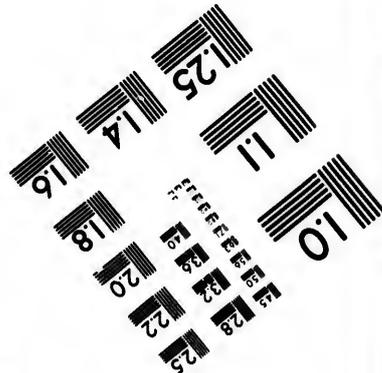
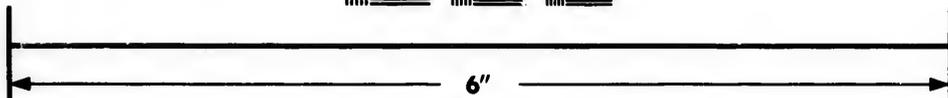
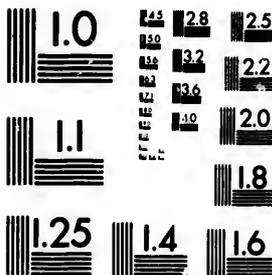


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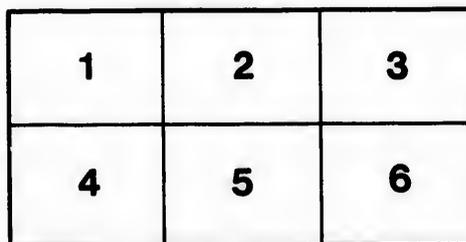
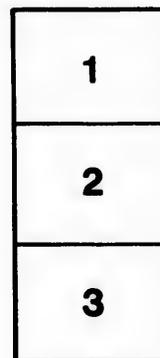
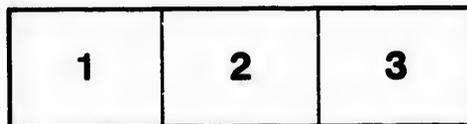
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THE ONTARIO  
CABINET LAWYER:

BEING

A HANDY BOOK OF LEGAL FORMS, WITH OBSERVATIONS  
DESIGNED FOR THE USE OF FARMERS,  
MERCHANTS AND OTHERS.

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By JOHN WHITLEY, Esq.,  
BARRISTER-AT-LAW.

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BOWMANVILLE:  
PAUL ROBINS, BOOKSELLER AND STATIONER.

1870.

PRINTED BY A. LOVELL & CO., 67 YONGE STREET, TORONTO.

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Entered according to the Act of the Parliament of Canada,  
in the year of our Lord one thousand eight hundred and  
seventy, by ROBERT LOVELL, in the Office of the Minister of  
Agriculture of the Dominion of Canada.

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## PREFACE.

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In the preparation of this little work, the compiler has had but one object in view, viz: to furnish the farmers, merchants and mechanics of Ontario, with a few general observations on the law as it affects some of the common and ordinary transactions of their every day business; together with some forms of legal documents for use in simple cases where it may be inconvenient or impracticable to obtain the services of a professional man. With this purpose only it is submitted to the public.

Toronto, April, 1870.

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THE  
ONTARIO CABINET LAWYER.

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CHAPTER I.

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AFFIDAVITS.

An affidavit is a sworn, written statement of facts. Where persons entertain conscientious scruples about taking an oath, an affirmation may be made. The only difference between an affidavit and an affirmation, is this; the one is sworn to be true, the other is affirmed. The penalties for making a false affidavit or a false affirmation are identical.

Affidavits should be written in words at length. It is advisable not to use figures in the body of the affidavit, although they may be used in the jurat. If any interlineations or erasures are made, the initials of the person before whom the affidavit is sworn should be put in the margin opposite such interlineations or erasures. If it is necessary to erase any words in an affidavit, do so with the pen and not with the knife.

Affidavits to be used in a suit or cause in any of the Courts of Law, as a general rule, require to be taken before a Commissioner; sometimes, they may be taken before a Justice of the Peace. The forms given will generally indicate before whom they should be sworn.

Affidavits should be written in paragraphs: each paragraph relating, as much as possible, to a distinct subject. This is absolutely necessary in all the Courts, and the same method is recommended in every case.

In the margin of an affidavit not intended for use in Court it is usual to state the name of the County wherein it is sworn.

#### 1. *General Form of Affidavit.*

County of [                    ]	}	I, A. B. of
to wit :		in the County of
<i>or</i>		<i>Yeoman (or other proper</i>
United Counties of [                    ]	}	<i>designation) make oath</i>
] and [                    ]		and say :
to wit :		First. That, &c., &c.

*(Here state the facts to be sworn to plainly and accurately. If there are several matters to be sworn to, state them in paragraphs separately.)*

First.—That, &c.

Second.—That, &c.

Third.—That, &c.

*Confining each paragraph as much as possible to a distinct subject matter, and commencing each with a new line.)*



Severally sworn [*or*  
 affirmed] by the Depo-  
 nents, A. B., C. D., &c.,  
 before me, at, &c., [*as*  
*in the foregoing*].

The following is the form of the oath to be administered by the Justice of the Peace, or Commissioner, to each deponent.

### 3. Oath.

You swear that this affidavit by you subscribed is true to the best of your knowledge and belief. So help you God.

The following is the form of an affirmation.

### 4. Affirmation.

You do solemnly and sincerely declare and affirm as you shall answer to Almighty God at the great day of judgment, that this affirmation by you subscribed is true, to the best of your knowledge and belief.

Every affidavit or affirmation should be signed at the foot by the party making the same, but if unable to write, a mark may be made thus:—

The mark of

+

A. B.

And whenever an affidavit or affirmation is made by a marksman: that is a person who cannot write his name, the jurat must be in the following form:

Sworn [or affirmed] before me at [            ] in

the County of [       ] this [       ] day of [       ]  
18 [       ], and I certify that the foregoing affidavit  
(or affirmation) was read over by me (or in my  
presence) to the said A. B., who appeared perfectly  
to understand the same, and made his (or her)  
mark in my presence.

C. D.

J. P., or Commissioner, &c., &c.

## CHAPTER II.

---

### CONTRACTS OR AGREEMENTS.

A contract is a stipulation or engagement entered into between two or more persons and may be either express or implied. An express contract is one in which all the particulars are specified and agreed upon, at the time of entering into it. An implied contract is one where the particulars are not specified but rest on the mere construction of law. As a general illustration of an implied contract, it may be stated, that it will be implied or assumed that a man actually promises to do that which he is legally liable to do. Express contracts are either by parol, or word of mouth, which are called *simple contracts*, or by deed under seal which are called *special contracts*. A consideration is an essential ingredient in every contract. By consideration, we mean an equivalent offered by the one party and accepted by the other. A

simple or parol contract, unsupported by a consideration, cannot be enforced. Thus, if a man should promise to give me \$1,000 without any consideration or equivalent on my part, he is not bound to perform his promise, and I am without remedy if he should break his word. In all contracts by specialty consideration is presumed.

Considerations are of two kinds, *good* and *valuable*. A *good* consideration is that of blood or the natural love which a person has to his wife or children, or any of his near relatives. A *valuable* consideration is such as money, marriage or the like.

A *special* contract is of necessity a written one; but a *simple* contract may be either written or verbal. There are, however, some simple contracts which the law requires to be in writing in compliance with the provisions of several statutes which we will proceed briefly to notice.

The first, of these is the Statute of Frauds, passed in 1676, in the reign of Charles II, (29 Car. II, cap. 3) which enacts, (section 4) that in the five following cases no verbal promise shall be sufficient to ground an action upon, but that the agreement, or at the least some note or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

1. Where an executor or administrator promises to answer damages out of his own estate.

2. Where a man undertakes to answer for the debt, default or miscarriage of another person.

3. Where an agreement is made upon consideration of marriage.

4. Where any contract is made of lands, tenements or hereditaments, or any interest therein.

5. And lastly, where there is any agreement that is not to be performed within a year from the making thereof.

This statute does not give to writing any validity which it did not possess before. A written promise made since this statute, without any consideration, is quite as void as it would have been before. The statute merely adds a further requisite to the validity of certain contracts, namely, that they shall, besides being good in other respects, be put into writing, otherwise they cannot be enforced. The phrase in the statute "to answer for the debt, default or miscarriage of another person," means to answer for a debt, default or miscarriage for which that other remains liable. The words, "any agreement that is not to be performed within the space of one year from the making thereof," point to contracts, the complete performance of which is of necessity extended beyond the space of a year. In order to bring an agreement within this clause of the statute so as to render writing necessary, both parts of the agreement must be such as are not to be performed within a year. The clause requiring the "agreement or some memorandum or note thereof to be signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized," has been liberally construed, and any insertion by the party of his name in any

part of the agreement, either at the beginning or in the body of the document, for the purpose of authenticating it, will be equally valid with a signature at the foot; and it is not necessary that both parties should sign the agreement, for the statute only requires that it should be signed "by the party to be charged therewith." The whole of the agreement must be contained in the writing, either expressly or by reference to some other document. And as a "memorandum or note" of the agreement is allowed, a writing sufficient to satisfy the statute, may often be made out from letters written by the party, or from a written offer accepted without any variation, before the party offering has exercised his right of retracting; and when correspondence is carried on by means of the post, an offer is held to be accepted from the moment that a letter accepting the offer is put into the post, although it may never reach its destination.

With reference to contracts for the sale of goods, it is to be observed that the necessary requisites depend partly upon the value of the goods. As to goods under the value of \$40, there can be no sale without a tender or part payment of the money, or a tender or part delivery of the goods, unless the contract is to be completed at a future time. Thus, if A. should agree to pay so much for the goods and B., the owner, should agree to take it, and the parties should then separate without anything further passing, this is no sale. But if A. should tender the money, or pay but a cent of it to B., or B. should tender the goods, or should deliver any, even the

smallest portion of them, to A., or if the payment or delivery, or both, should be postponed by agreement till a future day, the sale will be valid, and the property in the goods will pass from the seller to the purchaser. If, however, any act should remain to be done on the part of the seller previously to the delivery of the goods, the property will not pass to the purchaser until such act shall have been done. Thus if goods, the weight of which is unknown, are sold by weight; or, if a given weight or measure is sold out of a larger quantity, the property will not pass to the purchaser until the price shall have been ascertained by weighing the goods in the one case, or the goods sold shall have been separated by weight or measure in the other. So if an article be ordered to be manufactured, the property in it will not vest in the person who gave the order until it shall, with his consent, have been set apart for his benefit.

With regard to goods of the value of \$40 or upwards, additional requisites have been enacted by the seventeenth section of the Statute of Frauds, which provides "that no contract for the sale of any goods, wares and merchandise for the price of £10 sterling or upwards, shall be allowed to be good except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

And by a still more recent act, (Con. Stat. U. C. c. 44, s. 11) this enactment "shall extend to all contracts for the sale of goods of the value of \$40 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."

If an agreement for sale of goods is not to be performed within the space of one year from the making thereof, then, however small be the value of the goods, no action can be brought upon it, unless the agreement, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

It is convenient, though not necessary, that agreements should be signed by *all* the parties thereto; and where something is to be done on both sides, it is very useful to have them written in duplicate so that each party may possess one copy—they do not require a seal in all cases. The forms given will in general indicate when a seal is necessary, and when not.

*Agreement for the sale of Freeholds.*

Articles of agreement made and entered into this            day of            , 18    , Between A. B. of, &c., (*vendor*) of the one part, and C. D., of, &c., (*purchaser*) of the other part. The said A. B. and

C. D. do hereby respectively for themselves, their respective heirs, executors and administrators agree with each other, That the said A. B. shall sell to the said C. D., and that the said C. D. shall purchase All That, &c., (*here describe the premises*) with their appurtenances, and the freehold and inheritance thereof in fee simple in possession free from all incumbrances, at or for the price or sum of \$        to be paid by the said C. D. unto the said A. B. as follows, that is to say: the sum of \$        part thereof immediately after the signature of these presents, and the sum of \$        being the residue of the said purchase money on the        day of        next, at which time the purchase is to be completed, and the said C. D. shall, on and from that day have actual possession of the said premises, all outgoings up to that time being discharged by the said A. B. That the production and inspection of any deeds or other documents not in the possession of the said A. B., and the procuring and making of all certificates, attested, office or other copies of or extracts from any deeds, wills or other documents, and of all declarations or other evidences whatsoever, not in his possession, which may be required, shall be at the expense of the said C. D. That on payment of the said sums of \$        and \$        at the respective times specified for the payment thereof as aforesaid, the said A. B., and all other necessary parties (if any) shall execute a proper conveyance of the said premises with their appurtenances, and the freehold and inheritance thereof in fee simple in possession, free from all incumbrances unto the

said C. D., his heirs and assigns, or as he or they shall direct. That if from any cause whatever the said purchase shall not be completed on the said day of next, the said C. D. shall pay interest at the rate of per cent. on the said residue of the purchase money from that day till the completion of the purchase. In witness whereof the parties hereto have hereunto set their hands.

Signed by the said A. B. and A. B.  
and C. D., in the presence of C. D.  
E. F.

*Agreement for Lease with a right to Purchase at a Definite Sum.*

Articles of Agreement made and entered into this day of , 18 , Between A. B. of, &c., (*lessor*), of the one part, and C. D., of, &c., (*lessee*) of the other part as follows, namely, The said A. B. hereby agrees to let, and the said C. D. hereby agrees to take, All, &c., (*here describe the premises*), for the term of years to be computed from the day of next, at the yearly rent of \$ payable quarterly 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. The said A. B. his heirs or assigns will, at the request of the said C. D., his executors, administrators or assigns, execute a 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. In the said lease

to be granted as aforesaid, shall be contained covenants on the part of the said C. D., his executors, administrators and assigns, to pay the said yearly rent as the same shall become due, and also all present and future taxes, rates, assessments and other outgoings whatsoever in respect of the said premises. And also to repair and keep in repair at his and their own expense, during the whole of the said term, the said premises so agreed to be demised. And also at the like expense to insure the said premises against loss or damage by fire in the name or names of the said A. B., his heirs or assigns, in some public office to be approved of by the said A. B., in the sum of \$            at least, and to keep the same so insured during the continuance of the said term, and at all times when required, to produce the policy or policies of insurance and the receipt for the premiums in respect of the same to the said A. B., his heirs or assigns. And also, not to assign, underlet, or part with the possession of the said premises, or any of them, during the said term of            years, without the consent of the said A. B. And in the said lease so to be granted as aforesaid, shall be contained a condition authorizing the re-entry of the said A. B., his heirs or assigns, into the said premises on non-payment of the said yearly rent, or any part thereof, for the space of twenty-one days, or in case the said C. D., his executors or administrators shall become bankrupt or insolvent, or shall permit the said lease to be taken in execution, or on breach of all or any of the covenants so to be contained on the part of the

said C. D. his executors, administrators and assigns in the said lease agreed to be granted as aforesaid. And in the said lease shall also be contained a covenant on the part of the said A. B., that in case the said C. D., his executors or administrators shall, on or before the determination of the said term of years, be desirous of purchasing the interest of the said A. B., or his heirs in the said premises so agreed to be demised, then he, the said A. B., his heirs or assigns, shall and will take for the purchase thereof the sum of \$ . . . , and shall and will, upon payment of the same sum, at the costs and charges of the person or persons requiring the same, convey and assure the freehold and inheritance in fee simple in possession or expectant on the determination of the said term of . . . years, (as the case may be) in the same premises unto the person or persons so paying the said sum of \$ . . . and his, her or their heirs and assigns, or as he, she or they shall direct. And it is moreover agreed that a counterpart of the said lease shall be executed by the said C. D., his executors or administrators, at his or their own expense, and delivered to the said A. B., his heirs or assigns; and that until such lease and counterpart shall be executed, the rents, covenants and conditions agreed to be thereby respectively reserved and contained, shall, as nearly as circumstances will permit, be paid, observed and performed as if the same had been actually executed.

In witness whereof, the parties hereto have hereunto set their hands.

Signed in the presence of  
E. F.

A. B.  
C. D.

*Agreement for sale by way of Lease, reserving Purchase-Money as Rent.*

This Agreement, made the        day of        one thousand eight hundred and        , Between A. B., of, &c., of the first part,, and C. D., of &c., of the second part.

Whereas, the said party of the second part hath contracted with the said party of the first part for the purchase, in fee simple, of all and singular the land, tenements, hereditaments, and premises hereinafter mentioned to be hereby demised, for the sum of [ \$        ] lawful money of Canada, to be paid on the days and times and in manner hereinafter mentioned. And whereas the said parties are willing and desirous that the said party of the second part shall go into immediate possession and occupation of the said land, tenements, hereditaments, and premises, and receive a conveyance of the fee simple and inheritance thereof, so soon as the principal sum shall be fully and faithfully paid on the days and times and in manner after mentioned (all and singular other the covenants and agreements hereinafter 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, fulfilled, performed and kept, having been well and truly paid, performed, fulfilled and kept, according to the true intent and meaning of these presents), and that in the meantime the 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 agreement witnesseth, that in consideration of the premises and of the rents, covenants, and agreements hereinafter 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 party of the first part, Hath demised, leased, set, and to farm let, and by these presents Doth demise, lease, set, and to farm let, unto the said party of the second part, his executors administrators and assigns, All that land, tenements, hereditaments, and premises, situate, lying and being in the            in the County of            in the Province aforesaid [*here describe the premises*], together with all outhouses, waters, and water-courses thereon erected, lying or being, and all and singular other the rights, members and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the said land, tenements, hereditaments, and premises hereby demised, or intended so to be, with the appurtenances thereunto belonging, unto the said party of the second part, 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 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 hereby demised, unto the said party of the first part, his heirs, executors, administrators and assigns, the yearly rent or sum of \_\_\_\_\_ of lawful money of Canada, in even and equal half yearly payments on the \_\_\_\_\_ day of \_\_\_\_\_ and \_\_\_\_\_ day of \_\_\_\_\_ in each and every year during the said term, without any deduction, defalcation, or abatement thereof, or out of any part thereof, for or in respect of any taxes, rates, levies, charges, rents, assessments, statute labor, or other imposition of what nature or kind soever, either already taxed, rated, levied, charged, assessed or imposed, or hereafter to be taxed, rated, levied, charged, assessed or imposed, whether the same be now due, or shall hereafter become due, on the said demised premises or any part thereof, or on the said rent or any part thereof, or on either of the said parties to these presents, their or either of their heirs, executors, administrators, or assigns, or any of them in respect thereof, or any part thereof, by authority of Parliament or otherwise howsoever, the first payment of the said rent hereby reserved to be made on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

Provided always, nevertheless, that on payment of any instalment or instalments of the principal sum hereinafter specified according to the covenant hereinafter contained, for payment thereof, and the true intent and meaning of these presents, the said rent hereby reserved shall from thenceforth be proportionably reduced, so as at no time to

exceed the annual interest on such part of the said principal sum as shall from time to time remain due and owing after the payment of such instalment or instalments respectively; And provided, also, that if the said yearly rent or any part thereof, or the said principal sum or any part thereof, shall at any time or times hereafter be behind and unpaid by the space of thirty days next after any or either of the days on which the same or any part thereof ought to be paid, as herein or hereby provided, according to the true intent and meaning of these presents; Or, if the said party of the second part, his executors, administrators, or assigns, or any of them, shall at any time assign, or set over, or 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; Or if the party of the second part, 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 and may be lawful for the said party of the first part, 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, expel, amove.

and put the said party of the second part, 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 party of the first part, 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 therein contained, shall cease and determine, and forever thereafter be null and void to all intents and purposes whatsoever, anything herein contained to the contrary thereof in any wise notwithstanding. And the said party of the second part doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said party of the first part, his heirs and assigns, in manner following, that is to say : That he the said party of the second part, his heirs, executors, administrators, and assigns, or some of them, shall and will well and truly 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 hereinbefore mentioned, for payment thereof, according to the true intent and meaning of these presents. And also that he the said party of the second part, his heirs, executors, administrators, or assigns, or some of them, shall and will, during the said term hereby demised, pay, do, and perform all taxes, rates, levies charges, rents, assessments, statute labor, or other imposition above mentioned, 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 any part thereof, or on any person or persons in respect thereof, or any part thereof, as aforesaid; And also that he the said party of the second part, 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 underlease, 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 hereinbefore specified, as aforesaid; And also that he the said party of the second part, 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 party of the second part, his heirs, executors, administrators or assigns, or some of them, shall and will well and truly pay or cause to be paid, unto the said party of the first part, his heirs, executors, administrators or assigns, the full and just sum of \$            of lawful money of Canada, on the days and times and in manner following, that is to say [*here set forth the terms and manner in which the purchase money is to be paid*]. And the said party of the first part, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree,

to and with the said party of the second part, his executors, administrators, and assigns, in manner following, that is to say, That upon the due and faithful payment, performance, and fulfilment by the said party of the second part, 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 party of the second part, his executors, administrators, and assigns, are to be paid, done, and performed, he the said party of the first part, his heirs, or assigns, shall and will, at the expiration or other sooner determination of the said term hereby demised, upon the request of the said party of the second part, his executors, administrators, or assigns, made to him the said party of the first part, his heirs, executors, administrators, or assigns, or any of them, but at the proper costs and charges, in the law of the said party of the second part, his executors, administrators, or assigns, well and sufficiently convey and assure, or cause to be well and sufficiently conveyed and assured, unto the said party of the second part, and his heirs, in fee simple absolute, or to such person or persons and his, her, or their heirs, in fee simple absolute, 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 land, tenements, hereditaments, and premises hereby demised by such conveyances and assurances in the law, as by the said party of the second part, his executors, administrators or assigns

or his or their counsel learned in the law, shall or may be reasonably devised, advised, or required, freed, and discharged of and from all incumbrances whatsoever : but subject nevertheless to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown : with usual and proper covenants. And it is hereby further expressly agreed upon by and between the said parties, that in case at any time any of the rent or interest aforesaid, or of the purchase money shall remain unpaid by the space of            months after the same shall have fallen due, the party of the first part, his heirs or assigns, shall have full power to resell the said land at the best price which can be reasonably got for the same, and thereby utterly extinguish and bar all claim, interest, and title of the party of the second part, and all claiming under or by him in the same land—such resale to be either for cash or upon credit as the party of the first part, his heirs or assigns, may determine. And that the party of the first part, his heirs or assigns, may in the first place pay himself the expenses of such resale, and the whole of the claim due, or to become due, by the party of the second part, or any one claiming by or under him, out of the proceeds of such resale, and pay the balance (if any there be) when collected, over to the party of the second part, or the person entitled thereto ; And that the party of the second part, or those claiming by or under him, shall be answerable to the party of the first part, his heirs or assigns, for any deficiency which may happen



house and buildings according to the plan and elevation set forth in the schedule hereunder written. And also do, perform, and execute, or cause and procure to be done, performed and executed, all and singular other the works mentioned in the schedule hereunder written, according to the plan and elevation therein mentioned or contained, the same to be done within the time aforesaid, and in a good workmanlike and substantial manner to the satisfaction of E. F., (*surveyor or architect*), of, &c., (*insert name and residence of architect or surveyor*) or any other surveyor or architect whom the said A. B., [*builder*], and C. D., [*proprietor*], shall for that purpose by some writing under their hands appoint: such satisfaction to be testified by a writing or certificate under the hand of the said E. F., [*surveyor or architect*] or such other surveyor or architect as aforesaid. And also shall and will find and provide such good, proper and sufficient materials of all kinds whatsoever as, together with and in addition to the materials now lying on the said premises, shall be proper and sufficient for erecting the said dwelling house and buildings, and completely finishing the said works. And it is further agreed by and between the said parties that if the said A. B., [*builder*], his executors or administrators shall in any manner neglect or be guilty of any delay whatsoever, in building and completely finishing the said dwelling house, buildings and works as aforesaid, and the said E. F., [*surveyor or architect*], or such other surveyor or architect as afore-

said shall certify the same by writing under his hand, and the said C. D., [*proprietor*], shall give or leave notice in writing of such neglect or delay at the place of abode of him the said A. B., [*builder*], his executors or administrators, and the said A. B., [*builder*], his executors or administrators, shall not according to the direction of the said E. F. [*surveyor or architect*] or such other surveyor or architect as aforesaid, proceed to complete the said buildings and works within the space of (*seven*) days after such notice given or left as aforesaid: then and in any such case it shall be lawful for the said C. D., [*proprietor*], his executors or administrators to purchase proper and sufficient materials, and also to employ a sufficient number of workmen to finish and complete the said dwelling house, buildings and works, and also that the said C. D., [*proprietor*], his executors, administrators or assigns, shall and may deduct and retain to himself and themselves the costs of such materials, and all such sum and sums of money as he or they shall pay to such workmen for the completion of such dwelling house, buildings and works out of the money which shall be due to the said A. B., [*builder*], his executors or administrators, under this agreement; and also that the said A. B., [*builder*], his executors or administrators, shall not nor will in any manner do, or cause or procure to be done, any act, matter or thing whatsoever to prevent, hinder or molest the said C. D., [*proprietor*], his executors, administrators or assigns, or any person or persons employed by him or them

from completing and finishing the said dwelling house, buildings and works in manner aforesaid, or in using the materials which shall be on the said premises, and provided by either of the said parties for the doing thereof.

