages.

1101. The essentials to make a legacy operate as a satisfaction are,

(1.) That it be at least *equal* in amount to the debt; for if *less*, it will not be a satisfaction even *pro tanto*.

(2.) The *time* of payment of the legacy must be as certain as the debt.

(3.) There must be equal certainty of payment.

(4.) The fund must be equally beneficial to the creditor; and therefore a *residuary* bequest is no satisfaction, because of its uncertainty.

1102. *As to portions of children under a marriage settlement*, the rules are different from those in relation to debts.

(1.) An amount *less* than the portion will be a satisfaction *pro tanto*.

(2.) Difference of *time* of payment will not repel the presumption of satisfaction; but in such case the children will be put to their election to take either the legacy or the portion, but an infant will be allowed to wait until he is twenty-one to make his election.

(3.) The payment, however, must be as *certain* as the portion,

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RESIDUARY CLAUSE.—HEIR.

and of the same nature; and therefore a *contingent* legacy will be no satisfaction of an absolute portion, nor money of land, nor land of money.

(4.) If the bequest is for some *other purpose* than the portion was designed for, it will be no satisfaction.

1103. *A general pecuniary bequest*, payable when property of the testator is remitted from abroad, will not be rendered *specific* by the postponement, and therefore will not depend upon the sufficiency of the assets abroad at the time of the testator's death; nor will that effect ensue if the testator have assets both at home and abroad, and bequeath legacies to persons in each place, with a direction to pay them out of the assets there, for such direction is no more than the law would do without direction, and the *whole* assets of the testator will be liable for the amounts bequeathed.

The RESIDUARY CLAUSE.

1104. *A residuary bequest* operates upon the whole personal estate not disposed of, or being disposed of in terms becomes part of that estate by lapse, forfeiture, or otherwise; but, if the bequest of any part of the *residue itself* should lapse, through the death of any of the *residuary legatees*, in the testator's lifetime, the survivors will not be entitled to those shares, unless the residue is bequeathed in joint tenancy, or there is a provision for survivorship and accretion.

A residuary bequest may, of course, be confined to certain particular parts of the testator's property by using suitable expressions.

1105. *A residuary devise of real estate* now includes a lapsed devise of such estate, which was not the case in England before the statute 1 Vic., c. 26, [Wills Act.]

1106. *Residue to executors beneficially* must be devised in terms sufficiently explicit, otherwise they will be only *trustees* of the same for the persons entitled under the Statute of Distribution; but if there are no such persons, then the executors will take.

1107. *Heir*.—The appointment by will that B. shall be the testator's *heir* will pass real estate, though no land be mentioned. A limitation to a man, and his *heir* in the singular number, or to a man, or his heirs, if in a *will*, passes *the fee*; but in a *deed*, only a *life estate*. Again, a limitation to a man, or his heirs, male or female, will in a deed pass *the fee*; but in a will, an *estate tail*.

1108. *Estate*.—This word has been held in many cases to pass not only the property itself but also the testator's estate and interest therein; but its exact meaning in any given instance will depend upon the context, which may even restrict it to the personality, to give it a larger meaning. *The rule is* that, where a testator's words, if taken in one sense, will dispose of *the whole of his property*, but,

WILLS.—DEATH WITHOUT ISSUE.

if taken in another, will leave a *chasm*, they shall be taken in that sense in which they dispose of the whole.

1109. *Dying without issue or without leaving issue*, expressions which have caused much controversy, have assumed a new meaning in England since the Wills Act, 1 Vic., c. 26. If the preceding words are sufficient to pass the fee, the limitation over in case of dying without issue will not, as formerly, create an *estate tail*, but an estate in *fee simple*, subject to a limitation over by way of executory devise, dependent on the first taker leaving no issue at the time of his death.

As to dying *without heirs*, any limitation over which depends on this contingency would be void for remoteness, and the first taker's estate would be absolute, *extinguishing* where the person to whom the limitation over is made is a relation and capable of being the *collateral heir* of the first devisee; for in that case the first devisee would take an estate tail only, and then the limitation over would be good as a remainder.

1110. *A charge on real estate will pass the fee*, as in the case of a devise upon trust to pay debts and legacies, which will, without any express limitation of estate, pass the fee or such other estate or interest as the testator had the power to dispose of by will, and not merely an estate determinable when the purposes of the trust are satisfied. 1 Vic., c. 26, ss. 30, 31.

1111. *A direction to sell*, where the lands are not directly devised to the trustees or executors to be sold, will give an authority to sell only, but no estate in the lands which, subject to the power of sale, will descend to the heir.

1112. *A beneficial interest as extensive as the legal estate will pass the fee*; e. g. if freehold premises are devised to B., in trust for C., "that is, B. to let the premises, and give the rent to my son C., for his support," C. will take both a legal and equitable fee. (*Malcombson v. Malcombson*, 17 L. T. Rep., 44.)

1113. *An absolute power of disposition will pass the fee*, but not if there be an express estate given, divided from the power; and so, if a precedent estate for life, or other limited interest, is given, so as to let in estates either vested or contingent, *which estates fail*, then such power of disposition will carry the fee; but only where it is absolute and unrestricted, for if a particular form of disposition is named, as "*by deed*" or "*by will*," the fee will not pass by force of such power.

1114. *Limitations in joint tenancy* require express words by Canadian Statute, 4 Will. iv., c. 1, s. 48, and are to the devisees, and their heirs, "TO HOLD UNTO and TO THE USE of them, their heirs and assigns," as joint tenants and not as tenants in common; but it seldom happens that the testator wishes this form of limitation in *beneficial* devises.

JOINT TENANCY.—ESTATES FAIL.

1115. *In the case of trustees and executors*, such express words are not necessary to create a joint tenancy, but it will be implied by the exception in the Statute, and the clause will run "To *wold to them and their heirs, to the uses, &c.*, hereinafter declared," which will make their seizin serve to vest the use in other persons.

1116. *Tenancy in common* has long been favored by the courts; but, if words are used which clearly imply that the share of a deceased devisee should go to the others, a joint tenancy will arise, without express words to prevent it. Thus: "To A., B., and C., during their joint and several life and lives, and the natural life of the survivor of them, to take as tenants in common and not as joint tenants."

A tenancy in common, without benefit of survivorship, was formerly created by limiting the property to the use of the several devisees by name, and their respective heirs and assigns, forever, "as tenants in common;" but now a tenancy in common is presumed by statute, (*see n. 1115*), and if the benefit of survivorship is intended under this form of tenancy, there must be an express limitation.

1117. *As to estates tail*, it is important to bear in mind the rule in *Shelley's case*, [which indeed was settled law long before that case,] that when an estate *for life* is given to one generally, and in the same instrument an estate in remainder is limited to his heirs, or the heirs of his body, the subsequent limitation vests in the ancestor, and gives him in the one case a fee simple, in the other a fee tail; and this consequence is not hindered by the limitation of any intervening estate for life or in tail between the freehold of the ancestor and the limitation to his heirs, although the estate in fee will not be executed until the determination of the mesne estate. It is essential to this rule that the ancestor take an estate of freehold; and that there be a limitation to his heirs as heirs, and not merely as sons, children, &c.; and that the heirs take as heirs of the ancestor alone, and not as heirs of him and another; and that both limitations give estates of the same quality, *e. g.*, both legal or both equitable; and that both limitations are by the same instrument.

This rule will hold also where an estate for life is limited to a man by an instrument creating a power, if in exercise of the power an appointment is made to his heirs; though the law was unsettled on this point for a considerable time. (*Venables v. Morris*, 7 T. R. 373.)

In equitable estates the court will effect the testator's intention, and not allow the operation of this rule where there are executory trusts; but, where they are executed, the rule will prevail, thus: "To A. and B., in trust for C., and, after his decease, in trust for the heirs of his body." Here the trusts are wholly declared and will be executed in B., and the rule will apply; but if A. and B. are directed to purchase and convey lands, each direction will not be considered complete, and the technical construction of the words will

not prevail; and so a clause exempting C. from impeachment of waste, or any terms which deny the power to *bar the entail*, will, in all cases of executory trusts of this kind, restrict the estate of the first taker to a mere life estate.

1118. *The word issue* is a word of *limitation* when used in a collective sense, so as to comprehend issue from generation to generation. But it may be a word of *purchase*; e. g., "to A., and his *issue*," standing alone, would be a limitation creating an estate tail in A.; but, if the will went on to say "*the elder of such sons to be preferred to the younger*," that would show that by "*issue*" the testator meant *sons*, and therefore it would be a word of *purchase* and not of *limitation*; but the contrary is the rule.

1119. *Cross remainders* between tenants in tail will arise by implication, thus: "To A., B., and C., as tenants in common in tail; and, for default of such issue, to the testator's right heirs." Here the construction will be that A., B., and C., and their issue, as long as there are any, shall enjoy the property; and, on the death of A., B., or C., without issue, his share shall go over to the survivors, so that the testator's *heir* shall take nothing until after the determination of all the estates tail. In this case A., B., and C. take cross remainders on the determination of the particular estates; nor will the word "*respectively*," or "*several and respective*," or any such like expressions, prevent the implication of cross remainders; but this implication will not arise, unless the parties take shares in the *same property*.

Where cross remainders are *intended*, the best way is to limit the lands to the use of all the tenants in common in tail in equal shares as tenants in common, and the respective heirs of the body of all and every of them, and then to add that, in case there should be a failure of issue of any of them, the shares, both original and accruing, of the party of whom there shall be such failure of issue shall go over to the survivors or survivor of them.

1120. *Entails of leaseholds* are not strictly possible, but *quasi entails* may be effected by will so as to tie up the property for any time which does not exceed the duration of lives in being at the time of the testator's death, and twenty-one years afterward; and for this purpose a child *en ventre sa mere* at that period is viewed as actually born. If the contingencies exceed the limits just mentioned, the *first taker* will acquire an *absolute* interest in the whole property, whether it be chattels real or personal, and that will be the case generally if the property is limited in such a manner as would create an estate tail in *freeholds*.

1121. *In strict settlements*, it is still customary to insert limitations to trustees to preserve contingent remainders, though the English act 8 and 9 Vic., c. 110, expressly provides that they shall not fail for want of such limitations.

U. W. O. LAW

ENTAILS.—PROTECTORS OF SETTLEMENTS.

If the *legal estate* is intended to be in the remainders, the form will be to limit the lands "TO THE USE of the said (*trustees*.) and "their heirs, *during the life* of the said (*tenant for life*.) UPON TRUST "to preserve the contingent remainders herein after limited." If there are *several preceding life estates* to sons, the limitation should be to the testator's first and other sons successively for life, and after the determination of the estate of each respectively in his lifetime, TO THE USE of (*trustees to preserve, &c.*) and their heirs, during the life of the same son, UPON TRUST to preserve, &c.

If tenant for life is to take a *mere equitable estate*, the limitation will be "to (*the trustees*.) and their heirs, during the life of, and in "trust for, (*the tenant for life*.) UPON TRUST to pay him the rents and "profits during his life;" and if there are *several preceding equitable life estates*, then "To (*the trustees*.) during the life of each of the "tenants for life, UPON TRUST to preserve contingent remainders, "and UPON FURTHER TRUST to pay the same tenant for life the rents "and profits during his life."

If the first taker is to have a *mere chattel interest*, then the form will be "TO THE USE of (*the trustees*.) for the term of ninety-nine "years from the time of the testator's death, if the party shall so "long live, UPON TRUST to pay him the rent and profits during his "life, and subject thereto, TO THE USE of (*trustees to preserve, &c.*) "UPON TRUST to preserve, &c."

1122. *Entails to daughters* may be limited in precisely the same manner as to sons; but the practice is to make them tenants in common, with cross remainders between them, which is not often done as to sons. The estates to daughters are also usually limited upon trust for their *separate use*. If the first taker is a *married woman*, and the property is for her separate use, then the trust will be to pay the rent and profits to her during her life, for her sole and separate use, free from the control of her present or any future husband, and a clause use may be added to prevent her from anticipating the proceeds.

1123. *Protectors of settlements* are for the purpose of preventing the entail from being *barred*, and they may be created in two ways.

(1.) By an estate which they actually take in the property, without any express appointment to the office.

(2.) By an express appointment to the office, without any estate or interest whatever in the property.

As to the first method, the English Fines and Recoveries Substitution Act, 3 and 4 Will. iv., c. 74, enacts that where there is under a settlement an estate for years, determinable on a life or lives, or any greater estate, prior to an estate tail, the owner of such prior estate is to be the *protector*; but an *absolute term*, however long, will not make the owner of the prior estate a protector. See also Canadian Statute, 9 Vic., c. 11, s. 10.

If the estate of a *married woman*, sufficient to constitute a pro-

WILLS.—SPECIAL PROTECTORS.

teetor, is not settled, or agreed to be settled, to her separate use, she and her husband together will be the protector, and in the latter case she may consent to an alienation without her husband's consent, as if she were sole; but, if she is *tenant in tail*, she can not convey without his consent and concurrence, and even with his consent she must acknowledge the conveyance in conformity with the Canadian statute, 2 Vic., c. 6.

If a protector becomes *insane*, or a felon *convict*, the chancellor or the Court of Chancery will be the protector.

As to the second method, the Canadian Stat., 9 Vic., c. 11, s. 20, empowers the settlor to appoint any number of persons in *esse* not exceeding three, and not being *aliens*, to be protectors of the settlement, and, by power of appointment in the deed or will making such settlement, to perpetuate the protectorship to any such persons not exceeding three; and the effect of this is, that the person who, but for such appointment, would have been protector by virtue of the estate limited to him will be excluded from that office.

To control the power of alienation within the narrowest limits, the settlor may not only appoint special protectors, but authorize perpetuation of the office as vacancies occur among them by death or otherwise, and then, during the whole time such protectorship subsists, the tenants in tail cannot effectually bar the entail without the consent of the special protectors, although the tenant of the prior estate, who would himself be protector if none were specially appointed, may himself concur. All that they can do is to bar their own estates tail, and so create a base fee, determinable on failure of issue of the estate tail so barred; and such base fee, if conveyed for valuable consideration, may be afterward confirmed by the tenant in tail if there should cease to be a protector, or if the protector should consent.

The appointment of protectors therefore does not prevent alienation, but it creates such a defect in the title as must greatly affect the price that can be obtained for the property. A prudent tenant in tail will therefore not alienate, if he can help it, without the protector's consent; but an extravagant or necessitous one will not be prevented from doing so. The appointment of special protectors is therefore of questionable utility, since the only thing certain is that such appointment inflicts an injury upon the property, and this should always be clearly explained to the settlor when such a settlement is desired.

1124. *The powers of a protector are great and in some cases anomalous.*—Though special protectors take no estate, their power to give or withhold consent to alienation is *absolute*; nor is there any law to prevent their making merchandise of their consent, nor will a court of equity control their power of consent.

The protector, by virtue of a prior estate, has powers equally

U. W. O. LAW

LONG TERM.—ANNUITY.—ACCUMULATION.

absolute, so that, even if he conveys away his interest, *his consenting power remains unaltered*, and he may afterward make gain of it if he pleases, which in point of fact is very like selling his estate twice over. He may also *retain* his own estate and consent to the disposition by tenant in tail.

1125. *A long term for raising portions for younger children* is usual in settlements by will, and then there are two sets of trustees—trustees of the *term*, and trustees to preserve contingent remainders; and then the form will be to devise the lands to the uses therein after declared.

(1.) To the use of the *trustees of the term*, for the term, upon the trust therein after declared, and subject thereto, to the use of the several tenants for life, with remainder to trustees to preserve, &c., remainder to their first and other sons, &c., in tail, with remainders over, &c.

If *special* protectors are appointed, this is done immediately after the limitation of all the estates tail, and then the trusts of the term should be declared: next follow any special powers, as for tenants for life to jointure their wives; for women to appoint life estates or other interests to their husbands; to raise portions for children, grant leases, sell exchange, make partition, &c., &c.; *shifting clauses*, if any, should come in here; and then the usual declaration with regard to estates vested in the testator in trust or by way of mortgage. *Proviso* for cesser of the term, when its purposes are satisfied, is not necessary in England, since the 8 and 9 Vic., c. 112, which enacts that it shall then cease. Power to change trustees, appointment of executors, and the clause revoking all prior wills, will conclude the instrument.

1126. *If an annuity is charged on the premises*, it is generally the first use declared, and there is commonly added powers of distress and entry. It is not usual to limit a *term* by will to secure an annuity by way of jointure, though it is often done in marriage settlements.

1127. *If the property is to accumulate*, the lands should be devised to the use of trustees during the term of accumulation; but that must not exceed twenty-one years from the death of the testator, and subject thereto. The uses must be declared to the several objects of the settlement.

1128. *As to vested and contingent legacies* there are many curious points of law, which we cannot find space for in this volume; we may, however, remark that wherever provision is made for children the court will lean strongly in favor of that construction which will give the children a vested and transmissible interest.

1129. *A legacy to a legatee absolutely* is vested and transmissible, whether the legatee make any disposition or not; and if a particular mode of disposition be pointed out, or even a limitation over in

case of no such disposition, that will make no difference; because that would be a conditional defeasance repugnant to the original bequest, and cannot be supported; but if a particular estate, *e. g.*, a life estate, is limited to a legatee, with power of disposition over the funds, that will *not enlarge* such estate; but if he fails to exercise his power of disposition, the power will cease with his life interest.

1130. *If a legacy is given for a particular purpose, and that purpose fails, the legacy will become absolute;* thus, “\$150 to A., for the purpose of binding him apprentice,” and A. died before the proper age, held that he took a vested and transmissible interest in the legacy.

1131. *A legacy in trust for legatee's maintenance until he comes of age, and then to be settled, confers a vested interest;* and the legatee may, at twenty-one, dispose of it by will, though no settlement or other special application of the legacy has been made by the trustees. And so a power to *affix the amount of shares* among a class of persons will pass vested interests, subject to be divested on the execution of the power.

1132. *Distinction where legacies are charged on real estate.*—The preceding remarks apply to legacies arising out of *personal* property, for when they arise out of *real estate* the rule is *totally different*. The reason is because, as to personalty, courts of equity have adopted the rules of civil law, and concur with the ecclesiastical courts; but in reality there is no such concurrence, and there the rule is that the *whole condition* upon which the legacy is given shall be complied with, so that, if the legatee dies before the time of payment, the legacy will sink into the land for the benefit of the heir or devisee, *except* where the legacy or portion is postponed with regard to the circumstances of the *estate* out of which it is to arise, and not of the *person* who is to take it, for then the implication is that a benefit was *absolutely* intended to the legatee, and his interest therefore will be vested.

1133. *A condition not to alienate* is inconsistent with a devise in fee; but not to alienate to or except to a *particular person* is good, or until a certain time or age.

Tenant for life may be prohibited from alienating his life estate, and a *married woman* from alienating her property *during coverture*. The prohibition will be void as to property in which she has an absolute interest if she becomes *discoverte*, and it will revive if she marries again; but if she take only a *life estate*, then a proviso for the cesser of her estate by alienation, either by her own act or operation of law, is good, and very useful where children are dependent on the mother's income for support.

1134. *The usual conditions* are either in favor or restraint of marriage or requiring the devisees to do or not to do certain things: as

CONDITIONS AS TO MARRIAGE. — RESIDUARY CLAUSE.

to assume testator's name and arms; to reside on the estate; not to dispute the validity of the will; for dividing the estate of the devisee on the happening of certain events, as where an annuity is left to a wife in lieu of dower, but to be avoided if she brings an action of dower; or, if devisee becomes insolvent, then the gift is to fail, and so if he attempt to alienate the estate or if his interest therein is otherwise determined.

1135. *Conditions as to marriage* are construed variously, according as,

1st. Whether they are conditions precedent or subsequent

2d. Whether the property is real or personal.

Whatever the kind of property, if the condition is *precedent*, it must be first performed or the devisee is not entitled, notwithstanding the condition, by no fault of his, becomes *impossible*; but if a condition *subsequent* becomes impossible, then the estate to which it is annexed becomes absolute.

As to real estate, if there be a condition *subsequent*, with a limitation over on breach of the condition, the party to whom the lands are limited over will become entitled on breach without entry or claim on the premises; but if *no estate* be limited over, then it will be a condition at common law of which only the heir could take advantage until the recent English acts, under which a right of entry may be conveyed by deed, 8 and 9 Vic., c. 106, or devised by will [1 Vic., c. 26;] but actual entry must be made or no actual estate will be acquired, and if such entry be delayed for twenty years after breach, such right of entry will be barred by the Statute of Limitations, [3 and 4 Will. iv., c. 27.]

As to personal estate the condition will be merely *in terrorem*, unless there be a limitation over in case of breach, and this will apply also to conditions *precedent* where the legacy is given on marriage with consent. Here *marriage* is essential to the vesting; but still, *if there is no bequest over*, upon marrying *without consent*, that part of the condition will be construed merely *in terrorem*, and the condition will be performed by the marriage alone.

Except (1.) Where the legatee takes a *substituted gift* in case of marrying without consent;

(2.) Where the marriage is one of two alternate events, on either of which the legatee will become entitled; as marriage with consent or on attaining a certain age, neither of which events take place because the legatee marries without consent or dies before the age.

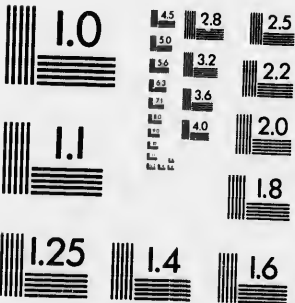
(3.) Where the consent is limited to the *minority* of the legatee, which is a fair and reasonable restraint.

1136. *A residuary clause*, simply as such, will not be construed in the same manner as a *positive bequest over*, so as to render the condition effectual, *except* there is an *express direction* that, on breach of the condition, the legacy shall become part of the residue.



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WILLS.—MARRIAGE WITH CONSENT.—CONDITIONS.

1137. *A requisition to marry with consent* will only apply to *spinsters*; for, if a daughter marries with consent after the making of the will, and in the lifetime of the testator, though she be a *widow* at his death, the condition as to her is fulfilled; and so if she attains her father's consent *after* her marriage.

1138. *As to conditions in restraint of marriage*, they will be void if used as a cover to restrain marriage *generally*; but a condition prescribing the ceremony and place of marriage has been held good; and so is an injunction to ask consent; and not to marry before 21, or any reasonable age; and not to marry a particular individual; or one of a particular country. A rent-charge or an annuity is frequently devised to testator's widow *durante viduitate*, but to be forfeited or diminished in case she marries again; if, however, such a bequest is in lieu of *dower*, the widow has her election. When the shares of children are to vest at a certain age, or on marriage with consent, it is sometimes provided that, if they marry before that age or without consent, the trustees shall stand possessed of the share of any daughter so marrying, for her *separate use*, or the interest is made to cease altogether; and sometimes a *substituted gift* is devised in lieu of that which is forfeited by breach of condition.

1139. *A condition to assume name and arms of testator* should always state the *time* within which this should be done; for otherwise the devisee might be allowed his *whole lifetime* for the performance, and in a case where a condition was imposed upon the devisees, *not bearing the name of Luscombe*, that within three years after being in possession they should procure their names to be altered to Luscombe by act of Parliament, *held* that an individual who, *before* he came into possession, had *voluntarily* and without authority assumed the name of Luscombe was a person "*bearing the name of Lusecombe*" within the meaning of the will.

1140. *Breach of condition to determine the estate* must determine the *whole* estate, and not a *part* only; therefore a condition that an estate tail shall cease on breach, in the same manner as if the tenant in tail were dead, would be incorrect, because there might be issue capable of inheriting. The condition should be that, on breach, the estate shall devolve on the person next entitled *in remainder*, as though the person whose estate shall cease were dead, leaving no issue inheritable under the estate tail. But a condition to reduce an estate in fee to a life estate may be good, and by parity an estate tail may be so reduced.

1141. *A condition to divest an estate* at a certain period will not take effect until that period actually arrives. Thus, on a devise to a wife provided she remain a widow, but if she marry then to testator's nephew on his attaining the age of twenty-three, *held* that, though she marry again, the widow had an estate until the nephew was twenty-three.

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IN TERROREM.—ELECTION.—BAR OF DOWER.

Inquiries should always be made whether testator intends jointures, leases, or other estates or interests created by the party previous to the breach to determine or remain in force.

1142. *Condition not to dispute validity of testator's will* comes under the same rule as conditions in restraint of marriage; so that, as to *personal* estate, it is merely *in terrorem*, and unless the legacy is given over upon breach it will not be forfeited by contesting the will. But this doctrine has never been applied to real estate.

If the same person has a claim under a will, and also an original and independent claim, he has his *election*; but he cannot accept the one without renouncing the other.

1143. *To raise a case of election* there must be an absolute power of disposition, and an intention to exercise that power.

No election will arise where testator is *under twenty-one years of age*, whether the property be real or personal, because the will itself is inoperative.

A widow also, as we have remarked before, may be put to her election between a legacy or jointure or dower.

She has also been put to her election between a bequest and a benefit derived from her marriage settlement.

But a rule of equity forbids to put a widow to her election, unless by an *express* declaration, or a *necessary* inference from the inconsistency of her claim with the dispositions of the will; therefore, if *both* may stand together, she cannot be compelled to elect, and hence a *mere gift*, even of a *larger amount* than her dower, will *not* put her to her election, but she may have both; nor does a bequest in bar or satisfaction of her thirds exclude her right and title as *next of kin*; nor does a bequest of the residue of personal estate, or of an annuity, bar her dower; and if testator give his wife real and personal estate in bar of dower and thirds, and the residue to some object which fails, the widow shall not be put to her election. And whether a rent-charge, issuing out of lands of which a widow is dowable, will put her to her election is doubtful, but the weight of opinion is in favor of the wife.

Where a *widow* is bound to elect, she may ascertain which fund will be *most beneficial* for her to take, and *file a bill* to have debts and legacies paid and the funds clearly ascertained *for that purpose*.

Children also may be put to their election where their interests under a will and a settlement are conflicting; but *semble* that they will not be bound by the election of their parents where their interests are distinct and separate.

Creditors also may be put to their election between their claim for debts and a bequest which is inconsistent with that claim; but election is inapplicable as to the funds *out of which the debts are to be paid*. Debts are payable first out of the personal estate, and if

that is insufficient the creditors may then resort to any other property which is liable to such payment.

When a devisee or legatee elects to take *in opposition to the will*, the interest given him by the will must be applied to compensate the disappointed party; but the estate thus taken in opposition vests in the taker, with all its legal consequences. It is better, in all cases where adverse claims may arise, to provide that the party who sets them up shall forfeit all claim under the will, and to declare *expressly* how the forfeited gifts shall be disposed of.

1144. *Conditions as to insolvency, alienation, or other determination of interest under a will.* Property cannot be bequeathed without its incidents and therefore a bequest to an insolvent will be available for the creditors; but it may be secured from such diversion by a limitation over in case of the insolvency of the original taker; and a trust for him until insolvency, or a trust for life with a proviso for determination, in such case, will equally effect this purpose. And it has been held that, under a proviso against alienation, bankruptcy will work a forfeiture if such cesser were *plainly* declared to be consequent on alienation *by operation of law*.

1145. *Restraints on the power of alienating estates of inheritance* are void, because repugnant, as they are also as to personal estate where the *absolute* interest is conferred; but a *life estate* in either may be restrained, and a condition that it shall be forfeited if alienated in *any* way will be supported. Clauses of this kind against anticipation are very common, and very useful in the case of improvident devisees and married women. And indeed, as to the latter, it is the only way of preventing alienation; for, if property is settled to her separate use, with a proviso against alienation, that operates only during coverture; for a widow may alienate, but if she takes only a *life estate* a proviso for cesser will effectually prevent alienation and anticipation, and possibly secure a young family from coming to want through the improvidence of a thoughtless mother.

1146. *Provisions against lapse* are necessary when the death of devisee before the testator's own death would cause the gift to fail, without that is what he intends. The English statute 1 Vic., c. 26, expressly provides that there shall be no lapse of any estate or interest bequeathed to a child or other issue of the testator, who dies before the testator, without such estate or interest is in itself determinable at or before the death of the devisee; but that the bequest shall take effect as if the death of the devisee took place immediately *after* that of the testator.

1147. *Debts*, whether simple contract or specialty, are not a charge on land by the common law; but by statute real estate, which the testator has not charged or devised for the payment of his debts, is assets to be administered in courts of equity for the payment there-

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DEBTS.—CHARGES ON REALTY.—RENTS AND PROFITS.

of, whether by simple contract or specialty; but creditors by specialty, in which the heirs are bound, are to be paid first; but if real estate is expressly charged with payment of debt, then *all classes of creditors are equally entitled.*

1148. *As to the mode of charging real estate*, a general direction to pay debts and legacies, followed by any disposition of the real estate, will be sufficient to charge that estate; and even if the will deals only with personalty, *semble* that the rule may not be different.

If any particular fund is set apart for payment of debts and legacies, as any specific portions of the realty, that will rebut the implication of a general charge.

A direction to the executors to pay the debts and legacies will imply out of such funds as come to them *as executors*, without the lands are specially devised to them, in which case the land will be charged, even though it be devised only for an *estate tail*; but when the executor takes only a *life estate* the law is not so clear. If, however, the fee, or a limited estate, is given to *one* of several executors, a general direction to pay debts and legacies will not charge the land, nor a devise to executors as trustees for others; and a devise of the *residue* of real estate to an executor, to whom also the residue of personalty is given after payment of debts and funeral expenses, will not charge the land with legacies.

1149. *A devise of rents and profits* in trust to apply them to pay debts and legacies at an indefinite period will authorize a *sale* of the land; but, to prevent doubt, the language of a will should be express, and give a power to sell the realty in aid of the personalty, and it is well to give a further power to sell, though the personalty has not been got in, with an indemnity to purchasers against the duty of inquiring into the state of the personalty; see the Canadian statute before quoted, 12 Vic., c. 71, and Consolidated statutes, c. 90, s. 9, which makes the receipts of fiduciaries sufficient discharges, and also expressly exempts purchasers from seeing to the application of the purchase money.

1150. *To exonerate personal estate* from debts and legacies, or to prevent its being the primary fund for that purpose, it is not sufficient to charge the real estate, but the testator must *show* that he does not intend the personal estate to be charged; and therefore a devise of land *on condition* of paying debts and legacies will not exonerate the personalty; and even a trust to pay a *particular debt* out of the realty will not of itself have that effect; but in the case of a *legacy* it will, and the reason seems to be that liability to a legacy is created by the will, but a *debt* is a charge on the personalty *independently of the will*. To avoid question, it should be said that the real estate is to be the *primary fund* for the payment of the charges, or otherwise as the intention may be.

1151. *Charitable bequests* cannot be charged on real estate; and

therefore, if they are to be certainly paid out of the personalty, it must be so directed, and then if that fund is not sufficient to pay such bequests, and also debts and other legacies, the charitable bequest will be *first* paid, and the residue of other legacies will be made up out of the *realty*; otherwise the charitable bequest would only take a *share* of the personalty, and could not resort to the realty for the residue, but such residue would fail.

1152. *Annuities* should be charged on the fund or estate which is intended to pay them, otherwise the rule is that an annuitant is a mere legatee. If the annuity is charged on premises which are burnt down, the annuitant has a right to come on the policy of insurance, the moneys paid thereunder being a substitution for the property so charged.

Powers of distress and entry are usually annexed to annuities charged on land, except where they are small; but there is an advantage sometimes in raising a term for securing the charge, because in this case the trustees are empowered to receive the rents under *any* subsisting demises, while powers of distress and entry conferred by will are inoperative under any demises subsisting at the time of the testator's death; and, besides, trustees who take an actual estate under the term are better able to deal with the property by leasing it, &c., than by mere possession under a power of entry.

TRUSTS and POWERS of SALE.

1153. *Trusts* should always be in joint tenancy, and if the trustees have a power of sale it should be to the survivors or survivor of them, or the representative of such survivor; because a power given to several by name cannot be exercised by the survivors. It will also, in most cases, be advisable to omit the heirs, for the heir may be a lunatic or an infant, not to name other possible inconveniences.

1154. *Executors who renounce probate* are not disqualified from exercising a power of sale given them in the will.

1155. *Trusts for sale* should give an option to the trustees not to sell reversionary property, if any, until it comes into possession, because such property always sells to a disadvantage; and it is well to authorize the trustees to limit the property sold to such uses as the purchasers shall direct, for where it is declared that they may appoint in fee to a purchaser that may not enable them to convey to special uses.

1156. *Indemnity to purchasers* is usually provided by declaring that the receipts of the trustees shall be a sufficient discharge, and that purchasers shall not be responsible for the application of the purchase money. Without this clause they were formerly liable as to all debts *expressly mentioned* in the will, or a schedule; but if no debts were expressly so mentioned, they were not liable.

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POWERS OF SALE.—LEASEHOLD AND PERSONAL SECURITIES.

It is better not to name the trustees, but to say "the receipts of the trustees or trustee for the time being shall be a sufficient dis- charge, &c.;" though, since the 12 Vic., c. 71, s. 10, the entire clause is a traditionary rather than a necessary form.

1157. *Trusts for collecting and getting in the estate* should con- tain a clause giving the trustees a discretion to wind up, settle, and adjust all accounts, compound debts and claims, give time for pay- ment, take personal or other security for payment, and to refer all disputed claims to arbitration, whether there is or is not any legal proof of such claims.

This clause is often advantageous to the estate, while it also re- lieves the trustees from responsibility for losses, to which they might otherwise be liable.

1158. *Power to sell on credit* is usually confined to chattels per- sonal, and very rarely extends to leaseholds or real estate; and, if a trustee or executor sells on credit, without such power, he is per- sonally liable.

1159. *Trusts for investment* should state carefully in what securi- ties the investment is to be made. A general discretion to invest will not authorize trustees to lend on *personal securities*; and even if *personal security* is mentioned in the authority to invest, that will not enable the trustees to accommodate a trader with a loan upon his bond.

Power to invest in real or personal security will justify trustees, as against *legatees* or other *volunteers*, in lending to apparently re- sponsible men, at a reasonable interest, but not as against *creditors*.

To lend trust moneys on *leasehold* property, without express au- thority, would be a *breach of trust*, for which the trustees would be liable; and so of any other investment not sanctioned by the prac- tice of the court; but if they invest in any funds so as to make a profit, the whole of it goes to the *cestuis que trusts*.

1160. *Costs of investment* are paid out of the *particular sum given* by the will to be invested, and not out of the *general estate*.

1161. *Changing and varying securities*.—If the trustees are to have this power, it should be specific in the will, and the nature of the securities to which the power is to extend. As to existing se- curities, if they are to be held and applied upon the trusts declared, then they may continue; but, unless specially mentioned, or their continuance be clearly implied, the trustees cannot safely allow im- perfect securities to continue, and the testator's opinion that they were good would not be a sufficient excuse for doing so.

In England the three per cent.'s are the only stock which is ab- solutely safe for the trustees.

Power to vary securities is generally made dependent on the con- sent, in writing, of persons named in the will.

1162. *Indemnity clause to trustees* against involuntary losses is

WILLS.—TRUSTS FOR ACCUMULATION.—ANNUITIES.

usual, but it is of doubtful value, and certainly will not avail them if there be any negligence.

1163. *Trusts for accumulation* are, by 39 and 40 Geo. iii., c. 98, restrained in England to the life of the grantor, settlor, or devisee, and twenty-one years afterward, or during the minority of any one living, or *en ventre sa mere*, on the death of the grantor, &c.; but provisions for payment of debts or portions for children are not within the statute, and a trust for accumulation which exceeds the limits named, but does not exceed the limits of an executory devise, will be sustained in part, and void only for the excess.

As to real property, the usual plan is to limit it to the use of trustees, for the term of twenty-one years from the death of the testator, upon the trusts mentioned.

As to personalty, the trustees are directed to collect and get in the same, and invest the moneys in proper securities, with power to vary them, and to invest the interest, &c., to accumulate, but so that such accumulation shall not extend beyond twenty-one years from the testator's decease; and, where the rents and profits are to be applied during minorities, the limitation must be to the minorities of such persons only as may be minors at the time of testator's death.

1164. *Trusts for repairing, improving, insuring, and renewing leases* will vary with circumstances, and are too numerous to be particularized.

1165. *Trusts to carry on a business* must be *express* and *clear*, for otherwise the trustees will properly decline to continue the business, however profitable it may be. Power to compound debts and to conduct the business as absolute owners, but subject to the trusts, should be given, actual misconduct only excepted; but power to *discontinue* the business, if it becomes unprofitable, should never be omitted. If continued, then for how long a time should be stated, and who is to take to the business afterward, or what is to be done with it; and, if the continuance is for the benefit of a widow, whether she is to have any control over it, and, if so, whether such control is to continue if she marry again; and if it is then to cease, how the concern is to be conducted afterward, and, in all cases, how the profits are to be divided. The stock should be directed to be insured against loss by fire.

1166. *Annuities* are charged upon the *whole*, or on some *part* only, of the property. If on both realty and personalty, it should be said which is to be the *primary* fund. It is often advisable to charge only a part of the property, especially when the annuity is relatively small, or where some of the real estates are expected to be sold; for an annuity or rent-charge, charged upon lands, issues out of every part of them, and the smallest portion of them cannot be sold without the annuitant's concurrence; and, if the annuitant

concur as to any part, the *whole charge will be extinguished*, and therefore a *regrant* will be necessary to reinvest the annuity in the annuitant.

An annuitant cannot be *compelled* to release his interest, for any consideration whatever; and therefore, without his concurrence, no *purchaser* could be *compelled* to complete his contract, unless it were to buy the property subject to the charge. This is a strong reason for setting apart a *particular fund* for the payment of an annuity.

1167. *Trusts for the separate use of a married woman*, if of *real estate* and designed to give her absolute power, should be raised by vesting the legal estate in trustees during the life of the wife, upon trust for such persons as she shall, by deed or will, or any writing purporting to be a will, and notwithstanding her coverture, appoint; and, in default of appointment, upon trust for her sole and separate use, free from the control, debts, or engagements of her present or any future husband.

As to *personal estate*, if it is limited to her *sole and separate use*, an express power of disposition is not necessary; because such limitation itself conveys that power, and she may use it as a *fee simple*, to the full extent of her interest; though under such a limitation she would have no power to alienate real property without her husband's concurrence.

1168. *Alienation* may be restricted by adding to the limitation to separate use that it shall be without power of *anticipation*; but this will be effective only *during coverture*, for whenever a woman takes an *absolute* interest in the property, her power of alienation cannot be restrained by any proviso whatever; but if she takes only a *life interest*, a condition for *cesser* of her estate by alienation will be effectual; and similar clauses may accomplish the same objects with regard to *daughters* yet unmarried. Sometimes it is provided that, if any daughters shall marry *without consent*, the trustees shall stand possessed of her share upon trust for her separate use.