And the said C. D., [*proprietor*], doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said A. B., [*builder*], his executors and administrators, that he the said C. D., [*proprietor*], his executors or administrators, shall and will well and truly pay or cause to be paid unto the said A. B., [*builder*] his executors, administrators or assigns, the sum of \$            of lawful money of Canada, in manner following, that is to say, the sum of            per cent. on the amount of the materials used in the said buildings and works as they shall proceed, to be ascertained by the surveyor (*or architect*) for the time being, and his certificate under his hand to be conclusive between the said parties; and also that the said C. D., [*proprietor*], his executors or administrators shall and will every week during the progress of the said buildings and works, pay and supply the said A. B., [*builder*] his executors or administrators, with such sums of money as shall be sufficient for paying and discharging the wages and labour of the workmen and labourers who shall from time to time be employed in or about the said buildings and works, the amount whereof shall be ascertained by the surveyor (*or architect*) for the time being by a certificate under his hand; and the remainder of the said

sum of \$            within            days (or months) next after the said dwelling house, buildings and premises shall be completely built, done and finished to the satisfaction of the said E. F., [*surveyor or architect*] or such other surveyor or architect as aforesaid, the same to be testified in writing under his hand. And it is hereby declared and agreed by and between the said parties hereto, that in case the said C. D., [*proprietor*], his executors, administrators or assigns, shall direct any more work to be done in or about the said dwelling house, buildings and works than is contained in the schedule hereunder written then, and in such case the said C. D., [*proprietor*], his executors or administrators, shall pay or cause to be paid unto the said A. B., [*builder*], his executors or administrators, so much money as such extra work and the materials used therein shall cost or amount unto, anything hereinbefore contained to the contrary notwithstanding; and that if it shall be thought proper by the said C. D., [*proprietor*], his executors, administrators or assigns, to diminish or omit any part of the work specified in the said schedule hereunder written, then and in such case the said A. B., [*builder*], his executors or administrators shall deduct and allow out of the said sum of \$ so much money as the work so to be diminished or omitted shall amount unto, upon a reasonable valuation, anything hereinbefore contained to the contrary notwithstanding; and all allowances or deductions for such extra or omitted works respectively shall be ascertained and settled by the said E. F.,

[*surveyor or architect*], or such other surveyor or architect to be appointed as aforesaid. And it is hereby covenanted and agreed by and between the said parties hereto that if any dispute or difference shall happen or arise between them, their or either of their executors, administrators or assigns; or between either of them, and the said E. F., [*surveyor or architect*], or such other surveyor or architect to be appointed as aforesaid: touching or concerning the said dwelling house, buildings and works hereby contracted to be made and done as aforesaid, or touching or concerning any other matter or thing whatsoever relating thereto, or to the additional or extra work as aforesaid, then such dispute or difference shall be left to the determination and award of three indifferent persons, one to be named by the said A. B., [*builder*], his executors or administrators, another by the said C. D., [*proprietor*], his executors, administrators or assigns, and the third by the said two persons so named by each of them the said parties or his executors, administrators or assigns. And each of them the said parties hereto doth hereby for himself, his heirs, executors and administrators, covenant and agree with the other of them, his executors and administrators, that they the said parties respectively and their respective executors and administrators shall and will severally stand to, abide by, perform and keep the award and determination of the said three persons so to be chosen, or of any two of them, touching the said several matters of dispute or difference as aforesaid, so as the

same award and determination be made in writing under the hands and seals of the said arbitrators or some two of them, within two calendar months next after such dispute or difference shall arise. And it is further agreed by and between the said parties, that the submission hereby made, shall, at the option and expense of either of the said parties requiring the same, be made a rule of either of the Superior Courts of Law or Equity in Ontario; and that the costs and charges attending any reference or arbitration as aforesaid shall be in the discretion of the said arbitrators, or any two of them, and shall be paid and satisfied pursuant to their award.

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 the presence of

Y. Z.

A. B. [L. s.]

C. D. [L. s.]

*Another Form.*

An Agreement made the            day of,            18    ,  
Between A. B., of, &c., (*Builder*), of the first part,  
C. D., of, &c., (*Surety*), of the second part, and E.  
F., of, &c., of the third part.

Whereas, the said E. F., is possessed of a piece of ground situate at (*describe the premises*), upon which he is desirous of erecting a dwelling-house and offices according to the elevation, plans and specifications prepared for that purpose by W. M., architect and surveyor, and under the direction and to the satisfaction of the said W. M., or other archi-

tect or surveyor for the time being of the said E. F., his executors, administrators or assigns: which said elevation, plans and specifications, are marked with the letters A, B, C, D, E, F, and G, and are signed by the said A. B., C. D. and E. F., and the said specification is contained in the schedule hereunder written, or hereunto annexed; and the said A. B. has proposed to erect and complete the said dwelling-house and offices, and to make and execute all other works mentioned and specified in the said elevation, plans and specification, within the time hereinafter limited for that purpose, and according to the stipulations and agreements hereinafter contained, at or for the price or sum of \$ : which proposal the said E. F., hath agreed to accept on the said A. B., together with the said C. D., as his surety, entering into the agreements hereinafter contained.

Now it is hereby witnessed, That the said A. B. and C. D. do, for themselves, their heirs, executors, and administrators, and each and every one of them doth for himself, his heirs, executors and administrators, hereby agree with and to the said E. F., his executors, administrators and assigns, in manner following: (that is to say) That he, the said A. B., shall, at his own cost and charges, forthwith erect and complete, make and execute, with all proper and necessary materials, workmanship, and labor, of the best kinds in every respect, and in the most substantial and workmanlike manner, upon the said piece of ground, a dwelling-house and offices behind the same, with the appurtenances, and all

other works, matters, and things mentioned and specified in the said elevation, plans, and specification, under the direction and to the satisfaction of the said W. M., or other the architect or surveyor for the time being of the said E. F., his executors, administrators or assigns; and for that purpose shall find and provide all proper and necessary materials, implements and machinery; and shall make good all damages which may be occasioned either to the said dwelling-house, offices, and works, or any of them; or to adjoining buildings, by the execution of the same works or any of them; and shall cleanse all drains and cess-pools in or about the premises, and cart and clear away at such times and in such manner as shall or may be directed by the said W. M., or other architect or surveyor as aforesaid, all surplus earth and waste or useless materials, implements and machinery, which may from time to time remain during the execution of the same works, or at the completion thereof; And shall at his own costs and charges from time to time, until the said dwelling-house, offices and works shall be erected, completed, made, and executed, insure or cause to be insured, in the joint names of the said E. F., his executors, administrators or assigns, and of the said A. B., his executors or administrators, and for the sum of \$ , all and singular the erections and buildings for the time being standing on the said piece of ground, to the full value thereof, in some public insurance office to be approved of by the said E. F., and shall deliver the policy of insurance to the said E. F.,

his executors, administrators or assigns, and shall produce and show to the said E. F., his executors, administrators or assigns, the receipts for the premium of insurance, when requested so to do; and that in case of fire, all the moneys to be recovered by virtue of such insurance shall forthwith be applied in reinstating the premises, under the direction and to the approbation of the said W. M., or other architect or surveyor as aforesaid: and that the said A. B., shall well and sufficiently cover in or cause to be covered in, the dwelling-house and offices so to be erected as aforesaid, before the day of , and shall complete, make and execute, or cause to be completed, made and executed, all and singular the said dwelling-house, offices, and other works, in manner aforesaid, and according to the true intent and meaning of these presents, before the day of : and that if the said A. B., his executors or administrators, shall not so well and sufficiently cover in the said dwelling-house and offices before the said day of , or shall not so complete, make and execute, the said dwelling house, offices and works before the said day of , then, the said A. B., and C. D., their executors and administrators shall pay to the said E. F., his executors, administrators and assigns, the sum of \$ , for every week during which the said dwelling-house and offices shall remain uncovered in after the said day of and the like sum for every week the said dwelling-house, offices and works shall remain unfinished after the said day of ; which sums may be recovered.

as liquidated damages, or may be deducted from the sums payable to the said A. B., his executors and administrators, under this agreement, provided always, that in case the said E. F., his executors, administrators or assigns, or his or their surveyor or architect, shall require any extra or additional works to be done, or shall cause the works to be delayed in their commencement or their progress, the said A. B., his executors or administrators, shall be allowed to have such additional time for covering in and finishing the said buildings and works, beyond the said days above fixed, as shall have been necessarily consumed in the performance of such extra or additional works, or as shall have been lost by the delay caused by the said E. F., his executors, administrators or assigns, or his or their surveyor or architect as aforesaid: and the said payments for delay shall not become payable until after the expiration of such additional time or times.

And the said A. B. and C. D., for themselves, their executors and administrators, do hereby further agree with the said E. F., his executors, administrators and assigns, that in case the said W. M., or other architect or surveyor as aforesaid, shall be dissatisfied with the conduct of any workman employed by the said A. B., his executors or administrators, in the said works, or with any materials used or brought upon the said premises for the purpose of being used in the said works, and shall give notice thereof in writing under his hand to the said A. B., his executors or administrators. he, the said A. B., his executors or administrators, will forth-

with discharge such workman from the said works and remove the said materials ; and that in case the said A. B., his executors or administrators, shall not, in the judgment of the said W. M., or other architect or surveyor, as aforesaid, employ a sufficient number of workmen in the execution of the said works, or have on the premises a sufficient quantity of materials or implements of proper quality for the said works, and the said W. M., or other architect or surveyor as aforesaid, shall, by writing under his hand, require the said A. B., his executors or administrators, to employ an additional number of workmen, or bring upon the premises an additional quantity of materials or implements of proper quality, and shall specify in such notice the number and description of additional workmen to be employed, and the quantity and description of additional materials or implements to be supplied, the said A. B., his executors or administrators, shall forthwith employ in the said works such additional number of workmen, and shall forthwith bring upon the premises such additional quantity of materials or implements for the said works ; and that in case he shall refuse or neglect for the space of seven days to comply with any such notice or request, it shall be lawful for the said W. M., or other architect or surveyor as aforesaid, to dismiss and discharge the said A. B., his executors or administrators, from the further execution of the said works, and for the said E. F., his executors, administrators or assigns, to employ some other person to complete the same ; and that in such case

the sum agreed to be paid to such other person to complete the said works (such sum being approved by the said W. M., or other architect or surveyor as aforesaid) shall be deducted from the said sum of \$ \_\_\_\_\_, and the balance, after making any other deductions which the said E. F., his executors, administrators or assigns, shall be entitled to make under this agreement, shall be paid by the said E. F., his executors, administrators or assigns, to the said A. B.; his executors or administrators, in full for the work done by him or them, at the expiration of two months after he or they shall have been so discharged as aforesaid: And it is hereby further agreed by and between the parties hereto, that all the materials brought upon the said piece of ground for the purpose of being used in the said buildings, except such as shall be disapproved of by the said W. M., or other architect or surveyor as aforesaid, shall, immediately they shall be brought upon the said premises, become the property of the said E. F., his executors, administrators or assigns, and shall be used in the said works.

And the said E. F. doth hereby, in consideration of the works so agreed to be done by the said A. B.; agree with the said A. B., his executors, administrators and assigns, that he, the said E. F., his executors, administrators or assigns, will pay to the said A. B., his executors, administrators or assigns, the said sum of \$ \_\_\_\_\_, in manner following, that is to say: the sum of \$ \_\_\_\_\_ within one week after the said W. M., or other architect or surveyor as aforesaid, shall have certified in writing

to the said E. F., his executors, administrators or assigns, under his hand, that work to the value of \$        has been done under this agreement and the further sum of \$        within one week after the said W. M., or other architect or surveyor shall have certified as aforesaid that further work to the value of \$        has been done under this agreement, and so on shall pay \$        for every \$        worth of work so certified as aforesaid, until the whole of the said works shall be finished, and shall pay the balance remaining unpaid within one month after the said works shall have been completed and finished to the satisfaction of the said W. M., or such other architect or surveyor, and the said W. M., or such other architect or surveyor, shall have certified to the said E. F., his executors, administrators or assigns, that the said works have been completed and finished to his satisfaction. Provided always, and it is hereby further agreed by the parties hereto, and particularly by the said A. B. and C. D., that if the said E. F., his executors, administrators or assigns, shall at any time be desirous of making any alterations or additions in the erection or execution of the said dwelling-house, offices and other works, then and in such case, the said A. B., his executors or administrators, shall make and execute such alterations and additions to the satisfaction of the said W. M., or such other architect or surveyor; and the sum or sums of money to be paid or allowed between the said parties in respect of such alterations and additions shall be settled and ascertained by the said W. M., or such other architect or

surveyor, whose determination shall be final. Provided always, and it is hereby further agreed, that in the settling and ascertaining the said sum or sums of money, the said W. M., or such other architect or surveyor, shall not include any charge for day work, unless an account thereof shall have been delivered to the said E. F., his executors, administrators or assigns, or the said W. M., or such other architect or surveyor, at the end of the week in which the same shall have been performed. Provided also, and it is hereby further agreed, that no such alteration or addition shall release the said A. B. and C. D., their executors or administrators, or any or either of them, from the observance and performance of the agreements herein contained on the part of the said A. B., his executors or administrators, to be observed and performed, so far as relates to the other parts of the said dwelling-house, offices and works; but that the same agreements shall in all respects be observed and performed in like manner as if no such alteration or addition had been directed. Provided also, and it is hereby agreed, that if the said W. M. shall die, or cease to act as the surveyor and architect of the said E. F., his executors, administrators or assigns, and the said A. B., his executors or administrators, shall be dissatisfied with the surveyor or architect for the time being, appointed by the said E. F., his executors, administrators or assigns, in the room of the said W. M., then it shall be lawful for the said A. B., his executors or administrators, at his own expense to employ a surveyor or architect on his

behalf in the adjustment of the accounts, to act with the surveyor or architect for the time being of the said E. F., his executors, administrators or assigns; and in case of disagreement between such two surveyors or architects, they shall be at liberty to nominate a third; and the said three surveyors or architects or any two of them, shall and may exercise all the powers and discretion which the said W. M. could or might have exercised under or by virtue of these presents if he had lived or continued to act as the surveyor or architect of the said E. F., his executors, administrators and assigns. And it is hereby further agreed that if the said A. B., his executors or administrators, shall so employ a surveyor or architect on his or their behalf, he shall be nominated within ten days after the said A. B. shall be informed of the appointment of the surveyor or architect so appointed by the said E. F., his executors administrators or assigns, and notice in writing of such nomination by the said A. B., his executors or administrators, shall forthwith be given to the said E. F., his executors, administrators or assigns.

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

	A. B. (L. s.)
Signed, sealed and delivered	C. D. (L. s.)
in the presence of	E. F. (L. s.)
Y. Z.	

THE SCHEDULE ABOVE REFERRED TO.

*(Here copy the Specification.)*

*Sub-Contract between a Builder and a Carpenter.*

An agreement made the            day of        18    ,  
Between A. B., of, &c., (*Builder*) and G. H., of,  
&c., (*Carpenter*).

Whereas, the said A. B., hath entered into a contract with E. F., of, &c., to erect a dwelling-house and offices according to certain plans, elevations and specifications referred to in said contract, under the superintendence of W. M., or other architect of the said E. F., which contract is dated the            day of            ; Now it is hereby agreed that in consideration of the sum of \$            to be paid by the said A. B., his executors or administrators, to the said G. H., his executors or administrators, as hereinafter mentioned, the said G. H., his executors or administrators, will do all the carpenter's work necessary to be done for the completion of the said contract in the manner, within the time, and according to the plans and specifications mentioned and referred to in the said contract, and will provide all materials and implements necessary for the performance of such work, and will in all things abide by, perform, fulfil and keep the terms and stipulations of the said contract, so far as the same are applicable to such carpenter's work. And it is further agreed that in case the said A. B., his executors or administrators, shall become liable under the said contract to pay any damages or penalty by reason of the default or delay of the said G. H., his executors or administrators, in the performance of the work agreed to be performed by him,

then that the said G. H., his executors or administrators shall pay to the said A. B., his executors or administrators, the amount of such damages or penalty, and that in case the said W. M., or other architect appointed to superintend the works under the said contract shall disapprove of the work done by the said G. H., his executors or administrators, or the materials used by him, or the manner in which such work is done, or in case the said G. H., his executors or administrators, shall refuse or neglect forthwith on request by the said W. M., or other architect as aforesaid, to re-execute such work with the materials and in the manner required by the said W. M., or other architect as aforesaid, it shall be lawful for the said A. B., his executors or administrators, to dismiss and discharge the said G. H., his executors or administrators from the further performance of such work, and employ some other person to complete the same, and to deduct the costs of such completion from the sum which would otherwise be payable to the said G. H., his executors and administrators, under this agreement. In consideration whereof the said A. B., agrees to pay to the said G. H., his executors or administrators, the sum of \$        in manner following, that is to say: 75 per cent. of the contract price for the work done by the said G. H., his executors or administrators, during any week, on the Saturday in every week during the continuance of the said works, and the balance within one month after the completion of the said dwelling house and offices.



administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of 18 .

Whereas, the above bounden A. B., (*builder*), has entered into a contract and agreement in writing with the said E. F., dated the day of 18 , whereby he, the said A. B., has contracted and agreed with the said E. F., to do the whole of the works in erecting and completely finishing a certain dwelling-house and premises, with the out-buildings belonging thereto, in every respect agreeably to the drawings, agreements, conditions, clauses and particulars, mentioned, specified and contained in a certain paper, writing or specification annexed to the said contract.

And whereas, at the time of entering into such agreement as aforesaid, the said A. B., and his said sureties, the said G. H. and J. K., agreed to execute the above written bond or obligation for the due performance of the several works so contracted to be done as aforesaid, according to the specification aforesaid.

Now, therefore, the condition of the above written bond or obligation is such that if the above bounden A. B., his executors or administrators do and shall, within calendar months from the date of the above written bond or obligation, do, perform, execute and completely finish, or cause to be done performed, executed and completely finished, all and singular the several buildings and works mentioned and specified in the hereinbefore mentioned specification, conformably to the said specification in all

respects whatsoever, and in a good and workmanlike manner: Then the above written bond or obligation shall be void, but otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered

in the presence of

Y. Z.

A. B. [L. s.]

G. H. [L. s.]

J. K. [L. s.]

*Contract to do Repairs, &c.*

An agreement made the            day of            18   ,  
Between A. B., of, &c., and C. D., of, &c.

The said A. B. agrees to do all the works hereunder specified in the best and most workmanlike manner, and to provide for such works all necessary materials and things of the best quality, and to complete and finish the said works on or before the            day of            next, and in case the said works shall not be finished on or before the said            day of            , to pay or allow to the said C. D., out of the monies payable under this agreement, the sum of \$            , for each day during which the said works shall remain unfinished after the said            day of            , and in case the said C. D. shall require any additions or alterations to be made to the works hereunder specified, to execute such additions and alterations in the best and most workmanlike manner, with materials of the best quality. And it is hereby agreed that in case any additional works shall be required by the said C. D., or in case the said C. D. shall delay the execution of the said works, the said A. B., shall have

such additional time for the performance of the said works after the said            day of            , as shall be equivalent to the time consumed in the execution of such additional works, or to the time during which the said C. D. shall have delayed the said works, and that the payments for non-completion as aforesaid, shall not be payable until after the expiration of such additional time. And it is hereby further agreed that materials brought upon the premises of the said C. D., for the purpose of being used in the said works, shall, if of proper description and quality, immediately become the property of the said C. D. And the said C. D. agrees to pay to the said A. B., for the said works, the sum of \$            , within one week after the same shall be finished.

Witness the hands of the said parties.

Signed in the presence of

A. B.

Y. Z.

C. D.

*Agreement for Sale of Merchants' Stock.*

This agreement made the            day of            18            ,  
Between A. B., of, &c., merchant, of the one part,  
and C. D., of, &c., merchant, of the other part.

The said A. B. agrees to sell, and the said C. D. agrees to buy, all the stock of goods, wares and merchandise, now being in and upon the store occupied by the said A. B. at            aforesaid, at the invoice price thereof (*or at the sum of \$            or otherwise as agreed upon*) an account of such goods, wares and merchandise being taken by the parties hereto in the presence of each other. [And it is

hereby agreed that any of the said goods, wares or merchandise, which may be damaged, shall be appraised and valued by three disinterested persons, each of the parties hereto selecting one of such persons and the two so selected appointing the third, and that the price set upon such damaged goods, wares and merchandise, by the said three persons, or any two of them, shall be substituted for the invoice price thereof, and that within ten days after the value of the said goods, wares and merchandise, shall have been ascertained as aforesaid, the said C. D. shall pay the amount thereof to the said A. B.] And the said A. B. agrees to make, execute and deliver unto the said C. D., a good and sufficient bill of sale of the said goods, wares and merchandise, and to give to the said C. D. quiet and peaceable possession thereof upon payment to him, the said A. B., by the said C. D., within the time before specified of the invoiced [*or appraised*] value as aforesaid.

Witness, &c., (*complete as in last form.*)

[*If desired, the clause for appraising damaged goods can be made applicable to the entire stock. The clause between brackets will be left out if a fixed sum is agreed on.*]

*Agreement for Sale of Grain.*

Memorandum of agreement made the        day of  
 18       , Between A. B., of, &c., of the one  
 part, and C. D., of, &c., of the other part. The said  
 A. B. agrees to sell to the said C. D. five thousand

bushels of wheat, to be delivered to the said C. D., at, [        ] on or before the first day of January next, free of all charges, at the price or sum of per bushel. And the said C. D. agrees to purchase the said wheat, and to pay therefor at the rate aforesaid, upon delivery as aforesaid. And the said A. B. hereby guarantees and warrants the said wheat to be good, clean and merchantable grain.

Witness the hands of the said parties.

Signed in presence of

Y. Z

A. B.

C. D.

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## CHAPTER III.

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### ARBITRATION.

Instead of the ultimate remedy of an action at law or suit in equity, recourse is sometimes had for the settlement of disputes to the more amicable expedient of arbitration. And in some transactions, especially in articles of co-partnership between traders, it is usual to stipulate that if any dispute shall arise it shall be referred to the determination of two indifferent persons as arbitrators, or of their umpire, who is usually, and very properly, required to be chosen by the arbitrators before they proceed to take the subject in question into consideration. And it

is agreed that the award in writing of the arbitrators, or of their umpire in case of their disagreement, shall be binding and conclusive on all parties. It is generally also further provided, that in case either party should neglect or refuse for a given time to appoint an arbitrator, the arbitrator chosen by the other party may make an award, which shall be binding on both.

As the Courts of Law and Equity have full jurisdiction on all questions arising out of agreements of any kind, it follows that they retain a jurisdiction over matters which the parties themselves have agreed should be referred to arbitration. Notwithstanding, therefore, an agreement to refer disputes to arbitration, either party may bring the matter into Court; although if the agreement should contain an express covenant not to sue, and especially if arbitrators be actually named, it seems that such covenant may be effectually pleaded in bar to any suit in equity. And without such a covenant, the circumstances of the parties having agreed to refer to arbitration will induce a Court of Equity to pause before granting to any of them summary relief on a point which they have expressly agreed to settle by amicable means. If, however, one of the parties should, notwithstanding his agreement, refuse to name an arbitrator, the Court of Chancery will not entertain a bill to compel him to do so, neither will it substitute the Master for the arbitrators; for the Court acts only when it has it in its power itself to execute the whole contract in the terms specifically agreed upon.

The reference of disputes to arbitration appears to have been early adopted by Courts of Law, with the consent of the parties to an action, in cases where the matter in dispute could be more conveniently settled in this mode. A verdict was taken for the plaintiff by consent, subject to the award of an arbitrator agreed upon by the parties, and the reference was made a rule of Court. This plan is still continually adopted. The arbitrators and the parties to the reference by this means become subject to the jurisdiction of the Court, which has power to set aside any award which may appear to have been given unjustly or through mistake of the law; or, if the award be valid, its performance may be enforced by the Court. In order to extend the benefits of this mode of submission to arbitration to all cases of controversies between merchants and traders or others concerning matters of account or trade or other matters, an act of Parliament was passed in the reign of William the Third, intituled "An Act for determining the differences by Arbitration" (9 & 10 W. III. c. 15). This Act empowers all merchants and traders and others desiring to end by arbitration any controversy for which there is no other remedy but by personal action or suit in equity, to agree that their submission of their suit to the award or umpirage of any person or persons shall be made a rule of any of Her Majesty's Courts of Record which the parties shall choose. And it provides that in case of disobedience to the arbitration or umpirage to be made pursuant to such submission, the party neglecting

or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of Court when he is a suitor or defendant in such Court. And the process to be issued accordingly shall not be stopped or delayed in its execution by any order, rule, command or process of any other Court, either of law or equity, unless it shall be made appear on oath to such Court that the arbitrators or umpire misbehave themselves, and that such award, arbitration or umpirage was procured by corruption or other undue means. It is also further provided that any arbitration or umpirage procured by corruption or undue means shall be judged void, and be set aside by any Court of Law or Equity, so as complaint of such corruption or undue practice be made in the Court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage is made and published, to the parties.

Previously to a recent statute, either party might have revoked his submission, and thus determined the authority of the arbitrators; and this may still be done, if the submission relate to criminal matters, which are not within the statute. But it is now enacted (Con. Stat. U. C., c. 22, s. 179) that the power and authority of any arbitrator or umpire, appointed by or in pursuance of any rule of Court or Judge's order, or order of nisi prius, in any action, or by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of any of Her Majesty's Courts of

Record, shall not be revocable by any party to such reference without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a Judge. And the arbitrator or umpire is empowered and required to proceed with the reference notwithstanding any such revocation, and to make such award although the person making such revocation shall not afterwards attend the reference. And the Court, or any Judge thereof, may, from time to time enlarge the term for any such arbitrator making his award. The Court, or any Judge, is also empowered under any such reference, by rule or order to command the attendance and examination of witnesses, or the production of any documents. And if in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of Court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, the arbitrator or umpire, or any one arbitrator, is authorized and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and any witness wilfully and corruptly giving false evidence shall be deemed guilty of perjury, and shall be prosecuted and punished accordingly. But an express order or agreement that the witnesses shall be examined upon oath is not now necessary; for every arbitrator or other person, having, by law or by consent of parties, authority to hear, receive, and examine evidence, may adminis-

ter an oath to all such witnesses as are legally called before them respectively.

The authority of arbitrators is liable to be determined not only by a revocation of the submission, but also by the death of either of the parties previously to the making of the award. In order to obviate this inconvenience, it is now usual to insert in the order or rule of Court, by which reference is made to arbitration, a provision that the death of either of the parties shall not operate as a revocation of the authority of the arbitrators, but that the award shall be delivered to the executors or administrators of the parties, or either of them, in case of the death of either of them, or his decease. And the same stipulation may be effectually made in a submission to arbitration by private agreement.

When no time is limited for the making of the award, it must be made within a reasonable time; but if a given time be limited, the award must be made within that time, unless the time for making it be enlarged. And if the award is required to be made and ready to be delivered to the parties by a certain day, it will be considered as ready to be delivered if it be made, unless the arbitrators should fail to deliver it to either of the parties, on request made for that purpose, on the last day. The submission to arbitration frequently contains a power for the arbitrators or umpire to enlarge the time for making the award; and in this case the time may be enlarged from time to time by such arbitrators or umpire, provided the enlargement be made on or before the expiration of the time originally limited

for making the award. And if the submission be made a rule of Court, then, whether the arbitrators or umpire have power to enlarge the time or not, the Court or a Judge thereof, has power to enlarge the time under the provisions of the statute above mentioned. And should no enlargement be formally made, yet the parties may, by continuing their attendance on the reference, or by recognizing the proceedings under it, virtually empower the arbitrators or umpire to make a valid award subsequently to the time originally limited.

In proceeding in the business of the arbitration, the arbitrators are bound to require the attendance of the parties, for which purpose notice of the meetings of the arbitrators should be given to them. But if either party neglect to attend either in person or by attorney after due notice, the arbitrators may proceed without him. In taking the evidence the arbitrators are at liberty to proceed in any way they please, if the parties have due notice of their proceedings, and do not object before the award is made. But in order to obviate any objection, they ought to proceed in the admission of evidence according to the ordinary rules of law. The award should be signed by the arbitrators in each other's presence, and when made it must be both certain and final. Thus, if the award be that one party enter into a bond with the other for his quiet enjoyment of certain lands, this award is void for uncertainty; for it does not appear in what sum the bond should be. On the question of finality many cases have arisen. If the arbitrators be *empowered*

to decide all matters in difference between the parties, the award will not necessarily be wanting in finality for not deciding on all such matters, unless it appear to have been *required* that all such matters should be determined by the award. If the award reserve to the arbitrators, or give to any other person, or to one of the parties, any further authority or discretion in the matter, it will be bad for want of finality. And if the award be that any stranger to the reference should do an act, or that money should be paid to, or any other act done in favor of, a stranger, unless for the benefit of one of the parties, such award will be void. An award, however, may be partly good and partly bad, provided the bad part is independent of and can be separated from that which is good. But if by reason of the invalidity of part of the award, one of the parties cannot have the advantage intended for him as a recompense for that which he is to do, according to that part of the award which would otherwise be valid, the whole will be void. If it should appear on the face of the award that the arbitrators, intending to decide a point of law, have fallen into an obvious mistake of the law, the award will be invalid. But where subjects involving questions both of law and fact are referred to arbitration, the arbitrators may make an award according to what they believe to be the justice of the case, irrespective of the law on any particular point.

When the submission to arbitration is not made the rule of any other Court, the Court of Chancery, according to the ordinary principles of equity, has

power to set aside the award for corruption or other misconduct on the part of the arbitrators, or if they should be mistaken in a plain point of law or fact. If the submission be made a rule of Court under the above mentioned statute of Wm. III., the Court of which it is made a rule has power to set aside the award, not only on the grounds of corruption or undue practice mentioned in the act, but also for mistakes in point of law; and no other Court has a right to entertain any application for this purpose. The application to set aside the award must, however, be made within the time limited by the act. But although the time limited by that statute may have expired, yet, if there be any defect apparent on the face of the award, the Court will not assist in carrying it into effect by granting an attachment for its non-performance. If the submission to arbitration be made by rule or order of the Court in any cause independently of the statute, the Court still retains its ancient jurisdiction of setting aside the award on account either of misconduct of the arbitrators, or of their mistake in point of law. In analogy, however, to the practice under the statute of Wm. III., the Court in ordinary cases requires application for setting aside the award to be made within the time limited by that statute; but upon sufficient grounds it will grant such an application, though made after the expiration of that time. Sometimes power is reserved to the Court to refer the matter back to the arbitrators for further examination, in the event of any application being made to the Court on the subject of the

award. In this case the application must be made within the same time as an application to set aside the award.

If an umpire be appointed, his authority to make an award commences from the time of the disagreement of the arbitrators, unless some other period be expressly fixed; and if, after the disagreement of the arbitrators, he make an award before the expiration of the time given to the arbitrators to make their award, such award will nevertheless be valid. The umpire must be chosen by the arbitrators in the exercise of their judgment, and must not be determined by lot, unless all the parties to the reference consent to his appointment by such means. In order to enable him to form a proper decision, he ought to hear the whole evidence over again, unless the parties should be satisfied with his deciding on the statement of the arbitrators. And the whole matter in difference must be submitted to his decision, and not some particular points only on which the arbitrators may disagree.

An award for the payment of money creates a debt from one party to the other, for which an action may be brought in any Court of law. But when the award is made a rule of Court, its performance may be enforced by execution. And where the reference is made by order of the Court of Chancery, or where the award requires any act to be done which cannot be enforced by an action at law, equity will decree a specific performance.

It often happens that the matters to be referred are of too complicated a nature to admit of a suc-

cessful carriage without the intervention of a professional man. The foregoing observations and following forms are not intended to apply to any such cases: they are meant for plain and simple cases only.

*Arbitration Deed.*

This Indenture, made the            day of            ,  
18    , Between A. B., of, &c., of the one  
part, and C. D., of, &c., of the other part. Whereas,  
certain differences have arisen between the said  
A. B. and the said C. D., respecting, &c., [*here  
state concisely the subject-matter in dispute, or, if  
all matters in difference are referred, you had better  
not state such subject-matter at all*]: and it is  
agreed by and between the said A. B. and C. D. to  
refer the said differences [*or all matters in difference  
between them*] to the award, order, final end and  
determination of U. V., of, &c, and X. Z., of, &c.,  
arbitrators, nominated by the said A. B. and C. D.,  
respectively; and in case they disagree about mak-  
ing an award, or fail to make an award, before the  
day of            next, then to the award, umpirage,  
final end and determination of such umpire as the  
said arbitrators shall by writing under their hands,  
endorsed on these presents, before they enter upon  
the consideration of the matters referred, nominate  
and appoint.

Now this indenture witnesseth that they, the said  
A. B. and C. D., do, and each of them for himself,  
severally and respectively, and for his several and  
respective heirs, executors and administrators, doth

covenant, promise and agree with and to each other, his executors and administrators respectively, that the said differences [or *all matters in difference*] between the said A. B. and C. D., be forthwith referred to the award, order, arbitrament, final end and determination of the said U. V. and X. Z. ; and in case they disagree about making an award, or fail to make an award, before the      day of      next, then to the award, umpirage, final end and determination of such umpire as the said arbitrators shall, by writing under their hands, endorsed on these presents, before they enter upon the consideration of the matters referred, nominate and appoint : so as the said arbitrators or umpire do make and publish his or their award or umpirage in writing under his or their hands of and concerning the premises, ready to be delivered to the parties or to either of them, or, if they or either of them shall be dead before the making of the award or umpirage, to their respective personal representatives who shall require the same, on or before the      day of      next, or on or before any other day to which the said arbitrators or umpire shall, by writing signed by him or them, endorsed on these presents, from time to time enlarge the time for making such award or umpirage ; and that the said A. B. and C. D. respectively, and their respective executors and administrators shall and will perform, fulfil and keep the said award or umpirage so to be made as aforesaid, and that the death of either of the said parties shall not operate as a revocation of the power and authority of the said

arbitrators or umpire to make said award or umpirage; and that all costs and charges of this reference and of the said award shall be in the discretion of the said arbitrators or umpire, who shall direct and award by whom and to whom and in what manner the same shall be paid: And, further, that the said A. B. and C. D., and each of them, shall and will produce unto and deposit with the said arbitrators or umpire all deeds, books, papers, evidences and writings touching or relating to the matters in difference in their respective possessions or power as the said arbitrators or umpire shall think fit: And that each of them shall and will submit to be examined upon oath, if thought necessary by the said arbitrators or umpire, and will, as far as in them lies respectively, do all such other acts and things as the said arbitrators or umpire shall require for the better enabling him or them to make the said award: And, further, that if either of the said parties shall obstruct or prevent the said arbitrators or umpire from making an award by affected or wilful delay, or by not attending after reasonable notice, and without such excuse as the said arbitrators or umpire shall be satisfied with and adjudge to be reasonable, it shall be lawful for the said arbitrators or umpire to proceed ex parte: And, further, that neither of them, the said A. B. and C. D., shall and will prosecute any action or suit in any Court of Law or Equity against the other of them, of and concerning the premises, until the said award be made and published: And further, that this submission may be made a rule of



these presents upon their said award, then it shall and may be lawful for them to appoint some fit person as third arbitrator, by a memorandum, in writing, under their hands, to be endorsed on these presents; and the award of any two of them shall be final and conclusive, both at law and in equity, upon both of the said parties hereto: such award to be made in writing on or before the            day of next.

Now this Indenture witnesseth, that the said parties hereto do, and each of them doth, each for himself severally and respectively, and for his and their respective heirs, executors and administrators, covenant, promise and agree, to and with each other, his and their heirs, executors and administrators, well and truly to stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament and final determination of the said arbitrators hereby appointed; or, in the event of it having been necessary to appoint such third arbitrator as aforesaid, to stand to, obey, abide by, observe, perform, fulfil and keep the award, order, arbitrament, and final determination of any two of them of and concerning the premises aforesaid or any thing in any manner relating thereto, so as such award be made in writing, under their hands, or under the hands of any two of them (in the event of any such appointment as aforesaid), on or before the            day of            next.

And it is hereby agreed, that the said arbitrators shall be at liberty, by writing, under their hands, or the hands of any two of them, respectively endorsed

on these presents, to enlarge the time for making the said award when and as often and to such times as they shall think fit. And also, that all the costs and charges attending the said arbitration shall be in the discretion of the said arbitrators hereby appointed, or in the event of such appointment of a third arbitrator as aforesaid, of any two of them so making their award as aforesaid, and shall be paid and satisfied pursuant to their award. And also, that these presents may be made a rule of Her Majesty's Court of Queen's Bench or Common Pleas, at Toronto.

And for the full performance of the said award so to be made as aforesaid, the said parties hereto bind themselves, severally and respectively, their several and respective heirs, executors and administrators, each to the other of them respectively, in the penal sum of [ ] lawful money of Canada, firmly by these presents.

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

Signed, sealed and delivered

in the presence of

A. B. [L.S.]

E. F.

C. D. [L.S.]

*Arbitration Bond.*

Know all men by these presents, That I, A. B., of, &c., am held and firmly bound to C. D., of, &c., in the penal sum of [ ] of lawful money of Canada, to be paid to the said C. D., or to his certain attorney, executors, administrators, or assigns,







we enter or proceed on the arbitration within mentioned] nominate and appoint Mr. X. Y., of \_\_\_\_\_, the third person or arbitrator, to whom, together with ourselves, all matters in difference between the said parties within mentioned shall be referred, according to the tenor and effect of the within submission.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ .  
 Signed in the presence of \_\_\_\_\_ U. V.  
 Y. Z. X. Z.

*Oath to be administered by Arbitrator to a Witness.*

You shall true answer make to all such questions as shall be asked of you by or before me touching or relating to the matters in difference between A. B. and C. D. referred to my award [or "to the award of myself and G. H."], without favor or affection to either party; and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

*Appointment by Arbitrator for attendance before him.*

B. } I appoint \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ next,  
 v. } at \_\_\_\_\_ o'clock in the evening, at \_\_\_\_\_, for  
 D. } proceeding in this reference. Dated the  
 day of \_\_\_\_\_, 18 \_\_\_\_ . A.A.

To Messrs. A. B. and } (*The arbitrator's signature, or the signature of one or more of them, if more than one.*)  
 C. D., and their }  
 respective attorneys or }  
 agents, and all others }  
 whom it may concern. }

*Peremptory Appointment for the same purpose.*

I appoint \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ instant [or "next<sup>o</sup>"], at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon precisely, at \_\_\_\_\_, peremptorily to proceed upon and conclude the reference now pending before me between A. B. and C. D. : And I hereby give notice, that in case of non-attendance of either party, I shall nevertheless proceed, and immediately make my award. Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

E. F., *Arbitrator.*

To Messrs. A. B. and C. D., and their respective Attorneys or agents, and all others whom it may concern.

*General Form of Award.*

To all to whom these presents shall come, I, A. A., of, &c., send greeting: [*&c. proceed to recite the instrument by which the parties referred to arbitration, and so much of its terms as may be essential to show the authority of the arbitrator or umpire with respect to the subject-matter of reference, and the time, power of enlargement, and manner of making the award. Thus if it be by indenture, the recital may be as follows: Whereas by an Indenture bearing date, &c., and made between, &c., reciting that various differences had arisen, &c.,*] so stating all that may be material to warrant the following award, and then proceed thus:] Now know ye that I, the said A. A., having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations

and evidence of the said respective parties of and concerning the said matters in difference so referred as aforesaid, do make this my award in writing of and concerning the said matters in difference so referred, and do hereby award, order, determine and direct that [*&c. conclude with a distinct statement of the arbitrator's decision on all the points referred to him*].

In witness whereof, I have hereunto set my hand this            day of            18            .

Signed in presence of

A. A.

W. W.

*Award where the Submission was by mutual Bonds.*

To all to whom these presents shall come, I, A. A., of &c., send greeting: Whereas on            , by a bond made and sealed with the seal of C. D., of, &c., he became held and firmly bound unto A. B., of, &c.. in the penal sum of \$            : And whereas on the day and year aforesaid the said A. B., by another bond sealed with his seal, became held and firmly bound unto the said C. D. in the like penal sum, with conditions written under the said several bonds that the said A. B., his heirs, executors and administrators, and the said C. D., his heirs, executors and administrators, should well and truly stand to, abide by, perform, fulfil, and keep the award, order, and final end and determination of me, A. A., an arbitrator indifferently named and elected, as well on the part and behalf of the above-bounden A. B., as the above-bounden C. D., to

arbitrate, award, order, judge and determine of and concerning [*&c. here set out such parts of the bond as bear upon the award, and state the enlargement, if any*]. Now, I, the said A. A., having taken upon myself the burthen of the said arbitration, and having heard and duly and maturely weighed and considered the several allegations, vouchers and proofs made and produced on both sides, do in pursuance of the said submission make and publish this my award of and concerning the said premises in manner following; that is to say, I do award [*&c.*].

In witness, &c. (*as in last form*).

Signed in presence of

A. A.

W. W.

*Award where the Submission was by Agreement, and stating an assent to an enlargement.*

To all to whom these presents shall come, we A. A., of, &c., and T. A., of, &c., send greeting: Whereas, by a certain agreement in writing under the hands of A. B., of, &c., and C. D., of, &c., bearing date on or about the        day of        last, reciting that [*&c. here set out such parts of the agreement as bear upon the award :*] And whereas by an endorsement on the said agreement, bearing date on or about the        day of        last under the hands of all the said parties to the said agreement, they the said parties mutually and reciprocally consented and agreed that the time for the said arbitrator's making the said award should be

enlarged to the            day of            then next, and that they would in all other respects abide by the terms of the said agreement. Now know ye that we the said arbitrators having taken upon us the burthen of the said reference, and having examined all such witnesses as were produced before us by the said parties respectively, and having fully weighed and considered all the allegations, proofs and vouchers made and produced before us, do award [&c.].

In witness, &c., [as in preceding forms].

Signed in the presence of

A. A.

W. W.

T. A.

*Clauses which may be inserted in an Award where they suit the circumstances.*

1. I award that C. D. do pay to A. B. the sum of \$            within            days after demand.
2. I award that A. B. do pay to C. D. the sum of \$            , within            days after demand.
3. I award and direct that C. D. do, within one month after demand, pay to the said A. B. the sum of \$            , and that the said A. B. do, upon such payment, deliver to the said C. D. a good and sufficient conveyance in fee simple, free from incumbrances of all kind singular, &c., [*describe lands*].
4. I award and direct that the said A. B. do pay to the said C. D. the sum of \$            , and that thereupon the said A. B. and C. D. do execute and deliver the one to the other good and sufficient releases of all claims and demands which they may have one against the other.

5. I award that the costs of the reference and award be paid by C. D. to A. B.

6. I award that each party bear his own costs of the reference, and that the costs of the award be paid by the said A. B. [or C. D., or in equal portions by the said A. B. and C. D].

7. I award and direct that the said C. D. do pay to the said A. B., the costs incurred by the said A. B., of, and incidental to, the reference and award, [when the arbitrator is to ascertain the amount add the following words] and I assess the amount of the said costs of the said A. B., at \$ , and the costs of my award at \$ .

8. And I further award and direct that the said A. B. and C. D. do each bear his own costs of the reference, and pay one-half the costs of the award, and if either party shall, in the first instance, pay the whole or more than half of the costs of the award, the other party shall repay him so much of the amount as shall exceed the half of the said costs.

9. I award and direct that one moiety of the costs of the reference and award be borne and paid by A. B., and the other moiety by C. D.

*Affidavit of execution of Arbitration Bond.*

County of , } I, Y. Z., of, &c., make oath and  
to wit: } say,

1. That I was present and did see the annexed Arbitration Bond duly signed, sealed and delivered by the therein named A. B., and that I am the subscribing witness to the execution of the said bond.

Y. Z.

Sworn before me at  
 , in the county of  
 , this day of ,  
 18 .

E. F.,  
 a Commissioner, &c., in B. R.  
 for the County of .

If the affidavit is intended for use in a Court of law, it must be entitled in the Court.

An affidavit of the execution of a submission by deed or otherwise, may be easily framed from the above.

*Affidavit of execution of Award.*

County of , } I, W. W., of, &c., make oath  
 to wit: } and say,

1. That I was present and did see the within [or annexed] award duly signed by the therein named A. A. and T. A., and that I am the subscribing witness thereto.

W. W.

Sworn, &c.,

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## CHAPTER IV.

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### ASSIGNMENTS.

An assignment, in its general acceptation, is the transfer of any kind of property, whether real or personal. The person making the assignment is called the *assignor*; he to whom the assignment is made, the *assignee*.

An assignment of land, or of any interest in land, should be registered in the County Registry Office. An assignment of goods and chattels, whether absolute, as a bill of sale, or conditional, as a chattel mortgage, not accompanied by immediate delivery and followed by an actual and continued change of possession, requires to be filed in the office of the Clerk of the County Court of the county wherein the goods are. See Con. Stat. U. C., c. 45, ss. 1-4.

An assignment requires to be executed with the same formalities as other deeds. For a longer notice of these formalities the reader may refer to the chapter upon DEEDS.

The following forms will be found to meet cases of common occurrence. In matters of difficulty the services of a professional man should be procured.

*Assignment of Agreement to Purchase.*

*(To be endorsed upon or annexed to the Original.)*

Whereas, the within-named C. D. hath duly paid to the within-named A. B. the sum of \$ , being the amount of the first two instalments 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-written articles, and there now remains to be paid the sum of \$ only, by equal annual instalments of \$ each, with interest from the day of last. And whereas, the said C. D. hath contracted and agreed with E. F., of, &c., 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 therein 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, at the times and in manner within mentioned.

Now these presents witness, that in pursuance of such agreement and in consideration of the sum of \$ , of good and lawful money aforesaid, to him, the said C. D., in hand 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., hath sold, assigned, transferred, and set over, and by these presents doth sell, assign, transfer, and set over unto the said E. F., his heirs and assigns, All and singular the within mentioned and described parcel or tract of land and premises, and therein described as being lot No. , in the concession of , together with all the right, title, and interest of him, the said C. D. of, in, and to the within-written articles of agreement covenants and the lands and premises therein referred to, [and all improvements thereon,] and all benefit and advantage to arise therefrom, To hold to the said E. F., his heirs, executors, administrators and assigns, for his and their own use and benefit forever.