1169. *Trusts for wife and children* usually direct the trustees to pay the whole or some part of the income of the trust fund to the widow, during widowhood; and after her death, or future marriage, to divide the principal among the children, to become vested interests in the sons at the age of twenty-one, and in the daughters at that age or on their marriage, with provision for their maintenance in the mean time, and a power to advance some part of, and in certain cases all, their shares for their advancement in the world.

Provision for a *widow* is generally only *during widowhood*; but sometimes it is merely reduced in amount on her remarriage, and in rare cases it is altogether unconditional.

If the widow is to *maintain the children* out of the income of the

trust fund, such a direction creates a *trust* in their favor, which she will be obliged to fulfill.

Provision for *maintenance of children* should never be omitted, otherwise the trustees will have no power to make any allowance for this purpose out of the income of their presumptive shares. Sometimes provision for maintenance and power of advancement are both contained in one clause, and conferred on the same person.

1170. *Hotchpot clause*.—When there is a power of appointment in favor of children or other persons, it is necessary to ascertain whether, if the power is exercised in favor of any one, he is to have the benefit of the appointed share, without bringing it into hotchpot with the unappointed portions of the trust fund.

1171. *If the children of devisees, who die in testator's lifetime, are to take their parents' share*, that should be expressly provided, and also the time when such share is to become vested, and provisions for maintenance and advancement may be properly extended to such children.

1172. *Legacies to children* by parents or persons *in loco parentis* will be adeemed or satisfied by advancement made in testator's lifetime, without an express clause to prevent it; but this rule will not apply to legacies bequeathed by a stranger, or a putative father, or an uncle, or a grandfather, during the father's lifetime. And in the case of a father, or one *in loco parentis*, the advancement must be as *certain* and advantageous as the legacy, and therefore money to be paid on some contingent event will not satisfy an absolute bequest; nor will the bequest of a *residue*, because the amount of that is uncertain. Also the advancement must be of the *same nature* as the bequest; and therefore a *sum of money* will not be adeemed by an *annuity*, or by a beneficial lease, and finally the advancement must come from the same person, and be made to the same person, as the legacy. Therefore, a sum of money directed to be raised by an *executor*, under a power, will be no satisfaction, because the portions come from different persons; and, on the other hand, an advancement to the husband, who gave a receipt for it, as part of his wife's portion, was held no satisfaction of a legacy limited differently by the will of the party making the advancement. [Bell v. Coleman, 5 Mad., 23.]

1173. *Powers* conferred on beneficiaries by will, devising real estate, in strict settlements are:—

- (1.) To make jointures.
- (2.) To raise portions for younger children.
- (3.) To grant leases.
- (4.) To cut down timber; and, in the case of females,
- (5.) To appoint life estates, or other beneficial interests, in favor of their husbands, or children, or other issue.

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ABATEMENT.—MARSHALING.—PRIORITY.—PREFERENCE.

The powers of trustees are usually,

- (1.) To sell or exchange.
- (2.) To effect a partition or exchange.
- (3.) To invest money in purchase of land.
- (4.) To cut down timber, and appoint agents, bailiffs, and receivers.

ABATEMENT of LEGACIES and MARSHALING of ASSETS.

1174. *Deficiency of assets* may raise the question whether any one or more of the legatees is to be preferred to the rest; and, if that is intended, there should be an express provision in the will.

If the assets are sufficient to pay the debts and specific legacies, but not the *general* legacies, the *latter* will abate in *equal proportions*, and the executor will not be permitted, as in the case of debts, to show preference to one legatee over another, or even to give *himself* a preference as to his own legacy.

Specific legacies do not abate, except where general pecuniary legacies are also bequeathed, with a direction that they are to come out of testator's personal estate; for then, if it turns out that there is *no other personal estate than the specific legacies*, they will be held to be subject to those which are pecuniary; but a residuary legatee cannot call for abatement from any one, because his claim is only on the surplus, and therefore, if there is nothing left, there is nothing for him.

Priority in time of payment will not prevent the abatement of legacies, but the rule as to abatement holds only as to *volunteers*; for if there be any valuable consideration, or the relinquishment of a claim or right, such legatee will be entitled to *preference* over general legacies which are mere bounties, and this right extends to the entire legacy, though it exceed the value of the right or interest relinquished by a legatee; but such right must *subsist* at the time of testator's death, and be such as might be *enforced* against him.

The object for which a legacy is given will be no ground of abatement, as between volunteers; as to executors, *for their care and trouble*; to friends to buy mourning-rings; or to servants; or charities; and even the wife of testator's son is under this rule and a volunteer.

An *annuity* charged on the personal estate is also treated as a general legacy, and liable to abatement.

Preference may be directed by testator, if the *amount* is named, or plainly alluded to, and not a *prior time* of payment only; for a direction that a legacy shall be paid out of the *first moneys* received by the executors is not sufficient, and so of any other direction as to time only.

Legacies payable out of a *particular fund* abate as among themselves, but not with other general legatees.

1175. *As to marshaling of assets*, the rule of equity is, that every claimant shall be satisfied, if possible; therefore, if A. has more than one fund to resort to, and B. has only one, A will be compelled to resort to that on which B. has no lien, where both could not be otherwise satisfied.

As to *specific legacies*, the rule is, that the assets shall be so far marshaled against the devisees of real estate that, on failure of the general personal estate, the devisee and specific legatee shall each contribute proportionably to the payment of the specialty debt.

Assets are not marshaled in favor of *charitable bequests*.

1176. *The Statute of Mortmain*, 9 Geo. ii. c. 36, provides against the accumulation of real estate for charitable uses, partly because it then becomes *inalienable*. The statute extends to every kind of property which savors of the reality, and therefore to leaseholds; to moneys secured on turnpike tolls; to shares in a waterworks company; to mortgages of realty of every kind, whether corporeal or incorporeal, freehold or chattel; and even to judgment debts, so far as they charge the land. So canal shares have been held within the statute, and *semble* that railway shares are so too; but shares in many undertakings of this kind are by statute declared to be personal estate.

Testator's lien on lands sold for his *unpaid purchase money* is within the statute.

A *pecuniary gift* to a charity, if charged partly on real and partly on personal estate, will be good for the personalty but void as to the lands.

This statute extends to Canada, until otherwise settled in Appeal. C. P., U. C., vol. ix., 349.

1177. *Charitable bequests out of personalty* are generally good, if the money is not directed to be laid out in *land*; and, even if it is, the bequest will be good if the object of the charity can be accomplished without buying land; thus, a bequest "to endow a school" will be satisfied by *renting* premises.

A bequest to rebuild or repair premises already in mortmain is good, because no *additional* land is required; but a bequest to *discharge incumbrances* existing on such property will not be supported, whether the charge be legal or equitable.

A *secret trust* to evade the statute will, if discovered, vacate the devise and let in the heir at law.

1178. *If the charitable object* ceases to exist, or if the legacy is not accepted, or even if the object is contrary to law, the Crown will appoint the fund to uses most like the one named, when it is plain that charity was the general object of the bequest.

This is called an application of the *cy pres* doctrine.

CHARITABLE USES.—PUBLIC POLICY.

1179. *Charitable objects should be clearly described*, for if they are not the bequest will fail altogether; thus, "to A. B., to dispose of to such objects of benevolence and liberality as he should approve," was held void, and so also a bequest "for such charitable or other purpose as the trustees may think fit," or "to be given in private charity."

1180. *The manner of investing and applying the money* should be explicitly stated; if it is in favor of existing charities, the bequest may be to the treasurer thereof for the time being, with directions to apply it to the purposes of the charity, and his receipt should be made a sufficient discharge.

If such bequest is to have priority over other legacies, it should be made payable exclusively out of the personalty to avoid abatement in case of deficiency of assets.

1181. *Trusts for charitable uses* are generally more numerous than in ordinary cases, and the clause directing the appointment of new trustees to fill up vacancies generally directs that a certain number shall always be kept up.

1182. *What are charitable uses?*

- (1.) Gifts for the aged, impotent, and poor.
- (2.) For maintenance of sick and maimed soldiers and sailors.
- (3.) For ease of poor inhabitants in paying taxes.
- (4.) For relief stock and maintenance of houses of correction.
- (5.) For the marriage of poor maids.
- (6.) For education and preferment of orphans.
- (7.) For schools of learning, free schools, and scholars in universities.
- (8.) For relief and redemption of prisoners and captives.
- (9.) For repair of bridges, ports, havens, causeways, churches, seabanks, and highways.
- (10.) Bequests for public purposes, conferring public benefits, whether general or local; as for the construction or improvement of waterworks for the use of the inhabitants of a particular town or city, or for the general improvement of a town, or for the establishment of a lifeboat.
- (11.) Bequests for religious purposes; as for the advancement of the Protestant religion, or the promotion of Christianity among the Jews, or for the preacher of a particular church, or for the benefit of poor clergymen, or for preaching an annual sermon on a particular day, or to the choristers of a church.

1183. *Gifts of personalty* may be void as against public policy; as a gift toward the political restoration of the Jews, which is void, as tending to create a revolution in a foreign state.

1184. *The profession of the donee* does not make a bequest charitable; therefore, where A. devised to B., preacher in the church of C., for life, on condition that he should immediately settle and convey the same to trustees, to take effect on B.'s decease, for support

of the preaching of the Word of God in said church for ever, and if preaching were discontinued then over to a charity school; held that, though the subsequent limitation was void, the devise of the preceding life estate was good.

The APPOINTMENT of EXECUTORS.

1185. *The appointment of executors* may be in any form which clearly shows the testator's intention, and the office may be created by implication; as "To A. B., to pay any debts, and otherwise to dispose of at his pleasure," will constitute A. B. executor; and so "I will that A. B. be my executor, if C. D. will not," will give C. D. a right to be admitted to the executorship; and where testator directed that no one should have any dealings with his goods until his son came to the age of eighteen years, except J. S., J. S. was held to be executor until that time.

In whatever manner executors are appointed, their authority is the same; and therefore an executor, according to the tenor of the will, may be admitted to probate jointly with one who is expressly nominated.

1186. *Executors are considered to be one individual*, so that the acts of one are the acts of all; but a testator may appoint A. executor for his plate, B. for his live stock, D. for his debts due to him, yet as against creditors they will all be executors equally, and as one executor, and may be sued accordingly.

1187. *There are two classes of executors*; namely, *qualified and conditional*. A qualified appointment may be,

- (1.) As to the time when the office is to begin or to cease.
- (2.) As to the place at which it is to be exercised.
- (3.) As to the property over which it is to extend.

As to *time*, it may be, say after five years from testator's death, which is a time certain; or upon the death or marriage of his son, which is an uncertain period; and so of the time of cessation.

In such cases, if there is no other executor appointed *ad interim*, administration may be granted with the will annexed, until the action of the qualified executor begins, or after it is ended.

As to *place*, the appointment may be of one executor for property abroad, and another for property at home; and so if the property is in different parts of the province.

Conditional appointments may be either *precedent*, as to give security to pay the legacies and perform the will before he acts as executor, or *subsequent*, as with proviso that the appointment shall be void if the executor fails to prove the will within three calendar months next after testator's death.

1188. *Substituted executors*, as where A. is appointed, and if he will not or cannot act then B., and if he likewise fails then C. Here A. is executor in the first degree, B. in the second, and C. in

U. W. O. LAW

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OF EXECUTORSHIP.—PROBATE.—GUARDIAN.

the third; and B. cannot propound the will until A. has been cited to accept or refuse the office. If A. accept and dies intestate, B. and C. are excluded, unless the testator, who appointed A., named B. "as successor in case of A.'s death, and C. in case of B.'s death."

1189. *Transmission of executorship.*—An executor cannot assign his executorship; but a testator may authorize his executors to appoint others in place of any who die, so as to keep up the full number, and executors so appointed have the power of original executors.

The interest of an executor may be kept alive by his will; thus, if B. be sole executor of A., and die testate, his executor will be, to all intents and purposes, executor and representative of A.; but the administrators of B., dying intestate, will not represent A.; nor will the executors of an administrator represent the original intestate.

Probate of the will is necessary to render the executorship transmissible; for if an executor dies before probate, the office is determined, and administration will issue *cum testamento annexo*.

1190. *Surviving executors* have all the powers of the original number, and those powers may ultimately pass to the executor of the last surviving executor, unless he die intestate, in which case administration *de bonis non* will be necessary.

1191. *Executors who renounce.*—If one executor alone proves the will, and the rest renounce, the interest of the one who proves will not pass to his executor if any of the renouncing executors survive him.

1192. *If executors are also legatees*, it is desirable to say whether the legacy is given for discharging the duties of the office, or otherwise, so that it will not be questionable whether they are to take the legacy if they renounce the duty. The general rule would be against it.

GUARDIANS.

1193. *The father, and he only, is empowered to appoint guardians*, and therefore appointment by a mother, though a widow, or by a grandfather, is a mere nullity.

A guardian duly appointed cannot appoint another in his stead. A putative father cannot, in strictness, appoint a guardian for his illegitimate child, under 12 Car. ii., c. 24; but the court will give such appointment effect by nominating the same person.

1194. A minor cannot in England appoint guardians *by will*, since 1 Vic., c. 26, because he has no power to make a will; but he may still appoint guardians *by deed*.

1195. *Guardianship* continues only during the minority of the ward, but the marriage of the ward does not dissolve it.

1196. *Who may be guardians?*—Under the above statute, all persons may be guardians except popish recusants; and, if the

guardian appointed is one of the witnesses of the will, his appointment is good nevertheless.

1197. *Guardians are trustees*, and therefore as betwixt him and his ward [his *cestui que trust*] a guardian is disabled from setting up the statute of limitations in bar of an account. (*Matthew v. Briss*, 17 L. T. Rep., 190.)

CODICILS.

1198. *Will and codicil together* make but one testament, (but see *n.* 1199.) The difference between them is that a later will is a *total* revocation of a disposition varied therein from what it was in a former will, though it contain no express words of revocation; but a codicil only revokes *so far* as it specifically alters the disposition, unless there be words of revocation. The other points of the disposition will, therefore, remain in force.

A codicil should always *refer* to the will, and declare that it is a codicil thereto and intended to form part of it. It may be on the same paper as the will or separate, and either folded with the will or put in a different place.

A codicil should conclude by confirming the will in all respects, except so far as it is altered by the codicil; and if it substitute or add to the gift in the will, it should say plainly whether the latter bequest is in substitution of the power or in addition to it. If it is in *substitution*, the best plan is to *revoke* that part of the will in express terms; if it is in addition, the original gift should be recited and then the addition bequeathed, saying that *it is in addition*.

1199. *Rules of construction*.—When some *specific thing* is bequeathed twice to the same legatee, whether in the same will or in a codicil annexed, the legatee will take a single gift only; and the same rule applies to legacies of quantity of the *same amount*, given to the same legatee by the *same instrument*, but not if given by *different instruments*; and for this purpose a *will* and *codicil* are distinct instruments, though on the same piece of paper, and the legatee will take both legacies, without reference to their being of equal or unequal amount. And so if two legacies are given for different causes; or out of different funds; or if one is a sum of money, and the other an annuity; or if one be absolute, and the other contingent, or conditional; or time and mode of payment differ, one will not merge in the other, but both will be payable, whether both bequests are in the same or in separate instruments.

The intent to substitute may be gathered by implication, as if testator declares one gift to be in addition to another, and then makes a gift without such declaration; and if two legacies in distinct instruments are of *same amount*, and express the same motive, the presumption will be that the second is only a repetition of the first; but this presumption arises only where there is such a double coincidence; and therefore, without the same *motives* and the same *sums*

U. W. O. LAW

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SUBSTITUTED GIFTS.—EXECUTION AND ATTESTATION.

are expressed in *both* instruments, the legatee will take both gifts. The motive will not be *inferred* from any relationship of the parties.

1200. *Substituted and additional legacies* are generally subject to the same incidents as the original gift; but the rule applies more universally to substitutions than to additions.

1201. A *codicil* for appointing or changing trustees or executors should recite the *will* and previous appointment, and the *reason* for the new appointment; and if the former trustees are living, their appointment should be revoked, with a declaration that the will shall be construed so as to have the same effect as if the names of the new trustees or executors had been inserted therein, instead of the original trustees or executors, in every part of the will in which the names of the latter occur, concluding with a clause confirming the will in every other respect.

WILLS.—EXECUTION AND ATTESTATION.

1202. *As to execution and attestation*, the historical learning on this subject, more especially with reference to the 32 Hen. viii., c. 1, [the Statute of Wills,] and the 29 Car. ii., c. 3, [the Statute of Frauds,] must be sought for in larger treatises. A few hints are all that we have room for here. Under the 32 Hen. viii., c. 1, a *letter* written by a man at sea, directing in what manner his lands should go, was a valid will, for the only solemnity required was that the instrument should be *in writing*, but it was not necessary that it should be the handwriting of the testator, or even that it should be signed by him; but mere instructions taken from the testator were held effectual, though his name did not occur in them. The 29 Car. ii., c. 3, remedied this laxity, and enacted [Sec. 5] that wills of real property should be signed by the testator, or by some one in his presence, and by his express direction, and attested by three or four credible witnesses, under pain of avoidance. The signature was not necessarily made in presence of the witnesses, but the acknowledgment of the testator was sufficient, nor did it signify in what part of the will the name appeared; so, where testator began his will "I, A. B., &c.," held a sufficient signature; but the English Wills Act, 1 Vic., c. 26, requires the signature to be at the foot or end of the will, and to be made or acknowledged in presence of the witnesses. The Canadian law requires *two* witnesses only to every will, and they must sign in presence of each other.

1203. *Signature*.—In addition to the remarks in *n.* 884, we may observe that a *stamp* or *mark* was a sufficient signature under the Statute of Frauds, and is so under the 1 Vic., c. 26; but a *scal* is not sufficient.

The signature may be by a third party, in the presence and by the direction of testator; and it is valid if so written by one of the two attesting witnesses.

WILLS.—SIGNATURE.—ATTESTATION.—SEAL.

The *place* where the signature is to be put was definitely settled in Canada, by 15 Vic., c. 21, which was passed for that express purpose by declaring that the signature shall be at "the foot or end" of the will, and then follow many saving explanations, intended as far as possible to give effect to wills which are not so signed; but the statute is imperative that no signature shall operate to give effect to any disposition written *underneath* it, or which *follows* it, nor to any which is *inserted* after the signature was made.

1204. *Attestation*.—The Statute of Frauds did not require the three witnesses to be present at the *same time*, nor that they should *see* the testator sign his name, nor that they should *know* what kind of instrument they were attesting; but Eng. Stat., 1 Vic., c. 26, and Canadian, 4 Will. iv., c. 1, which make two witnesses sufficient in every case, require that the signature should be made and acknowledged by the testator, in the presence of the witnesses, and that both should be present at the same time; but a third party may sign *for the testator* by his direction, and *the acknowledgment* of a signature already made will make it valid, but the acknowledgment must be made *before* the witnesses sign, or it will be invalid, and, according to the law of England, the witnesses must attest the signature in the presence of the testator, though not necessarily in the presence of each other. By the Canadian statute, 4 Will. iv., c. 1, the reverse is the law and the attestation must be by the witnesses in presence of *each other*, though not necessarily in the presence of the *testator*. It is essential also that the witnesses *see* the testator's *signature*, for they will not be allowed to attest what they do not know to *exist*. The fact that the witnesses *were* both present at the time of signature should appear on the face of the attestation, to prevent doubt, as thus:—

"Signed, sealed, published, and declared by the within named "A. B., the testator, as his last and only will and testament, in the "presence of us, who, present at the same time, [in his presence,] "at his request, and in the presence of each other, have herewith "subscribed our names as witnesses."

But if the witnesses do *not* sign in the testator's presence, the form must be altered accordingly.

The witnesses cannot sign by the hand of a *third party*, but must sign with their *own hand*; neither is tracing, with a *dry pen*, a name previously written sufficient; but a *mark* is a sufficient signing.

Where there are *several sheets* of paper, it is better for the testator and the witnesses to *sign every sheet*, and to notice that fact in the *testimonium*.

Sealing is not essential, though the practice is to put a seal to the testator's signature.

1205. *The date* comes at the end of the *testimonium*, and should never be omitted; for though it is not essential to the validity of a will, it is evidence of the time of its execution in case *another will*

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DATE.—ALTERATIONS.—PRESENCE.—WITNESSES.

should be found—for if both were without date, and no evidence to show which was last executed, both would be void for uncertainty.

1206. *Alterations and erasures* should be noticed by the witnesses, and their initials put opposite to them at the time of execution, and a memorandum added to the attestation clause in which the alterations should be described.

1207. *What is a sufficient signature in the testator's presence* has been a matter of much dispute. Common sense would dictate the propriety of avoiding all ground for dispute, by conforming to the meaning of the words literally where the law makes the testator's presence necessary. One point is settled. The witnesses must sign in the *same room* where the testator is; or if in an adjoining room, then in such a position that the testator can see them, if he chooses, from the place where he is in his own room; and it is not sufficient that *others*, who are in the testator's room, can and do see the witnesses sign in an adjoining room. The position of the testator must be such that he can see them himself; and if he could not see them if he looked, the attestation will be invalid; and even though the witnesses, so signing out of the range of testator's sight, retired to do so by his request, that will make no difference.

The testator's presence also must be not *bare presence only*, [for he may be unconscious,] but he must *know* what is being done; and therefore, even though testator be conscious, yet a *secret signing*, close to his elbow but unknown to him, would be invalid.

1208. *The witnesses* required by the Statute of Frauds were to be "credible witnesses," and Lord Mansfield decided that this included every one who would be a *competent* witness on a trial at law; but, by the act 1 Vic., c. 26, no person, however criminal or incapable of credit, is disabled from being an attesting witness to a will. But no attesting witness can take *any benefit* under the will which he attests. *Seem* also that crime or interest do not disqualify in Canada.

A creditor may be a witness though the devised property is charged with the payment of debts.

The executor of a will is a good witness.

1209. *Wills under powers* might, before 1 Vic., c. 26, (Eng.) have been by appointment unattested, or by a mere note in writing, if in pursuance of the power; or peculiar forms prescribed thereby must have been precisely followed; but by that statute *all wills* are to be executed in the manner directed by the act, and if so they are valid, though the execution is not in conformity with the terms of the power.

1210. *Estates pur autre vie*, if freehold and not disposed of by will, are chargeable in the hands of the heir, if they come to him by reason of *special occupancy*, as assets by descent, as in the case of lands in fee simple; but if there be no special occupant, then, whatever the tenure or the nature of such estates, they go to the

WILLS.—PERSONALTY.—REVOCATION.—CANCELLATION.

executor or administrator of the party who took the estate thereof by virtue of the grant; and if the same comes to the executor or administrator by reason of special occupancy, or by virtue of the 1 Vic., c. 26, it shall be assets in his hands, and be dealt with in the same manner as the personal estate of the testator or intestate.

1211. *Wills of personal estate* were not noticed in the fifth section of the Statute of Frauds; and even unfinished letters, written by way of instructions, were formerly sufficient to pass chattels, though the *onus* lay on the party sustaining such a will to show that the testator intended to execute it, but was prevented by some cause which made him incapable of rational action; but all questions arising from such a state of the law were set at rest in England, by the Statute of Wills, (1838,) which requires uniform execution and attestation.

1212. *Nuncupative wills* are invalid in Upper Canada, excepting the wills of soldiers or seamen in actual service.

1213. *The power of revocation* is inseparable from a will, and no words which it contains can control that power; but the manner of exercising the power is now exactly prescribed by the Wills Act, 1 Vic., c. 26, under which statute revocation must be with the *same formalities* as the execution of the will itself, or by burning, tearing, or otherwise destroying the same by the testator, or by some one in his presence, and by his direction, with the intention of revoking the same.

Revocation of a prior by a subsequent will will be *implied* by the *inconsistency* of the dispositions in the two wills; but if the latter will contains no express clause of revocation, the former will be revoked only *so far* as its dispositions are inconsistent with those of the latter.

If there be an express clause of revocation, the former will will be revoked, whether inconsistent or not.

A declaration of testator that he *intends*, at some *future time*, to dispose of his property will not revoke a will already made.

The *destruction* of a subsequent will, which contained no clause revoking a prior will, formerly revived that will as to real estate, but as to personalty the court required some act of republication, or some plain evidence of intention to revive. The Wills Act, however, makes re-execution necessary to a *revival*, or a codicil executed in conformity with the statute, and in every case such positive acts must be safer than any implication.

We remarked, *n.* 1198, that a codicil revokes a will so far only as its dispositions are inconsistent with those of the will, and leaves every other part of it untouched.

1214. *Cancellation* with the pen, by striking out the names of testator and witnesses, is not sufficient under 1 Vic., c. 26; and when the words "This will is cancelled by me, this 1st day of December, John Foray" was written at the top of the first page, and "Cancelled by me this 1st day of December" on each subsequent

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DESTRUCTION.—DUPLICATE.—ALTERATIONS.—MARRIAGE.

page, and "Cancelled by me this 1st day of December, 1850," at the end of the will, it was held *not to be revoked*.

1215. *Destruction by accident or mistake*.—If testator destroy his will by accident or mistake: as by throwing ink upon it instead of sand; or, having two wills, by destroying the one which he intended to operate; or if he obliterated or destroyed his will when under an access of insanity; none of these acts would effect a revocation. And if a *stranger* destroy a will, secondary evidence will be admitted to shew its contents.

1216. *Destruction of a duplicate* will imply intent to revoke the counterpart; but evidence to the contrary will be received. If the cancelled part be in testator's possession and the uncancelled part in the hands of another, then, since testator destroyed *all that was within his reach*, the inference is that he intended to revoke both; but if both were in his own possession, the act is equivocal.

1217. *Whether destruction of a will revokes a codicil* will depend upon whether the codicil is so connected with the will as to be incapable of independent action; but, in any case, evidence of intention may be given.

1218. *Revocation of a will under a misapprehension of facts* will have no effect; but it must be shown, beyond all reasonable doubt, that the erroneous supposition as to facts was the *cause* of the revocation.

1219. *Alterations, obliterations, and erasures* did not, under the Statute of Frauds, revoke the will, except as to the particular part so altered, &c.; but the Wills Act, 1 Vic., c. 26, makes all obliterations, interlineations, and other alterations after execution of no effect, [except so far as the words or effect of the will before alteration is not apparent,] without such alteration is executed in the same manner as the will itself.

Parol evidence is admissible to show what the original words were that have been erased.

In the absence of evidence to the contrary, the inference is that alterations or erasures were made after the will was executed.

1220. *Subsequent disposition of devised property*.—As to wills prior to 1838, a subsequent conveyance of lands devised *revoked the will*, and even a reconveyance of same property did not revive it; but now, by 1 Vic., c. 26, no such conveyance prevents the will from operating upon any property, real or personal, of which the testator may have power to dispose at the time of his death, for the will now speaks, not as formerly from the time it was *made*, but from the time of the testator's death. A subsequent conveyance will deprive the devisee of all benefit under the devise, and he will have no claim on the proceeds of the sale, though the will directed its conversion and the proceeds can be traced to an investment.

1221. *Marriage and the subsequent birth of a child* revoke a will,

and as to a *woman* marriage alone was sufficient, and her will is not revived by the death of her husband; and, by 1 Vic., c. 26, marriage alone will be a revocation of a will made previously, by either *man* or *woman*, but the act is silent as to the birth of children, and therefore, if testator were married but childless when he made his will, the birth of a child will not affect its operation.

1222. *The republication of a will*, whether of real or personal estate, might, before the Statute of Frauds, have been by mere word of mouth; but now, as said in *n.* 1220, a will speaks from the time of death, and not from that of publication, and will pass, under the general *residuary devise*, all such estate as the testator was entitled to at death, without regard to the time of its acquisition; and even as to wills made prior to 1838, a codicil and republication, after the 1 Vic., c. 26, brings the whole will under the operation of that act.

FORMS.

1223. WILL of REAL and PERSONAL ESTATE, for the BENEFIT of the TESTATOR'S WIFE and CHILDREN.

I, A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, DECLARE this to be my last will and testament.

I BEQUEATH to my wife, C. B., all the pictures, prints, books, plate, linen, china, wines, liquors, provisions, household goods, furniture, houses, carriages, chattels, and effects, [other than money or securities for money,] which shall, at my death, be in or about my dwelling-house, or the out-buildings or grounds thereof.

I BEQUEATH to my said wife the sum of _____ dollars, to be paid to her within one calendar month after my death, without interest.

I DEVISE all my real estate, [except what I otherwise devise by this my will, and except estates vested in me upon trust,] unto E. F., of _____ of _____, G. H., of _____ of _____, and I. K., of _____ of _____, their heirs, executors, and administrators, respectively, according to the nature and tenure thereof, UPON TRUST, that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators, respectively, of such survivor, shall, as soon as conveniently may be, sell the same, either together or in parcels, and either by public auction or private contract, and may buy in, and rescind any contract for sale, and resell, without being responsible for any loss oc-

U. W. O. LAW

FORMS.

caused thereby, and execute and do all such assurances and acts for effectuating any such sale as they or he shall think fit.

I BEQUEATH all my personal estate, [except chattels real, included in the general devise herein before contained of real estate, and except what I otherwise bequeath by this my will,] unto the said E. F., G. H., and I. K., their executors and administrators, UPON TRUST that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall, as soon as conveniently may be, call in, sell, and convert into money such part of my said personal estate as shall not consist of money.

AND I DECLARE that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators, respectively, of such survivor, shall, out of the moneys to arise from the sale of my said real estate, and from calling in, sale, and conversion into money of such part of my said personal estate as shall not consist of money, and the money of which I shall be possessed at my death, PAY my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will, or any codicil thereto; AND shall invest the residue of the said moneys, in the names or name of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, [herein after called the trustees or trustee,] in, (*here describe the stocks, funds, shares, or securities in which the investment is to be made.*)

AND I DECLARE that the said trustees or trustee may vary the said stocks, funds, shares, and securities, at their or his discretion; AND shall pay the annual income of the said trust funds to my said wife, so long as she shall continue my widow; AND after her death or marriage, shall hold the said moneys, stocks, funds, and securities, and the annual income thereof, upon trust, for all or any such one or more of my children, and in such manner and form in every respect as my said wife shall, so long as she shall remain unmarried, by any deed or deeds, or by will or codicil, appoint; AND IN DEFAULT of any such appointment, and so far as no such appointment shall extend, in trust for all my children, or any my child, who, being sons or a son, shall attain twenty-one years, or, being daughters or daughter, shall attain that age or marry, and if more than one, in equal shares; PROVIDED ALWAYS that no child, taking any part of the said premises under any such appointment as aforesaid, shall, in default of appointment to the contrary, be entitled to any share of that part of the said premises of which no such appointment shall be made, without bringing his or her appointed share into hotchpot; PROVIDED ALSO that the said trustees or trustee may, after the death or marriage of my said wife, which shall first happen, or previously thereto, if she shall so direct in writing, raise any part or parts of the then expectant pre-

WILLS.

sumptive or vested share or fortune of any child under the trusts herein before declared, not exceeding in the whole, for any such child, one half-part of his or her then expectant, presumptive, or vested share or fortune, and apply the same for his or her advancement or benefit.

AND I HEREBY DECLARE that the said trustees or trustee shall, after the death or second marriage of my wife, which shall first happen, apply the whole, or such part as they or he shall think fit, of the annual income of the share or fortune to which any child shall, for the time being, be entitled in expectancy under the trusts herein before declared, for or toward the maintenance or education of such child, either directly or to his or her guardians or guardian, without seeing to the application thereof, or requiring any account of the same; AND SHALL, during such suspense of absolute vesting, accumulate the residue [if any] thereof, in the way of compound interest, by investing the same, and the resulting income thereof, from time to time, in or upon any such stocks, funds, shares, or securities as are herein before mentioned, for the benefit of the person or persons who, under the trusts herein contained, shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulation of any preceding year or years, and apply the same for or toward the maintenance or education of the child or children who shall, for the time being, be presumptively entitled to the same respectively.

AND, if there shall be no child of mine living at my death, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, from and after the death or marriage of my said wife, and such default or failure of children, I NEQUEATH the said moneys, stocks, funds, shares, and securities, or so much thereof as shall not have become vested, or been applied under the trusts aforesaid, unto, &c.

AND I HEREBY DECLARE that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators, respectively, of such survivor may, at any time or times before all my said real estate shall have been sold, demise all, or any part thereof, at rack-rent, for any term of years absolute, not exceeding twenty-one years, to take effect in possession.

AND I FURTHER DECLARE that, until all my said real and personal estate shall be sold and converted into money, the said trustees or trustee for the time being thereof, respectively, shall apply the income of such part thereof as shall for the time being remain unsold or unconverted, after payment thereof of all taxes, expenses of repairs, insurance, and other outgoings, to the person or persons, for the purposes and in the manner, to whom, and for, and in which the annual income of the stocks, funds, shares, or securities

I O R M S.

aforsaid would be payable and applicable if such real and personal estate had been then sold, and the net surplus moneys arising from such sale had been invested as aforesaid.

AND I HEREBY DECLARE that the receipt in writing of the trustees or trustee for the time being acting in the execution of any of the trusts hereof, for the purchase-money of property sold, or for any moneys, funds, shares, or securities paid or transferred to them or him, in pursuance hereof, or of any of the trusts hereof, shall effectually discharge the purchaser or purchasers, or other the person or persons paying or transferring the same, therefrom and from being concerned to see to the application, or being answerable for the non-application or misapplication thereof.

AND I HEREBY DECLARE that, if the said trustees hereby appointed, or any of them, or any trustee or trustees to be appointed as herein after is provided, shall die, or desire to be discharged, or refuse or become incapable to act, then and so often the said trustees or trustee [and, for this purpose, any retiring trustee shall be considered a trustee] may appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act; AND, upon every such appointment, the said trust premises shall be so transferred that the same may become vested in the new trustee or trustees, jointly with the surviving or continuing trustees or trustee, or solely, as the case may require; and every such new trustee shall [both before and after the said trust premises shall have become so vested] have the same powers, authorities, and discretions as if he had been hereby originally appointed a trustee.

AND I DECLARE that the trustee for the time being of this my will, shall be chargeable only with such moneys as they or he, respectively, shall actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person, in whose hands any of the trust moneys shall be placed, nor for the insufficiency or deficiency of any stocks, funds, shares, or securities, nor otherwise for involuntary losses; AND that the said trustees or trustee for the time being may reimburse themselves or himself, out of the moneys which shall come to their or his hands under the trusts aforesaid, all expenses to be incurred in or about the execution of the aforesaid trust.

I DEVISE all the freehold and other estates vested in me upon mortgage unto the said E. F., G. H., and I. K., their heirs and assigns, subject to the equity of redemption subsisting therein, respectively; but the money secured on mortgages shall be considered as part of my personal estate.

AND I APPOINT the said E. F., G. H., and I. K. executors of this my will, and authorize the acting executors or executor for the time being of this my will to satisfy any debts claimed to be ow-

WILLS.

ing by me, or my estate, and any liabilities to which I or my estate may be obliged to be subject, upon any evidence they or he shall think proper, and to accept any composition or security for any debt, and to allow such time for payment [either with or without taking security] as to the said acting executors or executor shall seem fit, and also to compromise or submit to arbitration and settle all accounts and matters belonging or relating to my estate, and generally to act in regard thereto, as they or he shall think expedient, without being responsible for any loss thereby occasioned.

AND I APPOINT my said wife, and the said E. F., G. H., and I. K., guardians of my infant children.

IN WITNESS WHEREOF, I, the testator, have hereunto set my hand and seal, this _____ day of _____

SIGNED, SEALED, AND DELIVERED by the testator, in the presence of us, who, [in his presence] at his request, and in the presence of each other, have hereunto subscribed our names as witnesses. } A. B.

{ L. S. }

E. F., of, &c.
G. H., of, &c.

1224. WILL of a PERSON giving all his PROPERTY to his WIFE, and appointing her EXECUTRIX.

This is the last will and testament of one A. B., of _____ I give, devise, and bequeath all my real estate, of whatever description, and wheresoever situate; AND ALSO all my leasehold and other personal estate and effects, whatsoever and wheresoever, UNTO and TO THE USE of my wife, C. B., her heirs, executors, administrators, and assigns, according to the nature and tenure thereof: AND I APPOINT my said wife executrix of this my will.

IN WITNESS WHEREOF I have hereunto set my hand, this _____ day of _____, 186 _____

SIGNED by the testator, in the presence of us, who, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses. }

A. B.

E. F., of, &c.
G. H., of, &c.

There is no necessity, in a simple will of this nature, to direct the payment of debts, and funeral and testamentary expenses, as the law requires that, without any direction by the testator. It is only necessary to insert such a direction in a will when the testator

U. W. O. LAW

FORMS.

intends charging any *specific* property with the payment of his debts.

1225. GIFTS *not in SETTLEMENT*.—*All TESTATOR'S property to WIFE.*

I, A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, revoke my previous testamentary dispositions, and declare my will to be as follows:—

(1) I DEVISE AND BEQUEATH my real and personal estate [subject as to trust and mortgage estates to the equities subsisting therein] UNTO and TO THE USE of my wife, her heirs, executors, and administrators.

(2) I APPOINT my wife guardian of my infant children during their respective minorities, and executrix of this my will.

IN WITNESS, &c., (*as in n. 1223.*)

1226. *All TESTATOR'S property to WIFE, with LEGACIES to CHILDREN.*

I, A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, revoke my previous testamentary dispositions, and declare my will to be as follows:—

(1) I BEQUEATH to every child of mine who shall be living at or born after my death, [or be then dead, leaving issue then living,] and who shall attain twenty-one years, or [being a daughter] marry, a legacy of _____ dollars, without interest.

(2) SUBJECT as aforesaid, I devise and bequeath my real and personal estate [subject as to trust and mortgage estates to the equities subsisting therein] UNTO and TO THE USE of my wife, her heirs, executors, and administrators.

(3) I APPOINT my wife guardian of my infant children during their respective minorities, and executrix of this my will.

IN WITNESS, &c., (*as in n. 1223.*)

1227. LEGACIES *and ANNUITIES to TESTATOR'S BROTHERS and SISTERS*.—*RESIDUE to one BROTHER.*

I, A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, revoke my previous testamentary dispositions, and declare my will to be as follows:—

WILLS.

- (1.) I BEQUEATH to A. and B. a legacy of _____ dollars apiece.
- (2.) I BEQUEATH to my father, during his life, an annuity of \$200; to my brother X., [if he shall be living at the death of my father, and thenceforth during his life,] an annuity of \$200; to my mother during her life, an annuity of \$200; to each of my sisters, C. D. and E., who shall be living at the death of my mother, and thenceforth during her life, an annuity of \$50; to my sister, F., [if she shall be living at the death of my mother, and thenceforth during her life,] an annuity of \$100; the said annuities to be charged exclusively on my real estate, and paid by equal half-yearly payments, and so that the annuity to each of my said sisters shall be paid to her for her separate use, and no anticipation thereof shall be valid.
- (3.) I DEVISE my real estate UNTO and TO THE USE of my brother Y., his heirs, executors, administrators, and assigns; as to trust and mortgage estates subject to the equities subsisting therein, and as to all other estates [charged as aforesaid] absolutely.
- (4.) I BEQUEATH the residue of my personal estate to my brother Y., his executors, administrators, and assigns, absolutely, and appoint him my executor.
- IN WITNESS, &c., (as in n. 1223.)