And the said C. D. doth hereby make, ordain, authorize, 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, shall or may be hindered or prevented 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, shall and will well and truly 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 instalments and at the times mentioned and provided therefor in and by the said recited articles of agreement, and therefrom shall and 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 whereof the said parties to these presents have hereunto set their hands and seals.

Signed, sealed and delivered  
in the presence of C. D. [L.S.]  
W. W. E. F. [L.S.]

*Assignment of a Bond by Endorsement.*

Know all men by these presents, that for and in consideration of the sum of \$ lawful money of Canada, by E. F., of, &c., to the within-mentioned obligee, C. D, in hand well and truly paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said C. D., hath bargained, sold, assigned, transferred and set over, and by these presents doth bargain, sell, assign, transfer and set over, 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 had, made, or obtained by virtue thereof, and all the right, title, interest, property, claim and demand whatsoever, both at law and in equity, of him, the said C. D.; of, in, to, or out of the said bond and moneys, together with the said bond. To have, hold, receive and enjoy the said bond and moneys unto the said E. F., his executors, administrators and assigns, from henceforth, for his and their own use and benefit forever; And the said C. D. doth hereby make, constitute, and appoint, and in his place and stead put and place 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-written bond or obligation named, his heirs, executors, administrators or assigns, all such principal and interest moneys as now are or shall from time to time or at any time hereafter be due upon the said bond, and to sue and prosecute any action, suit, judgment, or execution thereupon, and to acknowledge, make and give full satisfaction, receipts, releases and discharges for all moneys secured by the said bond and now due or at any time hereafter growing due thereon, and generally to do all and every such further and other 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 or might do if personally present and doing the same. And the said C. D. doth hereby, for himself, his, executors and administrators, covenant and agree 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 further cov-

enant, promise and agree to and with the said E. F., his executors, administrators and assigns, by these presents, in manner following, that is to say: 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 shall or will release, nonsuit, vacate or disavow any suit or other legal proceedings to be had, made or prosecuted by virtue of these presents, for the suing for, recovering, releasing or discharging of the said moneys or any of them, without the license of the said E. F., his executors, administrators or assigns, first had and obtained in writing, nor shall or will revoke, invalidate, hinder, or make void these presents, or any authority or power hereby given, without such license as aforesaid.

In witness whereof the said C. D. hath hereunto set his hand and seal the            day of            , 18 .

Signed, &c.,

C. D. [L.s.]

W. W.

*Assignment (Crown Lands).*

Know all men by these presents, that I, A. B., of the            of            , in the County of            and Province of Ontario,            for and in consideration of the sum of \$            , of lawful money of the said Province, to me in hand paid by C. D., of the            of            , in the County of            and Province aforesaid,            at or before the date hereof, (the re-

ceipt whereof I do hereby acknowledge,) have bargained, sold, assigned, transferred and set over, and by these presents do bargain, sell, assign, transfer and set over to the said C. D., his heirs and assigns, all my estate, right, title, interest, claim and demand whatsoever, both at law and in equity, of, in and to that certain parcel or tract of land and premises situate, lying and being 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 of \_\_\_\_\_ aforesaid [*insert if necessary, "subject to the conditions, as to settlement and otherwise, of the Crown Lands Department, which are to be performed."*]

To have and 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 C. D., his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Signed, sealed and delivered  
in presence of \_\_\_\_\_ A. B. [L. s.]  
Y. Z.

*Affidavit of Execution.*

County of \_\_\_\_\_, to wit: I, Y. Z., of the Township of \_\_\_\_\_, in the County of \_\_\_\_\_, make oath and say: That I 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 I, this deponent, am a subscribing witness thereto.

Y. Z.

Sworn before me at           , }  
this        day of        18 . }

A. B.

a Commissioner for taking Affidavits  
in and for the said County.

*Assignment of Lease.*

This Indenture made the        day of        , one thousand eight hundred and        , Between A. B., of, &c., of the first part, and C. D. of, &c., of the second part. Whereas, by an Indenture of Lease, bearing date on or about the        day of        , one thousand eight hundred and        , and made between J. K., of, &c., of the one part, and the said A. B., of the other part, the said J. K. did demise and lease unto the said A. B. the lessee therein named, his executors, administrators and assigns, all and singular that certain parcel or tract of land and premises, situate, lying and being, in the, &c. To hold he same, with the appurtenances, unto the saidt lessee, his executors, administrators and assigns, from the        day of        , one thousand eight hundred and        , for and during the term of        years from thence next ensuing, and fully to be complete and ended, at the yearly rent of \$        , and under and subject to the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

Now this Indenture Witnesseth, that in consideration of the sum of \$ \_\_\_\_\_, of lawful money of Canada, now paid by the said party of the second part to the said party of the first part (the receipt whereof is hereby acknowledged), he the said party of the first part Doth hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns, All and singular the said parcel or tract of land, and all other the premises comprised in, and demised by, the said hereinbefore in part recited Indenture of Lease, Together with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom: To have and to hold the same, together with all houses and other buildings, easements, privileges and appurtenances thereunto belonging or in any wise appertaining, unto the said party of the second part, his executors, administrators and assigns, from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any), and other the interest of the said party of the first part therein; Subject to the payment of the rent, and the observance and performance of the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

And the said party of the first part doth hereby, for himself his heirs, executors and administrators, covenant, promise and agree, to and with the said party of the second part, his executors, administrators and assigns, in manner following, that is to say:

That notwithstanding any act of the said party of the first part, the said hereinbefore in part recited Indenture of Lease is, at the time of the sealing and delivery of these presents, a good, valid and subsisting Lease in the law, and not surrendered, forfeited or become void or voidable; and that the rent and covenants therein reserved and contained have been duly paid and performed by the said party of the first part up to the day of the date hereof.

And that, notwithstanding as aforesaid, the said party of the first part now has in himself good right, full power, and lawful and absolute authority to assign the said lands and premises, in manner aforesaid, and according to the true intent and meaning of these presents.

And that, subject to the said rent, and the lessee's covenants and agreements in the said lease contained, it shall be lawful for the said party of the second part, his executors, administrators and assigns, to enter into and upon and hold and enjoy the said premises for the residue of the term granted by the said Indenture of Lease, and any renewal thereof (if any), for their own use and benefit, without the let, suit, hindrance, interruption or denial of the said party of the first part, his executors, administrators or assigns, or any other persons claiming under him or them, and that free and clear, and freely and clearly acquitted, exonerated, and discharged or otherwise, by and at the expense of the said party of the first part, his heirs, executors and administrators, well and effectually saved, de-

fended and kept harmless, of, from and against all former and other gifts, grants, bargains, sales, leases and other incumbrances whatsoever, of the said party of the first part, or any persons claiming under him, them or any of them.

And that the said party of the first part, his heirs, executors, administrators and assigns, and all other persons claiming any interest in the said premises, under him or them, shall and will, from time to time, and at all times hereafter, at the request and cost of the said party of the second part, his executors, administrators or assigns, make, do, and execute, or cause and procure to be made, done and executed, all such further assignments and assurances in the law of the said premises for more effectually assigning and assuring the said premises for the residue of the said term, and any renewal thereof (if any), as by the said party of the second part, his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or required.

And the said party of the second part doth hereby, for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said party of the first part, his executors and administrators, that he or they, the said party of the second part, his executors, administrators or assigns, shall and will, from time to time, during all the residue of the said term granted by the said Indenture of Lease, pay the rent, and perform the lessee's covenants and agreements therein respectively reserved and contained, and indemnify and



and made between &c., which said premises are more particularly known and described as follows, that is to say: All and singular that certain parcel or tract of land and premises situate, lying, and being &c., together with the appurtenances, To hold the same unto the said party of the second part, 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 party of the first part 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 party of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant with the said party of the second part, his executors, administrators and assigns, that notwithstanding any act of the said party of the first part, 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 party of the second part, 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 party of the first part, or any other persons claiming under him, free from all charges and incumbrances whatsoever, of him the said party of the first part. And that he the said party of the first part, and all per-

sons lawfully claiming under him will, at all times hereafter, at the request and costs of the said party of the second part, 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 party of the second part, his executors, administrators, or assigns, shall direct.

And the said party of the second part, for himself, his heirs, executors and administrators, Doth hereby covenant with the said party of the first part, his executors and administrators, that he, the said party of the second part, 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 contained, and indemnify and save harmless the said party of the first part, his heirs, executors and administrators, from all losses and expenses in respect thereof.

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 the presence of

Y. Z.

A. B. [L.S.]

C. D. [L.S.]

*Assignment of Lease by Administrator.*

Know all men by these presents, that I, A. B., of, &c.; 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 \$           , lawful money of Canada, to me in hand

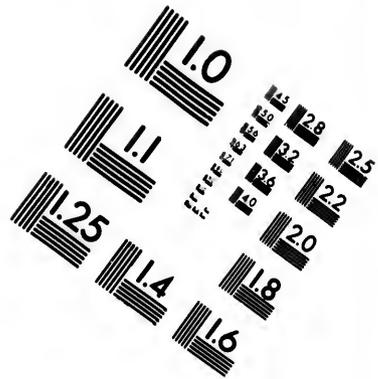
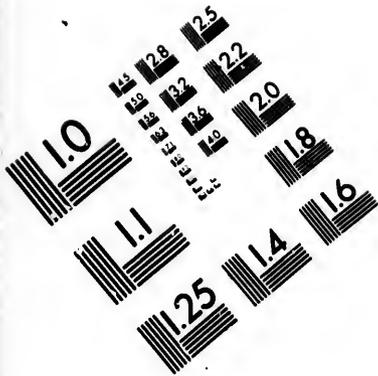
well and truly paid by E. F., of, &c., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold assigned, transferred, and set over, and by these presents do bargain, sell, assign, transfer, and set over, unto the said E. F., his executors, 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 I, the said A. B., as administrator of the said C. D. as aforesaid, or otherwise, now have, or at any time hereafter shall or may have, claim, challenge or demand, 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 have and 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 rest, residue, and remainder yet to come and unexpired, 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, provisions and agreements therein contained.

In witness whereof, I, the said A. B., have hereunto set my hand and seal the            day of            ,  
18            .

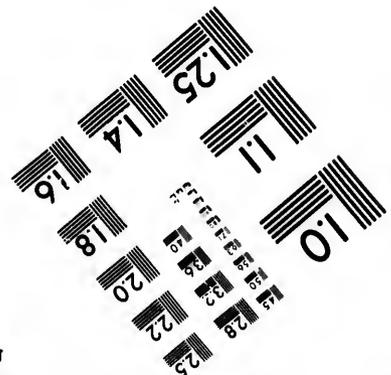
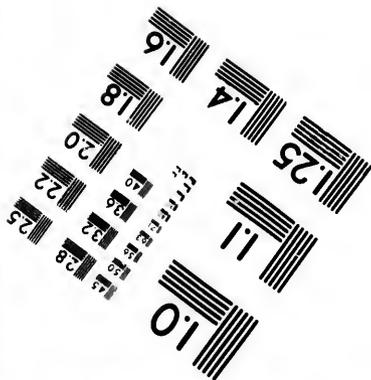
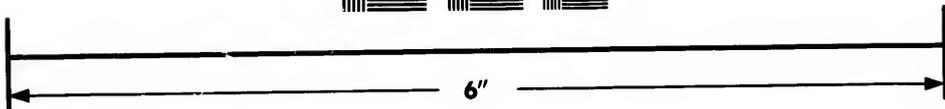
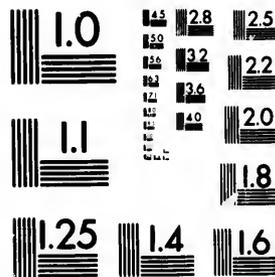
Signed, &c.,

A. B. [L.S.]





**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

1.5 28 25  
1.6 32  
1.8 22  
2.0  
2.5

10  
1.5  
1.6  
1.8  
2.0  
2.5

*Assignment from Trader to Secure Debt.*

This Indenture, made the            day of            ,  
one thousand eight hundred and            , Between  
A. B., of, &c., of the first part, C. D., wife of the  
said A. B., of the second part, and E. F., of &c.,  
of the third part.

Whereas, the said party of the first part is justly  
and truly indebted unto the said party of the third  
part in the sum of \$            or thereabouts, and hath  
agreed to execute unto the said party of the third  
part, an assignment of all his estate and interest in  
the real and personal estate and effects hereinafter  
mentioned, for the purpose of paying thereout or  
securing the payment of such indebtedness.

Now this Indenture witnesseth, that in pursu-  
ance of the said agreement, and in consideration of  
the sum of five shillings of lawful money of Canada,  
to the said party of the first part paid by the said  
party of the third part, at or before the execution of  
these presents (the receipt whereof is hereby ack-  
nowledged), he, the said party of the first part,  
Hath granted, bargained, sold, released, conveyed,  
assigned, transferred, and assured, and by these  
presents Doth grant, bargain, sell, release, convey,  
assign, transfer and assure unto the said party of  
the third part, his heirs, executors, administrators  
and assigns, All and singular the real estate speci-  
fied in the Schedule to these presents marked A,  
and all the household goods, books, credits, furni-  
ture, stock in trade, bonds, bills, notes, books of  
accounts and securities for money, and all other the

personal estate and effects, now belonging, due, or owing to him the said party of the first part, specified in the Schedule to these presents marked B; the greater part of which are now in and upon the premises upon which the said party of the first part now carries on his said business, and which said goods are forthwith, upon the execution of these presents to be delivered into the possession of the said party of the third part, or his agent or agents in that behalf; and all reversions, remainders, rents, issues and profits, and all the right, title, interest, trust, possession, property, claim and demand whatsoever, at law or in equity, of him the said party of the first part, of, in, to, out of, or upon the same real and personal estate, goods, chattels, effects and property, respectively. Together with the appurtenances, and together with all books, writings, deeds, bills, notes and receipts, papers and vouchers, touching or concerning the said premises hereby assigned, or any part thereof.

To have and to hold, receive, take, and enjoy, the said real and personal estate, goods, chattels, stocks, moneys, credits, bonds, bills, notes, securities for money, and all and singular other the premises hereby conveyed and assigned, or intended so to be, unto the said party of the third part, his heirs, executors, administrators and assigns, henceforth forever, to and for his and their sole and only use, and as and for his and their own proper goods, chattels, moneys and effects absolutely.

Subject nevertheless, and to and for the intents and purposes following, that is to say :

That the said party of the third part, or his agent or agents in that behalf, do and shall with all convenient speed sell and dispose of the said real and personal estate, stock, chattels and effects, either together or in parcels, and either by public auction or private contract, for the best price or prices that can be reasonably obtained for the same, and either for ready money or for credit or otherwise, as shall be deemed most beneficial, the receipts of the said party of the third part being sufficient discharges for the same, and do and shall receive, collect, and get in all and singular the credits and sums of money hereby assigned or intended so to be, and apply the said moneys to arise by such sale or sales, and to be received or collected as aforesaid, after payment of all costs, charges and expenses of these presents, and incidental thereto, and in carrying out the purposes thereof, or otherwise in relation thereto, in and towards the payment and liquidation in full of the said indebtedness of the said party of the first part to the said party of the third part, and after such payment do and shall pay the residue and surplus, if any, to the said party of the first part, his executors, administrators or assigns, or as he or they shall direct.

And for the better carrying out of these presents, the said party of the first part doth hereby nominate and appoint the said party of the third part, his executors, administrators and assigns, the true and lawful attorney and attorneys of him the said party of the first part, for him and in his name to do, perform, and execute all such acts, deeds, matters,

and things whatsoever in relation to all and singular the real and personal estate and effects and premises hereby assigned as aforesaid, as the said party of the third part may deem necessary for more effectually carrying into effect the true intent and meaning hereof; and that for the purposes aforesaid it shall be lawful for the said party of the third part, his servants and agents, to continue in and to occupy the said premises now in the occupation of the said party of the first part, until the trusts of this assignment are fully executed.

Provided also, that any collateral or other securities, by way of judgments or otherwise, which the said party of the third part now holds against the said party of the first part in respect of his said indebtedness or any part thereof, shall not be prejudiced or affected by this assignment, or otherwise than by payment of such indebtedness out of the proceeds to arise hereunder.

And provided, further, that the said party of the third part shall not be answerable or chargeable as implied trustee hereunder, except for wilful neglect or default.

And the said party of the second part, wife of the said party of the first part, in consideration of five shillings to her paid by the said party of the third part, hereby releases unto the said party of the third part all dower, and right or title to dower, in the said lands hereby conveyed and every part thereof.

In witness whereof, the said parties to these pre-

sents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.s.]  
C. . D [L.s.]  
E. F. [L.s.]

*Assignment of Judgment.*

This Indenture, made the        day of        18    ,  
Between A. B., of, &c., of the first part, and C. D.,  
of, &c., of the second part.

Whereas, the said party of the first part, on or  
about the        day of        , one thousand eight  
hundred and        , recovered a judgment in the  
Court of        for Upper Canada, at Toronto, for the  
sum of \$        against        .

And whereas, the said party of the first part hath  
agreed to assign the said judgment, and all benefit  
to arise therefrom, either at law or in equity, unto  
the said party of the second part, in manner here-  
inafter expressed.

Now this Indenture witnesseth, that in pursuance  
of the said agreement, and in consideration of the  
sum of \$        , of lawful money of Canada, to the  
said party of the first part in hand paid by the said  
party of the second part, at or before the execution  
hereof, the receipt whereof is hereby acknow-  
ledged, he the said party of the first part, Hath  
bargained, sold and assigned, and by these pre-  
sents Doth bargain, sell and assign, unto the said  
party of the second part, his executors, adminis-

trators and assigns, All that the said hereinbefore mentioned judgment, and all benefit to be derived therefrom, either at law or in equity, or otherwise howsoever.

To hold, receive and take the same, and all benefit and advantage thereof, to and for his and their own proper use, and as and for his and their own proper moneys and effects, absolutely.

And the said party of the first part hereby constitutes and appoints the said party of the second part, his executors and administrators, to be his true and lawful attorney and attorneys, at the proper costs and charges of the said party of the second part, his executors and administrators, to take and prosecute all and every remedy or proceeding at law or in equity, which the said party of the second part, his executors or administrators, shall hereafter consider advisable in reference to the said judgment, the said party of the second part, for himself, his heirs, executors, and administrators, hereby agreeing to indemnify and save harmless the said party of the first part, his heirs, executors and administrators, of and from all damages, costs, charges and expenses in respect thereof.

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 the presence of  
Y. Z.

A. B. [L.s.]  
C. D. [L.s.]

*Assignment of Mortgage.*

This Indenture, made the            day of            , one thousand eight hundred and            , Between A. B., of the            , in the County of            and Province of Ontario,            of the first part, and C. D., of the            , in the County of            and Province aforesaid,            of the second part.

Whereas, by an Indenture of Mortgage bearing date the            day of            , one thousand eight hundred and            , and made between E. F. of, &c., of the first part, and the said A. B. of the second part, it is witnessed, that in consideration of the sum of \$            , of lawful money of Canada, to him the said E. F. paid by the said A. B., He, the said E. F., did grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto the said A. B., his heirs and assigns, all and singular that certain parcel or tract of land and premises situate, lying and being in the, &c. ; To have and to hold the same unto the said A. B., his heirs and assigns, forever. Subject, nevertheless, to a proviso therein contained for redemption upon payment by the said E. F. to the said A. B. of the sum of \$            of lawful money aforesaid and interest, on the day and time and in manner therein mentioned.

And whereas, the sum of \$            is now owing to the said A. B. on the said in part recited security, and the said A. B. hath agreed to sell and assign the said lands and premises, and all the moneys thereby secured, as well as the said Indenture of Mortgage, and all his interest therein, unto the said

C. D. for the consideration hereinafter mentioned.

Now this Indenture witnesseth, that the said party of the first part to this Indenture, in consideration of the sum of \$ \_\_\_\_\_, of lawful money of Canada aforesaid, to him by the said party of the second part to this Indenture in hand paid, the receipt whereof he, the said party of the first part, doth hereby acknowledge, and of and from the same, and every part thereof, acquit, release and discharge the said party of the second part, his heirs, executors, administrators and assigns, forever; He, the said party of the first part, hath bargained, sold, assigned, transferred, and set over to the said party of the second part, his heirs, executors, administrators and assigns, the said principal sum of \$ \_\_\_\_\_, so due and owing to him as aforesaid, and secured by the hereinbefore in part recited Indenture of Mortgage, and also all future and other sums of money which from henceforth shall or may grow due by way of interest for or on account of the said principal sum of \$ \_\_\_\_\_. And also the said messuages and tenements, lands and premises, comprised in the said in part recited Indenture of Mortgage, and all the estate, right, title, interest, claim, and demand whatsoever of him, the said party of the first part, of, in, to, or out of the said premises or any part thereof, or the said principal and interest monies.

To have and to hold, receive and take, the said principal sum of \$ \_\_\_\_\_ and interest, and all and singular other the premises hereby assigned, and every part thereof, unto the said party of the second

part, his heirs, executors, administrators or assigns, to and for his and their own proper moneys, securities, and effects absolutely; And, for the more effectually enabling the said party of the second part, his executors, administrators and assigns, to recover and receive the said principal sum of \$ and interest, and to have and take the benefit of the security for the same, he, the said party of the first part, hath made, ordained, constituted, and appointed the said party of the second part, his executors, administrators and assigns, his true and lawful attorney or attorneys, to ask, demand, sue for, recover, and receive from the said E. F., his executors, administrators, or assigns, or any other person or persons liable to pay the same, the said sum of \$ and interest, and to commence and prosecute any action, suit or other proceeding, either at law or in equity, for the recovery of the same, and on receipt of the said principal moneys and interest, or any part thereof, to give sufficient receipts and discharges, And to make, do and execute all or any other act, matter or thing, for recovering and receiving the said principal sum and interest: And the said party hereto of the first part, for himself, his heirs, executors, administrators and assigns, covenants with the party hereto of the second part, his heirs, executors, administrators and assigns, that the said principal sum of \$ is now owing to him, the said party hereto of the first part, under the said security, and that he has done no act or thing whereby the said prin-





claim and demand whatsoever of the said A. B., to and in the same debts and premises. To have, receive and take the said debts, sums of money and premises hereby assigned unto and by the said C. D., his executors, administrators and assigns, for his and their own absolute use and benefit. And the said A. B. doth hereby absolutely and irrevocably constitute and appoint the said C. D., his executors, administrators and assigns, the true and lawful attorney and attorneys, of him the said A. B., his executors or administrators in his or their name or names, or otherwise to receive ; and if the said C. D., his executors, administrators or assigns, shall deem it expedient so to do, to sue for and recover the said debts, sums of money and premises hereby assigned, or any of them ; and when the same respectively, or any part thereof, shall be received, to give discharges for the same. And generally to perform all acts whatsoever which shall be requisite in order to give complete effect to the assignment hereby made, and to appoint a substitute or substitutes for all, or any of the purposes aforesaid, and such substitution at pleasure to revoke ; the said A. B. hereby ratifying and confirming and agreeing to ratify and confirm whatsoever his said attorney or attorneys, or his or their substitute or substitutes, shall lawfully do in the premises. 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 said several debts hereby assigned, or intended so to be, are now due

and owing to him, and that he, his executors or administrators will not at any time hereafter revoke the power or authority hereinbefore contained, or receive, compound for or discharge the said several debts, or any, or either of them, or any part thereof respectively, or release or interfere in any action or suit which shall or may be commenced in his, their, or either of their names, in pursuance of these presents, for the recovery of the same, without the consent in writing of the said C. D., his executors, administrators or assigns, but will at all times avow, justify and confirm all such matters and things, process and proceedings, as the said C. D., his executors, administrators or assigns, or any other person or persons, by or through his or their direction or procurement, shall in pursuance of the power hereinbefore contained, do, commence, bring or prosecute upon, or by reason or means of the said debts and premises; and further that he, the said A. B., his executors and administrators, will at all times hereafter on the request, and at the costs of the said C. D., his executors, administrators or assigns, make, do and execute all such further assignments, letters of attorney, acts, deeds, matters and things, for the more effectually assigning and assuring unto the said C. D., his executors, administrators and assigns, the said several debts and premises, and enabling him or them to recover and receive the same respectively, for his and their own absolute use and benefit in manner aforesaid, according to the true intent and meaning of these presents, as by the said C. D., his executors, ad-

ministrators or assigns, shall be reasonably 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, administrators or assigns, will at all times hereafter save harmless, and keep indemnified the said A. B., his executors or administrators, from and against all losses, costs, charges, damages and expenses, by reason of his or their name or names being used in any action, suit or other proceeding, which shall or may be brought or instituted by the said C. D., his executors, administrators or assigns, or his or their substitute or substitutes under or by virtue of the power or authority in that behalf, hereinbefore contained, or otherwise by reason or in consequence of the same power or authority, or in relation thereunto.