1228. SPECIFIC DEVISES and BEQUESTS.—RESIDUE to TESTATOR'S NEPHEW.

I, A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, revoke my previous testamentary dispositions, and declare my will to be as follows:—

(1.) I DEVISE AND BEQUEATH my real estate in the county of _____, and the county of _____, UNTO and TO THE USE of C., his heirs, executors, and administrators, absolutely.

(2.) I BEQUEATH my leasehold premises, No. _____ street, in _____, to D., her executors and administrators, for the residue of my term therein, and so that she, her executors and administrators, shall discharge and keep my general estate indemnified against all liability under the lease thereof.

(3.) I BEQUEATH to V. the sum of _____ dollars, [free from legacy duty,] to W. my gold watch, to X. all other my trinkets and my plate.

(4.) I DEVISE AND BEQUEATH my real and personal estate, not hereby otherwise disposed of, [subject as to trust and mortgage estates to the equities subsisting therein,] to my nephew, Y., his heirs, executors, and administrators, and appoint him my executor.

IN WITNESS, &c., (as in n. 1223.)

U. W. O. LAW

FORMS.

1229. REALTY and PERSONALTY—TRUSTS of the whole for SISTER for LIFE, and afterward for her ADULT CHILDREN absolutely.

I, A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, revoke my previous testamentary dispositions, and declare my will to be as follows:—

(1.) I DEVISE AND BEQUEATH my real and personal estate UNTO and TO THE USE of _____, and _____, their heirs, executors, and administrators; UPON TRUST that they, and the survivor of them, his executors or administrators, or their or 'his assigns, shall pay the income thereof to my sister, C. D., during her life, for her separate use, and so that no anticipation thereof shall be valid, [with power for my said trustees and trustee to lease, repair, and insure against fire any houses or land hereby devised, and to retain in specie all or any leaseholds and of my personal estate;] and, after my said sister's death, in trust for my nieces, _____ and _____, their heirs, executors, and administrators, in equal shares.

(2.) PROVIDED (1.) That the surviving or continuing trustees or trustee [or the executors or administrators of the last surviving or continuing trustee] may appoint one or more persons in the place and with the powers of every original or future trustee, who shall die, retire, or be abroad, or refuse or become incapable to act, the premises being on each appointment either revested or not at discretion. The vacancies may be supplied at the same or several times, and in any order, [and so that any one or more may be left unsupplied,] and, if occasioned by the death of an original trustee or trustees, whether such death shall precede mine or not; and every refusing or retiring trustee shall be deemed continuing for the purpose of supplying, if willing, his own or any other then subsisting vacancy: [(2.) THAT no trustee shall be responsible for deferring the sale of any real estate, notwithstanding any consequent loss or expiration of interest:] (3.) THAT every trustee and executor of my will, who may be a solicitor or attorney [including the said _____] shall be entitled to the same professional remuneration as if he had not been such trustee or executor.

(3.) I APPOINT my wife [and such persons as she shall by will or codicil appoint] the guardian and guardians of my children during their respective minorities; I DEVISE my trust and mortgage estates [subject to the equities subsisting therein] UNTO and TO THE USE of the said _____, their heirs, executors, administrators, and assigns, the mortgage money being taken as part of my personal estate; AND I appoint the said _____ my executors, with power for them and every acting executor of my will to compound or satisfy claims against my estate upon any evidence, and

WILLS.

to accept any composition or security for, or allow time [either with or without composition or security] for the payment of debts owing to my estate, without liability for loss.

IN WITNESS WHEREOF, &c., (*as in n. 1223.*)

1230. WILL of a MARRIED WOMAN appointing an absolute INTEREST in PERSONALTY to her HUSBAND, [with legacies to other persons,] under the usual SETTLEMENT POWER in default of CHILDREN.

I, M. B., the wife of A. B., [formerly M. H., spinster,] in exercise of my power under my marriage settlement [dated, &c.] with the said A. B., revoke my previous testamentary dispositions, and declare my will to be as follows:—

(1.) IN EXERCISE of my said power, I appoint that [on failure of the trusts of the said settlement preceding the trust for me if I should survive my said husband, otherwise for such person or persons as I should by will or codicil appoint,] the premises comprised in the settlement shall be held [after paying my funeral and testamentary expenses and debts] As to _____ dollars, in trust for L. M.; as to _____ dollars, in trust for N. O.; AND as to the residue thereof, IN TRUST for my said husband.

(2.) I APPOINT the trustees or trustee of the said settlement at my death executors or executor of my will.

IN WITNESS WHEREOF, &c., (*as in n. 1223.*)

1231. WILL of a MARRIED WOMAN appointing a LIFE ESTATE in PERSONALTY to a HUSBAND.

I, _____, the wife of A. B., [formerly _____, spinster,] in exercise of my power under the will [dated, &c.] of X. Y., appoint that the trustees or trustee of the said will shall pay the income of the trust premises to my said husband [if he shall survive me] during his life.

IN WITNESS WHEREOF, &c., (*as in n. 1223.*)

1232. WILL of HUSBAND appointing LIFE ESTATE in PERSONALTY to WIFE.

I, A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, revoke my previous testamentary dispositions, and declare my will to be as follows:—

FORMS.

(1.) IN EXERCISE of my power under the will [dated, &c.] of X. Y., I appoint that the trustees or trustee of the said will shall pay the income of the trust premises therein comprised to my wife [if she shall survive me] during her life.

(2.) I BEQUEATH, (*bequests, powers, and appointment of executors as in other wills.*)

IN WITNESS WHEREOF, &c., (*as in n. 1223.*)

1233. WILL of PERSONALTY.—VERY SPECIAL.

I, A. B., of _____ of _____, in the county of _____, and Province of Canada, do hereby revoke my previous testamentary dispositions, and declare my will to be as follows:—

(1.) I BEQUEATH to my brothers, C. D. and E., and to my sister, G. H., my plate and trinkets, equally.

(2.) I BEQUEATH my personal estate, not hereby otherwise disposed of, to M. N., T. M., and S. P., their executors, administrators, and assigns; as to my insurance shares, UPON TRUST to pay the income thereof [including bonuses] to my father's widow, X. Y., during her life, and subject thereto, in trust for my niece, J. K., if she shall attain twenty-one years or marry, otherwise for my nephews, L. M. and N. O., equally; the first bonus after the death of the said X. Y., not to be apportioned in her favor, but to go as income of the year in which it shall become payable; AND as to the residue thereof, UPON TRUST that said M. N., T. M., and S. P., or the survivors or survivor of them, his [executors or administrators] or their or his assigns, shall either retain or realize my invested personalty and the investments under this trust, and shall realize all any other personalty, investing the moneys realized [after paying my funeral and testamentary expenses, debts, and legacies] in or upon any stocks, funds, shares, or securities, (*here name and except any that are objectionable,*) or the personal security of any person.

(3.) THE INCOME of the trust premises shall be paid as follows, that is to say: DURING such part of the joint lives of my said sister, G. H., and her aunt, U. V., as my said sister shall have done nothing whereby

WILLS.

lives of sister and aunt inalienably to sister.

the same, or any part thereof, might [if her absolute property] become payable to some other person, to my said sister, for her separate use; AND after determination of such trust otherwise than by the death of my said sister, G. H., or the said U. V., and thenceforth during their joint lives, UPON TRUST, in the sole discretion of my said trustees or trustee, to pay or apply the same, or any part thereof, to or for the benefit either of my said sister or of the persons or any person who, if my said sister were then dead, would be entitled thereto under the subsequent trusts. SUBJECT as aforesaid, the premises shall be held IN TRUST [if my said sister shall die in the lifetime of the said U. V.] for the children equally, or child, if but one, of my said sister, attaining twenty-one years, or [being daughters or a daughter] marrying; and, on failure of the foregoing trusts, IN TRUST, in equal shares, for such of my said brothers, C. D. and E., as shall be living at my death, or shall be then dead leaving issue then living, their respective executors, administrators, and assigns.

On death of sister, aunt her surviving, to sister's children

Devise over to brothers.

Power to raise and apply funds for maintenance and education.

(4.) PROVIDED (1.) THAT my said trustees or trustee may raise and apply for any minor's benefit half or less of his or her interest under the trust, and apply the income of his or her said interest for his or her maintenance and education, [payment to a guardian being deemed such application,] and accumulate any surplus upon the trusts, and with the powers of the principal from which the same proceeded, or the income thereof; (2.) THAT the trustees' receipts shall discharge persons paying purchase or other money, or transferring trust property, from liability in regard to the application thereof; (3.) THAT the surviving or continuing trustees or trustee [or the executors or administrators of the last surviving or continuing trustee] may appoint one or more persons in the place and with the powers of every original or future trustee who shall die, retire, or be abroad, or refuse or become incapable to act, the premises being on each appointment either revested or not at discretion. The vacancies may be supplied at the same or several times, and in any order, [and so that any one or more may be left unsupplied,] and, if occasioned by the death of an original trustee or trustees, whether such death shall precede mine or not; and every refusing or retiring trustee shall be deemed continuing, for the purpose of supplying, if willing, his own or any other then subsisting vacancy; (4.) THAT

Trustees' receipts to be discharges.

Appointment of new trustees.

U. W. O. LAW

FORMS.

every trustee and executor of my will who may be a Payment of solicitor or attorney [including the said] shall be entitled to the same professional remuneration as if he had not been such trustee or executor. solicitor as such, though also trustee.

(5.) I APPOINT my wife [and such persons as she shall by will or codicil appoint] the guardian and guardians of my children during their respective minorities; Appointment of guardians.
I DEVISE my trust and mortgage estates [subject to the equities subsisting therein] UNTO and TO THE USE of the said , their heirs, executors, administrators, and assigns, the mortgage money being taken as part of my personal estate; AND I APPOINT the said M. N., T. M., and S. P. my executors, with power for them and every acting executor of my will to compound or satisfy claims against my estate upon any evidence, and to accept any composition or security for, or allow time [either with or without composition or security] for the payment of debts owing to my estate, without liability for loss. Appointment of executors

IN WITNESS, &c., (as in n. 1223.)

1234. WILL.—SPECIFIC DEVISE of REALTY.—SPECIFIC BEQUEST of BOOKS, FURNITURE to furnish a residence for TESTATOR'S WIFE, PICTURES, and ARTICLES of VERTU.—ANNUITY to WIFE, DEDUCTING her LIFE INTEREST under other SETTLED PROPERTY.—LEGACY of \$ in TRUST for a SON and DAUGHTER of TESTATOR, not advanced by him.—RESIDUE, as to ONE MOIETY to TWO ADVANCED CHILDREN absolutely; as to the other MOIETY to the TWO CHILDREN not advanced, the DAUGHTER'S INTEREST in the LEGACY and RESIDUE being settled upon HERSELF and her CHILDREN.

I, A. B., of of , in the county of , and Province of Canada, revoke my previous testamentary dispositions, and declare my will to be as follows:—

- (1.) I DEVISE my lands in of , called , in the county Lands to son, , with the appurtenances, TO THE USE of my son, A., and his heirs.
- (2.) I BEQUEATH to my wife and two daughters, B. Specific books and C., such octavo volumes [not exceeding twenty-five to wife and apiece] as they shall respectively select from my library; daughters. to the said A. the residue of my library; to my said

WILLS.

Furniture sufficient for a small house to wife.

wife such articles of my household furniture as my executors herein after appointed shall select as sufficient to furnish a small house [the selection so made to be conclusive on my said wife, both as to the choice and sufficiency for the purpose aforesaid of the articles selected;] to my said wife, during her life, an annuity of \$

Annuity to wife, deducting her life interest, under other settled property.

, payable in equal parts, half-yearly, and first at the expiration of six calendar months from my death [but so that from each payment thereof my trustees or trustee for the time being shall retain and appropriate, as income arising from my residuary estate, herein after bequeathed, an amount equal to the clear income payable to my said wife during the then preceding half-year, in respect of her life interest, under the will [dated, &c.,] of X. Y., in a certain estate at aforesaid;] and to M. N., T. M., and S. P., their executors, administrators, and assigns, \$

A specific fund in trust.

to be held upon the trusts and subject to the clauses and provisos herein after expressed concerning the same.

Specific undisposed residue in trust to divide in specie.

(3.) I BEQUEATH my *personal* estate, not hereby otherwise disposed of, unto the said M. N., T. M., and S. P., their executors, administrators, and assigns; As to pictures, prints, coins, trinkets, and other articles of vertu, UPON TRUST to divide the same in specie, as nearly equal as may be, among my said wife, my said children, B. and C., and my child D. [and so that the division made by my said trustees or trustee shall be conclusive upon my said wife and children;] AND as to all other my personal estate, UPON TRUST that said M. N., T. M., and S. P., or the survivors or survivor of them, his [heirs] executors or administrators, or their or his assigns, shall either retain or realize my invested personalty and the investments under this trust, and shall realize all my other personalty, investing the moneys realized and the said sum of \$, and my ready money [with the sale moneys of my real estate, devised in trust for sale,] [after paying my funeral and testamentary expenses, debts, and legacies] in or upon any stocks, funds, shares, or securities, (*here name and except any objectionable securities.*) or the personal security of any person.

Residue of personalty in trust, with proceeds of realty under trusts for sale, to be invested.

In trust to pay annuity to wife.

(4.) THE TRUST PREMISES shall be held UPON TRUST, to satisfy, out of the income thereof, [other than arising from the said sum of \$,] the said annuity to my said wife, without being obliged to appropriate or purchase any [\$3 per cent. consols,] or other specific

FORMS.

investment for that purpose; AND *subject thereto*, As to Two-fourths to
two fourth parts thereof, [excepting the said sum of two advanced
\$, and the investments and income thereof,] children abso-
IN TRUST for the said A. and B., in equal shares; As to
one other fourth part thereof, together with a moiety Other fourth
of the said sum of \$, and the investments and moiety of
and income thereof, UPON TRUST to pay the income specific fund to
thereof to the said C., during her life, for her separate daughter not
use, and so that no anticipation thereof shall be valid; trust inalien-
AND after her death, as to both principal and income, able for
IN TRUST for her children equally, [or child, if but one,] herself and
attaining twenty-one years, or [being daughters or a children.
daughter] marrying; AND, if there shall be no such
child of the said C., IN TRUST for such person or per-
sons as she shall, whether covert or sole, by will or
codicil, appoint; AND as to the remaining fourth part Remaining
thereof, and the other moiety of the said sum of \$ fourth and
, and the investments and income thereof, IN moiety to
TRUST for the said D., if he shall attain twenty-one other son
years. absolutely.

PROVIDED (1.) THAT my said trustees or trustee may Power to
[without prejudice to the trusts preceding the creation make
of such interest] raise and apply for any minor's bene- advancements.
fit half or less of his or her interest under the trust,
and apply the income of his or her said interest for his
or her maintenance and education, [payment to a
guardian being deemed such application,] and accumu-
late any surplus upon the trusts, and with the powers
of the principal from which the same proceeded, or the
income thereof, [and may also (subject to such consent
as aforesaid) lease my unsold real estate, devised in And to lease.
trust for sale, for twenty-one years or less, in possession
at rack rent:] (2.) THAT the trustees' receipts shall dis- Trustees' re-
charge persons paying purchase or other money, or ceipt clause.
transferring trust property, from liability in regard to
the application thereof: (3.) THAT the surviving or Appointment
continuing trustees or trustee [or the executors or ad- of new
ministrators of the last surviving or continuing trustee] trustees.
may appoint one or more persons in the place and with
the powers of every original or future trustee who shall
die, retire, or be abroad, or refuse or become incapable
to act, the premises being on each appointment either
revested or not at discretion. The vacancies may be
supplied at the same or several times, and in any or er,
[and so that any one or more may be left unsupplied,]
and, if occasioned by the death of an original trustee

WILLS.

Trustees' indemnity clause.

or trustees, whether such death shall precede mine or not, and every refusing or retiring trustee shall be deemed continuing for the purpose of supplying, if willing, his own or any other then subsisting vacancy : [(4.) THAT no trustee shall be responsible for deferring the sale of my real estate, notwithstanding any consequent loss or expiration of interest:] (5.) THAT every trustee and executor of my will, who may be a solicitor or attorney, [including the said S. P.,] shall be entitled to the same professional remuneration as if he had not been such trustee or executor.

Guardians.

Trust and mortgage estates.

I APPOINT my wife [and such persons as she shall by will or codicil appoint] the guardian and guardians of my children during their respective minorities; I DEVISE my trust and mortgage estates [subject to the equities subsisting therein] UNTO and TO THE USE of the said M. N., T. M., and S. P., their heirs, executors, administrators, and assigns, the mortgage money being taken as part of my personal estate; AND I APPOINT the said M. N., T. M., and S. P. my executors, with power for them and every acting executor of my will to compound or satisfy claims against my estate upon any evidence, and to accept any composition or security for, or allow time [either with or without composition or security] for the payment of debts owing to my estate, without liability for loss.

Executors.

IN WITNESS, &c., (as in n. 1223.)

1235. APPOINTMENT by a WIFE of PERSONAL ESTATE settled upon her by a MARRIAGE CONTRACT; to take EFFECT on her DECEASE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, E. B., wife of G. B., of of , in the county of and Province of Canada, , send greeting.

WHEREAS, by indentures tripartite, bearing date, &c., made between the said E. B., [by her then name and addition of E. C., of of , spinster,] of the first part, the said G. B., of the second part, and W. B. and J. B., of the third part, it was agreed by the said parties that the said W. B. and J. B., amongst other things, should stand possessed of certain capital stock in , in the said indenture mentioned to have been transferred, on the day of the date thereof, to the said W. B. and J. B., by the said E. B., and any other estate which might thereafter be

FORMS.

substituted therefor, IN TRUST to receive and collect the incomes, profits, and dividends of the said capital stock or substituted estate, so often and whenever the same should be payable, and pay over the same, or so much thereof as the said E. B. should not direct to be added to the principal for the purpose of accumulation to the said E. B., during her coverture, upon her sole and separate receipt therefor, and free from the control or interference of her said husband or any other person whatsoever; AND IN TRUST, upon the decease of the said E. B. during the lifetime of her said husband, to transfer and pay over the said capital stock, or substituted estate, to such person or persons as she, the said E. B., by any instrument or note in writing subscribed by her in presence of at least two credible witnesses, should order and appoint to take and receive the same;

Now KNOW YE that I, the said E. B., by virtue and in pursuance of the said powers and limitations in the said indentures contained, and in pursuance of every other power and authority in me now being, do direct and appoint the said W. B. and J. B., as soon after my decease as conveniently may be, to transfer and pay over to C. D., of _____, the whole of the said capital stock or substituted estate, and the incomes, profits, and dividends thereon accrued, which shall not have been received by me, to her sole and separate use, according to the limitations, trust and true intent of the said indenture.

IN WITNESS, &c., (as in n. 1223.)

1236. CONDITION *that the OBLIGOR shall suffer his INTENDED WIFE to make a WILL.*

WHEREAS a marriage is shortly intended to be solemnized between the above bounden L. R. and one M. W.;

Now THE CONDITION of this obligation is such that, if, after the said intended marriage shall be solemnized between the said L. R. and M. W., the said L. R. shall quietly permit and suffer the said M. W., in due form of law, to sign, seal, publish, and declare her last will and testament in writing, and in and by the same to bequeath, or otherwise to dispose of, at her free will and pleasure, unto such person or persons as to her shall seem meet, the sum of \$ _____, of lawful money of Canada; AND FURTHER, in case of the said L. R. surviving the said M. W., if the said L. R., his heirs, executors, or administrators, or any of them, upon reasonable request to him or them in that behalf made by any such person or persons to whom she, the said M. W., shall give and bequeath any moneys, not exceeding in the whole the said sum of \$ _____, or the value

WILLS.

thereof, shall pay, or cause to be paid, all and every such moneys, so bequeathed as aforesaid by the said M. W., in such manner as shall be by her appointed; THEN this obligation to be void, otherwise to remain in full force and virtue.

1237. PROVISION for CHILDREN born after the EXECUTION of a WILL.

I GIVE, BEQUEATH, AND DEVISE all the rest, residue, and remainder of my real and personal estate to my children now living, or who may be living at the time of my decease, or born after my decease, to be divided equally between them, share and share alike.

1238. *The SAME in ANOTHER FORM.*

I GIVE AND BEQUEATH to each and every of my children, born subsequent to the execution of this my last will and testament, the sum of dollars, to be paid in the same manner as the other legacies herein before mentioned.

1239. DEVISE of an ANNUITY.

I GIVE, DEVISE, AND BEQUEATH to my wife, E. B., and her assigns, for and during the term of her natural life, one annuity, or clear yearly rent, or sum of , free of all taxes and other deductions, to be issuing and payable out of the real estate above devised to my son, C. B., in equal half yearly payments, at , on the day of January and July, in each and every year as aforesaid; AND I do hereby charge the said real estate with the payment of the said annuity, yearly rent, or sum of dollars, at the times and in the manner aforesaid; FULLY empowering and authorizing my said wife, and her assigns, provided the said annuity, or any part thereof, shall remain unpaid after the expiration of twenty days from the time when the same shall be due and payable as aforesaid, to enter into ALL AND SINGULAR the premises charged with the annuity as aforesaid, and the rents, issues, and profits thereof, to receive and take, until she and they be therewith and thereby, or by the person or persons then entitled to the immediate possession of the premises, paid and satisfied, the same and every part thereof, and all the arrears then due and payable, together

FORMS.

with her and their costs, damages, and expenses, paid out and sustained by reason of the non-payment thereof, or of any part thereof.

1240. WILL of REAL and PERSONAL ESTATE.—*Short Form.*

THIS IS THE LAST WILL AND TESTAMENT of me, _____, made this _____ day of _____, in the year of our Lord one thousand eight hundred and _____, as follows:—

I GIVE, DEVISE, AND BEQUEATH all my messuages, lands, tenements, and hereditaments, and all my household furniture, ready money, securities for money, money secured by life assurance, goods, and chattels, and all other my real and personal estate and effects, whatsoever and wheresoever, unto _____, heirs, executors, administrators, and assigns, to and for _____, and their own absolute use and benefit, according to the nature and quality thereof respectively; SUBJECT only to the payment of my just debts, funeral and testamentary expenses, and the charges of proving and registering this my will. AND I APPOINT _____ executor of this my will, and hereby revoke all other wills.

IN WITNESS WHEREOF, &c., (as in n. 1223.)

1241. CODICIL appointing a NEW TRUSTEE.

I, A. B., of _____ of _____, in the county of _____, and Province of Canada, _____, DECLARE this to be a codicil to my last will and testament, dated the _____ day of _____.

WHEREAS E. F., in my said will named, has lately died;

NOW I HEREBY APPOINT L. M., of _____ of _____, to be a trustee and executor of my said will, and a guardian of my infant children, in the place of the said E. F.; and I declare that my said will shall accordingly be read and construed as if the name of the said L. M. had been inserted therein throughout, instead of the name of the said E. F.; and in all other respects I confirm my said will.

IN WITNESS WHEREOF, &c., (as in n. 1223.)

1242. CODICIL appointing a TRUSTEE and EXECUTOR in the place of a DECEASED TRUSTEE and EXECUTOR appointed by the TESTATOR'S WILL.

THIS IS A CODICIL TO THE LAST WILL AND TESTAMENT of me, A. B., of _____ of _____, in the county of _____, and Province of _____.

WILLS.—FORMS IN

Canada, _____, which bears date the _____ day of _____

WHEREAS by my said will I have appointed C. D. to be one of the trustees and executors thereof; AND WHEREAS the said C. D., having lately died, I am desirous that E. F., of _____, shall be substituted as a trustee and executor of my said will in the place of the said C. D.; Now, THEREFORE, I do hereby appoint the said E. F. to be one of the trustees and executors of my said will, in the place of the said C. D., deceased; and I do hereby declare that my said will shall be construed and take effect throughout as if the name of the said E. F. had been inserted in my said will instead of the name of the said C. D. And in all other respects I do confirm my said will.

IN WITNESS WHEREOF, &c., (as in n. 1223.)

1243. CODICIL APPOINTING a TRUSTEE and EXECUTOR in the place of one DECEASED.

I, A. B., of _____ of _____, in the county of _____ and Province of Canada, _____, DECLARE this to be a codicil to my last will and testament, dated the _____ day of _____

(1.) I APPOINT C. D., of _____, trustee and executor of my said will, in the place of X. Y., deceased; my said will being read as if the name of the said C. D. had been there substituted throughout instead of the name of the said X. Y.

(2.) [I BEQUEATH to the said C. D., provided he shall act as trustee and executor of my said will, the legacy of \$ _____, thereby bequeathed to the said X. Y.]

(3.) In all other respects I confirm my said will.

IN WITNESS WHEREOF, &c., (as in n. 1223.)

1244. POWER to postpone the SALE of REAL ESTATE.

I EXPRESSLY DECLARE, that, notwithstanding the TRUST for sale herein before contained, it shall be lawful for the said trustees or trustee, for the time being, to postpone or defer the sale of any part of my said real estate, (but which real estate shall nevertheless be deemed to be of the nature or quality of personalty,) for such period as to them, or him, shall seem expedient, and that until such sale, the income, if any, arising from the said real estate, shall go and belong to the person or persons who would be entitled to the annual produce of the money arising therefrom, or of the investments of such money under the TRUST therein contained, if such sale had actually taken place.

WILLS.—FORMS IN.

1245. POWER *to grant* LEASES.

AND I HEREBY empower my trustees or trustee, for the time being, to demise at rack rent for any term not exceeding ten years in possession any part of my freehold hereditaments, which, for the time being, shall remain unsold under the trusts aforesaid.

1246. TRUSTEES *may permit* INVESTMENTS *to remain*
UNCONVERTED.

AND I DECLARE that it shall be lawful for the trustees or trustee for the time being, of this my will at their or his discretion, and without incurring any responsibility thereby to permit so much of my residuary personal estate as shall, at my decease, be constituted of leasehold interest (whether for years absolutely or determinable on a life or lives,) or other determinable property, or be invested in or upon any stocks, funds, securities, shares in societies, companies or institutions, or other pecuniary investments whatsoever, whether real or personal, permanent or determinable, to remain wholly or in part so invested, and to permit so much of my residuary personal estate as shall not be so constituted or invested, or any part thereof to remain unconverted.

1247. POWER *to change* SECURITIES.

I EMPOWER the said trustees or trustee, for the time being, at any time, or from time to time, to sell and dispose of any stocks, funds, or securities, whereon any of my TRUST moneys, for the time being, shall or may happen to be invested, and to invest the money to arise from such sale in any other stocks or funds, or other government securities, or on mortgage of freehold estates, and to vary and transfer the same as occasion shall require or as shall be thought fit.

1248. TRUSTEES' POWERS *in winding up the* AFFAIRS.

I DIRECT that the said trustees or trustee for the time being, shall have power, at their or his discretion, to settle my accounts and wind up my affairs, and in so doing to make such arrangement relative to debts or demands due or claimed to be due to or from my estate, as they or he shall judge expedient, with liberty to accept compositions or securities from, and grant indulgences to debtors,

WILLS.—FORMS IN

and wholly to release property mortgaged or pledged on part payment of the money secured, and to admit the claims of creditors on evidence not strictly legal, and to pay demands which have become barred by any statutory or other limitation, and also to submit questions and accounts to arbitration.

1249. POWER *to appoint* NEW TRUSTEES.

I DECLARE that if my said trustees, or either of them, or any person or persons to be appointed under this clause, shall die, or be or become unwilling or incompetent to act in the execution of the trusts of my will, it shall be lawful for my said wife during her widowhood and after her death on marriage for the competent trustees or trustee for the time being, (if any) whether retiring from the office of trustee or not, (or if none) for the executors or administrators of the last surviving trustee, to substitute and appoint by any writing under her, his, or their hand or hands, any fit person or persons in whom alone, or, as the case may be jointly, with the surviving or continuing trustee, my trust estate shall be vested. And the trustee or trustees for the time being of my will, shall be competent to exercise the trusts, powers, and discretions given to the trustees herein named, and on every such appointment the necessary assurances shall be executed for vesting my trust estate in the new and old trustees, or in the new trustees solely as the case may be.

1250. 'TRUSTEES' DISBURSEMENTS *to be PAID*.

AND I DIRECT that my trustees may deduct and mutually allow each to the other all his disbursements and expenses incident to the execution of my will.

1251. YEARLY PRODUCE *to be deemed the INCOME*.

I DECLARE that the actual yearly produce of my residuary estate, whether consisting of investments to be made by the said trustees or trustee for the time being as aforesaid, or of investments of whatever nature to be continued by them or him as aforesaid, shall be deemed the income of such residuary estate for the purposes of my will.

WILLS.—FORMS IN.

1252. WIFE'S DOWER.

I DECLARE that the provision hereby made for my said wife, shall be accepted by her in full satisfaction of her claim to dower out of any real estate of which I have been or now am or shall be seized.

1253. HOTCHPOT CLAUSE.

PROVIDED ALWAYS, that no child taking any part of the said trust premises under any appointment in pursuance of the power lastly herein before contained, shall, in default of appointment to the contrary, have or be entitled to any share of that part of which no such appointment shall have been made of the said trust premises, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly.

1254. SUMS *advanced to CHILDREN, to be deducted from their LEGACIES.*

PROVIDED ALWAYS, and I hereby declare, that, if I shall in my lifetime advance or give [*or covenant to advance or give*] to or with any of my said children, any sum or sums of money on his or her marriage, or otherwise for his or her advancement, preferment, or benefit, then, and in every such case, unless I shall in writing direct the contrary, such sum or sums shall be deemed and taken in or toward satisfaction of the provision intended to be hereby made for such child, [*or of the legacy herein before given to such child,*] and shall be brought into hotchpot, and accounted for accordingly.

1255. ADVANCEMENT CLAUSE.

PROVIDED ALWAYS, and I hereby declare, that it shall be lawful for the said [*trustees*] and the [*survivors and*] survivor of them, and the executors or administrators of such survivor, after the death of my said wife, or in her lifetime with her consent in writing to raise any part or parts, not exceeding in the whole one-half of the then expectant or presumptive or vested share of any child under the trusts herein before declared, and to pay or apply the same for his or her preferment, advancement, or benefit, as the said trustees or trustee shall think fit.

1256. MAINTENANCE CLAUSE.

AND I HEREBY DECLARE, that the said [*trustees,*] and the [survivors and] survivor of them, and the executors or administrators of such survivor, shall, after the death of my said wife, pay or apply the whole, or such part as they or he shall think fit, of the interest, dividends, and income of the share to which my child shall, for the time being, be entitled in expectancy under the trusts herein before declared, for or toward his or her maintenance or education; And may either themselves or himself so pay or apply the same, or may pay the same to the guardian or guardians of such child for the purpose aforesaid, without seeing to the application thereof.

1257. CLAUSE to be inserted in WILLS, as to TRUST ESTATES and ESTATES held in MORTGAGE.

I DEVISE ALL ESTATES, real and personal, of which I am seized or possessed, as mortgagee or trustee, unto and to the use of the said [*executors,*] their heirs, executors, administrators and assigns respectively, subject to the equities and trusts affecting the same respectively, and so far as I am beneficially interested as mortgagee, to be disposed of as part of my personal estate for the purposes of my will.

REVISED STATUTES, CAP. XVI., p. 93.

(*Certain parts of.*)

1258. AN ACT respecting the SURROGATE COURTS.

Surrogate courts not to be deemed new courts; officers and suits, &c., to continue.

A surrogate court established in each county with judge, registrar, &c.

Her Majesty, by and with the advice and consent of the legislative council and assembly of Canada, enacts as follows:—

(1.) [*The substance of this section is sufficiently shown for our purpose by the margin.*]

(2.) In and for each county in Upper Canada there shall be a court of law and record to be called "the Surrogate Court" of each respective county, over each of which courts one judge shall preside; and there shall also be a registrar and such officers as may be necessary for the exercise of the jurisdiction to the said courts belonging.

AN ACT RESPECTING SURROGATE COURTS.

JURISDICTION AND POWERS.

(8.) All jurisdiction and authority voluntary and contentious in relation to matters and causes testamentary and in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons having estate or effects in Upper Canada, and all matters arising out of or connected with the grant or revocation of probate or administration, shall continue to be exercised in the name of Her Majesty in the several surrogate courts in Upper Canada, and each surrogate court shall hold its sittings in the county town of each respective county.

(9.) The said surrogate courts respectively shall have full power, jurisdiction and authority (1.) To issue process and hold cognizance of all matters relative to the granting of probates and committing letters of administration, and to grant probate of wills, and to commit letters of administration of the goods of persons dying intestate having estate goods, rights or credits in Upper Canada, and to revoke such probate of wills and letters of administration; (2.) To hear and determine all questions, causes and suits in relation to the matters aforesaid and to all matters testamentary; and (3.) subject to the provisions herein contained, such courts respectively shall also have the same powers, and the grants and orders of the said courts shall have the same effect throughout all Upper Canada, and in relation to the personal estate of deceased persons as the former court of probate for Upper Canada, and its grants and orders respectively had in relation to those matters and to causes testamentary within its jurisdiction, and to those effects of deceased persons dying possessed of goods and chattels over twenty dollars in value in two or more counties in Upper Canada, and all duties which by statute or otherwise were imposed on or exercised by the said court of probate, or the judge thereof in respect of probates, administrations, and matters and causes testamentary, and the appointment of guardians and otherwise, shall be performed by the said several surrogate courts and by judges thereof within their respective jurisdictions; but no suits for legacies or suits for the distribution of residues shall be entertained by any of the said surrogate courts.

(83.) No *nuncupative will* made after this act comes

U. W. O. LAW

PARTS OF, AN ACT RESPECTING

Wills not good, except in certain cases.

in force shall be good, provided that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate in such manner as he may now do according to the laws of England.

Proof, &c., requisite for obtaining grant to party not next of kin to intestate.

(35.) In case application be made for letters of administration by any person not entitled to the same as next of kin to the deceased, the next of kin or others having or pretending interest in the personal estate of the deceased resident in Upper Canada, shall be cited or summoned to see the proceedings, and to shew cause, if any, why the administration should not be granted to the person applying therefor, and if neither the next of kin nor any person of the kindred of the deceased happen to reside in Upper Canada, then a copy of such citation or summons shall be served or published in such manner as may be provided for by any rules or orders in that behalf.

Temporary administration in certain cases having jurisdiction in the matter.

(36.) If the next of kin usually residing in Upper Canada, and regularly entitled to administer happens to be absent from Upper Canada, the surrogate court may, at its discretion, grant a temporary administration and appoint the applicant or such other person as the court thinks fit to be administrator of the personal estate of such deceased person for a limited time, or to be revoked upon the return of such nearest of kin as aforesaid.

Security to be given.

(37.) The administrator so appointed shall give such security as the court directs, and shall have all the rights and powers of a general administrator and shall be subject to the immediate control of the court.

As to caveats where to be lodged.

(46.) Caveats against the grant of probate or administration may be lodged with the surrogate clerk, or with the registrar of any surrogate court. * * *

Official copy of the whole or part of a will may be obtained.

(53.) An official copy of the whole or any part of a will or an official certificate of the grant of letters of administration may be obtained from the registrar of the surrogate court where the will has been proved or the administration granted on payment of such fees as shall be fixed for the same by the rules and orders under this act.

Administration with the will annexed. * * *

(55.) Where administration is granted with a will annexed, bond shall be given to the judge of the court as in other cases and with like effect. * * *

Payments under probates

(59.) In case any probate or administration be revoked under this act, all payments *bona fide* made to

THE SURROGATE COURTS.

any executor or administrator under such probate or administration before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who has acted under any such revoked probate or administration, may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration may be afterwards granted might have lawfully made.

(63.) Enacts that *bond* with one or more sureties conditioned for the due collecting, getting in, and administering the personal estate of the deceased shall be given.

SCHEDULE A.

TO BE RECEIVED BY REGISTRARS.

Fees to belong to and be paid over to fee fund.

On every application for probate administration or for guardianship (including notice thereof to surrogate clerk but not postage,) . . .	\$0.50
On certificate of surrogate clerk upon such application (including transmission to registrars but not postage,)50
On every instrument or process with seal of court,50
Entry and notification of caveat not including postage,50
On every grant of probate of administration as follows, viz. :—	
Where property devolving is under \$1,200, . . .	1.00
Where property devolving is from \$1,200 to \$4,000, . . .	2.00
Where property devolving is above \$8,000, . . .	3.00
On every final judgment in contentious or disputed case, . . .	1.00
On deposit, of wills for safe custody, each,50

TO BE RECEIVED BY SURROGATE COURT.

On every search for grant of probate, administration, guardianship or other matter in clerk's office (other than searches on applications of registrars,)50
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U. W. O. LAW

SURROGATE COURTS.—REGISTRATION ACT.

On every certificate of search or extract, . . .	\$0.50
(If exceeding three folios, per folio,)10
On every order made on application to a judge in chancery and transmission of same, exclu- sive of postage,50
On entry of every appeal,50
On every decree on appeal and transmission, exclusive of postages,	2.00
On entry of caveat,50

Fees to belong to, and to be paid over to the fund to provide for the accommodation of the Superior Courts of Law and Equity.

On every certificate issued by the surrogate clerk in chancery,	0.50
On every order made on application to a judge in chancery,	0.25
On every decree or order on appeal. 22 V., c. 31 (1850).	1.00

SCHEDULE B.

Fees allowed to Judge.

On every grant of probate or administration where property devolving is under \$1,200, the sum of	2.00
From \$1,200 to \$4,000, the sum of	3.00
Above \$8,000,	7.00
On every appointment of a guardian,	2.00
On every order,50
On every special attendance or for purpose of audit,	1.00
For every day's sittings in contentions or dis- puted cases, together with 20 cents per folio on evidence taken before judge,	2.00

CONSOLIDATED STATUTES, 1860, CAP. LXXXIX., p. 381.

Parts of.

1259. AN ACT respecting the REGISTRATION of DEEDS, WILLS, JUDGMENTS, DECREES in CHANCERY, and other INSTRUMENTS.

Her Majesty, by and with the advice and consent of the legislative council and assembly of Canada, enacts as follows:—

Interpretation clause.

(1.) In the construction of this act, the word "in-

ION ACT.

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cents per folio	
.	2.00

XXXIX., p. 881.

of DEEDS, WILLS,
and other INSTRU-

advice and consent
assembly of Canada,

s act, the word "in-

REGISTRATION ACT.

strument," shall include every deed, conveyance, assurance and other instrument whereby lands or real estate may be transferred, disposed of, or affected; the word "land" shall include lands, tenements, hereditaments and real estate, the word "will" shall include every devise whereby lands are disposed of, or affected, the word "affidavit" shall include affirmation, and the word "county" shall include a city, junior, county, and riding, having a separate registry office established therein. 9 V., c. 34, s. 10.

INSTRUMENTS AND PROCEEDINGS THAT MAY BE REGISTERED.

(17.) The following instruments and proceedings may be registered at the election of the party concerned, viz:

(1.) Deeds, conveyances and assurances of or in any-wise affecting in law or equity any lands in Upper Canada, executed after such lands have been granted by letters patent. 9 V., c. 34, s. 6.

(2.) Powers of attorney under which any such deed, conveyance or assurance has been executed. 16 V., c. 187, s. 7; 18 V., c. 127, s. 5.

(3.) Wills and devises of or affecting any such lands, the testator being dead. 9 V., c. 34, s. 6.

(4.) Judgments entered up in a suit or action in any court of record, and when exceeding forty dollars, in any division court in Upper Canada. 9 V., c. 34, s. 13; 19 V., c. 90, s. 7; 13, 14 V., c. 53, s. 58.

(5.) Decrees of foreclosure and all other decrees affecting any title or interest in land, also decrees or orders of the court of chancery, or of a county court, on its equity side, for the payment of money, costs or charges. 18 V., c. 127, s. 4; 20 V., c. 56, s. 10.

(6.) The filing of a bill or taking of proceedings in chancery, or in a county court, on its equity side, whereby any title or interest in lands in Upper Canada may be brought in question. 18 V., c. 127, s. 3.

HOW REGISTERED

(7.) Satisfaction of judgments and mortgages. 9 V., c. 34, ss. 23, 24; 10, 11 V., c. 16, ss. 1, 2; 20 V., c. 57, s. 20.

(8.) Discharge of decrees or orders of the court of chancery, or of county court on its equity side, for the payment of money, costs, charges or expenses. 20 V., c. 56, latter part of s. 10.

REGISTRATION ACT.

How deeds registered. (18.) Deeds, conveyances, assurances, powers of attorney and wills, are to be registered through memorials thereof; and sheriff's deeds of lands sold for taxes, judgments, decrees and proceedings in chancery, or of a county court, on its equity side, rules or orders of the courts of Queen's bench or common pleas, or of a judge thereof, and rules or orders of a county court, respectively directing payment of money other than costs through certificates thereof. 9 V., c. 34, s. 7; 16 V., c. 182, ss. 65, 66; 6 G. iv., c. 7, ss. 19, 20; 18 V., c. 127, ss. 3, 4; 22 V., c. 33, s. 17, (1859.)

How sheriff's deeds and other instruments registered.

REQUISITES OF A MEMORIAL TO BE REGISTERED.

Memorial in writing to contain date, &c. (19.) Every memorial shall be in writing or be partly printed and partly written. 9 V., c. 34, s. 7.

(1.) It shall contain the date of the instrument or will, the names and additions of all the parties to the instrument or of the deviser, testator, or testatrix of the will as set forth in the instrument or will. 9 V., c. 34, s. 8.

Names of witnesses. (2.) The names and additions of all the witnesses to the instrument or will and of their places of abode respectively. 9 V., c. 34, s. 8.

Description of land as in the deed. (3.) It shall mention the lands contained in the instrument or will, and the city, town, township or place in the county, or riding where the lands are situate in the manner in which the same are described in the instrument or will, or to the same effect. 9 V., c. 34, s. 8; 16 V., c. 187, s. 5.

Memorial of deed, &c., to be under the hand of the grantor or grantee, and attested by two witnesses, &c. (20.) The memorial of an instrument other than a power of attorney, shall be under the hand and seal of the grantor or of one or more of the grantors, or of the grantee or of one or more of the grantees, his or their heirs, executors or administrators, guardians or trustees, and shall be attested by two witnesses, one of whom shall be also a witness to the execution of the instrument. 9 V., c. 34, ss. 7, 8.

Memorial of power of attorney to be under the hand of the constituent or of the constituted. (21.) The memorial of a power of attorney shall be under the hand and seal of one or more of the constituents or of the constituted, and shall be attested by two witnesses, one of whom shall be also a witness to the power of attorney. 16 V., c. 187, s. 7; 18 V., c. 127, s. 5.

Memorials of wills to be under the hand (22.) The memorial of a will shall be under the hand and seal of the devisee, or of one or more of the devisees, his or their executors, administrators, guard-

REGISTRATION ACT.

ians or trustees, and shall be attested by two witnesses, of one of the one of whom in the case of wills made and published devised. out of Upper Canada, shall be also a witness to the will. 9 V., c. 34, ss. 7, 8, 10.

MODE OF PROOF FOR REGISTRATION.

(23.) In the case of an instrument or will, one of the witnesses to the memorial who is also a witness to the wills, how instrument, and in the case of a will, one of the witnesses to the memorial of such will or probate thereof, or if the will be made or published out of Upper Canada, then to the will and memorial shall make an affidavit wherein he shall, in the case of an instrument, swear to the execution of the same and of the memorial thereof, and the place of such execution, and in the case of a will, to the execution of a memorial of such will or probate, or to the execution of the will and memorial, (as the case may be.) 9 V., c. 34, s. 10.

(24.) When the instrument or will has been executed or made and published within Upper Canada, the affidavit may be sworn before the registrar or deputy registrar of the county in which the lands lie, or before a judge of any of the superior courts of law or equity, or any judge of a county court within his county in Upper Canada, or before a commissioner authorized by any of such superior courts to take affidavits; and when the instrument or will has been executed or made and published without Upper Canada, the affidavit may be sworn before any of the persons aforesaid, or before the mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland, and be certified under the common seal of such city, borough or town corporate, or before a judge of any of the superior courts, or circuit courts in Lower Canada, or before a commissioner authorized by any of the superior courts of common law for Upper Canada, to take affidavits in Lower Canada, or before a judge of the supreme court of any colony belonging to the Crown of Great Britain, or before the mayor of any city, borough or town corporate in any foreign country, or any consul or vice-consul of Her Majesty resident therein. 9 V., c. 34, ss. 7, 10; 18 V., c. 127, s. 5; 12 V., c. 77, s. 2; 19 V., c. 88, s. 2; 16 V., c. 187, s. 6.

Deeds, &c., executed within Upper Canada, on what evidence to be registered.

If executed abroad.

(25.) Where the proof is made without Upper Canada, it may be either by affidavit or by a declaration, If without Upper Canada.

REGISTRATION ACT.

whereby the law a declaration in writing may be substituted for an affidavit. 9 V., c. 34, s. 10; 18 V., c. 127, s. 5.

And how identified.

(26.) But no memorial of any instrument, or of a will, or the probate thereof, made and executed or published out of Upper Canada, shall be registered unless the instrument or the will, or the probate thereof, be identified as that referred to in the affidavit or declaration, by a certificate indorsed on the deed, conveyance or will, or probate thereof, under the hand of the person before whom the affidavit or declaration is made. 9 V., c. 34, s. 10.

Cases in which the witnesses have died or reside permanently out of the Province provided for.

(27.) When the witnesses to any deed or will, have died, or are permanently resident out of this province, the grantee, his heirs, executors, administrators, guardians or trustees, or their assignee, may make proof before the justices in general quarter sessions, assembled in any county of Upper Canada, of the execution of such deed or will, and upon a certificate, signed by the chairman and witnessed by the clerk of the peace, that the majority of the magistrates present in such sessions, are satisfied by the proof adduced of the due execution of the said deed or will, the registrar or his deputy shall record such deed or will, and certificate, and shall certify the same. 9 V., c. 34, s. 11.

Seal of a corporation to be sufficient evidence to justify the registration of their deed.

(28.) The seal of any corporation affixed to any deed, memorial or instrument in writing, shall of itself be sufficient evidence of the due execution of such deed, memorial or instrument in writing by such corporation, for all purposes respecting the registering thereof, and no further evidence or verification of such execution shall be required for the purpose of registry. 9 V., c. 34, s. 29.

Memorials of letters of attorney may be registered, and how.

(29.) Any letter or power of attorney from the grantor or grantors under which an instrument is executed, may be registered in the same manner as a deed may be registered. 16 V., c. 187, s. 7; 18 V., c. 127, s. 5.

* * * * *

When a deed relates to lands in several localities in the same county, one memorial shall be sufficient.

(33.) When any deed, will or other instrument, embraces different lots or parcels of land situate in different localities in the same county, it shall only be necessary to furnish one memorial of such deed, will or other instrument, and such memorial shall be copied into the registry book for the city, town, township or place in which the different parcels or lots of land are

U. W. O. LAW

REGISTRATION ACT.

situate, in the same manner and to the same extent only as if a separate memorial had been furnished in relation to the lands situate within each such city, town, township or place respectively, and the registrar shall make the necessary entries and certificates accordingly. 16 V., c. 187, s. 5.

(34.) A sheriff's deed made under authority of law of land sold for taxes before the first day of January one thousand eight hundred and fifty-one, may be registered upon the certificate of the sheriff under his hand and seal of office, stating the name of the purchaser, the sum paid, the number of acres sold, the lot or tract of which they form a part, and the date of the sheriff's deed, and such certificate may comprise a schedule of any number of such deeds, and the registrar shall receive such certificate from the sheriff in place of a memorial, and shall, on production of the sheriff's deed, enter on record a transcript thereof which shall be deemed sufficient registry. 16 V., c. 182, s. 66; 6 G. iv., c. 7, s. 19.

Registrar to register sheriff's deeds of land sold for taxes before 1st Jan., 1851.

(35.) A sheriff's deed of land sold for taxes after the last above-mentioned day may be registered upon the like certificate given by the sheriff to the purchaser, signed and sealed by the sheriff as above provided, and containing the above-mentioned particulars, which certificate shall be deemed a memorial, and the registrar upon the production of such certificate and the deed, shall register the same and grant a certificate of the registry. 16 V., c. 182, s. 65.

On what evidence sheriff's deeds for land sold for taxes since 1st Jan., 1851, to be registered.

(36.) When any judgment has been entered up in any suit or action in a court of record in Upper Canada, or any rule or order made by the court of Queen's bench or common pleas, or by a judge thereof, or by a county court, directing the payment of money other than costs, the plaintiff or defendant in such action, or the party in whose favor such rule or order has been made, or his attorney, may obtain a certificate from the clerk of the court in which such judgment, rule, or order has been obtained, signed by the clerk and under the seal of the court in the form following:—

Certificate of judgment to bind lands, how obtained.

"In the court of (as the case may be), I hereby certify that judgment was entered up between A. B., plaintiff, and C. D., defendant, on the day of in a plea of for dollars, debt (or damages) and dollars, costs, or that a rule or order was made between A.

REGISTRATION ACT.

"B., plaintiff, and C. D., defendant, (stating the names of the parties, and the amount and subject-matter of the order as the case may be.) "E. F., Clerk."

And for such certificate the clerk may charge fifty cents. 9 V., c. 34, s. 13; 22 V., c. 33, s. 17, (1859.)

Such certificate may be registered; effect of such registration.

(37.) The party obtaining such certificate, or his attorney, may carry the said certificate to the registrar or deputy registrar of the county wherein any lands lie which belong to the party against whom such judgment has been entered, or rule or order made, and such registrar or deputy upon the receipt thereof, signed and sealed as aforesaid, shall register the same; and the registry thereof shall be deemed a registry of the judgment, rule, or order, for the purposes of this Act. 9 V., c. 34, ss. 13 and 7; 13, 14 V., c. 63, s. 7; 22 V., c. 33, s. 17, (1859.)

Certificate of deputy clerks of the crown and clerks of county courts may be registered in any county.

(38.) When any deputy clerk of the Crown or the clerk of a county court has entered up any judgment, in either of the superior courts of common law or in any county court (as the case may be,) or has issued any rule or order aforesaid, he may give to the party on whose behalf the same has been entered, or to his legal representative, a certificate signed by him of such judgment, rule, or order, containing the like particulars as are required in certificates of judgments, rules or orders, given by the clerks of the Crown and pleas, which certificate may be registered in the registry office of any county in Upper Canada, and when registered shall have the like force and effect in binding and operating as a charge upon lands, of the judgment debtor in such county as certificates of judgments, rules, or orders, granted by either of the clerks of the Crown and pleas at Toronto. 19 V., c. 90, s. 7; 19 V., c. 43, s. 15; 22 V., c. 33, s. 17, (1859.)

Certificates of clerks of division courts to have the same effect.

(39.) Any party who has obtained a judgment in any division court exceeding forty dollars, may, at any time after fourteen days from the day of giving judgment, obtain a certificate of such judgment from the clerk of such division court, in the form used in the superior courts as near as circumstances will permit, which certificate shall, on the request of the party obtaining the same, be registered in the same manner, and on payment of the same fees to the registrar as are paid upon certificates of the judgments of the superior courts, and such registry shall bind lands to the same extent as they would have been bound had the judg-

REGISTRATION ACT.

ment been rendered in any of the superior courts. 13,
14 V., c. 53, s. 58.

(40.) Every decree of foreclosure, and every other decree in the court of chancery, or in any county court, affecting any title or interest in land, may, at the instance of any person, be registered in the registry office of the county where the land is situate, on a certificate given by the registrar or clerk of the court, stating the substance and effect of such decree, and the lands affected thereby. 18 V., c. 127, s. 4.

How decrees of foreclosure, &c., shall be registered.

(41.) Every decree or order of the court of chancery, or of a county court on its equity side, ordering money, costs, charges or expenses to be paid by instalments, or otherwise to any person, or to be paid into the court, or to the credit of a cause in the court or otherwise, may be registered in the registry office of the county, on the certificate of the registrar or deputy registrar of the said court, stating the title of the cause or matter in which the decree or order has been made, the date of the decree or order, and the amount of money thereby, or by any report made in pursuance thereof, ordered or decreed to be paid, and such certificate shall be entered and recorded by the county registrar in the same books and in the same manner as certificates of judgments at law. 20 V., c. 56, s. 10.

Registration of decree or order for payment of money in order to bind lands.

(42.) The court of chancery, or a county court on its equity side, upon being satisfied by proof that some specified part of the real estate of any person ordered by decree or order of the court to pay any sum or sums of money, will be sufficient security for the payment of such sum or sums of money, may direct either in the same decree or order or by a subsequent decree or order, that the charge created by any such decree or order shall be confined to such part of the real estate of the person or persons so liable, and that the residue of the real estate of such person shall be unaffected by such registration, and in case such restriction is contained in the original decree or order, the registrar's, deputy registrar's, or clerk's said certificate shall state the same, and if such restriction is contained in some subsequent order, the registrar's or deputy registrar's or clerk's certificate thereof may be registered by either party. 20 V., c. 56, s. 11.

Court may confine the effect of the registration to specified property proved to be sufficient.

(43.) The filing of any bill, or the taking of any proceeding, in the court of chancery in Upper Canada,

What only shall be deemed notice of

REGISTRATION ACT.

proceedings in or county court on its equity side, in which bill or chancery by proceeding any title or interest in lands is brought which title or in question, shall not be deemed notice of such bill or interest in proceeding to any person not being a party to such bill lands shall be or proceeding, unless and until a certificate given by called in ques- the registrar, deputy registrar, or clerk of the court, tion. to some person demanding the same, in the form mentioned in this section, has been registered in the registry office of the county in which are situate the lands, of which the title or interest is questioned in such bill or proceeding.

FORM.

"I certify that in a suit or proceeding in chancery
 "or in the county court of on its equity side,
 "(as the case may be,) between A. B. and C. D., some
 "title or interest is called in question in the following
 "lands, (stating them.)"

As to suit for
 foreclosure.

But no such certificate shall be required to be registered in any suit or proceeding for foreclosure of a registered mortgage. 18 V., c. 127, s. 3.

EFFECT OF REGISTERING OR OMITTING TO REGISTER.

Deeds not reg-
 istered to be
 void as against
 subsequent
 purchasers
 whose deeds
 are registered.

(44.) After any memorial has been registered, as in this act provided, every deed and conveyance made and executed of the lands, tenements or hereditaments, or any part thereof, comprised or contained in such memorial, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial thereof be registered in the manner hereby directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee may claim; and every devise by will of the lands, tenements or hereditaments or of any part thereof, contained in any memorial registered as aforesaid, made and published after the registering of such memorial, shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered in the manner herein directed; and a memorial of any further mortgage (whether legal or equitable) to a first mortgagee, shall in like manner be registered before it can prevail against a second mortgagee of the whole or any part of the lands, tenements, hereditaments and premises comprised in the first mortgage. 9 V., c. 34, s. 6.

Act not to ex-
 518

(45.) This act shall not extend to any lease for a term

REGISTRATION ACT.

not exceeding twenty-one years, where the actual possession goeth along with the lease. 9 V., c. 34, s. 18.

(46.) All wills, or the probates thereof, recorded within the space of twelve months, next after the death of the devisor, testator or testatrix, shall be as valid and effectual against subsequent purchasers, as if the same had been recorded immediately after such death: and in case the devisee, or person interested in the lands, tenements or hereditaments, devised in any such will as aforesaid, be disabled from recording the same within the said time by reason of the contesting of such will, or by any other inevitable difficulty without his willful neglect or default, then the recording the same within the space of twelve months next after his attainment of such will or probate thereof, or the removal of the impediment aforesaid, shall be a sufficient recording within the meaning of this act. 9 V., c. 34, s. 12.

(47.) The registry of any instrument, will, judgment, decree, rule or order, affecting any lands or tenements registered under this or any former act, shall in equity constitute notice of such deed, conveyance, will or judgment, decree, rule or order, to all persons claiming any interest in such lands or tenements subsequent to such registry. 13, 14 V., c. 63, s. 8; 22 V., c. 33, s. 17, (1859.)

(48.) Every judgment entered up against any person in any court of record in Upper Canada, before the first day of January, one thousand eight hundred and fifty-one, and registered since that day or hereafter registered in any county in manner aforesaid, shall affect and bind all the lands therein, belonging to the person against whom the judgment has been rendered, at the time of the registering thereof, or at any time afterwards, in like manner as a judgment of any of Her Majesty's superior courts at Westminster would, when duly docketed, have bound lands before the practice of docketing judgments had been discontinued in England, and whenever any judgment had been registered before the first day of January, in the year aforesaid, the party, in whose favor the same was rendered, may (if not already done) require the registrar of any county to mark on the margin of such registry and sign the same "registered this day of A. D. , and such entry of registry shall have the same effect from such date as if the judgment had

tend to certain leases.

Wills may be registered with effect within twelve months after the death of the testator.

When registration to constitute notice.

Effect of judgments entered before first Jan., 1851, and registered afterwards.

Or registered before that day.

REGISTRATION ACT.

been registered under this section, and the registry, or registry of any certificate of any judgment as in this section mentioned, shall be deemed and taken to be a registry of such judgment for the purposes of this act. 13, 14 V., c. 63, s. 1 and 7.

How registered judgments shall affect lands, &c.

(49.) Every judgment entered up against any person in any court of record in Upper Canada, subsequent to the first day of January, one thousand eight hundred and fifty-one, shall, so soon as a certificate of such judgment has been duly registered in any county, affect and bind all the lands within such county belonging to the person against whom such judgment has been rendered at the time of the registering thereof, or at any time afterwards in like manner as a judgment of any of Her Majesty's superior courts at Westminster would, when duly docketed, have bound lands before the practice of docketing judgments had been discontinued in England, and shall operate as a charge upon, and shall affect and bind all lands in that county, of, or to which such person, was at the time of registering such judgment, or at any time afterwards, became seized, possessed or entitled for any estate or interest whatever at law or in equity, whether in possession, reversion, remainder or expectancy, or over which such person had at the time of registering such judgment, or at any time afterwards, any disposing power, which he might, without the assent of any other person, exercise for his own benefit, and shall be binding upon the person against whom judgment has been so entered up and registered, and against all persons claiming under him after such judgment and registry, and shall also be binding as against the issue of his body, and all other persons whom he might without the assent of any other person cut off and debar from any remainder, reversion or any other interest in or out of the said lands, tenements or hereditaments; and every judgment creditor shall have such and the same remedies in a court of equity against the lands so charged as aforesaid, as he would be entitled to in case the person against whom such judgment has been so entered up and registered had power to charge the same lands, and had by writing under his hand, agreed to charge the same with the amount of such judgment-debt and interest; and all such judgments shall be claimed and taken to be valid and effectual according to the priority of registering such certificates, but

Remedies of judgment creditors.

As to notice.

REGISTRATION ACT.

nothing herein contained shall be deemed to alter or affect any doctrine of courts of equity whereby protection is given to purchasers for valuable consideration without notice. 13, 14 V., c. 63, s. 2; 18 V., c. 127, s. 8.

(50.) A decree or order of the court of chancery for the payment of money, costs, charges or expenses when registered, shall have the same effect as a registered judgment. 20 V., c. 56, s. 10.

(51.) Every rule or order of the court of Queen's bench or common pleas, or of a judge thereof, directing payment of money other than costs, and every rule or order of a county court directing such payment, may be registered in the registry office of any county, and such registration shall be on the certificate of the same officer, and shall have the same effect as the registration of a judgment of the same court. 22 V., c. 33, s. 17, (1859.)

(52.) No unregistered judgment shall take effect against a prior registered judgment, unless the party who has such first registered judgment has for one year next after the entry of such judgment neglected to put his execution against lands in the hands of the proper sheriff. 13, 14 V., c. 63, s. 1; 9 V., c. 34, s. 13.

(53.) After any grant from the Crown of lands in Upper Canada, and letters patent thereof issued, every deed, devise or other conveyance, executed after the first day of January, one thousand eight hundred and fifty-one, whereby the said lands, tenements or hereditaments may be in any-wise affected in law or equity, shall be adjudged fraudulent and void, not only against any subsequent purchaser or mortgagee for valuable consideration, but also against a subsequent judgment-creditor or creditor by decree or order in chancery, who has registered a certificate of his judgment, decree or order, unless a memorial of such deed or devise or a certificate of such judgment be registered as by this act is specified, before the registering of the memorial of the deed, devise, conveyance, or certificate of judgment, decree or order, under which such subsequent purchaser, mortgagee or judgment-creditor or creditor by decree or order, claims, subject nevertheless, as to devisees, to the provisions contained in the forty-sixth section of this act: but nothing herein contained shall affect the rights of equitable mortgagees as now recognized in the court of chancery in Up-

Decees and orders to affect lands in like manner.

All rules and orders directing the payment of money may be registered.

How far registered judgments protected against unregistered judgments.

All deeds, devises, &c., executed after 1st January, 1851, must be registered.

U. W. O. LAW

REGISTRATION ACT.

per Canada. 13, 14 V., c. 63, s. 3; 18 V. c. 127, s. 8.

Judgments to give no lien or charge on lands until registered.

(54.) No judgment of any court of record in Upper Canada shall create a lien or charge upon any lands within the same, or upon any interests in lands liable to seizure or sale on any execution against lands, until such judgment has in the manner required by law for registering judgments, been registered in the registry office of the county in which such lands are situate. 18 V., c. 127, s. 1.

Judgment creditor not registered need not be a party to foreclosure.

(55.) No judgment-creditor shall be a necessary party to any bill for the foreclosure of mortgage, so as to prevent a mortgagee obtaining a complete title by such foreclosure, unless such judgment-creditor has registered his judgment in the county registry office as aforesaid, before the filing of the bill of the mortgagee for such foreclosure. 18 V., c. 127, s. 2.

Deeds, &c., to take priority according to the date of registry.

(56.) The doctrine of tacking having been found to be productive of injustice, therefore every deed executed subsequent to the first day of January, one thousand eight hundred and fifty-one, a memorial whereof has been or may be duly registered, and every judgment recovered since that day, a certificate whereof has been or may be duly registered, shall be deemed effectual both in law and in equity according to the priority of the time of registering such memorial or certificate; and when no memorial of such deed has been duly registered, then such deeds shall be deemed effectual, both at law and in equity, according to the priority of time of execution. 13, 14 V., c. 63, s. 4.

THE MANNER OF REGISTERING SATISFACTION OF MORTGAGES AND JUDGMENTS.

Affidavits of payment of purchase money.

(57.) An affidavit of the due execution of any certificate of payment of mortgage money executed, published, or made in Lower Canada, may be sworn before any judge or commissioner mentioned in the twenty-fourth section of this act. See 18 V., c. 127, s. 5; 13, 14 Vic., c. 65, s. 5.

How registered securities may be discharged. Mortgages.

(58.) When any registered judgment or mortgage has been satisfied, the registrar or his deputy:—

(1.) In the case of a mortgage, on receiving from the person entitled to the amount of such mortgage, or his attorney, a certificate in the form A, duly proved by the oath of a subscribing witness, in the same manner as herein provided for the proof of deeds and other instruments affecting lands; and

REGISTRATION ACT.

(2.) In the case of a judgment, on receiving a satisfaction-piece under the seal of the court in which such judgment was entered signed by the clerk thereof, may write the word "discharged," and affix his name in the margin of the register wherein the said mortgage or judgment has been registered, and the same shall be deemed a discharge thereof; and such certificate or satisfaction-piece shall be filed and numbered and entered on the margin of the register under the word "discharged."

(59.) Every such certificate of payment or performance of the condition of any mortgage by the mortgagee, his heirs, executors, administrators or assigns, at whatsoever time given, and whether before or after the time limited by the mortgage for payment or performance, shall, when so registered, be as valid and effectual in law as a release of such mortgage, and as a conveyance of the original estate of the mortgagor therein mentioned; and if given after the expiration of the period within which the mortgagor had a right in equity to perform the condition shall have the effect of defeating any title remaining vested in the mortgagee, or his heirs, executors, administrators or assigns, but shall not have the effect of defeating any other title whatsoever. 9 V., c. 34, ss. 23, 24; 10, 11 V., c. 16, ss. 1 and 2.

(60.) Any judgment registered against land may be discharged from the registry of the county where the same is registered, on the production to the registrar of such county of a certificate signed by the judgment-creditor, or, if more than one, by any one of them, his executors, administrators or assigns, to the following effect:—

"I do hereby certify that a judgment rendered in favor of A. B. against C. D., for the sum of \$ _____, and registered in the registry office of the county of _____, has been discharged." 20 V., c. 57, s. 20.

(61.) Such certificate shall be proved to the registrar by the affidavit of one subscribing witness who witnessed the execution of such certificate, which affidavit may be taken before any person before whom an affidavit for the registry of any deed or other instrument can be taken. 20 V., c. 57, s. 20.

(62.) The registry of a judgment may also be discharged in any other manner provided by law. 20 V., c. 57, s. 20.

REGISTRATION ACT.

wise discharged. (63.) A decree or order of the court of chancery, or of a county court on its equity side, for the payment of money, costs, charges or expenses, may be discharged in the same manner as a registered judgment. 20 V., c. 56, s. 10.

Registered judgment to bind lands only three years from registration unless re-registered. (64.) Every judgment registered against land in any county shall, in three years after such judgment has been registered, cease to be a lien or charge upon the land of the party against whom such judgment was rendered, or any one claiming under him, unless before the expiration of the said period of three years, such judgment be re-registered; and such lien or charge shall cease, whenever the period of three years has at any time been allowed to elapse without a further registry. 20 V., c. 57, s. 19.

FEEES OF REGISTRARS.

Fees to registrars in Upper Canada. (74.) Every registrar shall be allowed the following fees and no more, that is to say: 16 V., c. 187, s. 8.

Affidavits of execution. (1.) For drawing affidavit of execution of instrument and memorial brought to be registered, if done by the registrar or his deputy, including swearing and all certificates thereof, fifty cents. 16 V., c. 187, s. 8.

Recording deeds. (2.) For recording every deed, conveyance, will, power of attorney, or agreement, including all necessary entries and certificates, one dollar and twenty-five cents, but in case such entries and certificates exceed eight hundred words, then at the rate of thirteen and one-third cents for every additional hundred words; but in counting folios to be charged for in cases within the thirty-third section of this act, only one certificate of registry shall be charged for, and the marginal certificates, notes, or references, shall not be charged for. 16 V., c. 187, s. 5.

Sheriff's deeds. (3.) For registering a sheriff's deed, seventy cents. 16 V., c. 182, s. 65.

Certificate of judgment. (4.) For registering certificate of judgment, fifty cents, and satisfaction thereof, fifty cents. 16 V., c. 187, s. 8.

Certificate of suit. (5.) On registering any certificate of suit, or proceeding in equity, fifty cents. 18 V., c. 127, s. 7.

Certificate of decree. (6.) On registering any certificate of decree, one dollar. 18 V., c. 127, s. 7.

Certificate of payment of mortgage money. (7.) For entering certificate of payment of mortgage money, including all entries and certificates thereof, fifty cents. 16 V., c. 187, s. 8.

REGISTRATION ACT.

(8.) Drawing affidavit of the execution thereof, including the swearing of the witness when done by the registrar or his deputy, fifty cents. See No. 1, and s. 58, No. 1. Affidavits of execution.

(9.) For searching records relating to the title of any lot or parcel of land, not exceeding four references, twenty-five cents, and twenty-five cents for every additional four distinct references, and so in proportion for every number of searches made; but in no case shall a general search into the title of any particular lot, piece or parcel of land, exceed the sum of two dollars. Searching records, &c.

(10.) For every extract furnished by the registrar, including certificate, twenty-five cents, and where the same exceeds one hundred words, fifteen cents for every additional one hundred words contained in such extract and certificate. 16 V., c. 187, s. 8. Extracts.

(15.) The registrar or his deputy shall not be compelled to register any deed, conveyance, will, instrument, or certificate unless the fees authorized by this act are paid thereon. 9 V., c. 34, s. 27. No deed, &c., need be registered until the fees thereon be paid.

SCHEDULE A

REFERRED TO IN THE 58TH SECTION OF THIS ACT.

To the registrar of the county.

I, A. L., of , do certify that C. D. of , hath satisfied all money due upon a certain mortgage made by the said C. D. to me, bearing date the day of , one thousand eight hundred and , and registered at of the clock in the forenoon of the day of following, and that such mortgage is therefore discharged.

AS WITNESS MY HAND, this day of , 18 .
(Signed) A. B.

E. F., of } Witnesses.
G. H., of }
9 V., c. 34.

U. W. O. LAW

CHAPTER XII.

DECLARATIONS OF USES AND TRUSTS.

NOTES.

1260. *Where a trustee buys in his own name, with the money of another*, a declaration of trust is usually made by deed-poll, in which the trustee declares the facts, and that his own name is only used as a trustee for the *cestui que trust* who is the real purchaser. The objection to this plan is that it leaves the *legal estate* in the trustee. It is better, therefore, in many cases, to make a regular conveyance of grant and release from the trustee to the purchaser. A very short form indorsed on the conveyance to the trustee will be sufficient. It should contain a recital of the facts and conclude with the declaration that the trustee at the request of *cestui que trust* had agreed to convey the premises to his use, which are then conveyed for a nominal pecuniary consideration, and the premises will be sufficiently described by the words "the hereditaments and premises mentioned and comprised in the within indenture." The trustee simply covenants that he has done no act to encumber.

1261. *If partitions, sales, or exchanges under powers*, it is necessary to *revoke the use* limited by the instrument containing the power so far as relates to the property in question, and to declare new uses therefor, and the instrument by which this is done should recite the previous instrument, showing the creation of the powers, so far as relates to the said property, and the power of revocation, &c.

1262. *As to lands purchased or taken by way of exchange or partition*, there should be two deeds. (1.) To convey the lands to the trustees of the settlement to hold to them, their heirs and assigns, to the uses and upon the trusts to be declared by the second deed.

(2.) Should recite the original settlement with its uses, trusts and powers. The exercise of the power of revocation and declaration of new uses should also be recited and the conveyance of the premises to the trustees, and then will follow the declaration that said trustees shall stand seized or possessed of the same, under the limitations of the original settlement and with the same powers or such of either as are then capable of taking effect.

1263. *A declaration of trust is sometimes requisite to supply a defect in some previous instrument*, as where trust moneys have been advanced on mortgage without any declaration that they were so on joint account and are to be transmitted to the survivors. A

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well drawn mortgage deed will in such case contain a clause to provide for this; and so where a mortgage is made to bankers to secure the balance of a *banking account*, it should be said that all moneys advanced by the banking firm are to be considered as advanced on the partnership account, and in case of death, to be payable to the survivors. If such clauses have been omitted, the best way to remedy the defect is by a deed of declaration of trust with suitable recitals.

If some of the trustees die before the discovery of the omission, the personal representatives of the deceased will be necessary parties to the declaration of trust, which must recite the death of the deceased, and the character of their representatives, whether executors or administrators. If they are executors, the date and probate of the will appointing them, must be recited; if they are administrators, the granting of letters of administration, the time when they were granted, and the court out of which they issued. Next should follow that the surviving trustees are the persons really entitled to receive the mortgage debt but cannot in equity give valid releases therefor, because of the omission of the necessary stipulation to that effect, and then the representatives of the deceased and the surviving trustees, should declare that the money was advanced by the trustees on joint account, and that in case of the death of any of them, which has now actually happened by the decease of the late trustees, (*naming them*.) their executors or administrators, (*as the case may be, and naming them also*.) as their representatives were to have no interest therein, but that the surviving trustees are entitled to the whole of the moneys.

DEEDS of DISCLAIMER and RENUNCIATION by EXECUTORS and TRUSTEES.

1264. *Persons appointed executors or trustees, should disclaim at once, if they do not mean to act, and be very careful not to do any thing which may be construed as belonging to the character of executor or trustee in the premises, otherwise they will not be allowed to disclaim.* A formal deed is the best course in substance as to a trustee.

1265. *A person appointed both executor and trustee does not disclaim his trusteeship by renouncing his executorship, but both offices must be disclaimed; see form n. 1324; and if the will has been proved by other executors or administration, with the will annexed taken out, those facts should be recited.*

1266. *Substitution and appointment of new trustees must be made in conformity with the power in the deed creating the trust; but if that deed contain no such power, the court of chancery will appoint if it shall appear expedient, and trustees so appointed have the rights and powers of trustees appointed by a decree in a suit duly instituted, and the lands will vest in the new trustees on their*

OF DISCLAIMER AND RENUNCIATION.

appointment for such estate as the court may direct, and as though the continuing trustees had duly executed all proper conveyances and assignments of such estate. We have before remarked that *appointments under a power* do not clothe the new trustees with the estate, but that a conveyance or assignment thereof must be made by the outgoing and continuing trustees, or the representative of the last existing trustee.

1267. *One instrument* will be sufficient to perfect the assurance if *entirely* new trustees, or only a *single* trustee is appointed, to fill the vacant office; or if the *whole* property is *real estate*; but if the new trustee is to have a joint estate with the continuing trustee, and the property, or part of it, consists of chattels real or personal, then *two* instruments are necessary. (1.) One by which the continuing trustee and all persons in whom the property is vested assign the same to a *temporary trustee*, upon trust that he shall by (2.) *another* deed already prepared reassign the premises to the continuing trustees and new trustee upon the trusts of the original settlement. This circuitous method is necessary because chattels are not within the statute of uses.

1268. *When one instrument* is sufficient it should be an indenture, not a deed-poll, and the new trustee should execute it, and thereby estop himself from denying his acceptance of the trusts.

The heir of a deceased trustee need not join because the whole estate is in the survivor if the trustees were *joint tenants*, as they ought to be; but if by mistake they were *tenants in common*, then the heir must join.

1269. *Where the property is personal estate* the method of assignment is much the same; but where the assignment is to entirely new trustees, or if the retiring trustee only resigns to a continuing trustee, or trustees, then it is sufficient to limit the premises by one instrument to such new or continuing trustees.

APPOINTMENTS *on* EXERCISE *of* POWERS.

1270. *A general power of appointment* may be exercised by any instrument by which the property might have been disposed of to a third party, but if a *particular* instrument is named, that alone can effectuate the power, and if any other special manner of executing the power be prescribed that also must be closely observed.

1271. *A married woman* may execute a power without reference to her husband's consent, and so may all persons who are not infants or of unsound mind.

1272. *A deed-poll* is usually the better form where the power is to be exercised by an instrument in writing, simply and absolutely in favor of one or more appointees; but where an *appointment* among children or other objects is to be made under a power, an

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OF APPOINTMENTS UNDER POWERS.

indenture is preferable, because all parties executing it will be estopped from disputing its validity. This form is also to be used where a husband makes an appointment to raise a *jointure* for his wife, especially where a term of years is raised and vested in trustees as a security for the due payment of the jointure; and generally where others besides the appointor are to be bound, or where the trusts do not take effect immediately. In all such cases, the trustees and others, should execute the deed in evidence of acceptance and concurrence.

1273. *Illusory appointments.*—An appointment of any share however small, as one shilling, or the devolution of any unappointed share however trifling, is not illusory either in law or equity since the statute 1 Will. iv., c. 46, except where the instrument creating the power declares the amount of the share.

1274. *Limitations prior to the power* are often recited, but ulterior limitations in default of appointment are only referred to as being set out "in the now reciting indenture," or more briefly, as in the case of tenant for life, with a power of jointuring the recital may be that by a certain instrument, [giving date and nature thereof,] the property was limited to the appointor for life, "with divers limitations ever after his decease," but with a proviso enabling him to jointure.

1275. *The appointment clause* must carefully follow the terms of the power, and when the appointment is to raise *portions for younger children*, the particular clause by which this power is limited, should be set out; next recite the number of children and which of them are to take under the present appointment; next follows the appointment of the portions which the trustees of the original instrument are to raise in pursuance of the trusts thereof and by virtue of the present appointment, and conclude then with a clause that the present is not to preclude a further appointment, or prevent the appointee from taking share in the residue.

1276. *Appointment of a jointure* may be in the form n.1348, and where the present appointment does not exhaust the power, a further clause may be added, like n.1349.

1277. *A hotchpot clause* is often expedient where the appointment does not exhaust the power, see n.1350.

1278. *A power of revocation*, if reserved, must come at the end of the deed of appointment and may be as

PARTITION DEEDS.

1279. *When parties cannot agree* as to the allotments, the best way is to have the whole property surveyed, valued and allotted by competent and disinterested persons, and then for the parties to draw lots for the choice; but it often happens that an equal partition of the property is not possible, and then the parties taking the

OF PARTITION DEEDS.

shares of smallest value, receive from the others a sum of money in compensation and for equality of partition.

1280. *The partition of freehold estates* may be effected by as many deeds of grant and release as there are allotted shares, or more simply, and always when it is intended to limit any portion to uses to bar dower, by *one* instrument in which all the allotments are made, and the uses declared out of the seisin limited to a releasee to uses.

1281. *In leaseholds* which are not within the statute of uses, all parties making partition, except the one to whom the allotment is made, concur in assigning the premises to him, to hold to him, during the residue of the term subject to the rents and covenants of the lease.