In Witness, &c.,

Signed, &c.,

Y. Z.

A. B. [L.s.]

C. D. [L.s.]

THE SCHEDULE to which the above-written Indenture refers.

Name of Debtor.	Amount of debt.	Name of Debtor.	Amount of debt.
John Smith.	\$100 00	Henry Bastien.	\$118 25
William Jones.	\$150 00	&c.	
John Jacobs.	\$200 00	&c.	

Received on the day of the date of the above written Indenture of the above named C. D., the sum of \$ , being the consideration money above mentioned to be paid by him to me.

Witness,

A. B.

Y. Z.

*NOTE.—In all cases where the consideration for a deed is money paid by the one party to the other, a receipt, in the above form, should be written upon the Instrument, and signed and witnessed.*

*Another Form.*

Know all men by these presents, that I, A. B., of &c., in consideration of the sum of \$ paid to me by C. D., of, &c., (the receipt of which is hereby acknowledged) do hereby sell, assign and transfer, unto the said C. D., his executors, administrators and assigns, all my claims and demands against E. F., of, &c., for debts due to me and all actions against the said E. F., now pending in my favor and all causes of action whatsoever against him.

And I do hereby nominate and appoint the said C. D., his executors, administrators and assigns, my attorney or attorneys irrevocable, and do give him and them full power and authority to institute any suit or suits against the said E. F., and to prosecute the same, and any suit or suits which are now pending, for any cause or causes of action in favor of me, against the said E. F., to final judgment and execution: and such execution to cause to be satisfied by levying the same on any real or per-





thereof, and all the right, title, interest, possibility, property, claim and demand of him, the said A. B., into, out of or upon the said furniture, goods, chattels and effects, and every part thereof. To have, hold, receive and take the said furniture, goods, chattels and effects hereby assigned or expressed, or intended so to be, 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 absolute authority to assign the several premises hereby assigned or expressed, and intended so to be, unto the said C. D., his executors, administrators and assigns, in manner aforesaid: And that the said A. B., his executors and administrators, and all persons claiming under him and them, shall at any time or times hereafter, on the request, and at the costs and charges of the said C. D., his executors, administrators and assigns, do and execute all such acts and assurances for more effectually assuring the said premises hereby assigned or expressed, and intended so to be, unto the said C. D., his executors, administrators and assigns, and placing him and them in possession of the same in manner aforesaid and according to the true intent and meaning of these presents, as by him or them, or his or their counsel in the law shall be devised, advised and required.

In witness whereof, the parties to these presents



tors and assigns. All those the said chattels and effects following, that is to say, (*Here enumerate the several articles intended to be assigned with such certainty as that they may be easily indentified*). And all the right, title, interest, property, claim and demand whatsoever, both at law and in equity or otherwise howsoever, of him the said party of the first part, of, in, to and out of the same, and every part thereof.

To have and to hold the said hereinbefore assigned premises, and every part thereof, with the appurtenances, and all the right, title, and interest of the said party of the first part therein as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns, to and for his and their sole and only use forever.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with the said party of the second part, his executors and administrators, in manner following, that is to say:

That he, the said party of the first part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned premises and every part thereof, and that the said party of the first part now has in himself good right to assign the same unto the said party of the second part, his, executors, administrators and assigns, in manner aforesaid and according to the true intent and meaning of these presents; And that the said party hereto of the second part, his executors, administrators

and assigns, shall and may from time to time and at all times hereafter peaceably and quietly have, hold, possess and enjoy the said hereby assigned premises and every part thereof to and for his and their own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever, of, from or by him, the said party of the first part, 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 party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges, and incumbrances whatsoever; And, moreover, that he, the said party of the first part, 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, shall and will from time to time and at all times hereafter, upon every reasonable request of the said party of the second part, his executors, administrators, or assigns, but at the costs and charges of the said party of the second part, make, do and execute or cause to be made, 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 party of the second part, his executors, administrators and assigns, in manner aforesaid and according to the true intent and meaning of these presents, as by the said party of the second part, his executors, administrators or assigns, or his counsel, shall be reasonably advised and 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 the presence of

A. B. [L.S.]

Y. Z.

[NOTE. — *Where goods mention'd in a Bill of Sale, are at once handed over to the purchaser, and an actual and continued change of possession takes place, the Bill of Sale does not require to be filed, nor is it necessary to make any affidavit as to the bona-fides of the transaction. But where the goods are allowed to remain in the hands of the seller, affidavits must be made, and the Bill of Sale filed, just as in the case of a Chattel Mortgage :—WHICH SEE POST.*]

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## CHAPTER V.

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### AUCTIONS AND AUCTIONEERS.

An auctioneer is a person who is authorized to sell goods or merchandise at public auction or sale for a recompense, or (as it is commonly called) a commission. He cannot buy: he can only sell. Primarily, he is deemed the agent of the seller of the goods only; but for certain purposes he is

also deemed to be the agent of both buyer and seller. Thus, by knocking down the goods sold to the person who is the highest bidder, and inserting his name in his book or memorandum, he is considered as the agent of both parties ; and the memorandum so made by him will bind both parties, as being a memorandum sufficiently signed by an agent of both parties within the statute of Frauds before referred to. Before the knocking down of the goods, he is, indeed, exclusively the agent of the seller ; but after the knocking down, he becomes also the agent of the purchaser, and the latter is presumed to give him authority to write down his name as purchaser. An auctioneer has also a special property in the goods sold by him, and a lien on the same and the proceeds thereof, for his commissions ; and he may sue the purchaser at the sale in his own name, as well as in the name of his principal. An auctioneer can sell only for ready money, unless there be some usage of trade to sell on credit, or unless the terms of sale are on credit.

Auction sales should be conducted with rigid fairness, and due notice of the sale ought to be given. Every bona fide bid should be accepted. Before proceeding to sell, the conditions of sale ought to be read or announced. Usually these conditions are written or printed ; but the verbal declarations of the auctioneer at the sale, where they do not contradict the written conditions, are binding.

Although the entry by the auctioneer in his book is a sufficient memorandum to bind both seller and buyer, yet in every sale of land it is usual to have

agreements of sale and purchase signed by auctioneer and purchaser.

Forms of such agreements, and ordinary conditions of sale, are subjoined.

*Memorandum to be signed by an Auctioneer, after a sale of land.*

I hereby acknowledge that A. B. has been this day declared by me the highest bidder, and purchaser of [*describe the land*] at the sum of \$ , [or at the sum of \$ per acre or foot,] and that he has paid into my hands the sum of \$ , as a deposit, and in part payment of the purchase money; and I hereby agree that the vendor, C. D., shall in all respects fulfil the conditions of sale hereto annexed.

Witness my hand, the            day of            , 18 .  
J. S., Auctioneer.

*Memorandum to be signed by Purchaser.*

I hereby acknowledge that I have this day purchased at public auction all that [*describe the land*] for the sum of \$ , [or for the price of \$ per acre or per foot,] and have paid into the hands of J. S., the auctioneer, the sum of \$ as a deposit, and in part payment of the said purchase money; and I hereby agree to pay the remaining sum of \$ , unto C. D., the vendor, at            , on or before the            day of            , and in all other respects on my part to fulfil the annexed conditions of sale.

Witness my hand, this            day of            , 18 .  
A. B.

*Conditions of Sale of Goods.*

1. The highest bidder to be the purchaser ; and, if any dispute shall arise as to the last or highest bidder, the property shall be immediately put up again at the former bidding.

2. No person to advance less than \$            at a bidding.

3. The purchasers to give in their names, and places of residence (*if required*), and pay down a deposit of            per cent. in part payment of purchase money ; in default of which, the lot or lots so purchased will be immediately put up again and re-sold.

4. The lots to be taken away at the buyer's expense, within three days after, and the remainder of the purchase money to be paid on or before delivery.

5. Upon failure of complying with these conditions, the deposit money shall be forfeited ; and all lots uncleared within the time aforesaid shall be re-sold by public auction or private sale, and the deficiency, if any, on such re-sale shall be made good by the defaulter.

*Conditions of Sale of Land.*

1. The highest bidder shall be declared the purchaser ; and, if any dispute shall arise as to the last or best bidder, the property shall be immediately put up again at the former bidding.

2. No person shall advance at any one bidding less than \$            , or retract his or her bidding ;

and the vendors, by themselves or their agent, shall be at liberty to bid once for the property.

3. The purchaser shall pay, immediately after the sale, to the vendor's solicitor, a deposit of per cent. in part of the purchase money, and sign an agreement for the payment of the remainder on or before the            day of           , 18   . The premises will be sold subject to all defects or imperfections of title subsisting before the commencement of the title of the present vendors, and not occasioned by any act done by them or any person claiming under or in trust for them; and subject also to the several mortgages outstanding appearing on the certificate of the registrar of the county of           , which will be produced at the time of sale.

4. The purchaser shall accept a conveyance from the vendors, to be prepared at his own expense, on payment of the remainder of the purchase money; and possession will be given on completion of the purchase: from which time the purchaser shall be entitled to the rents and profits. But if, from any cause, the remainder of the purchase money shall not be paid on the            day of           , 18   , the purchaser shall pay interest for the same at the rate of            per cent. from that day to the day of payment; but, nevertheless, this stipulation is without prejudice to the vendor's right of re-sale under the last of these conditions.

5. If any mistake be made in the description of the property, or there be any other error in the particulars of sale, the same shall not annul the sale, but a compensation or equivalent shall be given, or

taken, as the case may require, according to the average of the whole purchase money (on such error or mis-statement being proved) : such compensation or equivalent to be settled by two referees or their umpire—one referee to be chosen by each party, within ten days after notice given of the error, and the umpire to be chosen by the referees immediately after their appointment.

6. The purchaser shall not be entitled to the production of any title deeds other than such as are in the vendor's hands, or in the hands of the several mortgagees.

7. Lastly, upon failure of complying with the above conditions, the deposit shall be forfeited, and the vendor shall be at full liberty (with or without notice) to re-sell the property by public auction or private sale ; and if, on such re-sale, there should be any deficiency, the purchaser shall make good such deficiency to the vendor, and all expenses attending such re-sale ; the same to be recoverable as liquidated damages.

[NOTE.—*Special conditions may be necessary to meet particular cases ; but the above conditions will meet ordinary cases. Except in very plain and simple cases, the services of a professional man should be procured.*]

*Conditions of Sale of the Court of Chancery.*

1. No person shall advance less than \$10 at any bidding under \$500, nor less than \$20 at any bidding over \$500 ; and no person shall retract his bidding.

2. The highest bidder shall be the purchaser; and, if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3. The parties to the suit, with the exception of the vendor, and (*naming any parties, trustees, agents, or others, in a fiduciary situation*) are to be at liberty to bid.

4. The purchaser shall, at the time of sale, pay down a deposit in the proportion of \$10 for every \$100 of his purchase money to the vendor or his solicitors, and shall pay the remainder of the purchase money on the            day of            next, and upon such payment the purchaser shall be entitled to the conveyance, and be let into possession. The purchaser at the time of such sale to sign an agreement for the completion of the purchase.

5. The purchaser shall have the conveyance prepared at his own expense, and tender the same for execution.

6. If the purchaser shall fail to comply with the conditions aforesaid, or any of them, the deposit and all other payments made thereon shall be forfeited, and the premises may be re-sold, and the deficiency, if any, by such re-sale, together with all charges attending the same or occasioned by the defaulter, shall be made good by the defaulter.

## CHAPTER VI.

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### BILLS AND NOTES.

A Bill of Exchange (foreign or inland) is defined to be an open letter of request from one man to another, desiring him to pay a sum named therein to a third person, on his account.

Foreign Bills are such bills as are drawn in any foreign country upon a person residing here or abroad, or drawn in this country upon a person residing in a foreign country, and payable abroad.

Inland Bills are those bills which are drawn in Canada upon any person residing in any place within the province.

Foreign bills bear so strong a resemblance in their form to inland bills that there is no occasion to notice them separately. The law affecting them is, in general, identical with the rules regulating inland bills. The leading distinctions are, that a formal *protest* is necessary (as regards the drawer and indorser) if they be dishonored on presentment for acceptance or payment. It is also observable that the laws and customs of the foreign country in which a foreign bill is payable, or in which the

party to be charged resides, may, even in our Courts, regulate the time of payment, protest, &c.

It may also be mentioned, as a slight distinction between a foreign and an inland bill, that the former is, in general, drawn in sets; that is, there are several parts thereof. Therefore, the form of a foreign bill is, in general, "at            after sight," or "date," &c., "pay this my *first* of exchange [*second and third of same tenor and date not paid*] to, &c." This condition should be inserted in each part, and should in each mention every other part of the set. Each part ought to be delivered to the payee.

The custom of merchants requires that bills of exchange, whether foreign or inland, should be in writing.

It seems extremely doubtful at what period, or by whom, *foreign bills of exchange* were first invented; although it appears tolerably certain that they were in use in the fourteenth century; and an inference drawn from the statute 5 Rich. II., st. 1, c. 2, warrants the conclusion that foreign bills were introduced into England previous to the year 1381.

Inland bills of exchange (which were so called because they were drawn as well as payable in England) did not originate at a much earlier period than the reign of Charles II.,—probably about the year 1645, when banking began to be extensively carried on by the goldsmiths.

*Form of an Inland Bill of Exchange.*

\$100<sup>00</sup>/<sub>100</sub> <sup>3</sup> Toronto,<sup>1</sup> 1 January, 1870.<sup>2</sup>

Two months after date,<sup>4</sup> pay to me,<sup>5</sup> or order,<sup>6</sup> (or "to my order," or "to E. F., or order"), at, &c.,<sup>7</sup> the sum of one hundred dollars,<sup>8</sup> value received.<sup>9</sup>

A. B., (*the drawer*).<sup>10</sup>

To C. D., Esq., (*the drawee*),  
Montreal.<sup>11</sup>

Accepted C. D.,<sup>12</sup> payable at Bank of Montreal.<sup>13</sup>

[*Indorsed*]<sup>14</sup> A. B., or "E. F." (*first indorser*).  
G. H., (*second indorser*.)

*Remarks on this Form.*

1. The place at which the bill is dated, or is supposed to be drawn.
  2. The date of the bill.
  3. The sum superscribed in figures.
  4. The statement of the time when payable.
  5. The description of the payee.
  6. "Or order."
  7. "At," &c.
  8. Statement of the sum payable.
  9. "Value received."
  10. The drawer's signature.
  11. The direction to the drawee.
  12. The form of the acceptance.
  13. "Payable at," &c.
  14. Form of indorsement.
1. *The place at which the Bill is dated, or is supposed to be drawn.*

It is usual to date the bill at the city or place where it is drawn ; but this is not necessary. No

place need be stated. If a place be stated, it will be *presumed* that the drawer resides therein; and if only a general description be given, as "London," or "Montreal," it will be sufficient, in the absence of information, or ready means of acquiring intelligence, as to the particular street, &c., in which the drawer resides, to give *him* notice of dishonor by letter addressed to him merely "London," or "Montreal."

2. *The date of the Bill.*

This is not essential, although the bill be payable after date. If there be no date, or an impossible date, the time of drawing or issuing the instrument will be reckoned the date, and will give the criterion when the bill is due.

A bill of exchange may legally be post-dated. The restrictions against post-dating in England have reference to stamp duties merely, and do not apply to Canada. Even in England, although a penalty of one hundred pounds is incurred by post-dating, yet the bill will be good in the hands of a *bona fide* holder.

As against third persons the date is not even presumptive evidence that the bill was drawn on the day expressed; nor will it afford proof of the time of indorsement.

A bill may legally be drawn and dated on a Sunday.

3. *The sum superscribed in figures.*

This superscription is unnecessary, but usual.

If it were contradictory to the body of the bill, it would be rejected: on the other hand, if in the body of the bill there were an omission of the word *dollars*, the superscription would aid the mistake by supplying the word.

4. *The Statement of the Time when payable.*

It is not *necessary* to state on the face of the bill any time for payment of the amount. If no time be mentioned, the bill is payable immediately, or on demand, that is, on presentation to the drawer for payment.

If the time of payment be fixed, it is not material that the day is ever so distant; nor is it any objection that the bill or note is payable at a specified time after *notice* from the holder.

But it is a rule that a bill or note is void, even between the original parties thereto, if the payment of the money is made, by the terms of the instrument on the face of it, or by a *written* contemporaneous indorsement on the instrument, dependent upon a *condition*, or upon the *contingency* of the happening of an event which may never occur; and the defect is not cured by the fulfilment of the condition or the occurrence of the event.

Thus, if an instrument be drawn or made for the payment of a sum of money (being the price of certain goods), "*upon condition* that if any dispute should arise between, &c., respecting the goods, the note should be void;" or "*provided* the terms mentioned in certain letters shall be complied with;" or "*provided* T. S. shall not pay;" or "*provided*

D. M. shall not return to England, or his death be duly certified, before the appointed time for payment ;" or, "when I am able ;" or "when J. S. shall marry ;" or "when an estate, &c., shall be sold ;" it is not valid as a bill or note.

An instrument is not valid as a bill or note if the sum specified is not payable at all events, but is expressed to be security merely as a set-off against, or deduction from, another demand.

And the instrument is considered uncertain, contingent, and void, as a bill or note, if the money is to be paid out of a specified *fund*, which may never be realized or be adequate to the purpose ; as, "out of rents ;" or "out of money when received ;" or "out of my growing subsistence ;" or "out of the produce of goods when sold ;" or "out of *drafts* on a banker ;" or "when they shall be paid."

But, however uncertain it may be *when* the event on which the time for payment is made dependent will occur, if it be certain that it *must* transpire at some period, the bill or note will be good ; as if the payment is to be made within one month "after the *death*" of a party ; or "when J. S. shall come *of age*" (naming the day) ; so that his death would not discharge the liability.

##### 5. *The Description of the Payee.*

The bill may be made payable to the drawer, or to a third person. It is not essential that either should be named, provided the bill be made payable to the order of the drawer (when in effect it is payable to him), or to bearer.

But alternative words on the face of the instrument, as to the party to whom payment is to be made, will invalidate the bill; as, if it be payable to A. or B.

If, on framing a bill, a blank or space be left for the name of the payee, the acceptor and drawer tacitly authorize a *bona fide* holder, afterwards taking the bill from the drawer or his transferee, to supply his own name, so as to give effect to the instrument as a bill payable to himself; and the objection of uncertainty, which would otherwise prevail, is thus obviated.

If the name of a *fictitious* person be introduced as *payee*, the bill is inoperative in the hands of a party who takes it with knowledge of that fact; but the parties to the bill who were aware of the circumstance shall not be permitted to avail themselves of the irregularity; and against them the bill, in the hands of an innocent holder for value, may be treated as a bill payable to *bearer*.

If the bill be *drawn* in the name of a fictitious person, payable to the order of the drawer, with the acceptor's knowledge, the latter may be charged by a *bona fide* holder as undertaking to pay to the order of the person who signed as the drawer.

#### 6. "Or Order," &c.

Bills are generally payable to the *order* of the drawer or payee, or they may be payable to him or bearer, or to bearer generally.

Great attention is due to this part of the instru-

ment, as the distinguishing quality of a bill—its negotiability—altogether depends upon the introduction of express words rendering it transferable.

If the words "or order," or "bearer," be omitted, the bill cannot be negotiated so as to become available against the acceptor. It is available only against the assignor who indorses it to the holder. It will therefore be remarked that the express assent of the original parties is necessary to attach to a bill its more important and peculiar attribute.

7. "At," &c.

Although the bill be *accepted* payable at a particular place in pursuance of the drawer's request, yet if the acceptor do not use the restrictive words "and not otherwise or elsewhere," according to the statute Con. Stat. U. C., c. 42, s. 5, the acceptance is, as to him, deemed to be *general*; and the *acceptor* is, it seems, responsible, although no presentment be made at the specified place.

But the *drawer* and indorsers are not liable in such case, unless the bill be duly presented at the place designated by the acceptor, in pursuance of the direction in the body of the bill, confirmed and rendered specific by the acceptance.

If the drawer, in the body of the instrument, make it payable, not at any specific place, but generally in some town, the direction becomes inoperative, if the bill be not accepted or the acceptance be general, without mentioning any particular street or place in such town.

Sometimes the drawer makes the bill payable at his *own* house. This seems to be injudicious; it having been held that the circumstance raises a presumption that the bill was accepted for his accommodation, that he is the party to pay, and consequently that he is not entitled to notice of dishonor, unless he proves that he really had effects with the drawee.

8. *Statement of the Sum payable.*

This is generally expressed in words at length; but figures would suffice. We have seen that the superscription of the sum in the margin may aid an omission in the body of the bill of the word "dollars."

A bill, &c., is not valid unless it be *solely* for the payment of a *specific* sum of *money*.

Therefore a bill "to pay A. B. 100*l.*" is void if there be added the words, "and to deliver up a horse," &c.; or the words "and all other sums that may be due to him;" or, "first deducting thereout any sum J. J. may owe me." And uncertainty as to any part of the amount to be paid will invalidate the instrument as a note.

9. "*Value received.*"

These words (though usual) are not necessary to give validity or force to the instrument as a bill of exchange.

Consideration being *presumed* by law for the drawing and indorsing a bill, no argument or in-

ference that it does not exist can be founded on the absence of the words "value received:" the presumption that a consideration existed still arises.

The precise meaning of these words, in reference to the parties by whom and from whom the value was received, depends upon the form of a bill. If it be payable to the drawer or his order, the words "value received" import that the drawee has received consideration from the drawer; if it be payable to a third person, they signify that the drawer has received value from him to the amount drawn for.

The nature of the value or consideration may be stated, without prejudice to the validity of the instrument.

#### 10. *The Drawer's Signature.*

The bill would, evidently, be imperfect if the drawer's name did not appear on the face of the instrument. A formal signature at the foot of the bill is not essential. If the drawer himself write the bill in this shape, "I, A. B., request you to pay," &c., the instrument will be good, although not undersigned.

The signature may be in pencil; or by a mark or cross, by way of signature; or it may be printed.

When an agent draws a bill for his principal, the signature should be in the name of the latter; or in the name of the agent, thus: "A. B." (*the agent*), "for C. D." (*the principal*); or thus: "C. D." (*the principal*), "per procuration, A. B." (*the agent*). If an agent merely sign his own name

only, as drawer, he will become personally liable on the bill, and the principal will not incur any responsibility thereon.

If there be several drawers, and they be *partners*, either the name of the firm may be subscribed by one of the members or an agent of the firm or the signature may be by the partner or agent "for" the firm by its usual title.

If the drawers be *not partners*, each should separately sign by himself or by an agent appointed by him for the purpose. In this case one drawer has no *implied* authority to sign for the others.

#### 11. *The Direction to the Drawee.*

This *formal* direction is not necessary; for, in a case in which instead of the usual address to the drawee the words "payable at No. 1 Wilmot Street" only were inserted, it was held that a person who resided at that place and who accepted the bill was liable thereon as acceptor. But this case does not show that the instrument can be perfect *as a bill*, although it do not appear on the face of the instrument who is the drawee. And it is clear that the absence of such information, to be obtained from the instrument itself, would render the instrument inoperative as a bill.