1282. *Parties.*—Each granting party should be of a *distinct* part; and if any of them are *married women*, their husbands must be concurring parties, and the deed must be duly acknowledged under the Canadian statute, 2 Vic., c. 6; and any husband entitled as *tenant by the courtesy*, must join as a *conveying party*, and also the *heir* of the deceased through whom he claims. The *releasee to uses* (if any,) must, of course, be a party, and where any share is to be limited to uses to bar dower, the *trustee* for that purpose must be a party, though indeed in this case the releasee to uses is the proper person to fill the office of *dower trustee* also.

1283. *The recitals* should state the agreement to make partition, and the nature of the estate of the several parties in the property; *e. g.*, if coheiresses that they take by descent, and *how* they take; if joint tenants or tenants in common, that they take as purchasers, and the manner how, which is best shown by reciting the instrument creating their estates and interests, and if a sum of money is to be paid for equality of partition that also should be recited.

1284. *The testatum*, where nothing is paid for equality of partition, usually states a nominal consideration, as 5s. or the like paid by the trustee to uses, and the parties making the partition, grant, release, convey and confirm unto the trustee and his heirs according to their respective undivided shares, estates, and interests in the premises.

1285. *Money for equality of partition* should be set out and payment acknowledged in same manner as in an ordinary purchase deed.

1286. *The operative words* are like those in an ordinary conveyance. If the conveyance is direct to the party, the others convey their undivided shares to him as in *n.* ; but if partition is through a release to uses, all parties making the partition convey to the releasee.

1287. *Parcels* are best set out in as many schedules as there are lots, and a map of the whole premises, in which each allotment is distinguished by a particular color, is a highly convenient mode of

OF PARTITION DEEDS.

ascertaining the part conveyed to each allottee, and such map may be either at the back or in the margins of the deed.

1288. *The habendum* will make the allotment to each party direct; or will limit the whole premises to the releasee to uses, (if any,) and his heirs, to the uses therein after declared, and then allot the shares accordingly; and if there are *coparceners*, some of whom are married, limitations to their separate use, or a power of appointment may be added, or any other uses and trusts in their favor.

1289. *As to dower* uses the releasee to uses will be the proper person to be the dower trustee. The allotted premises are first limited to the trustee and his heirs, to such uses as the allottee shall appoint, and in default of appointment to the use of the allottee for life without impeachment of waste, and after the determination of the estate, by any means in his lifetime, to the use of the trustee, his executors or administrators, during the life of and in trust for the allottee, and his assigns, with an ultimate limitation to the allottee, his heirs, and assigns.

1290. *Limitations to uses to bar dower* are of rare currency in Canada, and it seems better that they should not become customary form.

1291. *In partitions by joint tenants* the habendum may be recited except where the allotment is limited to uses to bar dower, one joint tenant will, except as aforesaid, simply release his share to the other.

1292. *A clause to prevent warranty* is useless when there are qualified covenants, and a *clause of re-entry* in case of eviction, is invalid as tending to a perpetuity.

1293. *The actual allotment* by a trustee is usually by indenture appointing the several parcels as already mentioned.

1294. *Partition by tenants in tail* requires a disentailing assurance which may be separate or contained in the deed of partition.

1295. *Partition of leaseholds* conveying legal estate is best effected by a distinct instrument to each allottee in which the several assignors assign their undivided shares in the allotment to the allottee for the residue of the term with the usual covenants.

1296. *When an apportionment of rent* is necessary in respect of several allotments held under the same lease, the assignees should enter into mutual covenants for the payment of the rent, and performance of the covenants in respect of the assigned premises, with cross powers of distress, and he who retains the original lease and other documents of title should covenant to produce them to the other parties.

PARTITION under DIRECTION of the COURT of CHANCERY.

1297. *Bills in chancery* to compel partition have long superseded writs of partition; such bills are filed to obtain the judgment

OF PARTITION IN CHANCERY.

of the court as to the rights of parties, the several proportions they should take in the property, and to obtain partition accordingly. The court may thereon issue a commission for a partition without a jury, and upon return of the commission, confirmation by the court of the partition so made, is completed by conveyances between parties.

1298. *It is essential to support a bill of partition*, that the applicant show a clear legal title.

1299. *The commissioners are thus appointed.* Each party who appears by a separate solicitor, is entitled to name four persons as commissioners, and they join and strike commissioners names in the same way as on a commission to examine witnesses abroad, except that each defendant joins and strikes names with every other set of defendants as well as with the plaintiff; but to save this great expense it has become the practice for the parties to agree to appoint two commissioners who are generally scientific persons to discharge this duty.

1300. *Every part of the estate need not be divided*, because, *e. g.*, to divide each of three houses of different values into three parts would be to spoil every house. In such case money must be paid for equality of partition to those who have houses of less value.

1301. *Allotment of shares* should be by some indifferent person called in by the commissioners to draw lots for the shares of each party, but the choice should not be made by lot where, from the peculiar position of the parties and the situation of the property, it cannot be done with fairness. In such cases the commissioners will assign the shares to those parties to whom they would be of most value independently of their value in the market.

1302. *An order for conveyance is obtained*, after the commission is returned and filed, on motion of the party who issued the commission to confirm the return by orders *nisi* and absolute.

1303. *The title deeds* which belong to such part of the premises as shall be allotted to any party *alone*, are decreed to be delivered to him, and as to those which relate to parts allotted to any parties jointly, the parties are to apply to the court for direction, and the court directs the party who has the largest estate entitled to hold them upon entering into a covenant to produce them and allow copies to be taken of them when required.

RELEASES.

1304. *Trustees and executors*, when their duties are all done, have a right to a release *by deed* of all demands from *cestui que trusts* or legatees.

1305. *Form of release from legatee to executor* will be found in n. 1353, which may be varied so as to suit several legatees who release by the same instrument.

OF RELEASES.

1306. *Release for the residuary estate* should recite the will, the residuary bequest, the death of the testator, the probate of his will, that the executors have discharged all the testator's debts, funeral expenses, and all legacies, and then state the amount of the residuary estate, and that the whole has been paid to the residuary legatee, who should then release the executors from all further claim.

1307. *If future claims may be expected*, the executors have a right to retain a sufficient amount of assets in their hands to meet those claims, but when this is not or cannot be done, the legatees on receiving their legacies, should be required to indemnify the executors against all future claim. This may be done by deed-poll or indenture, but sometimes an *indemnity* is given by bond, (see n. 676.)

1308. *And so if contingent interests are assigned*, executors have a right to indemnity against any responsibility they may thereby incur, and this is generally done by a bond in a penal sum of double the amount of the trust fund; suitable recitals should set out the will creating the contingency and the reason and the agreement for assignment, and the *condition* of the bond should be to indemnify the executors. A general release from the *cestuis que trust* should accompany this or an indenture may comprise both objects.

1309. *Release by ward to guardian* may be very brief and simple, as in n. 1354.

1310. *When disputed accounts have been adjusted and paid*, especially when a less sum is paid than was originally demanded, a release from the creditor is often desirable and should contain suitable recitals.

1311. *Releases between partners* by which each partner releases the other from all claims on the partnership account may be very brief, though a longer form reciting the object, institution, progress and dissolution of the partnership is more generally used.

1312. *Releases from creditors to debtors who compound* may be by deed-poll or indenture, and when the full amount of the composition is paid the debtor is entitled to have one. In either form some should be recited of the composition as to show the composition agreed upon; and then that the agreement had been duly fulfilled, after which follows the clause of release.

INDEMNITIES.

1313. *Defective title or latent incumbrances* may make it desirable for a willing purchaser to secure himself as well as he can by an indemnity from the vendor; and in the case of the assignment of a term in leasehold by the *original lessee*, it is usual to adopt the same precaution and require indemnity from the *assignee* against all the express covenants of the original lease; because the assignor remains liable upon them notwithstanding the assignment and even the *acceptance of the assignee as tenant by the lessor*. The method

OF INDEMNITIES.

is to insert in the assignment a clause of indemnity against such covenants, but as the assignee has the custody of the deed of assignment, a careful vendor sometimes requires a bond of indemnity, or a separate deed of covenant. If the lease is executed *in duplicate* nothing more is needed.

1314. *If defect is caused by loss of title deeds* a purchaser may be satisfied with a bond from the vendor conditioned to be void if vendor shall within a stated time deliver such title deeds to the purchaser; or if the latter shall continue in quiet enjoyment of the premises; or if vendor shall pay him all damages and expenses caused by the loss, but sometimes it is arranged that vendor shall convey *other lands* by way of indemnity, and that may be done by indenture reciting the loss of the deeds and the agreement for indemnity. The vendor then conveys the lands to trustees upon trust to indemnify the purchaser against damages and expenses from loss of the deeds, and to raise money by sale or mortgage sufficient to repay the purchaser such damage and expenses; with a proviso for cesser of the term on delivery of the deeds, to the purchaser; or if the latter remain in quiet enjoyment of the premises for a stated period, or on vendor paying the full amount of damages and expenses incurred by said loss and defective title.

The vendor also covenants to indemnify the vendee in manner aforesaid, and covenants absolutely with the trustees that he has good right to convey, for quiet enjoyment, freedom from incumbrances, and further assurance. Lastly is added the usual power to change trustees, see n. 1223, clause 13.

1315. *Repayment of purchase money in case of eviction* is also secured in a similar manner.

1316. *A bond for quiet enjoyment against all mankind* is sometimes given where the vendor cannot show any title; but where the indemnity is against particular claims they must be carefully set out so as to show *exactly* what the purchaser is to be indemnified against.

1317. *Where one of the conveying parties is a minor*, the vendor may retain part of the purchase money in his own hands until the minor attain full age and executes the conveyance; or the vendor may execute a bond by way of guarantee that the minor when of age shall execute the instrument, and if the minor is a *female*, then, beside the condition for avoiding the bond in case the minor shall execute on attaining twenty-one, add:

"Or in case of her marriage, in the meantime, she and her husband, and in case of her death, her heirs, executors, or administrators, shall, at the request of the said (*purchaser*), his heirs and assigns, (or executors, administrators or assigns, as the case may be,) but at the cost of the said (*vendors*), their heirs, executors, or administrators, make, do, acknowledge, enter into, execute

OF INDEMNITIES AND GUARANTEES.

"and perfect such assurances for conveying and assuring the estate and interest of the said (*minor*) in the said premises according to the limitations declared concerning the same, in and by the said recited indenture, as the said (*purchaser*), his heirs and assigns (or executors, administrators or assigns,) or his or their counsel in the law shall require; *then, &c.*

1318. *The cost of such indemnity is borne by the vendor.*

GUARANTEES.

1319. *Guarantees by way of indemnity* are usually by bond, and are generally for faithful discharge of duty by clerks and confidential servants; or to secure the value of goods supplied by wholesale dealers to retail traders; or the balance of banking accounts; or the fulfillment of contracts by builders and others.

1320. *A guarantee for faithful discharge of duty* is usually executed by the servant and his surety, and the bond recites the engagement of the servant, and that the obligee has required security for the faithful discharge of duty by the servant, conditioned to be void if the duties are faithfully performed.

1321. *Guarantees to secure payment for goods*, or to secure the balance of a *banking account*, may be easily and concisely drawn.

1322. *Guarantees for specific performance of a contract by builders, &c.*, should set out accurately the nature of the contract, and that the principal and his sureties have agreed to enter into a bond for the due performance of the contract, concluding with a condition for avoiding the contract if it is performed accordingly.

FORMS.

1323. MEMORANDUM *as to the OWNERSHIP of MONEY advanced on MORTGAGE.*

MEMORANDUM. That of \$1,500 secured (with interest at per cent.) by a mortgage in fee of even date herewith, from X. Y. to the undersigned A. B., C. D. and E. F., on hereditaments at , in the county of , \$800 belongs to the said A. B., \$600 to the said C. D., and \$100 to the said E. F.

DATED.

Signed, A. B. of ,
C. D. of ,
E. F. of .

Make as many copies of this as there are parties.

1324. DISCLAIMER of TRUSTS and EXECUTORSHIP of a WILL.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of
 , sends greeting:—

WHEREAS, G. H., late of , Esq., deceased, in such manner as the law then required for rendering valid devises of freehold estates, duly signed and published his last will and testament in writing, bearing date the day of , and thereby gave, devised, and bequeathed all his real and personal estate unto the said A. B. and C. D., their heirs, executors, administrators and assigns, upon trust, &c., (*here shortly recite the will, to shew what trusts were thereby reposed in A. B.,*) and the said testator thereby appointed the said A. B. and C. D. executors of his said will:

AND WHEREAS the said testator departed this life on or about the day of , without having altered or revoked his said will:

AND WHEREAS the said A. B. hath never in any respect acted, and hath wholly refused to act in proving and executing the trusts of the said will;

NOW THESE PRESENTS WITNESS THAT HE, the said A. B., hath, from the decease of the said G. H., fully and absolutely disclaimed and renounced, and by these presents doth fully and absolutely renounce and disclaim ALL the real and personal estate and effects whatsoever given, devised, or bequeathed by the said will, and also the offices of trustee and executor of the said will, and all trusts, powers, and authorities whatsoever, by the said will expressed to be made or given to them, the said A. B. and C. D., their heirs, executors, administrators and assigns, and all rights and privileges thereunto relating or in any-wise belonging or annexed.

IN WITNESS WHEREOF the said A. B. hath hereunto set his hand and seal the day and year first above written.

SIGNED, SEALED, AND DELIVERED	}	A. B. [SEAL]
in presence of		
E. F.		

1325. AGREEMENT for a PARTITION of FREEHOLDS.

THIS AGREEMENT, made this day of , one thousand eight hundred and , between A. B., of , of the first part, and C. D. of , of the second part, and E. F. of , of the third part,

FOR EFFECTING a partition of the after-mentioned premises, each of the said parties in respect of his undivided third share under the will (dated &c.) of M. N., in the testator's freehold estates of inheritance in , agrees with the other of them, as follows:—

U. W. O. LAW

SHIP of a WILL.

ME, A. B., of

deceased, in such did devise of free-will and testament, and thereby personal estate unto administrators and will, to shew what d testator thereby his said will:

fe on or about the ltered or revoked

any respect acted, executing the trusts

said A. B., hath, olutely disclaimed ly and absolutely estate and effects said will, and also ill, and all trusts, ill expressed to be D., their heirs, ex-ts and privileges nexed.

unto set his hand

A. B. [SEAL.]

FREEHOLDS.

, one

A. B., of , of the second

ed premises, each d share under the old estates of in-ncm, as follows:—

PARTITION.

(1.) THE COMMISSIONER of the said A. B. for the aforesaid par-tition shall be X. of . The commissioner of the said C. D. shall be Y. of . The commissioner of the said E. F. shall be Z. of .

(2.) THE COMMISSIONERS shall survey the said estates, and pre-pare a terrier (and if they shall think fit a map) thereof. The terrier shall state the forms or holdings of which the estates con-sist, with their respective occupations and rentals (or estimated rentals) and outgoings, and shall also state under each form or hold-ing the particulars comprised therein, affixing a number (and name if any) to each particular, and specifying its nature and quantities.

(3.) THE COMMISSIONERS shall prepare a valuation of the estates (including wood down to 1s. per stick) upon the basis of the afore-said terrier, and divide the same into three portions, either of equal or unequal value, directing in the latter case what sum or sums shall be received and paid in respect of each portion for equality of partition.

(4.) THE PARTIES shall draw lots for priority of choice; two of the portions shall be successively chosen by the parties entitled to the first and second choice, according to their priorities, and the remaining portion shall belong to the third party.

(5.) EACH of the parties shall have assured to him in entirety the portion to which he is entitled under the last foregoing clause, (sub-ject to any sum or sums directed to be paid in respect of such por-tion for equality of partition,) and the party entitled to the first choice shall hold any muniments of title affecting other premises than those comprised in the portion assured to him, and execute a covenant for their production to each owner of such other premises. The principal or only assurance shall be executed in three parts.

(6.) THE COST of this agreement and all expenses under it shall be defrayed by the parties equally.

(7.) THE OPINION of two of the commissioners, or (if no two shall agree) of an umpire chosen by all three, shall be decisive on all questions arising under this agreement.

(8.) EACH PARTY may appoint a person in the place and with the powers of every original or future commissioner of the same party, who shall die or become incapable to act.

IN WITNESS, &c., (as in n. 1324.)

1326. PARTITION.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , between A. B., of of , in the county of

FORMS.

and Province of Canada, _____, of the first part; and C. D., of _____, and E. D., his wife, of the second part; and F. G., of _____, (*grantee to uses*), of the third part:

WHEREAS, by an indenture, dated the _____ day of _____, and expressed to be made between (*parties*), one undivided moiety of the hereditaments intended to be hereby conveyed, was limited to such uses, upon and for such trusts, intents, and purposes, and with, under, and subject to such trusts, provisos, and declarations, as the said A. B. should, by any deed or deeds, direct, limit, or appoint, and in default of, and until and subject to such direction, limitation, or appointment, to the use of the said A. B. and his assigns, for his life, with remainder to the use of the said X. Y., and his heirs, during the life of the said A. B., in trust for him and his assigns, with remainder to the use of the said A. B., his heirs and assigns;

AND, WHEREAS, the said C. D. is seized of the other undivided moiety of the same hereditaments for an estate in fee simple in possession, free from incumbrances;

AND, WHEREAS, the said A. B. and C. D. have agreed to make partition of the said hereditaments in the shares and manner herein after appearing, and the said E. D. hath agreed to release her right of dower in the said undivided moiety of the said C. D. of the said hereditaments:

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, he the said A. B. doth hereby direct, limit, and appoint, that the said undivided moiety comprised in the said indenture of the _____ day of _____, of the said hereditaments shall henceforth go and remain to the uses herein after limited.

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and in consideration of the premises, he the said A. B. as to the undivided moiety, comprised in the said indenture of the _____ day of _____, of the said hereditaments, doth hereby grant, and he the said C. D., as to his undivided moiety of the said hereditaments, doth hereby grant, and she the said E. D., as to the same undivided moiety and with the concurrence of the said C. D., doth hereby release unto the said F. G., and his heirs, ALL AND SINGULAR the _____ and hereditaments, situate in the parish of _____, in the county of _____, specified in the two schedules here underwritten, and delineated in the map drawn in the margin of these presents, and therein colored, _____ and _____ respectively, all those (*here insert a description of the property*), together with all ways, water-courses, rights, privileges, easements, advantages, and appurtenances whatsoever, to the said hereditaments or any part thereof appertaining, or with the same or any part thereof held, used, or

FORMS.

enjoyed, or reputed as part thereof or appurtenant thereto; AND all the estate and interest of the said A. B., C. D., and E. D., respectively, in the said premises; to hold the said premises unto the said F. G., and his heirs; to the uses hereinafter limited.

AND IT IS HEREBY DECLARED, that the appointment and grant and release herein before contained shall enure; as to the hereditaments comprised in the first schedule here underwritten, and in the said map colored _____, with their appurtenances as aforesaid; to such uses, &c., and as to the hereditaments comprised in the second schedule here underwritten, and in the said map colored _____, with their appurtenances as aforesaid; to such uses, &c., [uses to bar dower in favor of C. D., *ib.*]; and each of them the said A. B. and C. D., so far as relates to the one undivided moiety, to which he claims to be entitled as aforesaid, of the said premises, doth hereby, for himself, his heirs, executors and administrators, covenant with the said F. G., and his heirs, that, notwithstanding any thing by them the said A. B. and C. D., respectively, or any of the ancestors of the said C. D., done or knowingly suffered, they, the said A. B. and the said C. D. and E. D., respectively, now have power to assure the said premises to the uses and in manner aforesaid, and free from incumbrances; and that they the said A. B. and C. D., respectively, and their respective heirs, and every other person lawfully or equitably claiming through or in trust for them respectively, or the ancestors of the said C. D., will, at all times, at the cost of the party requiring the same, execute and do all such assurances and acts, for further or better assuring all or any of the said premises to the uses herein before declared of the same respectively, as by the said A. B. and C. D., respectively, or their respective heirs, appointees or assigns, shall be reasonably required.

IN WITNESS WHEREOF, &c., (*as in n. 1324.*)

The first schedule to which the above-written indenture refers.

The second schedule to which the above-written indenture refers.

1327. DISCLAIMER under a WILL.

THESE PRESENTS WITNESS THAT I, A. B., have renounced probate of the will (dated, &c.) of X. Y., and have never acted in the trusts or powers thereof; and that I disclaim all such trusts and powers, and all estates and interests by the said will devised and bequeathed, and the guardianship of the testator's children.

IN WITNESS WHEREOF, (*as in n. 1324.*)

FORMS.

1328. EQUITABLE RELEASE (*by covenant*) of a RENT-CHARGE, on the SALE of part of the LANDS charged.

THIS INDENTURE, made the _____ day of _____, one thousand eight hundred and _____, between A. B. of the first part, C. D. of the second part, and E. F. of the third part, witnesseth as follows:—

FOR effectuating a conveyance by indenture of even date herewith, by the said C. D. to the said E. F. and his heirs, of hereditaments at _____, in the county of _____, the said A. B., at the request of the said C. D. for himself, his heirs, executors, and administrators, covenants with the said E. F., his heirs and assigns, that the said A. B., his heirs, executors, and administrators, will keep the said E. F., his heirs and assigns, indemnified against the yearly rent-charge of \$ _____ to the said A. B. during his life, granted by indenture, (dated, &c.,) and thereby charged (amongst other hereditaments,) on the hereditaments expressed to be conveyed by the said indenture of even date herewith, and against all arrears of such rent-charge, and the expenses of recovering the same.

IN WITNESS, &c., (*as in n. 1324.*)

1329. RELEASE of DOWER.

KNOW ALL MEN BY THESE PRESENTS: That I, C. B., of the town of _____, in the county of _____, and Province of Canada, widow of A. B., of _____, deceased, in consideration of the sum of one dollar, to me paid by C. D., of the _____, of _____, in the county of _____, and province aforesaid, (the receipt whereof is hereby acknowledged) *do*, by these presents, grant and release unto the said C. D., his heirs and assigns, all my dower and all my right and title thereto, of, into, or out of, ALL AND SINGULAR (*description of the property*) and all other my estate and interest in the said premises:

To HOLD the same unto the said C. D., his heirs and assigns, forever.

AS WITNESS my hand and seal this _____ day of _____, one thousand eight hundred and _____.

SIGNED, SEALED, AND DELIVERED }
in presence of } C. B. [SEAL.]
G. H. }

1330. RELEASE of all DEMANDS.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the _____ of _____, for and in consideration of the sum of _____ dollars, to me in hand paid by C. D., of _____, do, *by these presents*, for myself, my heirs, executors, administrators and

U. W. O. LAW

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FORMS.

assigns, remise, release, and forever discharge the said C. D. his heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, claims and demands whatsoever, in law or in equity, which I ever had, or now have, or which I or my heirs, executors, administrators, or assigns, hereafter can have, by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the date of these presents.*

IN WITNESS WHEREOF, I have hereunto put my hand and seal,
this day of , one thousand eight hundred and

SIGNED, SEALED, AND DELIVERED }
in presence of
G. H.

A. B. [SEAL.]

1331. SPECIAL RELEASE.

KNOW ALL MEN, &c., (as in n. 1330, to the *, and then add :) arising out of any dealings, or transactions, between myself and the said C. D., at my warehouse (or shop,) in the city of
IN WITNESS WHEREOF, &c., (as in n. 1324.)

1332. RELEASE by CREDITOR named in an ASSIGNMENT.

KNOW ALL MEN, &c., (as in n. 1330, to the *, and then add :) saving and excepting, however, and without prejudice to, all my rights, remedies, claims and demands, and the rights, remedies, claims and demands, of my heirs, executors, administrators and assigns, under a certain deed of trust, bearing even date herewith, and made and executed by the said C. D. to E. F., upon the trusts therein expressed and declared.

IN WITNESS WHEREOF, &c., (as in n. 1324.)

1333. RELEASE of PART of MORTGAGED PREMISES.*

THIS INDENTURE, made this day of , in the year between A. B., of and C. D., of WHEREAS, the said C. D. by his indenture of mortgage, bearing date the day of , A. D. 18 , did, for the consideration and for the purposes therein mentioned, convey to the

* A release of a lien on real estate, by mortgage or judgment, should be acknowledged, and recorded in the county where the premises are situated.

FORMS.

said A. B. (or, to one E. F., by mortgage duly assigned to the said A. B.) certain lands in _____ aforesaid, of which the lands hereinafter described are part and parcel; and the said C. D., on the day of the date hereof, has paid unto the said A. B. the sum of _____ dollars, being part of the money secured by the mortgage aforesaid, as therein specified, on which payment the said A. B. hath agreed (or, and the said A. B., at the request of the said C. D., hath agreed) to release to the said C. D., his heirs and assigns, the lands hereinafter described, and to take and accept the residue of the said mortgaged premises as his security for the payment of the moneys remaining unpaid on the said mortgage: Now THEREFORE, the said A. B., in consideration of the premises, doth hereby grant, release, unto the said C. D., his heirs and assigns, all that part of the said mortgaged lands, bounded and described as follows: (*that is to say, give description:*) with the hereditaments and appurtenances thereunto belonging, or in any-wise appertaining: To hold the said lands and premises hereby released and conveyed unto and to the use of the said C. D., his heirs and assigns, free, clear, and discharged of and from the lien of the said mortgage.

IN WITNESS WHEREOF, the said A. B. hath hereunto set his hand and seal, the day and year above written.

SIGNED, SEALED, AND DELIVERED }
in presence of }
G. H. }

A. B. [SEAL.]

1334. RELEASE of a LEGACY.

KNOW ALL MEN BY THESE PRESENTS: That, whereas A. B., of _____, in the county of _____, and Province of Canada, by his last will and testament in writing, bearing date the _____ day of _____, A. D. 18____, did, among other legacies therein contained, give and bequeath unto me, C. D., of _____, in the county of _____, and province aforesaid, (*addition*.) the sum, or legacy, of _____ dollars, and of his said will and testament did make and constitute E. F. the sole executor, (or, E. F. and G. H. joint executors;) Now THEREFORE, I, the said C. D. hereby acknowledge the receipt from the said E. F., executor, (or, E. F. and G. H., executors,) as aforesaid, of the said sum, or legacy, of _____ dollars, so given and bequeathed to me as aforesaid, and do acquit, release, and discharge the said E. F. (or, E. F. and G. H.,) of and from all legacies, dues and demands whatsoever, under or by virtue of the said last will and testament, or against, or out of, the estate of the said A. B.

IN WITNESS WHEREOF, &c., (*as in n. 1324.*) C. D. [SEAL.]

FORMS.

1335. RELEASE GENERAL, of all DEMANDS.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between _____ of the first part, and _____ of the second part:

WHEREAS, there have been divers accounts, dealings, and transactions between the said parties hereto, all of which have now been finally adjusted, settled and disposed of, and the said parties hereto have respectively agreed to give each other the mutual releases and discharges hereinafter contained in manner herein-after expressed;

NOW, THEREFORE, THESE PRESENTS WITNESS, that in consideration of the premises and of the sum of five shillings, of lawful money of Canada to each of them, the said parties hereto respectively paid by the other of them at or before the sealing and delivery hereof (the receipt whereof is hereby acknowledged,) each of them, the said parties hereto respectively, doth hereby for himself (and herself) respectively, his (and her) respective heirs, executors, administrators, and assigns, remise, release, and forever acquit and discharge the other of them, his (and her) heirs, executors, administrators, and assigns, and all his, (her) and their lands and tenements, goods, chattels, estate and effects respectively whatsoever and whatsoever of and from all debts, sum and sums of money, accounts, reckonings, actions, suits, cause and causes of action and suit, claims and demands whatsoever, either at law or in equity, or otherwise howsoever, which either of the said parties now have, or has, or ever had, or might or could have against the other of them, on any account whatsoever, of and concerning any matter, cause, or thing whatsoever between them, the said parties hereto respectively, from the beginning of the world, down to the day of the date of these presents.

IN WITNESS WHEREOF, &c. *(as in n. 1324.)*

1336. RELEASE from one JOINT TENANT to ANOTHER.

THIS INDENTURE, made the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, between D. J., of _____, widow of W. J. late of _____, and sister of S. C. of _____, of the one part, and the said S. C. of _____, of the other part:

WHEREAS, the said D. J. and S. C., are and stand jointly seized to them and their heirs, of and in all those messuages, &c., situate in the township of _____, in the county of _____, (here insert an accurate description of the property.)

FORMS.

Now, THIS INDENTURE WITNESSETH, that for and in consideration of the sum of _____ by the said S. C. to the said D. J. in hand paid at or before the sealing and delivery hereof, (the receipt whereof is hereby acknowledged,) she the said D. J. doth by these presents, grant, release and confirm unto the said S. C. and his heirs, all and singular, the above mentioned messuages, farms, lands, tenements, hereditaments and premises, herein before mentioned to be the joint estate of them the said D. J. and S. C. with their and every of their usual or legal appurtenances, and all the estate, &c. To hold the said premises, unto and to the use of the said S. C., his heirs, and assigns. [Add covenants by D. J. that she is lawfully seized of one moiety of the premises, in joint-tenancy with the said S. C. _____ hath good right to grant, _____ for quiet enjoyment, _____ free from incumbrances, _____ and for further assurance.]

IN WITNESS, &c., (as in n. 1324.)

1337. RELEASE of DOWER.

TO ALL TO WHOM THESE PRESENTS SHALL COME: We, A. B., at present residing in the township of _____ in the county of _____, in the Province of Canada, _____, and C. B. his wife, at present residing at _____, in the kingdom of _____, out of the Province of Canada _____ send greeting:—

WHEREAS the said A. B. by a certain deed heretofore made by him of the one part, and E. F. of the other part, did grant, and convey to the said E. F., his heirs and assigns, that certain parcel of land and premises situate, lying and being in the _____, of _____ in the county of _____, and Province of Canada, and being composed of (*description*);

AND WHEREAS by reason of the said C. B., residing out of Canada, she was unable to join in the said deed for the purpose of releasing her dower and right of dower in the said land;

AND WHEREAS the said deed contained a covenant on the part of the said A. B., that he would with all convenient dispatch procure such release of dower therein as hereinafter appears;

NOW KNOW YE, that I, the said C. B., in consideration of the premises and of the sum of five shillings of lawful money of Canada to me paid by the said E. F., the receipt whereof is hereby acknowledged, and with the full consent of my husband testified by his being a party to and executing these presents, do hereby in pursuance of the statute in that behalf in force in that part of Canada called Upper Canada, grant and release unto the said E. F., his heirs and assigns, all dower and right of dower which I now

U. W. O. LAW

FORMS.

have in or out of the said land, or which I might have in the event of surviving my said husband or otherwise howsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, in the year of our Lord one thousand eight hundred and _____

SIGNED, SEALED, AND DELIVERED }
in the presence of }
G. H. }

A. B. [SEAL]
C. B. [SEAL]

I HEREBY certify that the within is the deed mentioned and referred to in the memorial _____, and in the _____ made and taken before me this _____ day of _____, 18 _____.

1338. RELEASE to a GUARDIAN.

KNOW ALL MEN BY THESE PRESENTS: That A. B. of _____, son and heir of B. B., deceased, doth, by these presents, remise, release, and forever quit claim unto C. D., of _____, his guardian, all and all manner of action and actions, suits, reckonings, accounts, debts, dues and demands whatsoever, which he, the said A. B., ever had, now hath, or which he, his executors and administrators, at any time hereafter, can or may have, claim, or demand, against the said C. D., his executors or administrators, for, touching, and concerning the management and disposition of any of the lands, tenements, and hereditaments of the said A. B., situate, &c., or any part thereof, or for, or by reason of any moneys, rents, or profits, by him received out of the same, or any payments made thereout, during the minority of the said A. B., or by reason of any matter, cause, or thing whatsoever, relating thereto, from the beginning of the world to the day of the date hereof.

IN WITNESS WHEREOF, (as in n. 1337.)

1339. RELEASE of a TRUST.

To ALL, &c., A. B., of _____, sendeth greeting:—
WHEREAS, by indenture bearing date _____, made between _____, (here recite the deed,) in which said indenture the said A. B. doth hereby declare that his name was only used in trust, for the benefit and behoof of C. D., of _____
NOW KNOW YE, that I, the said A. B., in discharge of the trust reposed in me, at the request of the said C. D., by these presents for me, my executors and administrators, do freely and absolutely remise, release, surrender, assign and set over unto the said C.

FORMS.

D., his executors, &c., all the estate, right, title, interest, use, benefit, privilege, and demand whatsoever, which I, the said A. B., have, or may have, or claim, of, or to the said premises, or of and in any sum of money, or other matter or thing whatsoever, in the said indenture mentioned; so that neither I, the said A. B., my executors or administrators, nor any of us, at any time hereafter, shall or will ask, claim, challenge or demand, any interest, &c., or other thing, in any manner whatsoever, by reason or means of the said indenture, or any covenant therein contained, but thereof and therefrom, and from all actions, suits and demands, which I, my executors, administrators, or assigns, may have concerning the same, shall be utterly excluded and forever debarred by these presents.

IN WITNESS WHEREOF, &c., (*as in n. 1537.*)

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CHAPTER XIII.

1340. POWERS of ATTORNEY.

A POWER OF ATTORNEY is a written authority whereby one person empowers another to do for him a certain act or certain acts therein specified, and although it is usual to insert a clause to the effect that the attorney to whom the power is delegated may act as fully and absolutely as the party who delegates the power; this in fact conveys *no additional* power beyond that which is specially delegated and defined in the previous part of the instrument. The act to be done must be clearly set forth, and no words of a general kind coming afterwards will be permitted to imply a power to do *other acts*, or any thing which is not *necessary* to the effective transaction of the business specially set out as the object of the power.

If, however, an attorney exceeds his power and his principal adopt *any part* of what he has so done in excess of his power, the law will imply the adoption of the *whole*. The principal cannot in such case choose to adopt what he may think advantageous to himself, and disavow the rest; but must accept *all or none*.

The signature of an agent under a power should be "A. B., by his attorney C. D.;" the name of the principal standing first; for if he were to sign C. D., *attorney for* A. B., he would make himself personally responsible, as many have found out to their cost.

If notice be given to an agent as to any business within the limits of his "power," and while he is actually engaged in transacting that business, such notice will be notice to the principal or party whom he represents. An agent cannot execute an instrument under seal without his power of attorney is also under seal.

It is better to register a power of attorney to convey lands, though not absolutely necessary to do so; but in general a careful purchaser will not be satisfied without such registration or an attested copy of the power, and it is a saving of trouble and expense to register it rather than to give every purchaser a copy; besides which titles of which the power forms a link will be thus placed beyond dispute *quoad* the power, and much inconvenience may be prevented in after years when it may not be easy to find the original power.

The registration should be by a memorial, in which the power is

FORMS.

recited, word for word, and the execution of the power and memorial must be evidenced in the same manner as the execution of a conveyance of land, and when the power is revoked such revocation should be registered in like manner and in the same office.

An attorney cannot delegate his power to another without express authority so to do, according to the maxim of law *delegatus non potest delegare*. If, therefore, it is intended to allow him to do so the instrument must contain a power of substitution.

A principal is bound by the declarations of his agent concerning the business which he has given him power to transact, if they are made when actually transacting that business. It is therefore very important to exercise caution in the choice of an agent lest through his careless or fraudulent representations, the principal should find himself liable to third parties who have not been dealt with in the fair or careful manner in which he would have dealt with them himself.

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1341. GENERAL POWER of ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of _____, hereby appoint C. D., of _____, to be my attorney, in my name and on my behalf, to manage, demise, grant, mortgage, sell, exchange, and dispose of all or any of the messuages, lands, tenements, and hereditaments, of or to which I am now, or shall become seized, possessed, or entitled, and to pay all taxes, rates, charges, and expenses, and make all other payments whatsoever which shall be payable or grow due for or on account of any of the said lands, tenements, and hereditaments; and to fell any timber or other trees, which are or shall be upon any of the said lands, tenements, and hereditaments, and to sell and dispose, as he shall think fit, of such timber and trees; AND to make allowances to and arrangements with all or any of the tenants or occupiers for the time being of the said messuages, lands, tenements, and hereditaments, and to accept surrenders of leases and tenancies, and generally to act in relation thereto as fully and effectually as I myself could do; AND ALSO, in my name, and on my behalf, to demand, sue for, collect, and receive all the rents and profits now due, or which shall become due in respect of the said premises, and to give effectual receipts and discharges for such rents and profits, or so much thereof as shall be received; AND, in case of non-payment of the said rents and profits or any of them, or any part thereof, in my name and on my behalf, to enter into and upon all or any of the tenements and hereditaments in respect of which any rents or profits shall be unpaid; and for the same rents and profits, and the costs and expenses incurred by or incidental to

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the non-payment thereof, to distrain, and the distress and distresses there found to dispose of in due course of law; AND to take and use all lawful proceedings and means for recovering and receiving the said rents and profits, and for evicting and ejecting defaulting tenants and occupiers from all or any of the said premises, and determining the tenancy or occupation thereof, and for obtaining, recovering and retaining possession of all or any of the premises held or occupied by such defaulters; AND ALSO, in my name and on my behalf, to commence and prosecute and to defend at law and in equity all actions, suits, claims, demands, and proceedings touching the said messuages, lands, tenements, and hereditaments, or the estate, interest, and rights of me or my tenants or assigns therein and thereto, touching any matter or thing whatsoever, in which I or my real or personal estate or effects may be in any way interested, affected, or concerned; AND ALSO, to demand, sue for, recover, and receive all sums of money, securities for money, debts, legacies, goods, chattels, and personal estate of or to which I am now or hereafter shall become possessed or entitled: and in my name and on my behalf to give valid and effectual receipts for the same, or for so much thereof as shall be received; AND ALSO, to adjust and settle, and to compromise and submit to arbitration, upon any terms that the said C. D. shall think fit or advisable, all accounts, debts, claims, demands, and disputes which do or shall subsist or arise between me and any other person, or between the said C. D., as my attorney, and any other person; and for all or any of the purposes aforesaid to execute and do all such instruments and things as the said C. D. shall think proper or expedient; and, upon receipt of any money under or by virtue of these presents, to pay the same to or deposit the same with any banker, broker, or other person in my name, and on my behalf, and again to withdraw the same, and to invest the same in my name in or upon any such stocks, funds, shares, or securities, and in such manner in all respects as the said C. D. shall think fit: and from time to time to receive the dividends, interest, and income arising therefrom, or from any other stocks, funds, shares or securities, of or to which I now am or hereafter shall become possessed or entitled, and to vary, sell, assign, transfer, and dispose of, and to surrender and relinquish the said stocks, funds, shares, and securities; AND for the purposes aforesaid, or any of them, to sign my name to and execute on my behalf, all checks, promissory notes, acceptances, deeds, transfers, assignments, and instruments whatsoever; AND ALSO, to appoint and remove at his pleasure any substitute for or attorney, or agent under him, in respect of all or any of the matters aforesaid, upon such terms, at such salary, and for such remuneration as the said C. D. shall think fit; AND GENERALLY to act in relation to my estate and effects, and in relation to all the said premises, as

FORMS.

fully and effectually in all respects as I myself could do: I, the said A. B., hereby agreeing and undertaking to allow, ratify, and confirm every act, deed, and thing which my said attorney shall lawfully do, execute, permit, or suffer, or purport to do, execute, permit, or suffer by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of _____, one thousand eight hundred and _____.