Care should be taken to address the bill to each person (if more than one) who has undertaken to accept the bill. There cannot be successive acceptors or a second acceptor of the same bill after a perfect acceptance, unless the second be an acceptor for honor.

If, therefore, a bill be directed to A. only and be accepted by him, and B. afterwards accept it, he is not liable thereon as acceptor.

### 12. *The Form of the Acceptance.*

The acceptance may be upon any part of the bill, and it may be effected by the drawer merely writing his name or the word "accepted;" or, it seems, by his merely writing thereon "presented," or the day of the month, or a direction to a third person to pay the amount.

An acceptance may be in pencil, or by making a mark in lieu of a signature with intent to accept.

The statute Con. Stat. U. C., c. 42, s. 7, requires that bills shall be accepted *in writing upon the bill itself*. But this statute does not require the *signature* of the drawee.

The holder may insist, as against the drawer and endorser, upon having the *absolute* acceptance of the drawee to the *full extent* and in the very terms of the bill as drawn, and, if refused, may treat the bill as dishonored. But he may, if he please, waive such acceptance, and take a *conditional* or *partial* or *limited* acceptance, and it will be valid against the acceptor; and if the other parties have notice of the acceptance offered, and consent thereto, they also will be bound.

Here we may observe the distinction that, although a bill cannot be *drawn*, it may be *accepted*, payable upon a *condition* or *contingency*.

The acceptance of a bill conditional as to the

*place* of payment will be considered under the next division.

A bill may be accepted for *part only* of the sum mentioned therein ; or the *mode* of payment may be varied by making part of the amount payable in bills ; or the *time* of payment may be altered by the acceptance.

A bill may be accepted after it has been dishonored, and is then payable on demand.

The acceptance may be *revoked* or *cancelled* by the drawee at any time before it has been called for by the holder and before the drawee has parted with it or delivered it over to the holder.

We have seen that, if a bill is complete as to acceptance, that is, has been accepted by the party on whom it is drawn, the custom of merchants does not authorize any second or further acceptance by another person. But, if the drawee before acceptance become insolvent, &c., or if he refuse to accept, another person may accept for the honor of any party to the bill ; which is called an acceptance *for honor*, in the case of an inland bill, and is termed an acceptance *supra protest*, in the case of a foreign bill, from the circumstance of a protest in such instance preceding the acceptance.

If a party whose acceptance to a bill has been forged, on the bill being presented to him by a third person, with a request to know if the bill has been accepted by him, answer (though *bona fide*) that such is the case, he is liable as acceptor.

## 13. "Payable at," &amp;c.

The introduction of these words into an acceptance led to great difference of opinion in the Courts as to their legal operation, before the passing of the English Act 1 & 2 Geo. IV., c. 78 (Canadian Act, Con. Stat. U. C., c. 42, founded on 7 Wm. IV., c. 5).

It is clear that the acceptor need not state where the bill is to be presented for payment. He may accept generally. The question which divided the Courts was, whether the acceptor, by using the words "payable at," &c., incurred only a restricted and conditional or qualified liability, that is, was not responsible unless the bill were presented for payment at the place specified; or whether the words were a mere notification to the holder that he might, *if he pleased*, there call for payment at his *election*, without being *compelled* to do so.

The 1 & 2 Geo. IV. provides that an acceptance of a bill payable at a banker's or other specified place shall be deemed merely a general acceptance, unless the acceptor state that it is payable there "*only and not otherwise or elsewhere*;" and the Canadian act is in the same words.

14. *Form, &c. of the Indorsements.*

The indorsements may be upon the face or at the back of the bill. They may be written in pencil.

The indorsement may be by the mere signature of the party transferring, without any other words. This is called an indorsement *in blank*.

Or before his signature the party may state, "Pay

A. B.," or, "Pay A. B., or order." This is termed a *special* indorsement, or indorsement *in full*.

Bills and notes may be indorsed *before* they are complete. And a bill may be indorsed before due, so as to charge the drawer, &c., although he had been discharged as to the *indorser*, by the latter having *previously presented* the bill for acceptance and omitted, on the non-acceptance, to give the drawer notice thereof; provided the indorsee had no notice of such fact by noting on the bill or otherwise, and took it for value. So, if a bill *not due* be paid, but be left in the holder's hands, a person taking it before it is due, *bona fide* and without notice, may sue thereon.

And a bill may legally be indorsed *after* it is due, and has been *dishonored*; but not after it has been duly paid by the acceptor.

But there is this distinction between bills indorsed *before*, and *after*, they are due. If a note indorsed be not due at the time, it carries no suspicion whatever on the face of it, and the party receives it on its own intrinsic credit. But, if it is over-due, it is out of the common course of dealing, and does give rise to suspicion. And therefore he who takes a bill after it has arrived at maturity takes it subject to all the legal *defences* that could have been made by any previous holder, arising out of and connected with the bill or note transaction itself, and not relating, as in the case of a set-off, merely to *collateral* matter.

If, therefore, the *party transferring* could not have sued the acceptor upon the bill, because it

was given upon a smuggling, or other illegal, consideration; or because it had been paid or settled in account with the acceptor; or because he had obtained the bill by fraud, &c.; the transfer, *after* the bill or note has become due, will give the transferee no better title than the assignor possessed; and, in an action by the latter, either of these defences will avail the acceptor.

But if the *immediate* party transferring an overdue bill might have sued thereon, the holder is invested with his rights; and it is no defence that the bill was accepted by the defendant, &c., upon a smuggling contract, &c. between him and the drawer.

A bill may be indorsed conditionally, thus:—  
“Pay the within sum to A. B., or order, *upon my* name appearing in the Gazette as ensign in any regiment of the line between the 1st and 64th, if within two months from this date. Upon such an indorsement neither A. B. nor his indorseees can acquire any right to the money, unless the event specified has occurred.

An indorsement cannot be made as to *part* only of the sum due, so as to subject the acceptor to two actions without his consent; but if the partial indorsement be *before* the acceptance, and the drawee accept generally, he is supposed to assent to the double liability (that is, to one party as to one portion, and to another as to the residue of the bill), and the indorsement will be good. If part has been *satisfied*, the bill may be indorsed for the remainder.

An indorsement may be *restrictive*, and stop the

negotiability of the bill; as "Pay to my servant *for my use*," or, "Pay *W. S., or order, for my use*," &c.; or it may be *qualified* (as "*sans recours*" without recourse), so as to exempt the indorser from personal liability in case of dishonor.

The mode in which an *agent* or *partner* should *indorse* a bill is similar, in general, to that which should be adopted on his drawing a bill.

A partner may transfer in his own name only, and thereby charge the firm, if such a mode of indorsement has been usual. If there be several holders, not partners, *each* should endorse.

A promissory note may be defined to be a promise or engagement in writing to pay a specified sum of money at the time therein limited, or on demand, or at sight, to a person therein named or his order, or to the bearer.

*Form of a Note.*

\$100<sup>00</sup>/<sub>100</sub>.

Toronto, 1st January, 1870.

Two months after date I promise to pay to C. D., (*the payee*) or order at the City Bank, Toronto, the sum of one hundred dollars, value received.

A. B.. (*the maker.*)

[Indorsed] C. D., (*first indorser.*)

E. F., (*second indorser.*)

The several observations already made on the various parts of a Bill of Exchange apply equally to a Promissory Note, except those numbered 11 and 12, which apply exclusively to the former.

No particular, or precise, form of words is neces-

sary to constitute a valid promissory note. Neither the word *promise* nor the word *pay* is *indispensible*; but there must be *equivalent* expressions. There must be words importing a *promise* to pay. A mere "I. O. U." such a sum is not therefore valid as a promissory note.

Where a note is signed by several persons as makers, it is usually joint and several, so as to give the holder a right of action against all of them jointly, or each separately, at his election; although of course the note is satisfied by being once paid by all or either of the parties. The proper words to be used in such a case are "We jointly and severally promise to pay" &c. But where a note began "I promise" &c., and was signed by several makers, it was held the note was several as well as joint.

If a note purport to be made and be signed by A. only, B. cannot be sued thereon, although he was jointly with A. liable for the debt for which the note was given. But if a note begin "I promise to pay" &c., and A. and B. be partners in trade, and A. sign the note as for *himself and B.* on the face of the instrument, the note is *several* against A. and *joint* against the firm.

When it is desired that the maker of a note should not be responsible unless the note is presented at a particular bank or other place, he must insert in the body of the note the words "and not otherwise or elsewhere," as in the acceptance of a Bill of Exchange.

It only remains to observe that by the Dominion

Statute, 31 Vic., cap. 9, all bills and notes amounting to \$25 and upwards, require to be *stamped*, as follows: Where the sum payable amounts to, but does not exceed, \$25, a one cent stamp; where it exceeds \$25, but does not exceed \$50, a two cent stamp; where it exceeds \$50, but does not exceed \$100, a three cent stamp; and for every note exceeding \$100, an additional three cent stamp for every subsequent \$100, or fractional part of it.

Stamps must be affixed when the bill or note is drawn or made; and must be at once cancelled by writing over them the date when so affixed. A penalty of \$100 is imposed for non-compliance with this enactment. If, however, a bill or note should come *bona fide* into the hands of a party without having stamps affixed, such party may affix *double* stamps; the bill or note will then be good as to him and all persons becoming parties to it after him.

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## CHAPTER VII.

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### BONDS.

A bond is an obligation under seal, whereby the maker (called the *obligor*) obliges himself, his heirs, executors and administrators, to pay a penalty or sum of money to another (called the *obligee*).

A condition is generally added that if the obligor

pays a certain sum of money or performs some particular act, by a time specified, then the obligation shall be void, otherwise it shall remain in full force and virtue. A bond without a condition is called a *single bond*.

The penalty in a bond for payment of money is usually double the amount of the real debt, for the purpose of securing the full debt with interest and costs if necessary.

Whenever a specified sum is agreed upon by the parties for *stipulated* or *liquidated* damages, in the event of a failure to comply with the conditions of a bond, such specific sum is the amount which the party in fault is to pay.

All that can be recovered of a penalty in a bond for payment of money, in addition to the amount of the debt, is interest and costs; and as the general inclination of Courts is to regard the sum mentioned as a *penalty*, care must be exercised to state distinctly and unmistakably, the fact, that the sum agreed upon is in the nature of stipulated or liquidated damages, if the whole sum mentioned is intended as a forfeiture in case of failure.

*Single Bond.*

*(Without Condition.)*

Know all men by these presents, That I, A. B., of, &c., am held and firmly bound unto C. D., of, &c., in the penal sum of \$1000 of lawful money 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 faithfully made, I bind myself, my heirs, executors and administrators, and every of them firmly by these presents.

Sealed with my seal, dated the 6th day of January, 1870.

Signed, sealed and delivered  
in the presence of

A. B. [L.S.]

Y.-Z.

*Bond.*

*(With Condition.)*

Know all men by these presents, That I, A. B., of, &c., am held and firmly bound unto C. D., of, &c., in the penal sum of \$1000 of lawful money of Canada, to be paid to the said C. D. or to 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 this 6th day of January, 1870.

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 well and truly pay or cause to be paid unto the said C. D., his executors, administrators or assigns, the just and full sum of \$500 of lawful money of Canada, with interest thereon at the rate of ten per cent. per annum, on the days and times, and in the manner following, that is to say: The said principal sum of \$500 on the 6th day of July, 1872,





the following lands and premises; that is to say: *(here describe the lands).*

And whereas, the above bounden C. D. hath agreed to pay therefor the sum of \$500 of lawful money of Canada, at the time and in manner following; that is to say: *(here state the mode of payment).*

And whereas, upon the treaty for the said purchase, it was agreed that the above bounden C. D. should enter into the above bond or obligation for payment of the said purchase money, or the unpaid part thereof, and interest in manner aforesaid; and be let into possession of the said lands and premises and receipt of the rents and profits thereof, from the day of the date hereof.

Now the condition of the above written obligation is such that if the above bounden C. D., his heirs, executors, administrators or assigns, shall well and truly pay or cause to be paid to the said A. B., his executors, administrators or assigns, the whole of the said purchase money and interest thereon as aforesaid, at the times and in manner aforesaid, without making any deduction, defalcation or abatement thereout on any account whatsoever; Then the above obligation shall be void: otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered  
in the presence of

C. D. [L.S.]

Y. Z.

*Bond of Indemnity.*

Know all men by these presents, That I, E. F., of, &c., am held and firmly bound unto G. H., of, &c., in the penal sum of \$5000 of lawful money of Canada, to be paid to the said E. F., or to his certain attorney, executors, administrators or assigns: For which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and every of them, firmly by these presents. Sealed with my seal, dated this        day of  
18 .

The condition of the above written bond or obligation is such that if the above bounden obligor, his heirs, executors and administrators, do and shall from time to time, and at all times hereafter, hold and keep harmless and fully indemnified the said obligee, his heirs, executors and administrators, and his and their lands and tenements, goods, chattels and effects, of, from and against all loss, costs, charges, damages and expenses which the said obligee, his heirs, executors or administrators, may at any time hereafter bear, sustain, be at, or be put to, for, or by reason, or on account of, (*here state the particular matters to which the indemnity is to apply*) or any thing in any manner relating thereto; Then the above written bond or obligation shall be void: otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered  
in the presence of  
Y. Z.

E. F. [L.S.]

*Bond from a Lessee and his Surety to pay rent according to Lease.*

Know all men by these presents, That we, C. D., of, &c., and E. F., of &c., are held and firmly bound unto A. B., of, &c., in the penal sum of \$1000 of lawful money of Canada, to be paid to the said A. B., or to his certain attorney, executors, administrators or assigns: For which payment well and truly to be made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated this day of 18 .

Whereas, the above named A. B. by Indenture of Lease bearing even date with, but executed before, the above written obligation, for the consideration in the said lease mentioned, hath demised to the above bounden C. D., a certain saw mill situate at &c., (*here describe the premises*), To hold unto the said C. D., his executors, administrators and assigns, for the term of        years from thence next ensuing (determinable nevertheless at the end of the first        years of the said term, if the said C. D., his executors, administrators or assigns, shall give        months notice thereof, in manner therein mentioned) at and under the yearly rent of \$500 payable quarterly in manner as therein expressed: as by the said lease will more fully appear.

Now the condition of the above written obligation is such, that if the above bounden C. D. and E. F., or either of them, their, or either of their heirs, executors or administrators, shall and do

during the continuance of the said recited lease, well and truly pay or cause to be paid, the said yearly rent or sum of \$500, unto him the said A. B., his heirs or assigns, by four equal quarterly payments of \$125 each, on the several days following, that is to say, the            day of           , the            day of           , the            day of           , and the            day of           , in each and every year during the said demise, or within fourteen days next after any of the said days or times of payment, according to the true intent and meaning of the said recited lease, (the first quarterly payment to be made on the day of            next) ; Then the above written obligation shall be void and of no effect: otherwise shall remain in full force and virtue.

Signed, sealed and delivered

in the presence of

Y. Z.

C. D. [L.s.]

E. F. [L.s.]

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## CHAPTER VIII.

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### CHATTEL MORTGAGES.

Chattel mortgages are deeds or conveyances, by way of security, of personal property of a moveable kind, such as household furniture, stock in trade, &c.

In former days it sometimes happened that chattel

mortgages were made use of in order to deprive a creditor who had obtained a judgment of the just fruits of his execution. When a debtor became involved, and desirous of preventing the seizure of his goods and chattels by the sheriff or bailiff, it was quite common for a debtor to make a fictitious conveyance to some friend by way of security, for a pretended loan. When a seizure was made, the friend stepped in and claimed payment of the mortgage: which, being always for an amount equal to the full value of the goods, had the effect of preventing the creditor from realizing any thing at all.

To remedy this evil, the Legislature in 1857, passed an Act of Parliament (since consolidated and being now cap. 45 of the Consolidated Statutes for Upper Canada,) the sections of which, so far as it is necessary to notice them here, are as follows:—

1. Every mortgage of goods and chattels made in Upper Canada, which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, or a true copy thereof, must within five days from the execution thereof, be registered as hereinafter mentioned, together with the affidavit of a witness thereto, of the due execution of such mortgage or conveyance, or of the due execution of the mortgage or conveyance of which the copy filed purports to be a copy, and also with the affidavit of the mortgagee or his agent, if such agent be aware of all the circumstances connected therewith and properly authorized in writing to take such mortgage: in

which case a copy of such authority must be registered therewith.

2. Such last-mentioned affidavit, whether of the mortgagee or his agent, must state that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage: that it was executed in good faith, and for the express purpose of securing the payment of money justly due or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein, against the creditors of the mortgagor; or of preventing the creditors of such mortgagor from obtaining payment of any claim against him.

3. In case such mortgage or conveyance and affidavits be not registered, the mortgage or conveyance will be absolutely null and void as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith, for valuable consideration.

5. In case of an agreement in writing for future advances for the purpose of enabling the borrower to enter into and carry on business with such advances, the time of re-payment thereof not being longer than one year from the making of the agreement; and in case of a mortgage of goods and chattels for securing the mortgagee re-payment of such advances; or in case of a mortgage of goods and chattels for securing the mortgagee against the indorsement of any bills or promissory notes, or any other liability by him incurred for the mortgagor, not extending for a longer period than one year

from the date of such mortgage ; and in case the mortgage is executed in good faith, and sets forth fully, by recital or otherwise, the terms, nature and effect of the agreement, and the amount of the liability intended to be created ; and in case such mortgage is accompanied by the affidavit of a witness thereto of the due execution thereof, and by the affidavit of the mortgagee, or in case the agreement has been entered into, and the mortgage taken by an agent duly authorized in writing to make such agreement and to take such mortgage, and if the agent is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent : such affidavit, whether of the mortgagee or his agent, stating that the mortgage truly sets forth the agreement entered into between the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage, and that such mortgage is executed in good faith, and for the express purpose of securing the mortgagee repayment of his advances, or against the payment of the amount of his liability for the mortgagor, as the case may be, 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 ; and in case such mortgage is registered as hereinafter provided ; the same will be as valid and binding as mortgages mentioned in the preceding section of this act.

6. All the instruments mentioned in the act, must

contain such sufficient and full description of the goods and chattels, that the same may be thereby readily and easily known and distinguished.

7. The instruments mentioned in the preceding sections must be registered in the office of the clerk of the County Court of the county or union of counties where the mortgagor or bargainor, if a resident in Upper Canada, resides at the time of the execution thereof, and if he be not a resident, then in the office of the clerk of the County Court of the county or union of counties where the property so mortgaged or sold is at the time of the execution of such instrument.

[NOTE.—By *Ontario Stat. 32 Vic. c. 49, s. 8, chattel mortgages executed in Muskoka Territory are to be registered with the clerk of the first Division Court at Bracebridge.*]

9. In the event of the permanent removal of goods and chattels mortgaged as aforesaid from the county or union of counties in which they were at the time of the execution of the mortgage, to another county or union of counties before the payment and discharge of the mortgage, a certified copy of such mortgage, under the hand of the clerk of the County Court in whose office it was first registered, and under the seal of the said Court, and of the affidavits and documents and instruments relating thereto filed in such office, must be filed with the clerk of the County Court of the county or union of counties to which such goods and chattels are removed, within two months from such removal, otherwise

the goods and chattels will be liable to seizure and sale under execution, and in such case the mortgage will be null and void as against subsequent purchasers and mortgagees for valuable consideration.

10. Every mortgage or copy thereof, filed in pursuance of the act, will cease to be valid as against the creditors of the persons making the same, and against subsequent purchasers or mortgagees in good faith for valuable consideration, after the expiration of one year from the filing thereof; unless within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property claimed by virtue thereof, and a full statement of the amount still due for principal and interest thereon, and of all payments made on account thereof, be again filed in the office of the clerk of the said County Court of the county or union of counties wherein such goods and chattels may be then situate, with an affidavit of the mortgagee, or of his agent duly authorized in writing for that purpose (which authority shall be filed therewith), stating that such statements are true, and that the said mortgage has not been kept on foot for any fraudulent purpose.

12. All affidavits and affirmations required by the act may be taken and administered by any Judge or Commissioner of the Courts of Queen's Bench or Common Pleas, or Justice of the Peace, in Upper Canada.

The effect of these enactments may be shortly

summed up thus : every chattel mortgage must be filed with the clerk of the County Court within five days after execution ; the instrument must be accompanied by an affidavit of its due execution, and another affidavit of the good faith of the transaction. The last-mentioned affidavit may be made by an agent, if he be specially appointed in writing for the purpose. These affidavits may be sworn to before a commissioner of the Queen's Bench, &c., or before a Justice of the Peace.

If the mortgage is intended to secure future advances, or as collateral security against the indorsement of accommodation bills or notes, the requirements of section 5 must be carefully observed.

Finally, every chattel mortgage requires to be renewed each year. Section 10 points out the mode. A statement showing the interest of the mortgagee, and the amount remaining due, together with a copy of the mortgage, must be filed within thirty days of the expiration of the year.

The following forms will be found applicable to most occasions :—

*Chattel Mortgage.*

This Indenture, made the            day of            ,  
 18    , Between A. B. , of, &c., of the one  
 part, and C. D., of, &c., of the other part. Witnesseth that the said party of the first part, for and in consideration of the sum of \$100 of lawful money of Canada, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt

whereof is hereby acknowledged, doth bargain, sell and assign unto the said party of the second part, his executors, administrators and assigns all and every the goods, chattels, furniture and effects in and about the dwelling house (or store) of the said A. B., situate at &c., and hereinafter particularly mentioned, that is to say *(Here specify the chattels: or you may refer to a schedule saying after the word, &c., "which are particularly specified in the schedule hereunder written."*

To have, receive and take the said goods and chattels hereby assigned or intended so to be, unto the said party of the second part, his executors, administrators and assigns, as his and their own proper goods and effects.

Provided always that if the said party of the first part, his executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the full sum of \$100 with interest thereon, at the rate of 10 per cent. on the day of            next, then these presents shall be void.

And the said party of the first part doth hereby, for himself, his executors and administrators, covenant, promise, and agree to and with the said party of the second part, his executors, administrators, and assigns, that he, the said party of the first part, his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators and assigns, the said sum of money in the above proviso mentioned,

with interest for the same as aforesaid, on the days and times and in the manner above limited for the payment thereof.

And also, that in case default shall be made in the payment of the said sum of money in the said proviso mentioned, or the interest thereon, or any part thereof, or in case the said party of the first part 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 county of \_\_\_\_\_, without the consent of the said party of the second part, 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 and may be lawful for the said party of the second part, his executors, administrators and assigns, peaceably and quietly to receive and take unto his or their absolute possession, and thenceforth to hold and enjoy all and every or any of the goods, chattels and premises hereby assigned or intended so to be, and with his or their servant or servants, and with such other assistant or assistants as he may require, at any time during the day to enter into and upon any lands, tenements, houses and premises belonging to and in the occupation of the party of the first part, where the said goods and chattels or any part thereof may be, and to break and force open any door, lock, bolt, fastening, hinge, gate, fence, house, building, enclosure and place, for the purpose of taking possession of and removing the said goods and chattels; and to sell the said goods

and chattels, or any of them, or any part thereof at public auction or private sale, as to them 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 himself or themselves all such 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 party of the second part, his executors, administrators or assigns, in consequence of the default, neglect or failure of the said party of the first part, his executors, administrators or assigns, in payment of the said sum of money with interest thereon as above mentioned, or in consequence of such sale or removal as above mentioned; and in the next place to pay unto the said party of the first part, his executors, administrators and assigns, all such surplus as may remain after such sale, and after payment of all such sum and sums of money and interest thereon as may be due by virtue of these presents at the time of such seizure, and after payment of the costs, charges, and expenses incurred by such seizure and sale as aforesaid.

And the said party of the first part doth hereby further covenant, promise and agree to and with the said party of the second part, his executors, administrators and assigns, that in case the sum of money realized under any such sale as above mentioned shall not be sufficient to pay the whole amount due at the time of such sale, then he, the said party of the first part, his executors or administrators, will forthwith pay any deficiency to the

said party of the second part, his executors, administrators and assigns.

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  
Y. Z.

A. B. [L.s.]

*Affidavit of Mortgagee.*

Ontario, County of \_\_\_\_\_, to wit: I, C. D., of the  
\_\_\_\_\_ of \_\_\_\_\_, in the County of \_\_\_\_\_, the mortgagee in  
the within Bill of Sale, by way of mortgage named,  
make oath and say, that A. B., the mortgagor in  
the within Bill of Sale, by way of mortgage  
named, is justly and truly indebted to me, this de-  
ponent C. D., the mortgagee therein named, in the  
sum of \$100, mentioned therein. That the said  
Bill of Sale, by way of mortgage, was executed in  
good faith, and for the express purpose of securing  
the payment of the money so justly due as afore-  
said, and not for the purpose of protecting the goods  
and chattels mentioned in the said Bill of Sale, by  
way of mortgage, against the creditors of the said  
A. B., the mortgagor therein named, or preventing  
the creditors of such mortgagor from obtaining pay-  
ment of any claim against him.

C. D.

Sworn before me, at }  
the \_\_\_\_\_ of \_\_\_\_\_, in the }  
County of \_\_\_\_\_, this " }  
day of \_\_\_\_\_, 18 . " }  
E. F., }

J. P., or a Commissioner for taking Affidavits in the Queen's Bench, in and for the County of .

*Affidavit of Witness.*

Ontario, County of , to wit : I, Y. Z., of the of , in the County of make oath and say, that I was personally present, and did see the annexed Bill of Sale, by way of mortgage, duly signed, sealed and delivered by A. B., party thereto, and that the name Y. Z., 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 , in the said County of .

Y. Z.

Sworn before me, at }  
 the of , in the }  
 County of , this }  
 day of , 18 . }  
 E. F., }

J. P.. or a Commissioner for taking Affidavits in the Queen's Bench, in and for the County of .

*Chattel Mortgage.*

*(By way of security against Indorsement.)*

This Indenture, made the day of 18 , Between A. B., of, &c., of the first part, and C. D., of &c., of the second part : Whereas the said party of the second part has indorsed the Promissory

Note of the said party of the first part for the sum of \$500, of lawful money of Canada, for the accommodation of the said party of the first part, which Promissory Note is in the words and figures following, that is to say: (*here copy the note.*) And whereas the said party of the first part has agreed to enter into these presents for the purpose of indemnifying and saving harmless the said party of the second part of and from the payment of the said promissory note, or any part thereof, or any note or notes hereafter to be indorsed by the said party of the second part, for the accommodation of the said party of the first part, by way of renewal of the said recited note, or otherwise howsoever, within the period of one year from the date hereof.

Now this Indenture witnesseth, that the said party of the first part, in consideration of the premises, hath bargained, sold and assigned, and by these presents doth bargain, sell and assign, unto the said party of the second part, his executors, administrators and assigns, All and singular the goods, chattels, furniture and household stuff hereinafter particularly mentioned and expressed, that is to say: (*describe as in preceding form.*)

To have, hold, receive and take the said goods, chattels, furniture and household stuff hereby assigned, or mentioned, or intended so to be, unto the said party of the second part, his executors, administrators and assigns, forever: Provided always, and these presents are upon this condition, that if the said party of the first part, his executors or administrators, do and shall well and truly pay, or

cause to be paid, the said promissory note so as aforesaid indorsed by the said party of the second part, and all and every other note or notes, which may hereafter be indorsed by the said party of the second part for the accommodation of the said party of the first part, by way of renewal of the said note, and indemnify and save harmless the said party of the second part, his heirs, executors and administrators, from all loss, costs, charges, damages or expenses in respect of the said note or any renewals thereof, 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 party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said party of the second part, his executors and administrators, that he, the said party of the first part, his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, the said promissory note in the above recital and proviso mentioned, and all future or other promissory notes which the said party of the second part shall hereafter indorse for the accommodation of the said party of the first part by way of renewal as aforesaid, and indemnify and save harmless the said party of the second part from all loss, costs, charges, damages or expenses in respect thereof.

And also, that in case default shall be made in the payment of the said promissory note, or any

renewal note or notes as in the said proviso mentioned, or in case the said party of the first part 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 remove the same or any part thereof out of the county of \_\_\_\_\_, without the consent of the said party of the second part, his executors or administrators, to such sale, removal or disposal thereof, first had and obtained in writing, then and in such case it shall and may be lawful for the said party of the second part, his executors or administrators, 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 and upon any lands, tenements, houses, and premises, wheresoever and whatsoever belonging to, and in the occupation of the said party of the first part, his executors or administrators, where 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, enclosures 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 and may be lawful, and the said party of the second part, his executors or administrators, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels, or any of them, or any part thereof, at public auction or private sale, as to him or them, 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 himself or themselves all such sums and sum of money as may then be due by virtue of these presents on the said promissory note, or any renewal note or notes, as aforesaid, and all such expenses as may have been incurred by the said party of the second part, his executors or administrators, in consequence of the default, neglect or failure of the said party of the first part, his executors or administrators, in payment of the said note or notes as above mentioned, or in consequence of such sale or removal as above mentioned; and in the next place to pay unto the said party of the first part, his executors, administrators or assigns, all of such surplus as may remain after such sale, and after payment of all such sum and sums of money, and interest thereon, as he, the said party of the second part, shall be called upon to pay by reason of indorsing the said promissory note in the said recital and proviso mentioned, or any renewal note or notes to be indorsed by the said party of the second part for the said party of the first part, as aforesaid, at the time of such seizure, and after payment of such costs, charges and expenses incurred by such seizure and sale, as aforesaid.

Provided always, nevertheless, that it shall not be incumbent on the said party of the second part, his executors or administrators, to sell and dispose of the said goods and chattels, but that in case of default in payment of the said note or notes as aforesaid, it shall and may be lawful for the said party

of the second part, his executors, administrators and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said goods and chattels without the let, molestation, eviction, hindrance or interruption of him, the said party of the first part, his executors, administrators or assigns, or any of them, or any other persons or person whomsoever. And the said party of the first part doth hereby further covenant, promise and agree, to and with the said party of the second part, his executors and administrators, that in case the sum of money realized under any such sale as above mentioned shall not be sufficient to pay the whole amount due on the said note or notes at the time of such sale, that he, the said party of the first part, his executors or administrators, shall and will forthwith pay or cause to be paid, unto the said party of the second part, his executors or administrators, all such sum or sums of money, with interest thereon, as may then be remaining due upon the said note or notes.

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

Y. Z.

A. B. [L.S.]

C. D. [L.S.]

*Affidavit of Mortgagee.*

Ontario, County of                      to wit: I, C. D., of,  
&c., the Mortgagee in the within Mortgage named,  
make oath and say, that such mortgage truly states

the extent of the liability intended to be created and covered by such mortgage, and that the said mortgage was executed in good faith and for the express purpose of securing me, the said mortgagee therein named, against the payment of the amount of my liability for the said mortgagor by reason of the promissory note therein recited, or any note or notes which I may indorse for the accommodation of the said party of the first part, as renewals of the said note ; 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.

C. D.

Sworn before me, at	}
the        of        , in the	
County of        , this	
day of        , A.D.	
18 .	
E. F.,	

J. P. or a Commissioner for taking Affidavits in the Queen's Bench in and for the County of . . . .

*Affidavit of Witness.*

Ontario, County of        , to wit : I, Y. Z., of, &c., make oath and say, that I was personally present and did see the annexed Bill of Sale, by way of Mortgage, duly signed, sealed and delivered by A. B. and C. D., the parties thereto, and that I, this

deponent, am a subscribing witness to the same; that the name Y. Z., set and subscribed as a witness to the execution thereof, is of the proper hand writing of me, this deponent, and that the same was executed at \_\_\_\_\_, in the said County of \_\_\_\_\_  
Y. Z.

Sworn before me, at }  
the \_\_\_\_\_ of \_\_\_\_\_, in the }  
County of \_\_\_\_\_, this }  
\_\_\_\_\_ day of \_\_\_\_\_, A.D. }  
18 . }  
E. F., }

J. P. or a Commissioner for taking Affidavits in the Queen's Bench in and for the County of \_\_\_\_\_.

*Chattel Mortgage.*

*(To secure future advances)*

This Indenture made the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_,  
Between A. B., of, &c., of the first part, and C. D., of &c., of the second part. Whereas, [*Here set forth fully by way of recital, the terms, nature and effect of the agreement for the future advances, and the amount of liability to be created, as for instance*]; "Whereas the said A. B. is desirous of entering into and carrying on the business of a dry goods merchant at the City of Toronto, and hath applied to the said C. D. to make him future advances not exceeding in the whole the sum of \$5000, at such times and in such sums as he the said A. B. may require the same. And whereas, by an agreement

in writing, dated on the            day of            18    ,  
and made between the said A. B. and C. D., the  
said C. D. hath agreed to make such future ad-  
vances to the extent of \$5000 to the said A. B. for  
the purpose aforesaid at such times, and in such  
sums as the said A. B. may require it: the whole  
to be repaid within one year from the date of the  
said agreement.”] Now this Indenture witnesseth  
that the said party of the first part, in consideration  
of the premises, and in pursuance of the said agree-  
ment hath bargained, sold and assigned, and by  
these presents doth bargain, sell and assign unto  
the said party of the second part, his executors, ad-  
ministrators and assigns, All and singular the  
goods, chattels, furniture and household effects  
hereinafter particularly mentioned and described  
in the schedule hereunto annexed marked A. To  
have, hold, receive and take, all and singular the  
said goods, chattels, furniture and effects herein-  
before bargained, sold and assigned, or mentioned,  
or intended so to be, unto the said party of the  
second part, his executors, administrators and  
assigns forever. Provided always, and these pres-  
ents are upon this condition, that if the said party  
of the first part, his executors or administrators do  
and shall well and truly pay or cause to be paid  
unto the said party of the second part, his execu-  
tors, administrators or assigns, the said sum of  
\$5000 or so much thereof as the said party of the  
second part shall advance to the said party of the  
first part, according to the terms of the said agree-  
ment, together with interest thereon at the rate of

per cent. per annum, within one year from the date of the said agreement, 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. Provided always that in case default shall be made in payment of the said sum of \$5000, or so much thereof as may be advanced as aforesaid, and interest contrary to the last mentioned proviso; or in case the said party of the first part 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 City of Toronto, without the consent of the said party of the second part, 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 and may be lawful for the said party of the second part, 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, peaceably and quietly to receive and take into his or their absolute possession, and thenceforth to hold and enjoy all and every, or any of the said goods and chattels: and upon and from and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the said party of the second part, his executors, administrators and assigns, and each or any of them is and are hereby authorized and empowered, to sell the said goods and chattels, or any of them, or

any part thereof at public auction or private sale, 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 sums and sum of money as may then be due by virtue of these presents, and all such expenses as may have been incurred by the said party of the second part, his executors, administrators or assigns, in consequence of the default, neglect or failure of the said party of the first part, 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 party of the first part, his executors or administrators, all such surplus as may remain after payment of such sum or sums of money as aforesaid. And the said party of the first part, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said party of the second part, his executors, administrators and assigns, that in case the sum of money realized under any such sale as above mentioned, shall not be sufficient to pay the whole amount due at the time of such sale, he the said party of the first part, his executors or administrators, shall and will forthwith pay or cause to be paid unto the said party of the second part, his executors, administrators or assigns, all such sum and sums of money, with interest thereon, as may then be remaining due.

And it is hereby also declared and agreed, that until default shall be made in payment of the said

principal sum of \$5000 and interest, contrary to the aforesaid proviso, it shall be lawful for the said A. B., his executors or administrators, to make use of (but not to remove from the premises) the said goods, chattels and things hereby assigned or intended so to be without any hindrance or disturbance by the said C. D., his 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 he, the said A. B., hath not heretofore made, done, permitted or suffered, nor will at any time hereafter make, do, permit or suffer any act, deed, matter or thing whereby, or by means whereof, the said goods, chattels and premises hereby assigned are, is, can or may be in any wise impeached, charged, affected, incumbered or prejudicially affected in any manner howsoever; and also that he the said A. B., his executors or administrators will, so long as any money shall remain due on this security, insure and keep insured the said goods, chattels and premises from damage by fire, in some respectable insurance office, in the names of the said C. D., his executors, administrators or assigns, in the sum of \$           , and hand the policy for such insurance, and the receipt for the current year's premium, to the said C. D., his executors, administrators or assigns, on demand; and that in default of the said policy being so effected or kept on foot as aforesaid, it shall be lawful for the said C. D., his executors, administrators and assigns, to effect or keep on foot the same, and all

the premiums and other expenses incurred by him or them in so doing shall be repaid on demand by the said A. B., his executors or administrators, and until re-payment, the same shall be a charge on the said goods, chattels and premises hereby assigned, and shall bear interest after the rate aforesaid. And also that the said A. B., his executors and administrators, will, during the continuance of this security, keep the chattels, effects and premises hereby assigned, in good order, repair and condition in all respects, as they are in at the time of the execution hereof.

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	A. B. [L.S.]
Y. Z.	C. D. [L.S.]

*The Schedule above referred to marked A.*

*(Here set out a full and particular description of the goods as required in the preceding forms.)*

*Mortgagee's Affidavit.*

Ontario, County of \_\_\_\_\_, to wit: I, C. D., of, &c., the mortgagee in the within mortgage named, make oath and say, that the within mortgage truly sets forth the agreement entered into between myself and A. B., therein named, and truly states the extent of the liability intended to be created by such agreement, and covered by the within mort-

gage. That the within mortgage is executed in good faith, and for the express purpose of securing to me the re-payment of the advances agreed to be made as within mentioned, and not for the purpose of securing the goods and chattels mentioned therein, and set forth in the schedule attached thereto marked A, against the creditors of the said A. B., or to prevent such creditors from recovering any claims which they may have against the said A. B.

C. D.

Sworn before me at }  
 the day of , }  
 18 .

F. W.,  
 A Commissioner, &c.

*Affidavit of Witness.*

*(Same as in preceding Forms.)*

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## CHAPTER IX.

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### DEEDS.

The legal and technical definition of a deed is a writing *sealed* and *delivered*. Bonds, therefore, and assignments and chattel mortgages, of which we have treated in previous chapters, are all deeds: that is to say, they are writings *sealed* and *delivered*. The general and popular idea of a deed, however, is commonly associated with the transfer of land, and it is in this popular but restricted sense in which we shall speak of a deed in this chapter; remarking merely that the manner in which a deed must be written or executed is precisely the same whether goods or lands are intended to be conveyed.

A deed of land, then, is a writing sealed and delivered by the parties, by which lands, tenements or hereditaments are conveyed by one person to another. It may be either written or printed, and on paper or parchment. Figures, as a general rule, should be avoided, and all words written in full without abbreviation or contraction. The name, residence and occupation or addition of every party to the deed should be carefully inserted, and also some date: properly the date of the day of execu-

tion, but not necessarily; for a deed may legally be dated on one day, and not executed until some other and subsequent day. Care should be used in describing the lands conveyed; an error here may entail considerable expense before it can be rectified. If a whole township lot be conveyed, it will be sufficient to describe it as lot number so and so, in such a concession, township and county, comprising so many acres. If a portion only be to be conveyed, describe accurately the part intended; as the north or south half, or north-east or south-west quarter, as the case may be. Where the boundaries are well known, and especially where only a portion of a lot is conveyed, it will be desirable to describe the premises by metes and bounds; giving the courses or magnetic bearings, and the measurement of each side. A well prepared deed should contain no alterations or interlineations of any kind; they will not, however, invalidate the instrument; but if necessary to be made, the fact that they were so made before signature of the deed should be stated in the attestation clause at the foot, and the witness should put his initials in the margin, opposite all such alterations or interlineations, so that he may be the better able, if ever called on, to prove that they were so made before execution. When once signed and executed, a deed must not be altered—to do so might be to commit a forgery; and any such alteration might wholly vitiate the deed.

The person conveying the land is called the *grantor*; the person to whom it is to be conveyed

is called the *grantee*. If the grantor is a married man, his wife should join in the deed and bar her dower; otherwise, when her husband dies she will be entitled to one-third of the land conveyed for her life time. Land may be conveyed in such a manner as to preclude the wife of the party to whom it is conveyed from any right to dower on her husband's death; but the species of deed by which this may be done is very special and can only safely be prepared by a professional man.

When a married woman is the owner of land in her own right, she may convey the same by an ordinary deed, to which her husband must be a party, but the deed must be acknowledged by her before a Judge of one of the Superior Courts of law or equity, or before a County Court Judge, or before *two* Magistrates. A certificate of acknowledgment must be endorsed upon the deed, and signed by the Judge or Magistrates before whom it is made.

Every deed should be *signed* by the grantor. It is not necessary that the grantee should sign unless the deed contains some covenant on his part. The ordinary way of executing a deed is for the party conveying to sign his name in his usual manner, opposite the seal at the foot, and placing his finger on the seal to say "I deliver this as my act and deed." If the person should be unable to write, he may execute by mark. In this case some person should write opposite the seal the words "A. B. his mark," leaving space in the middle for the mark to be made—usually a cross: thus A. <sup>his</sup> + B.<sub>mark.</sub>

The mark must, of course, be made by the party himself, though his hand may be guided, or he may do it by simply touching the pen while the mark is being made by some other person for him. Before a deed is executed by an illiterate person, it ought to be read over and explained, so that he may fully understand what he is doing.

Before purchasing property it is essential that the title to it should be properly investigated. Registry offices are established in every county where all deeds and other instruments affecting land ought to be registered. It would serve but little purpose to enter into the question of title in a work of this kind; whenever a purchaser desires to be safe, he had better avail himself of the services of a properly qualified legal practitioner.

Formerly deeds used to be registered by means of memorials; but in 1865, this mode of registration was abolished, and the infinitely better plan of lodging the deed itself, or a duplicate of it, in the registry office was adopted. A deed of land, therefore, should now be executed in duplicate—one whereof will be left in the registry office, and the other retained by the party. Upon the deed intended to be left in the registry there must be an affidavit of execution made by the attesting witness. It is sufficient if this affidavit be only placed on such one; but it is usual and convenient to have an affidavit on both.

The present registry act (31 Vic. c. 20, Ontario,) contains the following provisions as to affidavits of execution.

Sec. 38 provides that the subscribing witness shall in an affidavit setting forth his name, place of residence and addition, occupation or calling in full, swear to the following facts :

1. To the execution of the original and duplicate if any there be.
2. To the place of execution.
3. That he knew the parties to such instrument, if such be the fact ; or that he knew such one or more of them, according to the fact.
4. That he is a subscribing witness thereto.

Sec. 39 requires the affidavit to be made *on* the instrument or securely attached thereto.

Sec. 41 contains the following provisions as to the persons before whom the affidavit may be made :

1. If made in Ontario it must be made 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 before any Judge of a County Court, within his County,

Or before a Commissioner authorized by any of the Superior Courts to take affidavits.

2. If made in Quebec it must be made before a Judge or Prothonotary of the Superior Court or Clerk of the Circuit Court,

Or before a Commissioner authorized by any of the Superior Courts of Common Law for Ontario to take affidavits in Quebec,

Or before any Notary Public in Quebec, certified under his official seal.

3. If made in Great Britain or Ireland it must be made before a Judge of any of the Superior Courts of Law or Equity therein,

Or before a Judge of any of the County Courts within his County,

Or before the Mayor or Chief Magistrate of any city, borough or town corporate therein, and certified under the common seal of such city, borough or town corporate,

Or before a Commissioner for taking affidavits in and for any of the Courts of Record for the Province of Ontario,

Or before any Notary Public certified under his official seal.

4. If made in any British Colony or possession it must be made before a Judge of a Court of Record,

Or before the Mayor of any city, borough or town corporate, and certified under the common seal of such city, borough or town,

Or before any Notary Public certified under his official seal,

Or if made in the British Possessions in India before any Magistrate or Collector, certified to have been such under the hand of the Governor of such possession.

5. If made in any foreign country it must be made before the Mayor of any city, borough or

town corporate of such county, and certified under the common seal of such city, borough or town corporate,

Or before any Consul or Vice Consul of Her Majesty, resident therein,

Or before a Judge of a Court of Record, or a Notary Public, certified under his official seal.

The fees for registering a deed are \$1.40 where the document does not exceed 700 words in length ; if it exceeds that number then fifteen cents for every additional 100 words up to 1400, and ten cents for each 100 words over 1400. If the instrument embraces different lots or parcels of lands situate in different localities in the same county, then the Registrar is entitled to 40 cents for the necessary entries and certificates, and fifteen cents for every 100 words up to 1400, and ten cents for every 100 words over that number.

A corporation executes a deed by affixing to it its common seal, and signing by its chief officer as Mayor, President, &c. No affidavit is necessary to prove the execution of a deed by a corporation ; the seal alone is sufficient evidence.

The only forms of deeds given here are the common forms of bargain and sale used in the ordinary conveyance of real property : special forms in unskilful hands might result in loss and embarrassment. The forms given are with *absolute* covenants and with *qualified* or *limited* covenants. The former are very extensive, and ought not be given without some sufficient reason, as they bind the grantor with reference to the acts of all parties

through whom the property may have passed. Limited covenants, on the contrary, are confined to the acts of the grantor himself and those claiming under him.

*Deed of Bargain and Sale.*

*(Absolute Covenants.)*

This Indenture made (in duplicate) the      day of      , 18      , Between A. B., of, &c., of the first part, C. D., wife of the said party of the first part, of the second part, and G. H., of, &c., of the third part; Witnesseth, that the said party of the first part, in consideration of the sum of \$500, of lawful money of Canada, to him, by the said party of the third part, in hand well and truly paid, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), doth grant unto the said party of the third part, his heirs and assigns, All and singular that certain parcel or tract of land and premises situate, lying and being in the (*here describe the lands*), Together with the appurtenances: To have and to hold the same lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said party of the third part, his heirs and assigns, to the sole and only use of the said party of the third part, his heirs and assigns, forever. Subject, nevertheless, to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown.

And this Indenture further witnesseth, that the said party of the second part, with the privity and full approbation and consent of her said husband, testified by his being a party to these presents, in consideration of the premises, and also in consideration of the further sum of five shillings of lawful money of Canada aforesaid, to her by the said party of the third part in hand well and truly paid 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 party of the third part, his heirs and assigns, all dower, and all right and title thereto, which she, the said party of the second part now hath or in the event of surviving her said husband might or would have in, to or out of the lands and premises hereby conveyed or intended so to be.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said party of the third part, his heirs and assigns, in manner following, that is to say : That he, the said party of the first part, 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 party of the third part, in manner aforesaid and according to the true intent and meaning of these presents ; And that it shall be lawful for the said party of the third part, 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 lands 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 party of the first part, or his heirs, or any other person or persons whomsoever; And that free and clear, and freely and absolutely acquitted, exonerated and forever discharged or otherwise by the said party of the first part 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; And lastly, that he, the said party of the first part, his heirs, executors or administrators, and all and every other person whomsoever 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



*(Qualified Covenants)*

This Indenture, made (in duplicate) the       day  
of       18   , Between A. B. of, &c., of the first  
part, C. D., wife of the said party of the first part,  
of the second part, and G. H., of, &c., of the third  
part: Witnesseth, that the said party of the first  
part, in consideration of the sum of \$500, of lawful  
money of Canada, to him by the said party of the  
third part in hand well and truly paid at or before  
the sealing and delivery of these presents (the re-  
ceipt whereof is hereby acknowledged), doth grant  
unto the said party of the third part, his heirs and  
assigns, All and singular that certain parcel or  
tract of land and premises situate, lying and being  
in the (*here describe the lands*), Together with the  
appurtenances: To have and to hold the same  
lands, tenements and hereditaments, and all and  
singular other the premises hereby conveyed or in-  
tended so to be, with their and every of their appur-  
tenances, unto the said party of the third part, his  
heirs and assigns, to the sole and only use of the  
said party of the third part, his heirs and assigns,  
forever. Subject, nevertheless, to the reservations,  
limitations, provisoes, and conditions expressed in  
the original grant thereof from the Crown.