SIGNED, SEALED, AND DELIVERED

in presence of

G. D.,

E. F.

} A. B., [SEAL.]

1342. POWER of ATTORNEY to receive DEBTS.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of _____, widow, do, by these presents, constitute and appoint C. D., of _____, my true and lawful attorney, for me and in my name, and to and for my sole use and benefit, to bring to account and reckoning, and to ask, demand, sue for, levy, recover and receive, of and from all or any person or persons whomsoever and wheresoever, all sum and sums of money whatsoever by them owing to me, and on receipt thereof, or any part or parts thereof for me, in my name and to my use, such good and sufficient receipts, releases and discharges, to make and give for the same, as the nature of the case shall require;

AND to liquidate, adjust, compound, arbitrate, release and discharge the same, and on neglect or refusal from or by any such person or persons, to pay all or any such sum or sums of money so due and owing unto me as aforesaid, to take and use all such usual and customary legal ways and means for compelling or securing the due payment thereof, by action, suit, attachment or otherwise, howsoever, in my name, as my said attorney shall be advised;

AND for me and in my name and for my use, to prosecute and defend all or any actions or suits either at law or in equity, attachment or other legal process, now brought or to be brought and commenced by, for or against me, in any court or courts of judicature in Canada, and therein to proceed to judgment and execution thereon, or to discontinue or compromise the same, as my said attorney shall be advised, and to enter up satisfaction on record in any or either of the said courts, or to do any other act, matter, or thing, which shall be required and necessary to be done on my part and behalf in the proceedings, or carrying on, or defending any such action or suit so brought or to be brought as aforesaid;

AND ALSO for me and to and for my use to defray, pay and discharge, all sum or sums of money, debts, dues, claims and demands

U. W. O. LAW

FORMS.

which shall or may be justly due and owing from, or accrue against me, to any person or persons whomsoever, on any account whatsoever, and to take and receive for the same such receipts, acquittances and discharges, as the case may require;

AND ALSO for me in my name, and to and for my use and benefit, to do, transact, execute and perform, all and whatsoever other acts, deeds, bonds of arbitration, deeds of composition, releases, assignments, matters and things, which shall or may arise and be requisite and necessary to be done in and about, touching or concerning the management of my affairs and concerns, or any of them, or in any manner relative thereto:

AND GENERALLY for me in my name and to my use to do, perform and execute all and whatsoever other acts, matters and things, my said attorney shall judge requisite and necessary to be done in and about the premises, as fully and effectually to all intents and purposes as if I myself were present and did the same, I the said A. B. hereby ratifying, allowing, and covenanting, promising and agreeing, for myself, my heirs, executors and administrators, from time to time, and at all times hereafter, to ratify, allow and confirm, as good and valid, all and whatsoever my said attorney shall lawfully do, or cause to be done in and about the premises, by virtue hereof.

IN WITNESS WHEREOF, (*as in n. 1341.*)

1343. POWER of ATTORNEY to MANAGE and sell ESTATES.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of _____, for divers good causes and considerations, me herunto especially moving, do by these presents make, constitute and appoint C. D. of _____, my true and lawful attorney, for me and in my name to enter into and upon, and to take possession of all and singular my messuages, farms, lands, tenements and hereditaments whatsoever, and wheresoever situate in the Province of Canada;

AND ALSO, for me and in my name to make sale of and to convey all or any of the said premises, and to sign receipts for the purchase moneys, and to sign, seal and execute, and as my act and deed, acts and deeds, deliver good, sufficient and valid deeds of conveyance and assurance, for conveying the said premises, or any part thereof to any purchaser or purchasers of the same, his, her or their heirs and assigns: and also, for me and in my name to contract with any person or persons for leasing any of the said premises, and to make, seal, deliver and execute, any lease or leases,

FORMS.

demises or grants, for any term or terms of years not exceeding years, in possession, and not in reversion, and at such rent or rents as my said attorney shall think proper;

AND ALSO, for me and in my name to ask, receive and recover of all tenants and occupiers whatsoever, of all and every the said premises, all rents and arrears of rent, issues and profits, due and owing, or which at any time or times hereafter shall grow and become due and owing on account of the same premises, and if need be to distrain for, sue or prosecute for the same;

AND ALSO, for me and in my name to commence and prosecute any action or actions, suit or suits, as well real as personal and mixed, or otherwise, in any court of law or equity in the said province, in relation to the said premises, and the same to prosecute and follow, or to discontinue or become nonsuit therein, as my said attorney shall see cause; and generally, for me and in my name to do, perform and execute, all and whatsoever shall be requisite and necessary to be done in and about the premises, as fully and effectually to all intents and purposes, as I might or could do if personally present, hereby promising to ratify and confirm all and whatsoever my said attorney shall lawfully do or cause to be done by virtue of these presents;

AND LASTLY, I do hereby revoke and make void all former powers of attorney, authorities and deputations, by me at any time heretofore made, given or executed, in any of the matters or things above mentioned, to any other person or persons whomsoever.

IN WITNESS WHEREOF, (as in n. 1341.)

1344. POWER of ATTORNEY, revocation of.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of _____, for divers good causes and considerations, me hereunto especially moving, do, by these presents, revoke, countermand, annul and make void, a certain deed-poll or power of attorney, under my hand and seal, bearing date _____ to C. D. of _____, given, delivered and executed, and all powers and authorities whatsoever therein expressed and delivered.

IN WITNESS WHEREOF, (as in n. 1341.)

FORMS.

1345. GRANT of RIGHT of WAY for HORSES, CARRIAGES, and CATTLE.—VARIATION where the GRANT is LIMITED to a FOOTWAY only.

THIS INDENTURE, made the _____ day of _____, A. D. 18____, between (grantor) of _____ of _____, and Province of Canada, _____, in the county of _____ (grantee) of _____ of _____, in the county of _____ and province aforesaid, of the other part—

WITNESSETH, That in consideration of the sum of \$ _____, paid by the said (grantee) to the said (grantor), the receipt whereof is hereby acknowledged; and also in consideration of the covenants and agreements hereinafter contained on the part of the said (grantee) to be observed and performed, he the said (grantor) doth by these presents, for himself, his heirs, executors, and administrators, covenant and grant to the said (grantee) his heirs and assigns, and that it shall be lawful for the said (grantee) his heirs and assigns, and his and their agents and servants, and the tenants and occupiers for the time being, of (description of parcels in respect of which the right of way is to be granted) and all other persons for the benefit and advantage of the said (grantee) his heirs and assigns, from time to time and at all times henceforth, and at his and their will and pleasure, and whether by day or by night,* for all purposes connected with the enjoyment of the said (short description of the premises to which the right of way is granted,) to go over and return with horses, carts, wagons, wains, and carriages, of every kind and description, laden or unladen, and also to drive all manner of cattle and beasts whatsoever, in, along, over, and throughout a certain road or way marked out and fenced off by the said (grantor) over certain closes of land of him the said (grantor), in _____, in the county of _____, which said road or way is of the breadth _____ feet or thereabouts throughout, and leads from _____ to the said (short description of premises,) and which said road or way, together with its course and direction, is delineated and set forth in a map or plan in the margin of these presents; AND ALSO, with full power, license, and authority, for the said (grantee) his heirs and assigns, from time to time to make causeways, and otherwise to amend and repair the said road as occasion shall require.

AND THE SAID (grantee) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise and agree with and to

* If a footway only is intended, then, instead of the rest of this paragraph, say, "to pass and repass, go over and return in, through, along, over, and across certain fields or closes of land (describe the property) whereof the said (grantor) is seized in fee simple by, over, and along a certain footway leading from _____ to the said premises, a map or plan of which said pathway is particularly delineated in the margin of these presents."

FORMS.

the said (*grantor*), his heirs and assigns, that he the said (*grantee*), his heirs and assigns, will, from time to time, and at all times, forever hereafter at his and their own proper costs, in all things well and sufficiently amend and keep the said road or way in proper and substantial repair, and also the hedges and fences lately erected and made thereon by the said (*grantor*) on both sides thereof.

IN WITNESS, &c., (*as in n. 1033.*)

1346. GRANT of a RIGHT of WAY to a MINE for a TERM of TWENTY-ONE YEARS.

THIS INDENTURE, made the _____ day of _____ A. D. 18 _____, between (*grantor*), of _____ of _____, in the county of _____, and Province of Canada, _____, of the one part, and (*grantee*), of _____ of _____, in the county of _____, and province aforesaid, of the other part—

WITNESSETH, That in consideration of the sum of \$ _____, paid by the said (*grantee*) to the said (*grantor*), the receipt whereof is hereby acknowledged; and also in consideration of the rents and covenants hereby reserved and herein contained on the part of the said (*grantee*), his executors, administrators, and assigns, to be paid and performed, he the said (*grantor*) doth, by these presents, grant and demise unto the said (*grantee*), his executors, administrators, and assigns, full, free and irrevocable, right, liberty and license, power and authority, for himself and themselves, his and their agent or agents, workmen and servants, and all other persons, for the benefit and advantage of the said (*grantee*), his executors, administrators, or assigns, from time to time and at all times hereafter, [and whether by day or by night,*] to use and employ for the purposes hereinafter mentioned, ALL that railway† extending in one continued line from _____ to _____ (*special description of road*),

TOGETHER with full and free right, liberty, license, power, and authority, for him and them to go over and return, pass and repass along the said line of railway with carts, wagons, wains, and carriages, of every kind and description, either drawn by horses or propelled by steam or other engines, or by any other power or means whatsoever; and to convey all such ores, metals, and minerals, as shall from time to time be raised or gotten by the said (*grantee*), his partners, coadventurers, executors, administrators, or assigns, from out of ALL that mine, (*describe Mine*); AND ALSO, to convey to the said mine all such coals, timber, and other materials, articles, and things as may be required, or as may be deemed nec-

* Or otherwise, as the case may be.

† Or road, specially described.

FORMS.

essary for carrying on the workings of the said mine; TOGETHER with all privileges, appurtenances, and advantages to the said right of way, belonging or appertaining.

TO HAVE, HOLD, USE, AND ENJOY the said right, liberty, license, power, and authority, and all and singular other the premises hereby demised unto the said (*grantee*), his executors, administrators, and assigns, from the _____ day of _____, for, and during, and unto the full end and term of twenty-one years thenceforth next ensuing.

YIELDING AND PAYING therefor yearly, and every year, during the said term unto the said (*grantor*), his heirs and assigns, the yearly rent or sum of \$ _____ by equal half yearly payments on the day of _____, and the _____ day of _____, free from all rates, taxes, and deductions whatsoever, the first half yearly payment to be made on the _____ day of _____ next ensuing.

AND THE SAID (*grantee*) does hereby, for himself, his heirs, executors, and administrators, covenant with the said (*grantor*), his heirs and assigns, that he the said (*grantee*), his executors, administrators, or assigns, will pay unto the said (*grantor*), his heirs or assigns, the said yearly rent of \$ _____ hereby reserved, on the several days herein before appointed for payment thereof.

AND ALSO will from time to time, and at all times during the said term, permit and suffer the said (*grantor*), his heirs or assigns, and his and their agent or agents, and all other persons duly authorized by him or them, peaceably and quietly to use and enjoy the said railway in common with him the said (*grantee*), his executors, administrators, and assigns, without hindrance or denial, and with as little interruption as possible.

AND ALSO shall and will at all times do as little damage as possible to the said railway and the embankments, sides, fences, walls, and drains thereof, or to any buildings or other works thereunto belonging.

AND ALSO will from time to time during the said term, except in the last year thereof, contribute to a just proportion of the expenses to be incurred in laying new rails, or any other matters or things that may be required for keeping the said railway in proper and substantial repair, and also the sides and embankments, fences, walls, and drains thereunto belonging, and also so much of the engines, rollers, ropes, buildings, machinery and works connected therewith, as shall be used and enjoyed by the said (*grantee*), his partners, co-adventurers, executors, administrators, and assigns, in common with the said (*grantor*), his heirs or assigns, or any other person or persons whomsoever;

PROVIDED ALWAYS that in case the yearly rent hereby reserved, or any part of the same, shall be in arrear for the space of _____ days next after any of the said days herein before appointed for

FORMS.

payment thereof, THEN and in such case, and so often as the same shall happen, it shall be lawful for the said (*grantor*,) his heirs or assigns, to DISTRAIN upon all or any part of the premises hereby granted and demised for the said rent and all arrears thereof, and the goods, chattels, effects and property of the said (*grantee*,) his executors, administrators, or assigns, then and there found, to take, carry away, impound and dispose of in the same way as landlords are authorized to do for rent in arrear upon ordinary leases; To THE INTENT that the said yearly rent, or so much thereof as shall be then due, and all costs occasioned by the non-payment thereof, shall be thereby and therewith fully satisfied and discharged;

PROVIDED ALSO, that in case the yearly rent hereby reserved, or any part thereof, shall be in arrear for the space of _____ days next after any of the said days herein before appointed for payment thereof being demanded, or if breach shall happen to be made in all, any, or either of the covenants herein before contained on the part of the said (*grantee*,) his executors, administrators, or assigns, to be observed and performed, THEN and in such case it shall be lawful for the said (*grantor*,) his heirs and assigns, by notice in writing under his hand, delivered to the said (*grantee*,) his executors, administrators, or assigns, or left at his or their last or usual place of abode in _____, to determine this present grant and demise, and the right, liberty, license and authority hereby given, and to declare these presents, and every clause, matter and thing herein contained, to be absolutely void, except with respect to the remedies of the said (*grantor*,) his heirs or assigns, for any prior breach of any covenant herein contained.

AND THE SAID (*grantor*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*grantee*,) his executors, administrators, and assigns, that he the said (*grantor*) now hath in himself good right to grant the said right of way hereby demised unto the said (*grantee*,) his executors, administrators, and assigns, for the term hereby granted.

AND ALSO, that the said right of way shall or may be enjoyed accordingly, without any unnecessary hindrance, interruption, or disturbance, of, or by the said (*grantor*,) his heirs or assigns, or any other person or persons whomsoever.

AND ALSO shall and will from time to time and at all times during the said term, keep and preserve the said railway rails, sides, embankments, walls, and drains thereunto belonging, and the engines, rollers, ropes, buildings, machinery, and works connected therewith, hereby authorized to be used and enjoyed in common as aforesaid, in proper and substantial repair, and in all respects fit for the exercise and purposes of the right, liberty, license, power and authority hereby granted and demised.

AND ALSO, will pay and discharge all rates, taxes and impositions

FORMS.

whatsoever, which, during the said term hereby granted, shall be charged or imposed in respect of the said premises hereby demised as aforesaid.

IN WITNESS WHEREOF, &c., (as in n. 1345.)

1347. RELEASE of a RIGHT of WAY from the GRANTEE to the GRANTOR.

THIS INDENTURE, made the _____ day of _____, A. D. 18____, between (relessor) of _____ of _____, and Province of Canada, _____, in the county of _____ (relessee) of _____ of _____, in the county of _____, of the one part, and _____, province aforesaid, of the other part.

WHEREAS BY INDENTURE, dated on or about _____ (here recite the deed by which the right of way was granted.)

AND WHEREAS the said (relessor) hath agreed to relinquish his said right of way herein before mentioned unto the said (relessee) for the sum of \$ _____.

NOW THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of \$ _____ paid by the said (relessee) to the said (relessor,) the receipt whereof is hereby acknowledged; he the said (relessor) doth by these presents, remise, release, relinquish, and forever quit claim unto the said (relessee) and his heirs, ALL THAT the aforesaid road or right of way so as aforesaid granted unto the said (relessor,) by the said herein before recited indenture of the _____ day of _____, AND all rights and privileges whatsoever which he said (relessor) now hath, in, over, upon, or throughout the same, TO THE INTENT that the said right of way may be forever extinguished, and that the said (relessee,) his heirs and assigns, shall, and may at all times hereafter, have, hold, use, occupy, possess and enjoy the said hereditaments and premises over which such right of way was so granted as aforesaid, freed and absolutely exonerated and discharged therefrom, and all other easements, privileges, claims and demands whatsoever, of or by the said (relessor,) his heirs or assigns, or any other person or persons rightfully claiming, by, from, through, under, or in trust for him.

AND THE SAID (relessor) doth hereby, for himself, his heirs, executors and administrators, covenant with the said (relessee,) his heirs and assigns, that he the said (relessor,) now hath in himself good right to release or otherwise relinquish the said right of way unto the said (relessee,) his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

AND ALSO, that the said (relessor,) and all persons rightfully claim-



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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FORMS.

ing through or under him, will, from time to time and at all times hereafter, at the request and costs of the said (*relessee*,) his heirs or assigns, enter into, execute and perfect all such further releases, or other assurances, for the further, better, or more perfectly or satisfactorily releasing, relinquishing, assuring and confirming the said road or right of way hereby released unto the said (*relessee*,) his heirs and assigns, as the said (*relessee*,) his heirs or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

IN WITNESS WHEREOF, &c., (*as in n. 1345.*)

1348. APPOINTMENT of a JOINTURE in exercise of a POWER limited by a WILL.

THIS INDENTURE, made the _____ day of _____, A. D. 18____, between (*appointor*) of _____ of _____, in the county of _____, and Province of Canada, _____, of the first part, (*christian name*,) the wife of the said (*appointor*) of the second part, and (*two trustees*) of _____ of _____, in the county of _____, and province aforesaid, of the third part.

WHEREAS (*testator*,) late of _____, by his last will dated on or about the _____ day of _____, devised all (*parcels*) unto the said (*appointor*) for the term of his natural life, without impeachment of waste with divers limitations over after his decease; but with a proviso empowering him the said (*appointor*) by any deed or instrument, &c., (*set out the power in precise terms as contained in the will.*)

AND WHEREAS the said (*appointor*) is desirous of exercising his said power of appointing a jointure in favor of the said (*christian name*,) his wife, and also of limiting and appointing the said hereditaments and premises for the term of years hereinafter mentioned, as a further security for the payment of the said jointure in manner hereinafter appearing;

NOW THIS INDENTURE WITNESSETH, that the said (*husband*,) in exercise and execution of the power limited to him as aforesaid, and of every other power in him vested, [but subject and without prejudice as in the said will is mentioned,] Doth hereby grant, limit, and appoint unto the said (*christian name*,) the wife of the said (*husband*,) one annuity or yearly rent-charge of \$ _____, to be yearly issuing and payable out of, and charged and chargeable upon all and singular the hereditaments and premises mentioned and described in the said will.

TO HAVE, HOLD, RECEIVE, AND TAKE the said annuity or yearly rent-charge of \$ _____, [subject as aforesaid,] unto the said (*christian name*,) the wife of the said (*husband*,)

U. W. O. LAW

FORMS.

Christian name,) the wife of the said (*husband*) and her assigns, during the term of her natural life, in case she should survive her said (*husband*), to be for her jointure in lien satisfaction and discharge of her said (*husband*), and to be paid to her or her assigns by four equal quarterly payments on the _____ day of _____, the _____ day of _____, the _____ day of _____, and the _____ day of _____, in every year free from taxes, and from all deductions whatsoever, the first quarterly payment thereof to be made on such of the said days of payment as shall first happen after the decease of the said (*husband*).

AND THE SAID (*husband*) doth hereby further grant and appoint that in case the said annuity or yearly rent-charge, or any part thereof, shall at any time or times be in arrear and unpaid for the space of fourteen days next after any of the said days hereby appointed for payment thereof, Then and so often as it shall so happen, it shall be lawful for the said (*Christian name,*) the wife of the said (*husband*), or her assigns, into and upon the said hereditaments and premises so charged with the payment of the said annuity or yearly rent-charge as aforesaid, or into and upon any part or parts thereof, to enter and distrain for the same and all arrears thereof, and the distress and distresses then and there found, to take, lead, drive away and imponnd, and in pound to detain and keep until the said annuity and all arrears thereof, together with the costs and expenses incurred in the taking and keeping any such distress or distresses shall be fully paid and satisfied; AND in default of payment thereof in due time, to appraise, sell, and dispose of such distress or distresses, or any part thereof, or in like manner as in cases of distress taken for non-payment of rent reserved upon common leases, To THE INTENT that thereby and therewith the said (*Christian name,*) the wife of the said (*husband*), or her assigns, may be fully paid and satisfied, the said annuity and all arrears thereof, or so much thereof as shall be remaining due and unpaid, and all costs and expenses incurred by reason of the non-payment thereof, or in the recovery of the same.

AND FURTHER, that in case the said annuity, or any part thereof, shall at any time or times be in arrear and unpaid for the space of twenty-eight days next after any of the days hereby appointed for payment thereof, [although no formal demand shall have been made,] it shall be lawful for the said (*Christian name,*) the wife of the said (*husband*), and her assigns, during the term of her natural life, into and upon the said hereditaments and premises so charged as aforesaid, or into and upon any part or parts thereof in the name of the whole to enter, and the same with the appurtenances to hold and enjoy, and the rents, issues, and profits thereof, to receive and take to and for her and their own use and benefit, until she shall thereby and therewith, or otherwise, be fully paid and satisfied, the said annuity and all arrears thereof, and also so much of the

FORMS.

said annuity as shall accrue and become due during the time that she or they shall, by virtue of such entry or entries, be in possession of the said premises, or any part or parts thereof, together with all such costs and expenses as shall be incurred by reason of the non-payment of the said annuity, or any part thereof, at, or on any of the said days herein before appointed for payment of the same; such possession when so taken as aforesaid to be without impeachment of waste.

AND THIS INDENTURE FURTHER WITNESSETH, that for the better securing the payment of the said annuity to the said (*christian name*,) the wife of the said (*husband*,) and her assigns, during the term of her natural life, in case she should survive the said (*husband*,) he the said (*husband*,) in further pursuance of the said power, and every other power in him vested, or in any-wise enabling him thereunto, [but subject nevertheless, and without prejudice as aforesaid,] Doth hereby grant, appoint, and demise unto (*two trustees*,) their executors, administrators, and assigns, ALL and singular the aforesaid lands and premises, with their rights, members and appurtenances;

To HOLD the said premises, with their appurtenances, unto the said (*trustees*,) their executors, administrators, and assigns, for and during and unto the full end and term of five hundred years, to commence from the death of the said (*husband*,) and thenceforth next ensuing without impeachment of waste;

UPON TRUST, in case the said annuity, or any part thereof, shall be in arrear and unpaid for the space of forty days next after any of the said days appointed for payment thereof, [although no formal demand shall have been made,] Then, and so often as the same shall happen that the said (*trustees*,) or the survivor of them, his executors or administrators, do and shall from to time out of the rents, issues, and profits of the said lands and premises, or by demise, sale, or mortgage of the said premises, or any part thereof, for all or any part of the said term hereby granted, or by bringing actions against the tenants or occupiers of the said premises, or any of the said rents then in arrear, or by all, any, or either of the ways and means aforesaid, to levy and raise such sum or sums of money as shall be sufficient from time to time to satisfy the said annuity, or so much thereof as shall from time to time happen to be in arrear, together with the costs and expenses attending the levying and raising, or occasioned by the non-payment of the said annuity, or any part thereof, and shall apply the moneys to be so levied and raised towards the satisfaction thereof accordingly.

AND shall permit and suffer the person or persons for the time being entitled to the immediate reversion of the said lands and premises expectant upon the determination of the said term of five hundred years, to receive the residue of the rents and profits which

U. W. O. LAW

FORMS.

shall not be applied in the performance of the trusts of the said term.

PROVIDED ALWAYS, that when the trusts of the said term of five hundred years shall have been performed or become unnecessary or incapable of taking effect, and all costs and expenses incurred by the trustees of the said term respectively in the execution of the said trusts shall have been fully paid and satisfied, then the said term of five hundred years, as to such part of the said premises as shall then remain unsold and undisposed of for the purposes aforesaid, shall cease and become void.

IN WITNESS, &c., (as in n. 1345.)

1349. CLAUSE that present APPOINTMENT shall not PREVENT any future APPOINTMENT when the POWER is not EXHAUSTED by the PREVIOUS FORM. (n. 1348.)

PROVIDED ALWAYS, that the grant, limitation, and appointment hereby made, shall not extend to prevent the said (husband) at any time or times hereafter from appointing any further annuity or rent-charge to the use of the said (christian name,) his wife and her assigns, during her life, in case she should survive him, upon the same terms and under the same restrictions as are limited and contained in the power of jointuring, limited and contained in the said will.

IN WITNESS, &c., (as in n. 1345.)

1350. HOTCHPOT CLAUSE.

PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties hereto, that in case any appointment shall be made by the said (A. B.) in pursuance of the power herein before contained for that purpose, in favor of any one or more of such children, no such child who shall take any part or share of the said sum directed to be raised for his or her portion under or by virtue of such appointment, shall be entitled to any further or other parts or share of or in the said moneys, until he, she, or they shall have brought the sum so appointed to him, her, or them into hotchpot, for the benefit of the other of the said children, for whom a portion is hereby intended or directed to be raised.

UST.

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A. B. [SEAL.]

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ECUTOR.
(*Legatee*) of

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revoked,] was duly proved by the said executors in the (*name of the court*) on the _____ day of _____, following:
Now THEREFORE KNOW YE that the said (*legatee*) doth hereby acknowledge to have received of and from the said (*executors*,) the said sum of \$ _____, so bequeathed to him as aforesaid. And of and from the said \$ _____, and every part thereof the said (*legatee*) doth by these presents, release, exonerate, and forever discharge the said (*executors*,) and each and every of them, their, and each and every of their heirs, executors and administrators, and also all the estate and effects whatsoever of the said (*testator*,) deceased. And ALSO the said (*legatee*) doth hereby remise, release, and forever quit claim unto the said (*executors*,) and each and every of them, their, and each and every of their heirs, executors and administrators, all action and actions, suit and suits, cause and causes of action, and suit, claims, and demands whatsoever of him the said (*legatee*,) for or in respect of the said sum of \$ _____, or any interest payable in respect of the same or any part thereof.
IN WITNESS, &c., (*as in n. 1351.*)

1354. RELEASE by WARD to GUARDIAN.

KNOW ALL MEN BY THESE PRESENTS, that I (*name and place of abode of ward*,) Do by these presents, remise, release, and forever quit claim unto (*guardian*,) of _____, ALL and all manner of action and actions, suit and suits, cause and causes of action, and suit, accounts, reckonings, claims and demands whatsoever, which I the said (*ward*) now have, ever had, or which I, my executors or administrators, at any time hereafter can do, may have, claim or demand against the said (*guardian*,) his heirs, executors, or administrators, concerning the management of any lands, tenements, or hereditaments of me the said (*ward*,) or any part thereof, on account of any sum or sums of money, rents or profits, received by him out of the same premises, or any payment made thereunto during my minority, or any other act, cause, matter or thing relating thereto from any time past to the day of the date hereof.
IN WITNESS, &c., (*as in n. 1351.*)

1355. MUTUAL RELEASE between PARTNERS.

TO ALL TO WHOM THESE PRESENTS SHALL COME: We, A. B., of C. D., of _____, and E. F., of _____, send greeting:—
WHEREAS dealings and transactions have taken place between us
563

FORMS.

the said A. B., C. D., and E. F., as partners trading under the name, style, and firm of (*style of firm*,) all of which are now wound up, and finally settled and adjusted.

NOW THEREFORE KNOW YE that each of us the said A. B., C. D., and E. F., DOth by these presents, for himself, his heirs, executors, and administrators, acquit, release, exonerate, and forever discharge the others of them, their, and each of their heirs, executors, and administrators, and all his and their lauds, tenements and goods, chattels, estate, and effects whatsoever, from all sum and sums of money, accounts, reckonings, actions, suits, claims, and demands for or on account of any matter, cause, or thing whatsoever, up to and inclusive of the day of the date hereof.

IN WITNESS, &c., (*as in n. 1351, but in the plural number.*)

ling under the name,
are now wound up,
he said A. B., C. D.,
his heirs, executors,
and forever discharge
heirs, executors, and
movements and goods,
all sum and sums of
pounds, and demands for
whatsoever, up to and
(serial number.)

Set of Foreign Bills of Exchange.

No. 100.

Toronto, October 10th, 1861.

Exchange for £1000.

Ten days after sight of this First of Exchange, (second and third
unpaid,) pay to the order of John Doe. One Thousand Pounds sterling,
value received, and charge the same without further advice, to account of
Your obedient servant,

To Peter Jones,

Richard Roe.

Liverpool.

BILLS OF EXCHANGE.



Set of Foreign Bills of Exchange.

No. 100.

Toronto, October 10th, 1861.

Exchange for £1000.

Ten days after sight of this Second of Exchange, (first and third unpaid,) pay to the order of John Doe, One Thousand Pounds sterling, value received, and charge the same without further advice, to account of

Your obedient servant;

Richard Roe.

To Peter Jones,

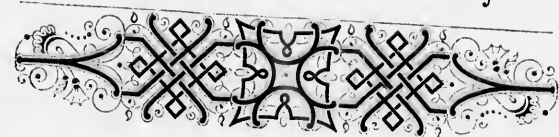
Liverpool.



To Peter Jones,

Liverpool.

Richard Pee.



Set of Foreign Bills of Exchange.

No. 100.

Toronto, October 10th, 1861.

Exchange for £1000.

Ten days after sight of this Third of Exchange, (first and second unpaid,) pay to the order of John Doe, One Thousand Pounds sterling, value received, and charge the same without further advice, to account of

Your obedient servant,

To Peter Jones,

Liverpool.

Richard Pee.

BILLS OF EXCHANGE.

Ordinary Bill of Exchange or Draft at a certain Time after Sight.

\$ 250.

Toronto, September 12th, 1861.

Ten days after sight,* pay to the order of Samuel Foy, Two Hundred and Fifty Dollars, value received, and charge the same to account of Yours, &c.,

John Doe,
Toronto, C. W.

To Richard Roe,
Quebec.

Bill or Draft at a certain Time after Date.

\$ 110. ²⁵/₁₀₀

Toronto, August 9th, 1861.

Twenty days after date, pay to the order of James Smith, One Hundred and Ten ²⁵/₁₀₀ Dollars, value received, and charge the same to account of

Yours, &c.,

John Doe,
Toronto, C. W.

To Richard Roe,
Quebec.

* For a bill payable at sight, instead of the words, "ten days after sight," say "At sight." A check made payable to order must be endorsed by the payee before used.

To Richard Rice,
Quebec.

Years, &c.,

John Dee,
Toronto, C. W.

* For a bill payable *at sight*, instead of the words, "ten days after sight," say "At sight." A check made payable to order must be endorsed by the payee before used.



No. 50.

Check or Draft on a Bank.

Toronto, May 14th, 1861.

Cashier of the COMMERCIAL BANK.

Pay to C. C. Savage, or bearer, Four Hundred and Twenty Dollars,
\$ 420.

48*



\$ 510.

Note not Negotiable.

CHECK.—PROMISSORY NOTE.

Toronto, November 9, 1861.

Twenty days after date, I promise to pay to Martin W. Goodman, Six
Hundred and Ten Dollars, value received.

Albert Dee.

569

\$250.

Note Negotiable by Endorsement.

Toronto, September 12, 1861.

Ten days after date, I promise to pay to the order of Albert Hawkins, Two Hundred and Fifty Dollars, value received.

Albert Dec.

PROMISSORY NOTES.

\$125 $\frac{25}{100}$.

Note Negotiable without Endorsement.

Toronto, September 10th, 1861.

Three months after date, I promise to pay to William Smith, or bearer, One Hundred and Twenty-Five $\frac{25}{100}$ th Dollars, value received.

Albert Dec.

Three months after date, I promise to pay to William Smith, or bearer, One Hundred and Twenty-Five $\frac{25}{100}$ th Dollars, value received.

Albert Doe.

Joint Negotiable Note, payable at a Bank.

\$200.

Toronto, February 8, 1861.

Six months after date, for value received, we promise to pay Henry Reed, or order, Two Hundred Dollars, at the Bank of Upper Canada, Toronto.

Albert Doe,

Richard Pece.

Negotiable Note payable in Merchandise.

\$300.

Philadelphia, September 12, 1861

Sixty days after date, for value received, I promise to pay without defalcation, to William Love, or order, Three Hundred Dollars, in merchantable wheat at the current price.

Albert Doe.

Without defalcation are inserted in notes drawn in Pennsylvania and New Jersey to protect them when due against any offset of the maker.

PROMISSORY NOTES.

PROMISSORY NOTES.

Negotiable Note on Demand.

\$400 ²⁵/₁₀₀.

Toronto, November 4, 1861.

On demand, I promise to pay to the order of Martin H. Webb, Four Hundred ²⁵/₁₀₀ Dollars, value received.

Richard Doe.

Note on Demand, with Interest from date, not Negotiable.

\$150.

Toronto, March 12th, 1861.

On demand, I promise to pay to Samuel Smith, One Hundred and Fifty Dollars, with interest from date, value received

Richard Doe.



On demand, I promise to pay to Samuel Smith, One Hundred and Fifty Dollars, with interest from date, value received

Richard Doe.

Form of Due-Bill.

Toronto, March 12, 1861.

Due Richard Hopkins, on demand, twenty-five dollars, value received.

Albert Doe.

Order for Money.

Toronto, September 12, 1861.

Mr. Richard Hopkins will please pay to Samuel Smith, or order, twenty-five dollars, on demand, and charge the same to the account of

Albert Doe.

DUE-BILLS.—ORDERS.

Order to sell Merchandise.

Toronto, November 4, 1861.

Please let Mr. Thomas Sharpe have such merchandise as he may select, to the amount of one hundred dollars, and charge the same to the account of
To Albert Doe.

Richard Doe.

ORDERS.

Order to Deliver Goods.

Toronto, February 8, 1861.

Mr. Samuel Doe: Please deliver to Dunn Brown, or bearer, the package of goods belonging to me and oblige
Yours,

Richard Doe.



Mr. Samuel Pece: Please deliver to Dunn Brown, or bearer, the package
of goods belonging to me and oblige
Yours,

Richard Doe.

Receipt in Full.

Toronto, September 10, 1861.

Received of Albert Pece fifty-one dollars, in full of all demands up to this
date.

Richard Doe.

RECEIPTS.

Receipt on Account.

Toronto, September 12, 1861.

Received of Richard Pece ten dollars, to apply on account.

Albert Doe.

Receipt for a Special Purpose.

Received, Toronto, July 24, 1861, from Richard Pece, one hundred dollars, to pay the account of John Dee against him.

Peter Popper.

RECEIPTS.

Receipt when Money is Paid by a Third Person.

Toronto, September 12, 1861.

Received of Richard Pece, through Peter Popper, one hundred dollars in full of all demands against Richard Pece up to this date.

John Dee.



Received of Richard Pece, through Peter Pepper, one hundred dollars in full of all demands against Richard Pece up to this date.

John Doe.

Receipt of Interest to be Endorsed on a Bond.

Received, September 15, 1861, from William Waters, one hundred and twenty dollars, being the semi-annual interest this day due on the within bond.

Albert Doe.

RECEIPTS.

Receipt in full for a Special Account.

Toronto, November 9, 1861.
Received from William Waters two hundred dollars and twenty-five cents, in full of all demands for printing to November 1st, 1861.

Albert Doe.

U. W. O. LAW

INDEX.

INDEX TO NOTES.

ABATEMENT—		
	of legacies,	1174 <i>et seq.</i>
ABSTRACT—		
	mortgagee's solicitor has a right to prepare,	2
	time for delivery of,	9
	expenso of comparing with deeds,	13
	who prepares and pays for,	163
	general rules on,	163 <i>et seq.</i>
	double when necessary,	174
	conclusion of,	203
	delivery of,	204
	purchase must apply for,	204
	demand of,	204
	non-delivery of,	205
	perusal of,	206
	analysis of,	207
	itself goes to the purchaser,	208
	belongs to vendor, if contract not fulfilled,	279
	purchaser may retain until dispute settled,	293
ACT OF PARLIAMENT—		
	private, how proved,	243
ACCUMULATION—		
	trust for,	1127, 1163
ADDITION—		
	of parties should be set out,	922
ADMINISTRATORS AND TRUSTEES—		
	have <i>joint</i> powers,	312
	must all concur,	312
ADMINISTRATION—		
	<i>cum testamento annexo</i> ,	1189
	<i>de bonis non</i> ,	1190
ADVANCES—		
	future covenant for in mortgage,	491

NOTE. The figure columns refer to paragraphs, and not pages.

INDEX.

AGENT—		
	may bind principal under Statute of Fraud, but not agent's clerk,.....	154
AGREEMENT—		
	should always be entirely in writing,.....	47
	clauses in, see "CLAUSES."	
	<i>parol</i> to refer to arbitration cannot be made a rule of Court, though an action may lie thereon,.....	94
	for sale of real estate must be in writing,.....	136
	not written, valid if executed,.....	139
	confession of, in bar to the Statute without same pleaded,.....	147
	not annulled by being treated only as a draft,.....	149
ALIEN—		
	use of the term,.....	331
ALIENATION—		
	to control power of,.....	1123
	by tenant for life restricted,.....	1133
	of estates of inheritance, restraints, void.....	1145
	by women, how restrained,.....	1168
ALL DEEDS CLAUSE—		
	omitted when,.....	788
ALL ESTATE CLAUSE—		
	omitted when,.....	787
ALTERATION—		
	of documents,.....	202
	and erasures in wills,.....	1206, 1219
	<i>parol</i> , as to,.....	1206, 1219
ANCIENT DOCUMENTS—		
	of title may be demanded,.....	167
	when lost,.....	168
ANNUITANT—		
	cannot be compelled to release,.....	1166
ANNUITY—		
	due payment of,.....	250
	as matter of purchase,.....	292
	redeemable,.....	658
	sometimes gives power to distrain,.....	658
	clauses in deed of,.....	665
	on real estate must be registered,.....	666
	regrant of,.....	667
	on joint life of husband and wife,.....	668
	charged on premises,.....	1126
	how to be charged,.....	1152, 1166
	on personality may abate,.....	1174

INDEX.

ANTICIPATION—		
prevented,		938
APPERTAINING—		
same as "BELONGING,"		784
APPOINTMENT—		
conveyances by, inconveniences of,		303
recitals in conveyance by,	314, 315	
operative words for the act of,		333
SHORT FORM of,		333
power of to a married woman,		938
in favor of children,		912
under <i>power</i> does convey the estate,		1266
APPOINTMENTS—		
under <i>powers</i> ,	1270 <i>et seq.</i>	
illusory,		1273
APPURTENANCES—		
this one word generally sufficient,		344
effect of,		783
ARBITRATION—		
that disputes shall be referred to,		63
law and practice of,		94, 97
cannot be compelled unless suit has begun,		97
ARBITRATOR—		
may examine on oath,		95
and compel attendance of witnesses,		95
cannot delegate authority,		95
is <i>functus officio</i> when award made,		95
cannot order payment of costs,		97
has lien on the award for a reasonable fee,		95
ASSIGN—		
effect of the word,	332, 366	
when license to, necessary,		365
not to, without license,		766
ASSIGNMENT—		
<i>see</i> "TRANSFER," when preferable to, <i>under lease</i> ,		518
of personalty, requisites of,		916
from one partner to another,		999
ASSIGNMENTS—		
invalid except by deed,		362
<i>mesne</i> , recital of,	363, 519	
ASSIGNOR—		
his continued liability,		1313
ASSURANCE—		
policies of,		30

U. W. O. LAW

INDEX.

ATTESTATION—
and receipt clause, how abstracted, 189
to a will, 1204

ATTORNEY—
may submit to arbitration, 94
powers of, see "POWERS."
execution by, 357
may not take a mortgage for future costs, 470
warrant of, 606
powers of, 1310

ATTORNMENTS, 831

AUCTION—
sales by, 122
reservo bid, 122
"without reserve," 122
disparagement of property by purchaser, 123
under decree, not within Statute of Frauds, 135

AUCTIONEER—
is a stakeholder as to deposit, 127
when liable for interest, on deposit, 129
personally liable, 130, 131
may not receive more than the deposit, 130
if insolvent, who is liable for loss, 132
how paid, 133
his lien, 134
negligence of, 134

AWARD—
how and when to be made, 97
parol not bad, 97
when bad, 97
may be in form of a special case, 97
when published, 97
mistake in point of law does not vitiate, 97
when court cannot set aside, 97

BANKERS—
mortgage to, 1263

BANKING ACCOUNT—
covenant to pay balance of, 492, 1263

BANKRUPTCY—
proceedings in, are within Statute of Frauds, 144
assignment is an act of, 1615

BARGAIN AND SALE, 302
cannot sustain a power to pass legal estate, 302
must have a consideration, 327

INDEX.

.....	189		
.....	1204	"BARGAIN AND SELL"—	
		use of the terms,.....	331
		see also "OPERATIVE WORDS."	
.....	94	BARRISTER—	
		power to bind his client by reference to arbitration, or	
		by agreement,.....	94
.....	357	BASE FEE—	
.....	470	how conveyed,.....	94
.....	606	BELONGING—	
.....	1340	synonymous with <i>appertaining</i> ,.....	373
.....	831	BEQUEST—	
		general pecuniary,.....	784
		residuary,.....	1103
.....	122	BIBLE—	
.....	122	family entries in the, are evidence,.....	1104
.....	122	BIDINGS—	
.....	123	one reserve bid,.....	246
.....	135	may be retracted,.....	122
		condition not to retract invalid,.....	125
.....	127	BILLS OF EXCHANGE—	
.....	129	mortgage of,.....	126
.....	130, 131	BILLS OF SALE,.....	528
.....	130	BIRTHS—	
.....	132	marriages and deaths, how proved,.....	736
.....	133	BLANKS—	
.....	134	in wills may not be filled up,.....	246
.....	134	BOND—	
		equity will support as an agreement,.....	1059
.....	97	as an original security,.....	390
.....	97	joint and <i>several</i> ,.....	604
.....	97	post obit,.....	605
.....	97	to be kept sealed,.....	607
.....	97	assignment of,.....	609
.....	97	proceedings on, preferable to covenant,.....	627
.....	1263	for quiet enjoyment where no title,.....	652, 664
.....	492, 1263	BOND DEBT—	
		mortgage of,.....	1316
		tacking of,.....	526
.....	144	BUILDINGS—	
.....	1010	pass with the land, when they should be named,.....	636
.....	302	BUSINESS—	
.....	302	trust to carry on,.....	781
.....	327	CANCELLATION—	
		of documents.....	1166
			202

INDEX.

CANCELLATION—		
of will, effect of,.....		1214
CAPACITY—		
mental, of testator,.....	1043, 1044	
CAPITA—		
or <i>stirpes</i> ,.....		1064
CASE--		
<i>special</i> , no basis for decree for specific performance,....		388
CHANGE—		
and variation of securities,.....		1161
CHARGE—		
on real estate, how made,.....		1148
CHARITABLE USES—		
trusts for,.....		1181
what they are, enumerated,.....	1182, 1184	
CHARITABLE BEQUESTS—		
cannot be charged on,.....		1151
assets are not marshaled in favor of,.....	1175, 1177	
should describe the objects clearly,.....		1179
and mode of investment and application,.....		1180
CHATTELS--		
wills of,.....		1091
CHATTEL MORTGAGES,.....		736
CHILDREN—		
of former marriage, how to provide for,.....		919
bequests to,.....	1060 <i>et seq.</i>	
to illegitimate,.....	1067-8	
election of, between will and settlement,.....		1143
to take parents' share,.....		1171
legacies to, by persons <i>in loco parentis</i> ,.....		1172
appointment to raise portions for,.....		1275
CLAUSE—		
reversion, omitted now,.....		345
all estate,.....	345, 367	
all deeds,.....	347, 368	
CODICIL—		
and will are one Testament,.....		1198
but sometimes distinct, Rules as to,.....		1199
for appointing or changing trustees or executors,.....		1201
COMMISSIONERS—		
to make partition,.....		1299
COMPOSITION—		
deeds of, with creditors,.....	1005 <i>et seq.</i>	

INDEX.

COMPENSATION—	
may be given for defect in quantity,.....	220
Lord Eldon's rule as to,.....	222
form of,.....	223
when vendor may enforce specific performance with,...	224
COMPUTATION—	
of time in leases,.....	793
in partnership deeds,.....	977
CONCURRENCE—	
of interested parties,.....	310
of mortgagor in a sale not necessary,.....	311
nor that of a dower trustee,.....	311
CONCURRENT LEASES,.....	794
CONDITION—	
to assume name and arms of testator,.....	1139
breach of, to determine estate,.....	1140
to divest an estate,.....	1141
not to dispute will,.....	1142
CONDITIONS—	
of title,.....	160
annexed to a devise,.....	1053
not to alienate,.....	1133
as to marriage,.....	1135
in restraint of,.....	1138
as to insolvency,.....	1144
CONFIRM AND RATIFY—	
use of the terms,.....	331
CONFESSIONS—	
of judgment,.....	736, 737
CONSENT—	
should be recited,.....	318
CONSIDERATION—	
not necessary at common law, except in a deed of bargain and sale,.....	327
rebutts resulting use or trust,.....	327
acknowledgment that it is paid, does not prevent proof that it is not,.....	328
none should be expressed in disentailing assurances,...	329
when should be more fully expressed,.....	336
Form of such expression,.....	336
CONTRACT—	
see "AGREEMENT."	
if by an agent,.....	36
clauses in,.....	37

U. W. O. LAW

INDEX.

CONTRACT—
not released by payment of penalty, 46
right to demand completion of, is sometimes in purchaser only, but never in vendor only, 221
when vendor may rescind, 278
in writing not necessary to support "money had and received," 385
but is necessary in suit for specific performance, 389
exceptions to this rule, 389
by testator for lands not yet conveyed, 1088, 1089

CONVEYANCE—
preparation, execution and expense of, 19
to purchaser, 297
clauses in, see "CLAUSES" in index of *Forms*.
who prepares, 297
modes of, 299, 300
under powers, inconveniences of, and title under, 303
grant and release, 304
to bar estates tail, 308, 307

CONVEY—
the word, has superseded "alien," 331

CONVEYANCING SECURITIES—
kinds of, 452

COPARCENERS, 1288

COPIES—
examined, 235
office, evidence, 241

COSTS—
when paid by vendor, 281
by purchaser, 297
of disentailing assurances, 307
in equity always discretionary, 391
at law, are not allowed in equity, 391
when written agreement will give title to, 460
future, an attorney may not take a mortgage for, 470
arbitrator cannot order payment of, 97
at law, equity will not allow, 653

COVENANT—
for future advances, 491
to pay balance of banking account, 492
special, to release mortgagor concurring in sale under power, 495
to produce title deeds, important, 498
not to grant leases, 499

INDEX.

COVENANTS—

see "CLAUSES" in index of *Forms*.

unusual, not to assign lease,..... 7

of trustees,..... 14

constructive, notice of,..... 158

how abstracted,..... 188

to produce deeds,..... 432

usual by mortgagor,..... 489

by mortgagee,..... 489

in mortgage deed are *absolute*,..... 495

usual in mortgage by demise,..... 506

usual in mortgage of leasehold,..... 522

burdensome should be recited,..... 304, 326

by vendor in deed,..... 352

mortgagor has a right to indemnity, on sale of equity, .. 353

which run with the land,..... 354

"usual," better to name them expressly,..... 764

in leases should run with the land,..... 809

usual as to houses,..... 810

in farm leases,..... 822

in building leases,..... 824

of lessor seized in fee,..... 825

and for a term only,..... 825

COUNSEL—

his approval of title not conclusive,..... 266

his opinion belongs to vendor, when,..... 280

COUNTERPART—

of lease, should be executed by *lessee* only,..... 773

CREDIT—

power to trustees to sell on,..... 1158

CREDITOR—

legacy to,..... 1100

election of, between debt and bequest,..... 1143

may be a witness to a will,..... 1208

CROSS REMAINDERS—

between tenants in tail,..... 1119

DAMAGES—

see "LIQUIDATED DAMAGES."

DATE—

importance of a, to a will,..... 1205

DEATH—

revokes submission to arbitration,..... 94

special clause may prevent such revocation,..... 95

presumption of,..... 229

INDEX.

DEATH—		
	without issue,.....	230, 248
	how proved,.....	246
DEBTS—		
	and legacies, when charged on land; when scheduled; purchaser may have to see paid,.....	191, 192
	whether charges which purchaser must see paid,.....	310
	will not pass by will as "movables,".....	1092
	devised,.....	1099
	a charge on land by statute,.....	1147
	mortgage of,.....	526, 529, 530
	if to be specially charged on estate,.....	1048
DECLARATIONS—		
	of uses and trusts,.....	927
DECREE—		
	sales under,.....	282
	error in will entitle purchaser to rescind contract,.....	283
	reference to counsel as to,.....	284
DEEDS—		
	see "DOCUMENTS."	
	mortgagee is entitled to, and cannot be compelled to produce, without a covenant to produce them; which should be inserted in every mortgage,.....	2
	when not to be delivered to purchaser,.....	15, 16
	condition when largest purchaser to have them,.....	17
	that vendor shall retain and produce,.....	67
	must be produced or accounted for,.....	233
	destroyed, how to remedy,.....	236
	recital of, is evidence of existence,.....	237
	and operates by estoppel,.....	237
	expense of production,.....	256
	proof of execution of, cannot be demanded,.....	259
	production of, not generally compellable at law,.....	295
	scaling and delivering essential to,.....	356
	when need <i>not</i> be delivered,.....	462
	may be demanded by mortgagee, though reconveyance not tendered,.....	639
	covenant to produce by mortgagee, when specially important,.....	641
	in cases of partition,.....	1303
	indemnity, when lost,.....	1314
DELIVERY—		
	essential to a deed,.....	356

INDEX.

DEMISE—		
mortgage by,	509 to 506	
in exercisc of power,	502	
DEPOSIT—		
payment of,	127, 128	
interest on,	129	
DESCENDANTS—		
bequests to,	1070	
DESCENTS—		
how proved,	200	
DEVISE—		
conditional,	1053	
general, of lands,	1081	
DEWISEE—		
claim of, to have mortgage debt discharged out of per-		
sonalty,	614	
if becomes insolvent,	1047, 1144	
taking in opposition to the will,	1143	
DIRECTION—		
to sell, in a will, effect of,	1111	
DISCLAIMER—		
deeds of, by executors and trustees,	1264 <i>et seq.</i>	
of <i>trust</i> does not renounce executorship,	1265	
DISENTAIL—		
see "ENTAIL."		
disentailing assurances,	670, 675	
DISPUTES—		
to be referred to arbitration,	63	
DISSOLUTION—		
of partnership,	993 <i>et seq.</i>	
DISTRAIN—		
power to, in mortgage,	478	
of leasehold,	521	
power to, when bad,	649	
power to, by <i>annuitant</i> ,	658	
by mortgagor who leases,	800	
power to,	800	
DISTRESS AND ENTRY—		
power of,	1152	
DOCUMENTS—		
of title however ancient, may be demanded,	167	
when lost,	168	
cancellation, alteration or emsure of,	202	
demand of,	209	

..... 230, 248
 246
 scheduled;
 191, 192
 310
 1092
 1099
 1147
 526, 529, 530
 1048
 927
 282
 act, 283
 284
 ed to pro-
 ; which
 2
 15, 16
 17
 67
 233
 236
 237
 237
 256
 259
 295
 356
 462
 veyance
 639
 641
 1303
 1314
 356

INDEX.

DOCUMENTS—	
originals must be produced,	233
vondor is bound to produce all in the abstract,	255
oxpense of production,	256
comparison of,	256
with abstract,	258
proof of execution of,	259
DOWER—	
when not released, purchaso money <i>pro tanto</i> invested,	43
<i>trustee</i> need not concur in sale,	311
how barred by joint tenants,	340
attaches in estates tail,	374
and jointure, election between,	1143
<i>uses</i> ,	1289
limitations to bar,	1290
DOWRESS—	
when she must give up her deeds,	295
EASEMENTS,	834 to 839
EFFECT—	
of deeds sometimes better to recite than the words of them,	320, 321
EJECTMENT—	
by vendor,	377
not without notice,	378
against mortgagor,	447
ELECTION—	
to raise a caso of,	1143
of widow between jointure and dower,	1143
in the case of <i>children</i> ,	1143
and <i>creditors</i> ,	1143
ENTAIL—	
deeds to bar should have no consideration expressed,	329
nor the words, "bargain and sell,"	334
in such deeds, protector may retain life interest,	341
assurances to bar,	370, 375
dower attaches to estates tail,	374
in settlements,	906
created by will,	1050
of leasholds,	1120
to daughters,	1121
ENTAILED PROPERTY—	
mortgage of,	507-8
ENTRY—	
right of, not barred by non-user,	6
power of,	659

U. W. O. LAW

INDEX.

ENTRY—
 right of, 791, 823

EQUITY—
 when preferable to law, 387

EQUITY OF REDEMPTION—
 bought by mortgagee, 291
 sold by mortgagor, he has a right to indemnity, 353
 mortgage of, 509, 514
 sale of, n. 737, 261

EQUITABLE MORTGAGES—
 mortgagee is entitled to a conveyance and not to a sale only, 655

ERASURE—
 of documents, 202

ESCROW—
 a conditional deed, 356

ESTATE—
 force and effect of the word, 1108

ESTATES—
 outstanding, 54
 tail, barring, 306, 307
pur autre vie, effect of different limitations of, 516
 for years determinable on lives, 517
pur autre vie, when chargeable as assets by descent, ... 1210

EVICITION—
 repayment in case of, .. 1315

EVIDENCE—
 of title, 242 *et seq.*

EXCEPTION—
 and reservation distinguished, 161, 348
 care required in setting out, 789

EXCHANGE—
 at common law, 305
 under power, 1261, 1262

EXECUTION—
 of deed, how abstracted, 189
 presumed genuine, when, 231, 232
 proof of, cannot be demanded, 273
 and attestation, 355
 by attorney 357

EXECUTORS—
 may sell leaseholds, 192
 if decline to act, 194
 have joint and several interest, 312
 and administrators do not *eo nomine*, take beneficially, .. 1076, 1106

INDEX.

EXECUTORS—	
direction to pay debts,.....	1148
estates to, effect of,.....	1148
who renounce probate may exercise power of sale,....	1154
appointment of,.....	1185
are as <i>one</i> individual,.....	1186
two classes, <i>qualified</i> and <i>conditional</i> ,.....	1187
<i>ad interim</i> ,.....	1187
<i>substituted</i> ,.....	1188
cannot <i>assign</i> executorship,.....	1189
surviving,.....	1190
who renounce,.....	1191
who are also legatees,.....	1192
may witness will,.....	1208
indemnity to, against future claims,.....	1307, 1308
EXECUTORSHIP—	
how proved,.....	244
transmission of,.....	1189
renunciation of, does not disclaim trusteeship,.....	1265
EXPENSE—	
of comparing title,.....	53
of producing and comparing documents,.....	270, 271
EXPENSES—	
what, allowed to mortgagee,.....	651
"EXPRESSED TO BE MADE"—	
when may be properly used,.....	324
FACTS—	
proof of, in conveyancing, and at law,.....	229
FAMILY—	
an uncertain word,.....	1079
FARMING STOCK—	
devised,.....	1093
FEE—	
will pass by a charge on real estate,.....	1110
or by a beneficial interest, as <i>extensivo</i> as the legal estate,	1112
or by an absolute power of disposition,.....	1113
FEOFFMENT,.....	300, 416
FIRE—	
covenant to insure against,.....	810, 821
FIRM—	
equitable mortgage to a,.....	464
FIXTURES—	
when sold separately,.....	18

INDEX.

1148
 1148
 1154
 1185
 1186
 1187
 1187
 1188
 1189
 1190
 1191
 1192
 1208
 1307, 1308
 244
 1189
 1265
 53
 270, 271
 651
 324
 229
 1079
 1093
 1110
 1112
 1113
 300, 416
 810, 821
 464
 18

FORECLOSURE—
 right of, not affected by power of sale, 574
 hints as to, 654
 is barred by a trust for sale, 656

FRAUDS—
 statute of, 136 *et seq.*

FUNDS—
 stock in assignment of, 910

FURNITURE—
 let with house, 768
 devised, 1092

FURTHER CHARGES, 610

FUTURE ADVANCES—
 covenant for, in mortgage, 491

GENERAL WORDS—
 see "APPURTENANCES," 344
 do not remedy an inaccurate description, 782

GOODS—
 and lands let together, reddendum, 805

GRANDCHILDREN—
 may take as children, 1069

GRANT—
 clause of, how abstracted, 180
 from the Crown, if lost how proved, 242
 real estate now lies in, 304
 should be in every conveyance of real property, 331
 clause of, need not contain any limitations, 339
 where purchaser himself grants, 340
 the word, 416
 and "exchango" imply no warranty, 602

GUARDIANS—
 none but the father can appoint, 1193
 a *minor* may appoint *by deed*, 1194
 who may be, 1196
 are trustees, 1197
 cannot plead statute of limitations in bar of an account, 1197
 release to, by ward, 1309

GAURDIANSHIP—
 continues only during minority; *marriage* does not dis-
 solve it, 1195

GAURANTEES, 1319 *et seq.*

HABENDUM—
 how abstracted, 182
 its office is to limit the uses or estates, 339

INDEX.

HABENDUM—	
not essential; sometimes improper,	349
when repugnant to grant,	349
in mortgage of a <i>term</i> ,	523
HEIR—	
title derived through, proof of,	251
infant, how may convey under power of sale,	487
claim of, to have mortgage paid out of personalty,	614
may take as devisee,	1074
appointment of B to be testator's <i>heir</i> , effect of,	1107
to B and his heirs, male or female, conveys fee in a deed; fee tail in a will,	1107
HEIRS—	
devise to,	1071 <i>et seq.</i>
as to personalty, means <i>next of kin</i> ,	1072
or <i>children</i> ,	1073
dying without,	1109
HOTCH POT,	935, 1170, 1277
HUSBAND AND WIFE—	
when both concur in conveyance, wife does not covenant,	493
husband seized in right of wife may lease,	757
husband not a "next of kin",	944
IMPROVEMENTS—	
pass with the land,	781
INCUMBRANCES—	
are matters of conveyance, or matters of title,	5
to be discharged,	55
existing if denied by vendor's solicitor,	267
must <i>all</i> be discharged before vendor can call upon purchaser to accept conveyance,	270
if not discharged purchaser shall have costs,	270
an estate bought under sale by decree,	286
tacking of,	639
INDEMNITIES,	1313 <i>et seq.</i>
INDEMNITY—	
clauses of, how abstracted,	186
for doubtful title cannot be claimed by purchaser,	218
for imperfect title,	291
mortgagor has a right to, on sale of equity of redemption, and so has vendor of leasehold,	353
as between partners,	369
to purchasers,	991
to purchasers,	1020, 1156
clause of, no protection to trustees,	1162
to executors,	1307-8

U. W. O. LAW

INDEX.

INDORSEMENT—	
has no operation,	353
INFANCY—	
of some of conveying parties,	44
INFANT HEIR—	
how may convey under power of sale,	487, 685
INFLUENCE—	
undue, as against testator,	1045
INSANITY,	1043, 1044
INVESTMENT—	
trusts for,	1159
costs of, from what fund paid,	1160
mode of, for charitable uses,	1180
INTEREST—	
payment of, on purchase money,	8, 41
payment of, not to imply right of entry,	60
on deposit,	129
in land,	137
proviso on punctual payment of,	475
higher rate as penalty,	475
cannot carry interest,	479
doubtful whether tender of six months in advance is equal to notice,	632
mortgagee no claim to, after notice and due tender of pay- ment,	638
made payable as between partners	981
INTERESTS—	
which cannot be mortgaged,	455
uncertain, when leased,	797
INTESTACY—	
how proved,	245
INTERPLEADER—	
as to deposit,	128
ISSUE—	
dying without,	1109
when a word of limitation,	1118
JOINTRESS—	
must give up her deed on having her jointure confirmed, JOINT TENANCY—	295
can only be created by express words,	1114
is the proper form for trustees, and will be implied,	1115
JOINT TENANT—	
conveys by release,	340
how he may bar dower,	340

.....	349
.....	349
.....	523
.....	251
.....	487
.....	614
.....	1074
.....	1107
.....	1107
.....	1071 <i>et seq.</i>
.....	1072
.....	1073
.....	1109
.....	935, 1170, 1277
.....	493
.....	757
.....	914
.....	781
.....	5
.....	55
.....	267
.....	270
.....	270
.....	286
.....	639
.....	1313 <i>et seq.</i>
.....	186
.....	218
.....	291
.....	353
.....	369
.....	991
.....	1020, 1156
.....	1162
.....	1307-8

U. W. O. LAW

INDEX.

JOINTURE—	
and dower, election between,	1143
appointment of,	1276
JUDGMENTS—	
search for and registration of,	269
bind <i>leaseholds</i> ,	269
against mortgagor after mortgage made,	271
and crown debts against mortgagees which have been paid,	272
bind tenant in tail, issue in tail, and remainder-man when no protector,	273
JUDGMENT DEBITS—	
assignment of,	530
KIN—	
next of, what,	944
LAND—	
interests in,	137
and goods let together, <i>reddendum</i> ,	805
LANDS—	
notice of sale of, by sheriff,	n. 737, 271
contracted for, by testator,	1088, 1089
LAPSE—	
provisions against,	1146
LEASE—	
determinable on lives, should be secured by a life assur- ance,	524
and counterpart, the latter should be executed by <i>lessee</i> only,	773
of wife's lands,	780
in duplicate,	1313
LEASES—	
where property is sold subject to,	61, 62
not good root for a title in fee,	166
title to,	172
renewed,	173
of modern date,	296
sixty years title not absolute,	296
covenant not to grant,	499
under-leases, and agreement for leases,	754
when void, if not by <i>deed</i> ,	771
by <i>tenant</i> for life, and <i>reversioner</i> ,	779
concurrent, effect of,	794, 795
determinable,	796, 829
by mortgagor and mortgagor,	800, 809

INDEX.

..... 1143
 1276
 269
 269
 271
 have been 272
 remainder-man 273
 530
 944
 137
 805
 n. 737, 271
 1088, 1089
 1146
 a life assur- 524
 ed by lessee 773
 780
 1313
 61, 62
 166
 172
 173
 296
 296
 499
 754
 771
 779
 794, 795
 796, 829
 800, 809

LEASES—
 of wife's land, rent how paid, 801
 by tenant in tail, 802
 covenants in, 809

LEASE AND RELEASE—
 described, 301

LEASEHOLDS—
 clauses in agreement, to purchase, 22
 lessor's title to, 172
 title to, how abstract of made, 177
 executors may sell, 192
 pass by assignment or demise, 308
 but not, if for lives, because they are then *freeholds*, ... 308
 assignment of, 325
 husband alone may assign wife's, 400
 for years cannot be settled, so as to pass the legal estate, 926
 nor entailed, 932, 1052
 should not be left to pass under a general devise, 1083
 entails of, 1120
 to lend trust money on, without express power, is a
 breach of trust, 1159

LEGACY—
 mortgage of, 531
 specific, does not generally abate, 1174
 out of particular fund, 1174

LEGACIES—
 points as to, 1054
 to creditors, 1100
 to children, whether in satisfaction of portions, 1102
 vested and contingent, 1128, 1129
 for a particular purpose, that purpose failing, 1130
 in trust for legatees, 1131
 charged on real estate, 1132
 when do not charge land, 1148
 abatement of, 1174 *et seq.*
 out of particular fund may abate among themselves, ... 1174 *et seq.*

LEGAL REPRESENTATIVES—
 who, 1075

LEGITIMACY—
 how proved, 249

LESSEE—
 of mortgagor has no claim to notice, 646
 entry by, effect of, 759
 if he dies pending the contract, 776

INDEX.

LESSOR—		
	if himself a lessee,	n. 755, 3
	if tenant in tail,	756
	if he does not intend to show his title,	758
	if he dies pending the contract,	775
LETTERS—		
	alone may sustain a contract,	47, 150
LICENSE—		
	to assign, lessor to be made party,	365
LIEN—		
	vendor's,	38
	purchaser's,	39
	destroyed,	40
	testator's, for unpaid purchase money,	1176
LIMITED INTERESTS,		4
	when leased,	797
LINEN—		
	devised, what,	1092
LIQUIDATED DAMAGES—		
	clause for, in default,	45, 64
	payment of, does not release contract	46
LIS PENDENS—		
	binds land, when,	274
	form of certificate for registry,	274
LIVES—		
	ages of, in leases determinable on,	26
	in life policies,	30
LOSS—		
	see "PROFIT AND LOSS."	
MANDAMUS—		
	may issue for, of contract performance,	376
MARRIAGE—		
	revokes submission to arbitration,	95
	how proved,	246
	articles,	901, 903 to 905
	settlements,	902, 906
	a sufficient consideration,	924
	conditions as to,	1135
	in restraint of,	1138
	effect of, on wills,	1221
MARRIAGE SETTLEMENTS—		
	should be inquired for,	224
MARRIED WOMEN—		
	acknowledgments of,	260

INDEX.

n. 755, 3
756
758
775

47, 150

365

38

39

40

1176

4

797

1092

45, 64

46

274

274

26

30

376

95

246

901, 903 to 905

902, 906

924

1135

1138

1221

224

260

MARRIED WOMEN—	
estates of,	1122, 1123
trusts for, separate use of,	1167
may execute powers,	1271
MARSHALING,	1175
MEMORIALS—	
examined copies of, are some evidence,	249
MINOR—	
where a conveying party,	1317
MISDESCRIPTION—	
as to extent,	225
as to interest or estate,	227
MISTAKE—	
shall not vitiate agreement,	52
MONEY—	
and ready money devised,	1096
MONEYS—	
in settlement,	917
advanced to husband, and secured by policy,	918
"MORE OR LESS,"	239
MORTGAGE—	
is the best kind of security,	453
of a mortgage,	454
interests which cannot be the subject of,	455
power to mortgage, is implied in power to sell,	457
terms of, should always be settled in writing,	458
sometimes contains liquidated damages' clause,	459
equitable,	460
the like of share certificates,	461
the like of lease, though not to be assigned,	463
may cover future advances,	463
mere deposit will not create a,	466
in fee usual now; no dower in a,	468
of a term when preferable,	469
recitals in,	470
for future costs an attorney may not take,	470
of equity of redemption,	470
by demise,	500
discharge of, reinvests the estate,	504
of entailed property,	507
of equity of redemption,	509, 514
of estates for life,	515, 517
of leasehold,	518, 525
by way of under-lease,	523

U. W. O. LAW

INDEX.

MORTGAGE—

- of *bond debt*,..... 526
- of policies,..... 527
- of bills of exchange,..... 528
- of single contract debts,..... 529
- of judgment debts,..... 530
- of legacies,..... 531
- of *shipping*,..... 532
- TRANSFER of,..... 611
- right of transfer is incidental to,..... 611
- claim of heir or devisee to have the debt discharged, ... 614
- by *devise* if converted into mortgage *in fee*, how conveyed,..... 624
- transfer of, by representatives of *deceased mortgagee*,... 625
- of mixed interests,..... 626
- estate in, vested in testator,..... 1086
- lands in, devised,..... 1089
- in fee, whether will pass under a devise of "securities for money,"..... 1097
- to bankers,..... 1263

MORTGAGEE—

- has a right to the title deeds,..... 2
- concurrence of, in sale of equity of redemption,..... 312
- when mortgagor concurs with, to convey,..... 336
- when *must* concur with mortgagor,..... 340
- must account for rent and profits after transfer,..... 612
- his only covenant not to encumber,..... 656

MORTGAGOR—

- need not concur in sale,..... 310, 486
- when he does concur,..... 336
- when mortgagee *must* concur with,..... 340
- selling equity of redemption has a right to indemnity,.. 352
- may convey a larger estate than his own,..... 456
- when concurring in sale under power, released from covenants in mortgage,..... 495, 656
- when concurring to convey,..... 620
- tenant at will, or tenant at sufferance,..... 646
- cannot be compelled to concur in sale even by express covenant,..... 656
- better for him not to concur,..... 656
- lease by, when in possession,..... 800

MORTMAIN—

- Statute of,..... 1176

INDEX.

NAME—		
	must be full in a will,	1058
	senior and junior,	1058
	and arms of testator, condition to assume,	1139
NEXT OF KIN—		
	who,	944, 1075
	means next of blood,	1077
NOTICE—		
	to arbitrators of their appointment,	113
	of hearing to opposite party,	114
	constructive, of covenants,	159
	of exercise of power of sale should not be a condition precedent,	485
	to redeem mortgaged premises,	629
	six month's interest in advance not equivalent to,	632
	right to, how forfeited by mortgagee,	633
	mortgagor is not entitled to,	634
	by mortgagor, how to be given,	638
	mortgagee is entitled to a fresh one, if payment not made on the precise day notice expires,	638
	mortgagor cannot claim,	616
	of dissolution of partnership,	1001 <i>et seq.</i>
OATH—	arbitrator has implied power to take evidence on,	95
OMISSION—		
	of name of grantee in granting part of deed of conveyance,	309
	in parcels equity will relieve against,	342
ON OR ABOUT—	in reciting dates unnecessary,	324
OPERATIVE—		
	words,	331 to 335, 337, 338, 366
	defined and distinguished,	416
	in leases,	778
OUTGOINGS—	to be paid by vendor,	59
OUTSTANDING ESTATES—	expense of getting in,	54
PARCELS—		
	how abstracted,	181
	identification of,	323
	Short form of recital of,	323
	omission in equity will relieve against,	342
	distinct or numerous,	343

526
527
528
529
530
531
532
611
611
614
charged, ...
how con-
...
mortgagee, ...
...
...
"securities"
...
1097
1263
2
312
336
340
612
656
310, 486
336
340
352
456
from cov-
495, 656
620
646
y express
656
656
800
1176

INDEX.

PARTNERS—	
cannot bind each other by deed of submission,.....	94
PARTNERSHIP,.....	975 <i>et seq.</i>
PARTITIONS—	
in chancery,.....	1297
clear legal title essential,.....	1298
PARTITIONS—	
under powers,.....	1261 1262, 1279 <i>et seq.</i>
under direction of Court of Chancery,.....	1297 <i>et seq.</i>
PARTIES—	
order of, in deed of conveyance,.....	309
omission of some in granting part,.....	309
concurrence of, where not essential,.....	310
really essential,.....	312
where several who convey,.....	335
PAST TENSE—	
improper except in a feoffment,.....	338
when proper, when improper,.....	416
PAYMENT—	
delay of,.....	290, 293
punctual, a ground of covenant,.....	475
into court not sufficient to redeem mortgage,.....	633
PEDIGREE—	
how proved,.....	169, 212
PENALTY—	
payment of, does not release contract,.....	46
higher rate of interest as not enforceable in equity,....	475
PERFORMANCE—	
<i>part</i> ,.....	139, 140, 141
part payment is not,.....	142
as to several lots,.....	143
<i>specific</i> ,.....	146, 147
with compensation, in what cases,.....	224, 226, 227
PER CAPITA—	
or per stirpes,.....	1064
PERSONAL ESTATE—	
how to exonerate from debts and legacies,.....	1150
PLATE—	
devised,.....	1092
POLICY OF ASSURANCE—	
mortgage of,.....	527
PORTIONS—	
for children under marriage settlement, effect of bequest upon,.....	1102

INDEX.

ion,..... 94
 975 *et seq.*
 1297
 1298
 1261 1262, 1279 *et seq.*
 1297 *et seq.*
 309
 309
 310
 312
 335
 338
 416
 299, 293
 475
 633
 169, 212
 46
 equity,.... 475
 139, 140, 141
 142
 143
 146, 147
 224, 226, 227
 1064
 1150
 1092
 527
 of bequest
 1102

PORTIONS—
 raised by long term,..... 1125

POSSESSION—
 purchaser in,..... 42
 purchaser to have, 56
 that tenants shall render,..... 57
 may be part performance,..... 140
 no proof of price or interest agreed for, 146
 title by, 168
 taking, may waive objection to title, 265
 without prejudice, application for, 285
 refusal of, by defendant,..... 288
 of mortgage, buying equity of redemption,..... 291
 with consent of vendor, consequences of, in equity,.... 294
actual, necessary to a common law release,..... 301

POST OBIT—
 bond, 607

POUR AUTRE VIE—
 effect of different limitations of,..... 516
 estates, when assets by descent,..... 1216

POWERS—
 and trusts, how abstracted,..... 185
 execution of,..... 232
 must be produced, 234
 of distress and entry, 1152
 of trustees, 1158 *et seq.*
 to beneficiaries in strict settlement by will,..... 1173
 to trustees in same,..... 1173
 appointments in exercise of, 1270 *et seq.*
 limitations prior to, 1274

POWER OF ATTORNEY—
 must be produced if deed executed under,..... 234
 to distrain in mortgage,..... 478
 of attorney, remarks on,..... 1340

POWER OF APPOINTMENT—
 of legal estate cannot spring from bargain and sale,.... 302
 inconveniences of conveyances under,..... 303
 to a married woman, 938
 in favor of children, 942

POWER OF DISTRESS—
 when bad,..... 649
 of entry,..... 659

POWER OF LEASING,..... 906, 945, 947

U. W. O. LAW

INDEX.

POWER OF RE-ENTRY..... 659, 828
 invalid, 1292

POWER OF REVOCATION..... 908, 1278

POWER OF SALE—
 implies power to mortgage, 457
 case in which it may not be exercised, 472
 and trusts for sale distinguished, 484
 notice of exercise of, should not be a condition precedent, 485
 infant heir may convey under, how, 487
 how restricted in mortgages by *demise*, 505
 assignment of, 617
 must be strictly executed, 656
 by annuitant, 660
 and exchange, 906

REFERENCE—
 testator may direct, how, 1174

PRESENCE OF TESTATOR—
 what, 1207

PRICE—
 inadequacy of, no ground for specific performance, 276

PRIORITY—
 in time of payment of legacies, does not prevent abatement, 1174

PRIVATE ACT—
 of parliament, how proved, 257

PROBATE—
 how abstracted, 193
 proof of death, 247
 best evidence as to personalty, 254
 of will necessary to make executorship transmissible, .. 1189

PROCEEDINGS—
 in Court, how proved, 240, 241

PRODUCTION—
 of documents by vendor, 269
 expense of, 270

PROFIT AND LOSS—
 after contract signed, 27, 28
 between partners, 983

PROMISES—
 and acknowledgments of liability, 93

PROSECUTION—
 of treaty will waive objection to title, 278

PROTECTOR—
 consent of, to sale, 312

INDEX.

.....	659, 828		
.....	1292		
.....	908, 1278		
.....	457		
.....	472		
.....	484		
..... precedent,	485		
.....	487		
.....	505		
.....	617		
.....	656		
.....	660		
.....	906		
.....	1174		
.....	1207		
.....	276		
..... abate-	1174		
.....	257		
.....	193		
.....	247		
.....	254		
..... issible, ..	1189		
.....	240, 241		
.....	269		
.....	270		
.....	27, 28		
.....	983		
.....	93		
.....	278		
.....	312		
		PROTECTOR—	
		may concur and yet retain life interest,	341
		consent of, in assurance, how shown,	371
		of settlement, why,	1123
		power of,	1124
		special,	1125
		PROVISO—	
		in mortgages for redemption, how abstracted,	187
		should say <i>where</i> payment is to be made,	472
		PROVISOES—	
		in leases,	827
		PUBLIC POLICY—	
		gifts void as against,	1183
		PUFFING—	
		avoids sale,	1
		PURCHASE MONEY—	
		invested pending negotiation, &c.,	42
		when purchaser may be responsible for application of,	191, 192
		how conveyance in such case should be drawn,	317
		surplus of, on sale of mortgaged premises, to whom paid,	488, 657
		PURCHASER—	
		to have possession,	56
		when responsible for application of purchase money,	191, 192
		may demand completion of contract when vendor cannot,	221
		should not act as owner,	263
		when more than one for same lot,	287
		when bound to see to the application of purchase money,	317
		when himself a granting party,	340
		if he die after cause of action, his personal representatives must maintain it,	384
		RAILWAY SHARES—	
		not within Statute of Frauds,	138
		RATIFY AND CONFIRM—	
		are synonymous,	331
		RECEIPT—	
		may be a valid contract,	148
		last, proves payment,	250
		by trustees a sufficient discharge by Statute,	580, 1156
		indorsed on mortgage reverts the term,	640
		RECEIPT CLAUSE—	
		signed and witnessed, does not destroy vendor's lien,	33, 323
		when should be more fully expressed,	330
		<i>Form of</i> ,	330
		equity will inquire into,	332

INDEX.

RECEIVER—		
on dissolution of partnership,.....		998
RECTALS—		
prove existence of deeds recited,.....		237
and estop parties,.....		237
may make good the loss of mesne assignments,.....		238
how far useful,	313 to 318	
order of,		319
of deeds,		320
of the <i>effect</i> of deeds,.....		320
when of <i>effect</i> preferable,.....		321
estop parties,.....		322
<i>Short form</i> of,.....		314
of dates,.....		324
of leasehold,.....		325
of covenants,.....		326
in mortgages,.....		470
RECONVEYANCE—		
when preferable to mere <i>avoidance</i> of estate under proviso fulfilled,.....		472
to whom usual,.....		483
of mortgaged estates,.....		629
as to deed of,.....		640
by mortgagee's representatives,		642
heir may be compelled to execute,.....		644
REDDENDUM—		
how abstracted,.....		183
in leases, how worded,.....		799
REDEMPTION—		
of mortgaged estates,.....	629 <i>et seq.</i>	
right of, how lost,.....	630, 631	
notice of,	632, 638	
of parcels,	641	
RE-ENTRY—		
power of,.....		828
REFERENCE—		
to arbitration,.....		9
REGISTRATION—		
how proved,		239
RELATIONS—		
defined,		1078
RELEASE—		
at common law, modes and effect of		300
actual possession was essential to,.....		301

INDEX.

RELEASE—		
use of the word,	416	
when not a safe assurance,	641	
to trustees and executors,	1304 <i>et seq.</i>	
for residuary estate,	1306	
between partners,	1311	
from creditors to debtors who compound,	1312	
RELINQUISH—		
proper operative words to express,	332	
REMAINDERS—		
cross, between tenants in tail,	1119	
REMEDIES—		
for non-performance at law,	376 <i>et seq.</i>	
of mortgagee,	645	
best mode of procedure by mortgagee,	653	
RENEWAL—		
covenant for,	769	
RENT—		
proportionate part of,	804	
of lands and goods let together,	805	
penal,	807	
corn,	808	
special reservation of,	811 to 816	
cesser,	830	
RENTS AND PROFITS—		
when allowed to purchaser,	289	
when not,	290	
mortgagee must account for, even after transfer,	612	
receipt of, after default by mortgagor, how obtained,	648	
mortgagee must account for,	650	
devise of, in trust,	1149	
RENUNCIATION—		
deeds of, by executors and trustees,	1264 <i>et seq.</i>	
REPAIRS,	763, 765	
REPRESENTATIVES—		
bound,	145	
legal, mean <i>next of kin</i> ,	1075	
REQUISITIONS—		
on abstract,	212 to 228	
before answering, ask if there are any more,	215	
RESCIND CONTRACT—		
right to, how waived,	10	
power to,	20, 23, 25	

INDEX.

RESERVATION—
 and exception, distinguished, 161

RESIDUARY—
 devise, 1104 *et seq.* 1136

REVERSION CLAUSE—
 is now omitted, 786

REVERSIONS—
 title to, 170

REVOCAION—
 of submission to arbitration, 95
 clause of, in a will, 1056
 power of, in deed of appointment, 1278

RIGHT OF ENTRY—
 not barred by non-user, 6
 not to be implied from payment of interest, 60

RIGHT OF WAY, 790, 836, 838
 release of, 839

SALE—
 (see *Index of Forms*) of lands, notice of, under an execu-
 tion, n. 737, 271
 a direction for sale of lands by will, effect of, 1111
 will be authorized by a devise in trust to pay debts, &c., 1149

SALES—
 of goods, 34
 by private contract, 35, 136
 by auction, 122
 when valid, 124
 under decree not within Statute of Frauds, 135
 of real estate, 136
 under decree, 282
 under power, 1261

SEAL—
 essential to a deed, 355
 not essential to a will, 1204

SECURITY—
 a mortgage, is the best, 453

SECURITIES FOR MONEY—
 devised, 1097
 variation of, by trustees, 1161

SEIZURE—
 how proved, 201
 of incorporeals, 252

SENIOR—
 and junior, 1058

J. W. O. LAW

INDEX.

SERVANTS—		
bequests to,		1080
SEPARATION—		
deeds of,		954
SETTLEMENTS—		
strict,		906
ordinary,		909 <i>et seq.</i>
post nuptial and voluntary,		951 <i>et seq.</i>
SHARES—		
in public companies, how sold,		21
railway, not within Statute of Frauds,		138
mining, <i>aro so</i> ,		138
devise of,		1098
SHELLEY'S CASE—		
rule as to fee, fee tail, and equitable estates where trusts executed,		1117
SHIPPING—		
sales of,		32
SIGNATURE—		
what, sufficient,	151, 152, 153, 155	356
not essential to a deed,		1203
to will,		1207
what is sufficient,		123, 377
SLANDER—		
of title, action for,		19
SOLICITOR—		
danger of, employing vendor's,		176
personally liable if he suppress an incumbrance,		281
or deny that there are any,		388
SPECIAL CASE—		
cannot support specific performance,		127, 129
STAKEHOLDER—		
an auctioneer is, as to deposit,		40
STOCK—		
pledge of, destroys vendor's lien,		1094
STOCK IN TRADE—		
devised, what,		1199, 1200
SUBSTITUTION—		
of gifts by will and codicil,		1266
of new trustees,		332
SURRENDER—		
operative words for,		340
of estates for years is by release,		

.....	161
..... 1104 <i>et seq.</i>	1136
.....	786
.....	170
.....	95
.....	1056
.....	1278
.....	6
.....	60
..... 790, 836, 838	838
.....	839
er an execu-	
..... n. 737,	271
.....	1111
y debts, &c.,	1149
.....	34
..... 35,	136
.....	122
.....	121
.....	135
.....	136
.....	282
.....	1261
.....	355
.....	1204
.....	453
.....	1097
.....	1161
.....	201
.....	252
.....	1058

U. W. O. LAW

INDEX.

TACKING—
 inembrances, 635
 bond debts, 636
 as against assignees, 637

TAIL—
 estates, 306, 307
 see "ESTAIL."
 created by will, 1107, 1117

TENANCY—
 nature of, should be inquired into, 261
 in common is favored by the courts, 1116

TENANT FOR LIFE—
 limitation of *equitable estate* to, 1121
 of *chattel interest* to first taker, 1121

TERM—
 purchaser of a, has a right to call for the lessor's title, 3
 ancient, 171
 defect as to time of, may be compensated, 234
 should be clearly defined, 760
 determinable at several periods, 760, 795
 inclusive or exclusive of day of date, 793
 on lives, 796
 legatees of, are usually made special executors thereof, 1084
 renewed, 1085
 long, to raise portions, 1125

TESTATOR—
 see "WILLS."
 mental capacity of, 1043, 1044
 undue influence over, 1045
 if in trade, necessary inquiries, 1046
 trust estates of, and estates in mortgage, 1086

TIME—
 of the essence of a contract, 37
 as to delivery of abstract, when named, when not named, 204
 when, of the essence, vendor may rescind on breach, 278
 doubtful if, can be made of the essence except in the original contract, 278

TITLE—
 kinds of, safe, good, marketable: purchaser has a right to one which will sustain ejectment or specific performance, 1
 where doubtful insert special clause, 10
 where doubtful as to part, 11
 slander of, 123, 377

INDEX.

TITLE—

purchaser has a right to sixty years, 160, 164
 even sixty years may not be sufficient, 165
 best root of, 166
 by possession, 168
 to reversions, 170
 to ancient terms of years, 171
 lessor's, 172
 to renewed lease, 173
 approval of, in abstract, no waiver, 216
 must be free from suspicion, 217
 doubtful, purchaser cannot claim indemnity for, 219
 to part only, may entitle vendor to specific performance
 with compensation, 226
 evidence of, 228 *et seq.*
 derived through an heir, how proved, 251
 purchaser may object to defect in, prior to time agreed
 for carrying back, 262
 prosecution of treaty after defect discovered, will waive
 objection to, 264
 approval of, by counsel, does not bind purchaser, 266
 if imperfect, with indemnity, 277
sixty years not absolute, 296
 if not made good by the day fixed, it is no defence that
 purchaser was not ready, 381
 meaning of "good," 382
 matter of, and matter of conveyance, 383
 covenant to produce, 493

TITLE DEEDS—
 see "DEEDS."

TRADES—
 not to carry on certain, 767

TRANSFER—
 right of, incidental to a mortgage, 611
 when original mortgagor does not concur in, 613
 where mortgagor *concur*s, 620
 by representatives of deceased mortgagor, 625

TRANSMISSION—
 of executorship, 1189

TRUSTS—
 and powers, how abstracted, 185
 for sale, and powers of sale distinguished, 484
one case in which trusts preferable, 484
 bars foreclosure, 656

..... 635
 636
 637
 306, 307
 1107, 1117
 261
 1116
 1121
 1121
 or's title, .. 3
 171
 234
 760
 760, 795
 793
 796
 rs thereof, .. 1084
 1085
 1125
 1043, 1044
 1045
 1046
 1086
 37
 ot named, .. 204
 reach, ... 278
 ept in the .. 278
 as a right .. 1
 eific per- .. 10
 11
 123, 377

U. W. O. LAW

INDEX

TRUSTS—
usual of personality, 940
in favor of children, 943
to sell, 1016
should always be in joint tenancy, 1153
for sale, 1155
for collecting and getting in estate, 1157
for investment, 1159
for accumulation, 1163
for repairing, &c, 1164
to carry on business, 1165
for separate use of married women, 1167
for wife and children, 1169
secret, 1177

TRUSTEES—
covenant of, 14
personally bound if deny that incumbrances exist, 282
receipts of, 310
of dower need not concur in sale, 310
and administrators have joint power, 312
where they convey, 317, 337
only covenant that they have done no act to incumber,
receipt of, a sufficient discharge by Statute, 491
estate not to be limited to, 580
to preserve, 925
receipts of, 929
appointment of new, 948, 1156
indemnity clause, 949
are joint tenants by implication, 950
to preserve, 1115, 1153
if legal estate in, form for, 1121
buying in their *own names*, 1121
death of some before declaration of trust, 1260
substitution and appointment of new, 1263 to 1269

TRUST ESTATES—
vested in testator, 1086

UMPIRE—
when may be appointed, 96
appointment by *chance*, bad, 96
power of, 96
must re-examine the witnesses, 96

UNCERTAIN INTEREST, 797

UNDER LEASE, 308
no breach of covenant not to *assign*, 766

..... 940
 943
 1016
 1153
 1155
 1157
 1159
 1163
 1164
 1165
 1167
 1169
 1177

 14
 282
 310
 310
 312
 317, 337
 494
 580
 925
 929
 948, 1156
 949
 950
 1115, 1153
 1121
 1121
 1260
 1263
 1266 to 1269

 1086

 96
 96
 96
 96
 797
 308
 766

INDEX.

UNDER LEASE—
 how granted, 798
 USES—
 Statute of, 301, 302
 no use upon a use, 301, 302
 should always be declared, 350
 when to arise out of seizin of grantee, 350
 to bar dower, 351
 USES AND TRUSTS—
 declarations of 1260 *et seq.*
 WARD—
 release by, to guardian, 1309
 WARRANT—
 of attorney, 467, 606
 WASTE—
 without impeachment of, 930
 WAY—
 right of, 790, 836, 838
 release of, 839
 WIPE—
 does not covenant, 493
 acknowledgment of, 497
 provision for, 1055, 1058
 and children, trusts for 1169
 WILL—
 and codicil are one testament, 1198
 who may be witness to, 1208
 destruction of duplicate, 1216
 whether, revokes codicil, 1217
 revocation of, by mistake, 1218
 revocation of, 1221
 republishing of, 1222
 WILLS—
 abstract of, 190
 original, cannot be demanded, 253
 should be registered, 275, 1043
 principal points to be attended to, 1057
 execution and attestation of, 1202 *et seq.*
 under powers, 1209
 of personal estate, 1211
 nuncupative, 1212
 revocation of, 1213
 destruction of, 1213, 1215
 subsequent disposition of devised property, effect of, ... 1220

U. W. O. LAW

INDEX.

WINDING UP—
of partnership, 993 *et seq.*

WITNESSES—
must be re-examined by umpire, 9
may be compelled to give evidence before arbitrator, 95, 112
memorandum by attorney, that W. W. is a necessary
witness in arbitration, 99
“credible,” 246
and competent, 1208

WOMEN—
married, acknowledgments of, 274, *n.* 451, *p.* 177
estates of, 1122, 1123

WORDS—
not technical, how abstracted, 184
operative, see “OPERATIVE WORDS,” 416

INDEX TO FORMS.

AFFIDAVIT—
of execution of reference, 100
of execution of award, 101
verifying copy of award, 102
of due enlargement, 103
to memorial of mortgage, 545
to chattel mortgage, 738, 746

AGREEMENT—
for sale of freehold, 48
of land; vendee to enter; time of the essence, 68
for sale by way of lease, reserving purchase money as
rent, 71
general form, with fixed damages in case of breach, 72
for purchase and sale of personalty, 73
for building a house, 74
for rebuilding mills, 75
for purchase of leasehold, 76
to sell stock in a grocer's shop, 77
to cultivate land on shares, 78
to sell copyright of a book, 79
to sell bond and mortgage, 80
to sell shares of stock in an incorporated company, 81
to freight sloop or boat, 82

INDEX.

AGREEMENT—

respecting party wall,	83
to build houses,	84
to make flour barrels,	85
with a clerk or workman,	86
to subscribe for the building of a Church,	87
for plasterer's and bricklayers' work,	88
of purchaser by his agent at auction sale,	89
to sell and deliver cordwood and stone,	90
charter party,	91
articles of clerkship,	92
to refer to arbitration,	98
to purchase, assignment of,	713
for a lease,	840 to 845, 886
for three years' tenancy of house,	861
yearly tenancy,	879
to let furnished house,	880
by tenant,	881
not to underlet or endanger,	884, 886
for a lease,	886
between housekeeper and lodger,	887
for settlement before marriage,	957
for partition of freehold,	1325

ANNUITY—

devise of,	1239
------------------	------

APPOINTMENT—

under power, operative words,	333
of rent charge to wife,	959
by husband and wife to children,	960
by husband surviving to children, reserving power of new appointment,	961
by wife,	962
by widow,	963
by tenant for life,	964
of reversionary life interest in personalty to intended husband,	969
of new trustees of marriage settlement,	970, 971, 972
by wife of personal estate,	1236
of a jointure under a power limited by will,	1348
clause that present appointment not to prevent future, ..	1349

ARBITRATION—

law and practice of,	94, 97
agreement of reference to,	98

.....	993 et seq.
.....	9
arbitrator, ..	95, 112
necessary	99
.....	246
.....	1208
.....	274, n. 451, p. 177
.....	1122, 1123
.....	184
.....	416
.....	100
.....	101
.....	102
.....	103
.....	545
.....	738, 746
.....	48
.....	68
money as	71
reach,	72
.....	73
.....	74
.....	75
.....	76
.....	77
.....	78
.....	79
.....	80
any,	81
.....	82

U. W. O. LAW

INDEX.

ARBITRATION—

memorandum by attorney that W. W. is a necessary witness, 99
order of reference to, at *nisi prius*, 104
bond, 105
general submission to, 106
short form, 107
special form, 108
agreement that judgment may be signed, 109
bond, condition in, 110
bond where no other submission in writing, 111
that submission may be made a rule of court, 112
notice to arbitrators of their appointment, 113
notice of hearing to opposite party, 114
release by party to an arbitration, 118
clauses, 119, 120, 121
proviso for, 876, 877
clause of, 876, 877

ARBITRATORS—

notice to them of appointment, 113

ARTICLES—

of clerkship, 92
of marriage, 955 to 957
of separation, 974
of partnership, 1029 to 1033

ASSIGNMENT—

see "COMPOSITION."
of leaseholds on sale, 697
of policy of assurance, 698
of mortgage, 699
of leasehold, 700
same by assignee of the term, 701
of life policy, 703
of freeholds indorsed, mortgagor not joining, 704
same mortgagor joining, 705
of mortgage of freehold by *executor* and *heir* of mortgagor, mortgagor joining, further advance, 706
of business and stock in trade, 707
of *good will* of trade, 708
of *policy* in pursuance of covenant in a mortgage, 709
same, 710
of a *debt*, with power of attorney, 711, 723
of policy by indorsement, 714
same, 721

INDEX.

a necessary
 99
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 118
 119, 120, 121
 876, 877
 876, 877
 113
 92
 955 to 957
 974
 1029 to 1033
 697
 698
 699
 700
 701
 703
 704
 705
 706
 707
 708
 709
 710
 711, 733
 714
 721

ASSIGNMENT—
 of Crown lands, 715
 of lease, 716, 728
 indorsed, 729
 same by *administrator*, 717
 of mortgage under Statute, 718
 same by indorsement, 719
 general form, 723
 same, shorter, 724
 of bond and mortgage, 725
 same indorsed, 726
 same as collateral security, 727
 of lease, 728, 729
 of contract for sale of realty, 730, 731
 of bail bond, 732
 of debt or wages, 733
 of policy as security, 735
 of one party to another, 1034

ASSIGNMENTS—
mesne recital of, 363

ATTORNYMENTS, 900a, 900b, 900c, 900d

AWARD—
 form of, 115
 by an umpire, 116
 short form by referees, 117

BAIL BOND—
 assignment of, 732

BILL OF SALE, 738, 739, 741
 and chattel mortgage, 740
 in consideration of maintenance, 742
 of registered vessel, 743

BOND—
arbitration, 105
 condition on special submission, 110
 short form where no other submission in writing, 111
 post obit, 606
 money bond, 609, 671
 for a deed of lands, 670
 of *two* obligors, 672
 condition that principal money shall become payable on
 default in payment of interest, 673
 bond by a *corporation*, 674
 to *executors*, 675
 to *executors* by *legatees*, 676

U. W. O. LAW

INDEX.

BOND—

of legatee or representative before suit,	677
of indemnity to sheriff,	678
with warrant of attorney to confess judgment,	679
to execute a conveyance,	680
to discharge bond and mortgage,	681
of an officer of a bank or company,	682
of indemnity to a surety,	683
of indemnity on paying <i>lost note</i> ,	684
for performance of <i>contract</i> ,	685
for payment of money, with deposit of title deeds,	686
<i>post obit</i> ,	687
<i>condition</i> that obligor will permit his wife to make a will,	688
to permit a wife to live separate from her husband,	689
to marry a woman or pay a sum of money,	690
to secure <i>floating balance</i> at banker's,	691
note of hand, instead of,	692
to secure an <i>annuity</i> ,	693
same to grantee and wife,	694
assignment of,	714, 721
assignment of, and mortgage,	725, 726, 727
with condition to suffer intended wife to make a will, ..	1236

BUILDING LEASE,

852

CERTIFICATE—

of married woman under 2 Vic. c. vi. p. 177, of <i>his pendens</i> ,	274
----------------------------------------------------------------------------	-----

CHARTER PARTY,

91

of tenancy by landlord,	883, 884
-------------------------------	----------

CHATTEL MORTGAGE—

and bill of sale,	740
insurance clause,	744
further advances,	745
proviso and second clause in affidavit of, to secure indorser,	746
to secure promissory note,	747
mortgagor to retain possession,	748
notice of sale under,	749

CHILDREN—

provision for, born after will executed,	1237, 1238
------------------------------------------------	------------

CLAUSES IN AGREEMENTS OF PURCHASE AND SALE—

power for vendor to annul sale if purchaser objects to title,	49
another,	50
defect in title to part, not to annul contract as to the rest, ..	51

INDEX.

..... 677
 678
 nt..... 679
 680
 681
 682
 683
 684
 685
 deeds,.... 686
 687
 make a will, 688
 sband,.... 689
 690
 691
 692
 693
 694
 714, 721
 725, 726, 727
 e a will, .. 1236
 852
 of *lis pen-*
 274
 91
 883, 884
 740
 744
 745
 secure in-
 746
 747
 748
 749
 1237, 1238
 objects to
 49
 50
 the rest, .. 51

CLAUSES IN AGREEMENTS OF PURCHASE AND SALE—
 mistake in description shall not annul sale,..... 52
 purchaser to be at expense of comparing title deeds, ... 53

CLAUSES IN ARBITRATION, 119, 120, 121

CLAUSES IN ASSIGNMENTS OF LEASEHOLD—
 for right to assign, 433
habendum to assignee, 434
 that *rent* has been paid and covenant performed,..... 435
 for further assurance, 436
 by assignee to *pay rent* and perform covenants, 437
 by assignee to *indemnify* vendor, 438
 that *policy* is valid, and for right to *assign* it,..... 439
 that vendor will not *avoid policy*, 440
 and will pay *additional premiums* if required, 441
 for *further assurance* by vendor of *policy*, 442
 qualified covenant that *lease* subsists unprejudiced and
 for right to *assign* it, 443
 for further assurance of same, 444
 for *indemnity* against liabilities under a *lease*, 445
 or to *assure*, 446
 that lease is unprejudiced and vendor has right to assure,
 further assurance and indemnity, 447
 entitled to *assign* and will further assure, 448
 that lessee will do no act to prejudice insurance, 564
 power to lease for building or mines, 566

CLAUSES IN CONTRACT, 37, 38
 power to annul sale, 49, 50
 defect of title as to part, 51
 mistake in description shall not annul, 52
 expense of comparing title deeds, 53
 outstanding estates, 54
 incumbrances to be discharged by vendor before con-
 veyance, 55
 purchaser to be let into possession, 56
 that tenants shall deliver up possession, 57
 that vendor will assign on approval of title, &c., 58
 outgoings to be paid by vendor, 59
 payment of interest not to give right of entry, 60
 subject to a lease for lives, 61
 when property subject to several leases, 62
 disputes settled by arbitration, 63
 penal clause for due performance of agreement, 64
 vendor to convey on payment, 65
 largest purchaser to have the title deeds, 66

INDEX.

CLAUSES IN CONTRACT—	
covenant to produce title deeds,.....	67
the whole of purchase money to become due on default in payment of part,	69
penal,	70
vendor to deliver abstract, but not lessor's title,.....	158
hotchpot,	1350
CLAUSES IN DEEDS OF CONVEYANCE—	
of operative words,.....	416
general words,	417
another form,	418
covenant for right to convey in fee,.....	419
free from incumbrances by donces of a power,.....	420
the same by tenant for life who concurs,.....	421
and will further assure,.....	422
for further assurance,.....	423
that vendor has done nothing to incumber,.....	424
that vendors have done nothing to incumber,.....	425, 426
free from incumbrances, <i>except a mortgage</i> , which is re- cited,	427
<i>joint</i> and <i>several</i> covenant,.....	428
<i>several</i> covenant,.....	429
covenant by <i>husband</i> for himself and <i>wife</i> ,.....	430
to produce deeds by trustees,	431
general form,	432
CLAUSES IN LEASES—	
for renewing term,	854
on lives dropping,	856
that lessor will pay taxes,	855
lessor not to grant more than three lives,	857
quiet enjoyment,.....	858
to pay rent,	859
that lessee will pay rent to tenant for life reversioner, . surety concurring,	860
to cultivate in husbandry-like manner,.....	861
to tax payers,	862
to keep and leave in repair,	863
to take due care of house, &c.,	864, 865
to pay for depreciation,	866
not to alter buildings without consent,	867
not to endanger insurance,.....	868
not to assign or underlet,.....	869
to rebuild,	870
not to carry on any business,	871
	872

INDEX.

CLAUSES IN LEASES—

to view, repair and re-enter,	873
to determine term on notice,	874
to re-enter on breach,	875
arbitration,	876, 877

CLAUSES IN MORTGAGES—

insurance indorsed,	543
<i>proviso</i> for redemption,	552, 553, 554, 555, 556, 557
<i>covenant</i> for payment,	558, 559, 560
the like to several mortgages,	561
to insure against <i>fire</i> ,	562
that mortgagee may insure,	563
that lessee will do no act to prejudice insurance,	564
that mortgagee may insure if mortgagor does not,	565
power to lease for building or mines,	566
that mortgagor will pay premium and not avoid policy,	567
<i>power of sale</i> ,	568, 569
extension of, to further advances,	570
who may exercise,	571
that on sale persons having legal estate shall join,	572
<i>indemnity</i> to purchasers under power,	573
<i>indemnity</i> to mortgagee,	574
<i>indemnity</i> against liabilities under lease,	575
<i>indemnity</i> to several mortgages,	576
<i>trusts</i> of purchase money on sale under power,	577
mortgagee's receipt sufficient discharge,	578
same as to several mortgages,	579
such receipt a sufficient discharge by Statute,	580
<i>proviso</i> for quiet enjoyment,	581, 582
that mortgagor has power to grant,	583
same, and will further assure,	584
that lease subsists, right to demise, will keep unim- peached and further assure,	585, 586, 587, 588, 589, 590
<i>power</i> to mortgagee to <i>distrain</i> , mortgagor in possession,	591, 592
that mortgagor shall have six months' notice to pay in principal,	593
<i>covenant</i> to reimburse mortgagee's expenses,	594
expenses to be a further charge,	595
with several mortgages to repay expenses,	596
<i>habendum</i> of leaseholds by demise,	597
in fee of equity of redemption,	598
of a mortgage of a mortgage in fee,	599
<i>covenant</i> that mortgagor shall not be required to pay be- fore time limited,	600

U. W. O. LAW

INDEX.

CLAUSES IN MORTGAGES—	
mortgagee to produce deeds,	601
CLAUSES IN WILLS—	
provision for, after born children,	1237, 1238
devise of an annuity,	1239
appointment of new trustee,	1241, 1242, 1243
power to postpone sale,	1244
to grant leases,	1245
trustees may permit investments to remain,	1246
power to change securities,	1247
to wind up affairs,	1248
to appoint new trustees,	1249
disbursements to be paid,	1250
yearly produce to be deemed income,	1251
wife's dower,	1252
hotchpot,	1253
sums advanced,	1254
power to advance,	1255
maintenance,	1256
trust estates and estates in mortgage,	1257
COMMERCIAL FORMS—	
pages,	565 <i>et seq.</i>
COMPOSITION—	
deeds of, with creditors,	752, 753
CONDITION—	
see "BOND."	
to suffer intended wife to make a will,	1236
CONDITIONS—	
of sale of freehold,	156
of sale of leasehold,	162
CONFESSION—	
of judgment,	750
warrant of attorney to confess judgment,	751
CONTRACT—	
see "AGREEMENT."	
short form to annex to conditions,	157
assignment of,	730, 731
CONVEYANCE—	
in fee by vendor, his wife releasing her dower,	392
short form,	393
without bar of dower,	394
where parcels are scheduled,	395
short form under Statute,	396
by appointment and grant in fee,	397

INDEX.

CONVEYANCE—

the like to uses to bar dower,.....	398
under power of sale in a settlement, protector consenting,	399
of wife's freeholds in fee,.....	400
of a life estate in freeholds,.....	401
by mortgagor and mortgagee,.....	402
by heirs and executors of a mortgagee under a power of sale,.....	403
by mortgagor and mortgagee in fee, mortgagee being paid off, and dower released,.....	404
of freeholds, and assignment of leaseholds,.....	405
of an equity of redemption to mortgagee,.....	406
by executor who is heir-at-law under a will,.....	407
by two vendors, subject to a life estate; one vendor a married woman entitled to separate use, husband joins,.....	408
reconveyance by heir and executors of mortgagee,.....	409
on sale by mortgagee,.....	411
of mortgaged premises on foreclosure,.....	412
by guardian,.....	413
by administrator,.....	414
by executor's,.....	415
clauses in deeds of conveyance, see "CLAUSES,".....	416
COVENANTS—	
see "CLAUSES,"	
CROWN LANDS—	
assignment of,.....	715
DEBT—	
assignment of,.....	711, 733
DECLARATION—	
of trusts,.....	1315
DEMISE—	
under power,.....	502
of leaseholds,.....	702
DISCHARGE OF MORTGAGE—	
statutory forms,.....	n. 737, 262
DISCLAIMER—	
under a settlement,.....	973
of trusts and executorship of a will,.....	1324, 1327
DISSOLUTION OF PARTNERSHIP—	
by assignment of one partner to another,.....	1034
between two,.....	1035
indorsed,.....	1036
notice of,.....	1037, 1039

601

1237, 1238

1239

1241, 1242, 1243

1244

1245

1246

1247

1248

1249

1250

1251

1252

1253

1254

1255

1256

1257

565 et seq.

752, 753

1236

156

162

750

751

157

730, 731

392

393

394

395

396

397

INDEX.

DISSOLUTION OF PARTNERSHIP—	
gizette notice,	1038
forcible,	1040
DISTRESS WARRANT,	
notice of sale under,	893
EQUITABLE MORTGAGE,	
EQUITY OF REDEMPTION—	
mortgage of,	549
FURTHER CHARGE—	
on bank stock and leasehold,	695
on freehold indorsed,	696
GOOD WILL—	
of a business, assignment of,	708
GRANT—	
of right of way,	1345, 1346
HOTCHPOT CLAUSE,	
INSURANCE CLAUSE—	
indorsed,	1350
INVENTORY—	
by bailiff,	51
JOINTURE—	
in lieu of dower,	895
appointment of rent charge,	958
appointment of, under a power,	959
JUDGMENT—	
assignment of,	1348
LANDLORD—	
and tenant,	722, 723, 724
LEASE—	
<i>see</i> "CLAUSES;" assignment of,	879 <i>et seq.</i>
by administrator,	716, 728, 729
agreement for,	717
of dwelling house,	840, 845
of firm,	846
of house in town,	847
for twenty-one years determinable,	848, 849
for three years,	850
building,	851
of farm, &c., under Statute,	852
common form,	853, 890, 891
of farm on shares,	888
of part of house,	889
LEASEHOLD—	
mortgage of,	892
.....	546

..... 1038
 1040
 893
 894
 560
 539
 695
 696
 708
 1345, 1346
 1350
 54
 895
 958
 959
 1348
 722, 723, 724
 879 *et seq.*
 716, 728, 729
 717
 840, 845
 846
 847
 848, 849
 850
 851
 852
 853, 890, 891
 888
 889
 892
 546

INDEX.

LEASEHOLD—
 assignment of, on sale, 697, 700
 assignment of, by assignee of the term, 701
 demise of, 702
LIFE POLICY—
 mortgage of, 551
 assignment of, 698, 703
LIS PENDENS—
 certificate of, for registration, 274
MARRIED WOMAN—
 certificate of, under 2 Vic. c. vi., p. 177
MARRIAGE ARTICLES, 955
MARRIAGE SETTLEMENTS, 956
 agreement for, 957
 of real estate, 965
 special, 963
 of money to arise from real estate, 966
 of personally, 967
 by appointment of intended wife to intended husband, 970, 973, 974
 appointment of new trustees in,
MEMORIAL—
 of mortgage, 544
 affidavit thereto, 545
MESSE ASSIGNMENTS—
 receipt of, 363
MONEY—
 advanced on mortgage, memorandum of ownership of, 1323
MONEY BOND, 669
MORTGAGE—
in fee to one mortgagee, power of sale, 533
 short form, 534
 principal payable by installments, 535
 to secure present and future advances, 536
 surety joining to secure principal and interest, 537
 to three trustees, bar of dower, insurance, 538
 to three owners, short form, 539
 the like to one mortgagee, 540
 to secure an account current with a bank, 541
 bar of dower, insurance, power of sale, 542
 of leasehold by demise, power of sale, life policy, 546
 by assignment, similar powers, 547
 of reversion in freeholds, mortgagor not to have option
 to pay off, 548
 of equity of redemption, 549
 2 N 53

INDEX.

MORTGAGE—	
<i>equitable</i> ,	550
of life policy for past and future advances,	551, 735
transfer of, by mortgagee,	699, 704
the like mortgagee joining,	705
the like under Statute,	718
the like by indorsement,	719
memorandum as to ownership of money advanced on ..	1322
NOTES OF HAND—	
as collateral security, instead of bond,	692
NOTICE—	
to arbitrators of their appointment,	113
of hearing for opposite party,	114
to quit, by landlord,	897
by tenant,	898
to dissolve partnership,	1039
under a power,	1037
in gazette,	1038
of expulsion from partnership,	1040
to purchase share in partnership,	1041
NOTICE OF SALE—	
under chattel mortgage,	749
under distress,	894, 896
ORDER—	
of reference <i>ad nisi prius</i> ,	104
PARTITION—	
agreement for,	1325
deed of,	1326
PARTNERSHIP—	
deeds of,	1029 to 1033
renewal of,	1032
dissolution of,	1035
notice to dissolve,	1037
to purchase share,	1041
testatum clause,	1042
POLICY—	
life, mortgage of,	551
assignment of,	698
the like pursuant to covenant in mortgage,	709, 710
assignment of, by indorsement,	712, 734
the like as security,	735
PORT OBIT—	
power to redeem,	608

INDEX.

550
 561, 735
 699, 704
 705
 718
 719
 ced on ... 1323
 692
 113
 114
 897
 898
 1039
 1037
 1038
 1040
 1041
 749
 894, 896
 104
 1325
 1326
 1029 to 1033
 1032
 1035
 1037
 1041
 1042
 551
 698
 709, 710
 712, 734
 735
 608

POWER—
 to lease for building or mines, 566
 of sale, 568, 569
 extension of, to further advance, 570
 who may exercise, 571
 to redeem *post obit*, 608
 of leasing, n. 755, 2
 of attorney to receipt debts, 1342
 to manage and sell estates, 1343
 revocation of, 1344

PROMISSORY NOTE—
 to secure chattel mortgage, 747

PROVISO—
 in chattel mortgage, 746

RELEASE—
 by one party to an arbitration by the other, 118
 of dower, 1329, 1337
 of all demands, 1330, 1335
 special, 1331
 by creditor named in an assignment, 1332
 of part of mortgaged premises, 1333
 of a legacy, 1334
 from one joint tenant to another, 1336
 to a guardian, 1338
 of a trust, 1339
 of right of way, 1347
 legatee to executor, 1353
 ward to guardian, 1354
 mutual between partners, 1355

RECEIPT CLAUSE—
 in full, 330

RECITAL—
 short form, to identify parcels, 323
 in mortgages, 470

RECONVEYANCE—
 by *heir and executors* of a mortgagee, 409
 the like of freeholds and *leaseholds*, 410

RENT—
 security for, 882

REVOCAION—
 of power of attorney, 1344
 power of, 1352

SALE—
 conditions of, 156

INDEX.

SALE—		
	notice of, on chattel mortgage,.....	749
	notice of, under distress,.....	894
SECURITY—		
	for rent,.....	882
SEPARATION—		
	articles of,.....	974
SETTLEMENTS—		
	see "MARRIAGE SETTLEMENTS."	
SUBMISSION—		
	to arbitration, general,.....	106
	short form,.....	107
	special,.....	108
	clause to make submission a rule of Court,.....	109, 112
	condition of bond in special,.....	110
	bond by way of,.....	111
SURRENDER—		
	of term to reversioner,.....	899
	of lease to lessor,.....	900
TENANCY—		
	see "AGREEMENT," "LEASE."	
	landlord's certificate of,.....	883, 884
TESTATUM—		
	clause in partnership deed,.....	1042
TRANSFER—		
	see "ASSIGNMENT," "DEMISE."	
	of mortgage by mortgagee,.....	699, 704
	mortgagor joining,.....	705
	by executor and heir,.....	706
TRUST—		
	declaration of,.....	1351
TRUSTEE—		
	appointment of new, by codicil,.....	1241
	and executor in place of deceased appointed by will, ..	1242
WAY—		
	right of, grant of,.....	1345, 1346
	release of,.....	1347
WILL—		
	real and personal estate to wife and children,.....	1223
	all to wife, and she executrix,.....	1224, 1225
	similar, but legacies to children,.....	1226
	legacies and annuities to relations, residue to one,.....	1227
	specific dispositions, residue to nephew,.....	1228
	of a married woman,.....	1230, 1231

..... 749
 894

 882
 974

 106
 107
 108
 109, 112
 110
 111

 899
 900

 883, 884
 1042

 699, 704
 705
 706

 1351
 1241
 1242

 1345, 1346
 1347

 1223
 1224, 1225
 1226
 1227
 1228
 1230, 1231

INDEX.

Will—

realty and personalty life estate to sister, over to her children, 1229
 of husband, life estate in personalty to wife, 1232
 of personalty, very special, 1233
 of realty and personalty, specific devises, bequest and limitations, 1234
 of wife, by appointment, 1235
 of real and personal estate—short, 1240

INDEX TO STATUTES, QUOTED.

THE work having been prepared before the Consolidated Statutes were settled and passed, the *left* hand column contains an index of the Statutes as originally abstracted, and the *right* hand column gives the corresponding chapters of the Consolidated Statutes, and notes a few corrections of the text, which are now necessary.

REMARKS.

An Act respecting written promises and acknowledgments of Liability, n. 93
 See Consolidated Statutes, U. C., Chapter xlv, p. 150

 An Act respecting short forms of conveyancing, n. 149
 See Consolidated Statutes, U. C., Chapter xci, p. 905

 An Act respecting Real Property, n. 450
 See Consolidated Statutes, U. C., Chapter lxxxii, p. 829

 An Act respecting the conveyance of Real Estate by married women, n. 451
 See Consolidated Statutes, U. C., Chapter lxxxv, p. 854*

 An Act respecting Mortgages of Real Estate, n. 603
 See Consolidated Statutes, U. C., Chapter lxxxvii, p. 867

* Which adds to the Statute, as given in the text, six other sections, *nn.* 10 to 15 inclusive, of which the marginal synopsis is as follows:—
 10. Certificate under former acts to be valid, though the Justices were not residents in the country or district in which the married woman resided.
 11. Certificate to be valid, though given subsequent to the execution of the deed.
 12. Deed executed by married woman jointly with her husband to be a good conveyance notwithstanding errors in certificate indorsed.
 13. And notwithstanding the certificate be not in strict conformity to the forms in the said acts.
 14. Act not to prejudice titles subsequently acquired &c.
 15. Requirements formerly necessary to continue to be so as in future conveyances. 22
Vic. chapter xxxv. ss. 1 to 6.

U. W. O. LAW

INDEX.

	REMARKS.
An Act for the Relief of Insolvent Debtors, which is to be called The Indigent Debtor's Act,..... <i>n.</i> 736	See Consolidated Statutes, U. C., Chapter xxvi. The sections quoted as <i>nn.</i> 30—33, should be 17—20; and the penalty of £200 in <i>s.</i> 20, should be expressed in dollars, as \$800.
The Common Law Procedure Act,..... <i>n.</i> 737	See Consolidated Statutes, U. C., Chapter xxii. For section <i>n.</i> 240, read <i>n.</i> 236. " " 241 " 237. " " 261 " 257. " " 262 " 258. " " 263 " 259. " " 264 " 260. " " 271 " 267. " " 272 " 268. " " 273 " 269. The verbal variations are of no moment.
An Act respecting Short forms of Leases,..... <i>n.</i> 878	See Consolidated Statutes, U. C., Chapter xxii. The heading of "The first Schedule" now stands thus: "This Indenture, made the day of in the year of our Lord, one thousand eight hundred and , in pursuance of the act respecting short forms of leases, between , of the first part, and of the second part, witnesseth: Page 366, line 6 from top, for "executors, administrators, or assigns," read "heirs, executors," &c. Same page, line 8, in the blank space, insert (with a pen) "on," &c. Same page, after line 12, "directions as to the forms in this schedule," insert a line, "In the case of leasing of lands and tenements,"
An Act respecting the Surrogate Court,..... <i>n.</i> 1258	See Consolidated Statutes, U. C., Chapter, xvi. <i>p.</i> 93

MARKS.

Statutes, U. C., Chap-
sections quoted as
ould be 17-20; and
£200 in s. 20, should
dollars, as \$800.

Statutes, U. C., Chap-

read n. 236.

" 237.

" 257.

" 258.

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Statutes, U. C., Chap-

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..... p. 93