And this Indenture further witnesseth, that the  
said party of the second part, with the privity and  
full approbation and consent of her said husband,  
testified by his being a party to these presents, in  
consideration of the premises, and also in conside-  
ration of the further sum of five shillings of lawful

money of Canada aforesaid, to her by the said party of the third part in hand well and truly paid 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 party of the third part, his heirs and assigns, all dower, and all right and title thereto, which she, the said party of the second part, now hath, or in the event of surviving her said husband might or would have in, to or out of the lands and premises hereby conveyed or intended so to be.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said party of the third part, his heirs and assigns, in manner following, that is to say: That for and notwithstanding any act, deed, matter or thing by the said party of the first part done, executed, committed or knowingly or wilfully permitted or suffered to the contrary, he, the said party of the first part, 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 party of the third part, in manner aforesaid, and according to the true intent of these presents: And that it shall be lawful for the said party of the third part, 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 lands 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 party of the first part or his heirs, or any person claiming or to claim by, from, under or in trust for him, them or any of them: And that free and clear, and freely and absolutely acquitted, exonerated and forever discharged or otherwise by the said party of the first part, 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 party of the first part, or his heirs, or by any person claiming or to claim by, from, under or in trust for him, them or any of them: And lastly, that he, the said party of the first part, his heirs, executors or administrators, and all and every other person whomsoever 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 party of the third part, his heirs or assigns, make, do or execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices, conveyances and assurances in the law whatsoever, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said party of the third part, his heirs and assigns, in manner aforesaid, as by the said party of the third part, 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.

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

Signed, sealed and delivered

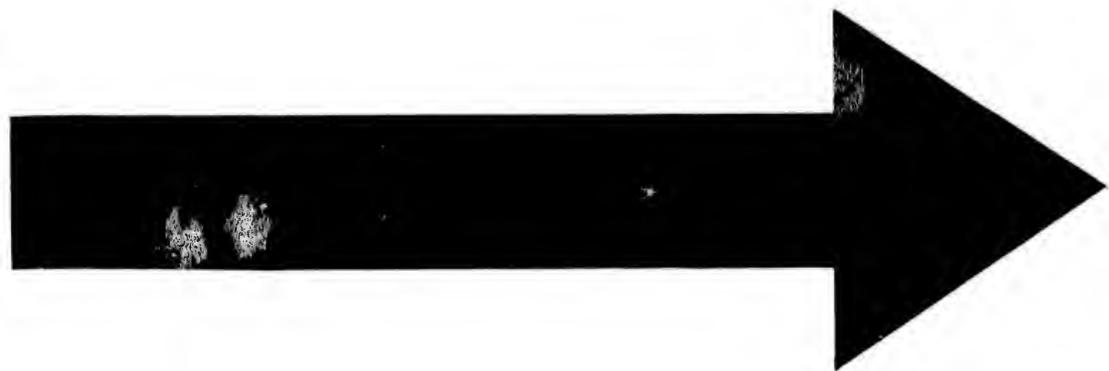
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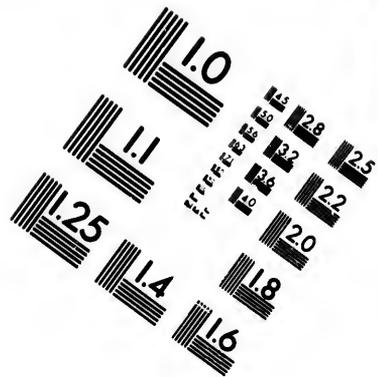
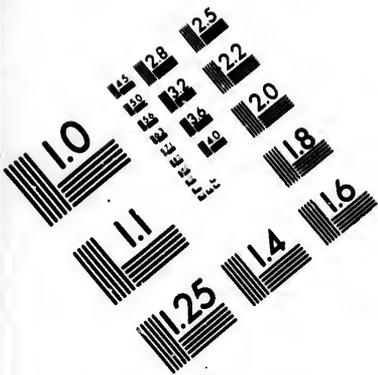
E. F.

A. B. [L.s.]

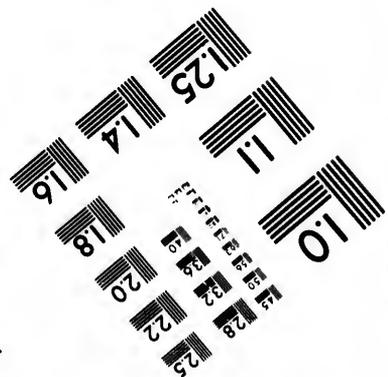
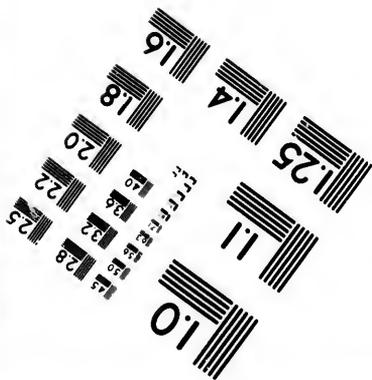
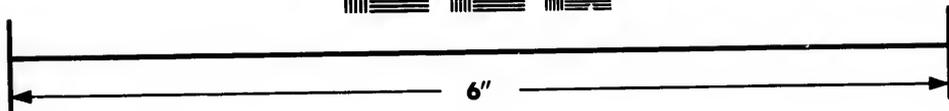
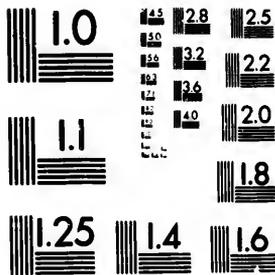
C. D. [L.s.]

Received, on the day of the date of the within Indenture, the sum of \$500, of lawful money of





**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

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Canada, being the full consideration therein mentioned.

Signed in presence of

E. F.

A. B.

*Short forms under Statute.*

This Indenture, made (in duplicate) the        day  
of        18    , in pursuance of an Act respecting  
short forms of conveyances :

Between A. B., of, &c., of the first part, C. D.,  
wife of the said party of the first part, of the second  
part, and E. F., of, &c., of the third part: Witnesseth, that in consideration of \$500 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, his heirs and  
assigns for ever, All and singular that certain parcel  
or tract of land and premises situate, lying and  
being (*here describe the premises.*) To have and  
to hold unto the said party of the third part, his  
heirs and assigns, to and for his and their sole and  
only use for ever. Subject nevertheless, to the  
reservations, limitations, provisoes and conditions  
expressed in the original grant thereof from the  
Crown. The said 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



Between A. B., of, &c., wife of E. F., of the same place, of the first part, the said E. F., of the second part, and G. H., of, &c., of the third part: Witnesseth, that in consideration of \$ of lawful money of Canada now paid by the said party of the third part to the said parties of the first and second parts; (the receipt whereof is hereby by them acknowledged), They, the said parties of the first and second parts, do grant unto the said party of the third part, his heirs and assigns for ever, All and singular that certain parcel or tract of land and premises situate lying and being, &c., (*here describe the premises*). To have and to hold unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use for ever: subject, nevertheless, to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown.

The said party of the second part covenants with the said party of the third part, that she, the said party of the first part, jointly with the party of the second part, hath the right to convey the said lands to the said party of the third part, notwithstanding any act of the said parties of the first and second parts.

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 parties of the first and second parts will execute such further assurances of the said lands as may be requisite.

And that the said parties of the first and second parts have done no act to encumber the said lands.



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

Signed, sealed and delivered

in the presence of.

A. B. [L.S.]

Y. Z.

*Certificate of Acknowledgement by Married Woman.*

I [or we, inserting the name or names of the Judge or Magistrates, &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.

A. B., Judge, or

C. D., J. P.

E. F., J. P.

*Affidavit of Execution of Deed.*

County of            , to wit: I, Y. Z., of, &c., [state here the name, in full, of the witness: his place of residence, and occupation] make oath and say:—

1. That I was personally present and did see the within instrument and duplicate duly signed,

sealed and executed by A. B. and C. D., two of the parties thereto.

2. That the said instrument and duplicate were executed at the (*City of Toronto.*)

3. That I know the said parties (*if that be the fact.*)

4. That I am a subscribing witness to the said instrument and duplicate.

Y. Z.

Sworn before me at  
                   in the County }  
of               , this        day }  
of               , 18 .        }

W. W.

A Commissioner, &c., in B. R.

## CHAPTER X.

### DIVISION COURTS.

These Courts have been established in every county in Ontario for the recovery of small debts. For the recovery of larger claims, the Superior Courts of Law and County Courts exist.

The number of Division Courts varies in different counties; but there must never be less than three or more than twelve; and there must be one Court in every city or county town. They are presided

over by the County Judge, or, in some large counties where junior Judges have been appointed, by such junior Judge. The authority of these Courts is derived from the "Act respecting the Division Courts," Con. Stat. U. C., cap. 19, as amended by the several acts, 27 & 28 Vic., c. 27, and 29 Vic., c. 31, of the acts of the late Province of Canada; and the 32 Vic., c. 23, of the Statutes of Ontario. Courts are holden once in every two months (or oftener, in the discretion of the Judge), at such times and places within each division as the Judge may appoint.

Division Courts may entertain, and take cognizance of, and determine in a summary way,

1. All personal actions, where the debt or damages claimed do not exceed \$40; and
2. All claims and demands of debt, account or breach of contract or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$100.

These Courts have no jurisdiction in the following cases:—

1. Actions for any gambling debt; or
2. For spirituous or malt liquors drunk in a tavern or ale-house; or
3. On notes of hand given wholly or partly in consideration thereof; or
4. Actions of ejectment, or actions in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question; or
5. In which the validity of any devise, bequest

or limitation under any will or settlement may be disputed; or

6. For malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage; or

7. Against a Justice of the Peace for any thing done by him in the execution of his office, if he objects thereto.

Upon a contract for payment in labor or goods, or commodities, or anything other than money, the Judge, after the day has passed on which the goods or commodities ought to have been delivered, or the labor or other thing performed, may give judgment for the amount in money, as if the contract had been so originally expressed.

Minors (or persons under twenty-one years of age) may sue in a Division Court for wages not exceeding \$100.

A claim will not be allowed to be divided into two or more parts, so as to bring it within the jurisdiction of a Division Court; nor can any sum greater than \$100 be recovered in an action on an unsettled account. Where the unsettled account in the whole exceeds \$200, no action can be brought in these Courts.

Formerly judgments of the Division Court were thought to be good for six years only; but under the last of the acts above referred to, they are declared to have the same force and effect as judgments of Courts of Record. They are good, therefore, for twenty years.

Ordinarily a suit must be entered and tried

in the Court of the division where the cause of action arose, (that is: where the debt was contracted,) or in that where the defendant resides; but under the act of 1864, a suit may be entered in the Court nearest to the defendant's residence, irrespective of the place when the cause of action arose. By leave of the Judge before whom the action is to be tried, a suit may be entered at the Court of the division adjacent to that in which the defendant resides, if the Judge be satisfied on oath or by affidavit, that it will be more convenient for the parties.

The first process in the Division Court is a *summons*. Summonses are of two kinds: *ordinary* and *special*. The former may be used in every case: the latter can only be used where the action is for a debt or money demand; and where the particulars of the plaintiff's claim are given with reasonable certainty and detail. There is also a *summons in replevin*, used in actions of that nature.

When a suit is to be entered at any Division Court, the first thing for the plaintiff to do is to hand to the clerk a written claim and particulars which should shew the names in full, and the present or last known place of abode of the parties. When the defendant's christian name is unknown, he may be described by his initials, or by such name as he is generally known by. The claim must in every case admitting thereof, show the particulars in detail; and in other cases must contain a statement of the particulars, or the facts constituting the claim, in ordinary and concise language,

and the sum claimed in respect thereof. Where the plaintiff desires to avail himself of the act of 1864, and sues the defendant in the Court nearest to his residence, he must add the following words to his claim, "and the plaintiff enters this suit and claims to have it tried and determined in this Court, because the place of sitting thereof is the nearest to the defendant's residence." If the plaintiff's claim is beyond the jurisdiction of the Court, he may abandon the excess; but he must do so in the first instance and on the claim.

When the defendants reside in the county, a special summons is returnable on the eleventh day after service. Where they reside in an adjoining county, it is returnable on the sixteenth day; and where they reside at other places, on the twenty-first day.

If a defendant served with a special summons disputes the plaintiff's claim, he must leave with the clerk of the Court a notice to that effect, within eight days after service, when the summons is returnable on the eleventh day; and within twelve days in other cases. If he does not do so, judgment will be entered by default on the return of the summons, and execution may be at once issued. The Judge however, has a discretion to let a defendant dispute the claim at any time before judgment entered, although notice may not have been given; and he may set aside a judgment on sufficient grounds being shown. Judgment by default must be entered within one month after the return of a summons, it cannot be entered after. Where

a special summons has been issued against several defendants, but all have not been served, the plaintiff may take judgment against those served: in which case his claim against the others will be lost. If he does not wish to abandon those not served, he must proceed in the ordinary way.

An ordinary summons, with a copy of the account, or of the particulars of the claim or demand, attached, requires to be served ten days at least before the Court day.

In case none of the defendants reside in the county in which the action is brought, but one of them resides in an adjoining county, the summons must be served fifteen days; and in case none of the defendants reside in the county within which the action is brought, or in an adjoining county, then twenty days at least, before the Court day.

When the claim exceeds eight dollars, the service must be personal on the defendant; but where the amount does not exceed eight dollars, the service may be on the defendant, his wife or servant, or some grown person being an inmate of the defendant's dwelling-house or store.

The bailiffs of the Court serve and execute all summonses, orders, warrants, precepts and writs, and so soon as served return the same to the clerk of the Court of which they are bailiffs.

The clerk prepares the affidavit of service of summons, stating how served, the day of service, and the distance the Bailiff necessarily travelled to effect service, which is annexed to or indorsed on the summons; but the Judge may require the

bailiff to be sworn in his presence, and to answer such questions as may be put to him touching any service or mileage.

In case of a debt or demand against two or more persons, partners in trade, or otherwise jointly liable, but residing in different divisions, or one or more of whom cannot be found, one or more of such persons may be served with process, and judgment may be obtained and execution issued against the person or persons served, notwithstanding others jointly liable have not been served or sued, reserving always to the person or persons against whom execution issues, his or their right to demand contribution from any other person jointly liable with him.

Whenever judgment has been obtained against any such partner, and the Judge certifies that the demand proved was strictly a partnership transaction, the Bailiff, in order to satisfy the judgment and costs and charges thereon, may seize and sell the property of the firm, as well as that of the defendants who have been served.

On the day named in the summons, the defendant must, in person, or by some person on his behalf, appear in the Court to answer, and, on answer being made, the Judge in a summary way tries the cause and gives judgment; and in case satisfactory proof is not given to the Judge entitling either party to judgment, he may non-suit the plaintiff; and the plaintiff may, before verdict in jury cases, and before judgment pronounced in other cases, insist

on being non-suited. The Judge may also non-suit in a jury case.

When a plaintiff is non-suited he is at liberty to bring his case again into Court on a new summons; but if a judgment against him be given, he cannot. If on the day named in the summons the defendant does not appear, or sufficiently excuse his absence, or if he neglects to answer, the Judge, on proof of due service of the summons and copy of the plaintiff's claim, may proceed to the trial of the cause on the part of the plaintiff only, and the order, verdict or judgment thereupon will be final and absolute, and as valid as if both parties had attended.

The Judge may adjourn the hearing of any cause in order to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable such party to enter more fully into his case or defence; or for any other cause which the Judge thinks reasonable: upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him seems meet.

If the defendant desires to plead a tender, before action brought, of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his plea with the clerk of the Court before which he is summoned to appear, at least six days before the day appointed for the trial of the cause, and at the same time paying into Court the amount of the money mentioned in such plea.

Such sum is to be paid to the plaintiff, less one dollar, to be paid over to the defendant for his

trouble, in case the plaintiff do not further prosecute his suit; and all proceedings in the action are to be stayed, unless the plaintiff, within three days after the receipt of notice of such payment, signifies to the clerk of the Court his intention to proceed for his demand, notwithstanding such plea; and in such case the action will proceed accordingly.

If such signification is given within the three days, but after the rising of the Court at which the summons is returnable, the case will be tried at the next sitting of the Court.

If the decision thereon be for the defendant, the plaintiff pays the defendant his costs, to be awarded by the Court, and the amount thereof may be paid over to him out of the money so paid in with the plea, or may be recovered from the plaintiff in the same manner as any other money payable by a judgment of the Court; but, if the decision be in favor of the plaintiff, the full amount of the money paid into Court will be applied to the satisfaction of his claim, and a judgment may be pronounced against the defendant for the balance due and the costs of suit.

The defendant may, at any time not less than six days before the day appointed for the trial, pay into Court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment.

The sum so paid in is to be paid to the plaintiff, and all proceedings in the action stayed, unless within three days after the receipt of the notice the plaintiff shall signify to the clerk his intention to

proceed for the remainder of the demand claimed ; in which case the action will proceed as if brought originally for such remainder only.

If the plaintiff recovers no further sum in the action than the sum paid into Court, the plaintiff pays the defendant all costs incurred by him in the action after such payment, and such costs may be duly taxed, and recovered by the defendant by the same means as any other sum ordered to be paid by the Court.

When a defendant desires to put in an off-set, or to take advantage of the claim being outlawed, he must, at least six days before the trial, give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode if within the division ; or, if living without the division, deliver the same to the clerk of the Court in which the action is to be tried ; and in case of a set-off, he must also deliver two copies of the particulars thereof to the clerk ; one to be kept with the papers, and the other for the plaintiff.

No evidence of set-off can be given by the defendant, beyond that referred to in the particulars of set-off delivered.

If the defendant's demand, as proved, exceeds the plaintiff's, the plaintiff will be non-suited ; or if he so elects, the Court may give judgment for the defendant : in which latter case the set-off will be satisfied to the extent of the plaintiff's claim ; but the defendant may take proceedings to recover the balance.

Any of the parties to a suit may obtain from the

clerk a subpoena with or without a clause for the production of books, papers and writings, requiring any witness resident within the county, or served with the subpoena therein, to attend Court; and the clerk, when requested, will give copies of such subpoena.

Any number of names may be inserted in the subpoena, and service thereof may be made by any person who can read and write, and proof of the due service thereof, together with the tender or payment of expenses, may be made by affidavit sworn before any County Judge or the clerk of any Division Court, or before any person authorized to take affidavits in any of the Superior Courts; and proof of service may be received by the several Judges of the said Courts, either orally or by affidavit.

Every person served with a copy of a subpoena, either personally or at his usual place of abode, and to whom at the same time a tender of payment of his lawful expenses is made, who refuses or neglects, without sufficient cause, to obey the subpoena: and also every person in Court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence, is liable to such fine not exceeding eight dollars, as the Judge may impose, and may by verbal or written order of the Judge, be, in addition, imprisoned for any time not exceeding ten days; and such fine may be levied and collected with costs in the same manner as fines imposed on jurymen for non-attendance; and the whole or any part of such fine, in the discretion of the Judge, after

deducting the costs, will be applicable towards indemnifying the party injured by such refusal or neglect; and the remainder thereof, if any, will form part of the general fee fund.

Any party may obtain, from either of the Superior Courts of Common Law, a subpœna requiring the attendance at the Division Court, and at the time mentioned in such subpœna, of a witness residing or served with such subpœna in any part of Upper Canada; and the witness must obey such subpœna, provided the allowance for his expenses, according to the scale settled in the Superior Courts, be tendered to him at the time of service.

Under a recent act affecting the law of evidence, a party may give evidence on his own behalf.

In any suit for a debt not exceeding five pounds, the Judge, on being satisfied of their general correctness, may receive the plaintiff's books as testimony; or in case of a defence of set-off or of payment, so far as the same extends to five pounds, may receive the defendant's books, and may also receive as testimony the affidavit of any party or witness in the suit resident without the limits of his county.

All affidavits to be used in any Division Court may be sworn before the Judge, clerk or deputy clerk, or before any Judge, or commissioner for taking affidavits in any of the Superior Courts.

The Judge may openly in Court, and immediately after the hearing, pronounce his decision; but if he is not prepared to pronounce a decision *instanter*, he may postpone judgment and name a

subsequent day and hour for the delivery thereof in writing at the clerk's office; and the clerk will then read the decision to the parties or their agents, if present, and forthwith enter the judgment.

The Judge may order the times and the proportions in which any sum and costs recovered by judgment of the Court shall be paid, reference being had to the day on which the summons was served; and, at the request of the party entitled thereto, he may order the same to be paid into Court; and the Judge, upon the application of either party, within fourteen days after the trial, and upon good grounds being shown, may grant a new trial upon such terms as he thinks reasonable, and in the mean time may stay proceedings.

Except in cases where a new trial is granted, the issue of execution will not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same; but in case it at any time appears to the satisfaction of the Judge, by affidavit or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, ordered to be paid as aforesaid, the Judge may stay judgment or execution for such time and on such terms as he thinks fit.

The Judge may, in any case, with the consent of both parties to the suit, or of their agents, order the same, with or without other matters in dispute between such parties, being within the jurisdiction of the Court, to be referred to arbitration to such per-

son or persons, and in such manner and on such terms, as he thinks reasonable and just.

Such reference cannot be revoked by either party, without the consent of the Judge.

The award of the arbitrator is to be entered as the judgment in the cause, and will be as binding and effectual as if given by the Judge.

The Judge, on application to him within fourteen days after the entry of such award, may, if he thinks fit, set aside the award ; or may, with the consent of both parties, revoke the reference and order another reference to be made in the manner aforesaid.

Any of such arbitrators may administer an oath or affirmation to the parties, and to all other persons examined before such arbitrator.

The costs of any action or proceeding not otherwise provided for are to be paid by, or apportioned between, the parties in such manner as the Judge thinks fit ; and in cases where the plaintiff does not appear in person or by some person on his behalf, or appearing does not make proof of his demand to the satisfaction of the Judge, he may award to the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance, as he thinks proper, to be recovered as provided for in other cases under this act ; and in default of any special direction, the costs will abide the event of the action, and execution may issue for the recovery thereof in like manner as for any debt adjudged in the Court.

Any Bailiff or clerk, before or after suit com-

menced, may take a confession or acknowledgment of debt from any debtor or defendant desirous of executing the same. A confession taken before suit, must shew therein, or by statement annexed, the particulars of claim ; with the same fulness and certainty as in special summons. Application for judgment on confession must be made within three months ; otherwise execution will not issue without an affidavit that the debt remains due.

Either party may require a jury, in actions for damages, where the amount sought to be recovered exceeds ten dollars ; and in all other actions where such amount exceeds twenty dollars.

In case the plaintiff requires a jury to be summoned to try the action, he must give notice thereof in writing to the clerk at the time of entering his claim, and at the same time pay to the clerk the proper fees for the expenses of such jury ; and in case the defendant requires a jury, he must, within five days after the day of service of the summons on him, give to the clerk, or leave at his office, the like notice in writing, and at the same time pay the proper fees as aforesaid ; and thereupon, in either of such cases, a jury will be summoned.

Either of the parties to a cause is entitled to challenge three jurors.

Five jurors are empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence ; the verdict of every jury must be unanimous.

The judge may, if he think proper, have any disputed fact in a cause tried by a jury; and in any case, if the Judge is satisfied that a jury cannot agree, he may discharge them and adjourn the cause to the next Court: unless the parties consent to his pronouncing a judgment.

If there be cross judgments between the parties, the party only who has obtained judgment for the larger sum can have execution, and then only for the balance over the smaller judgment; and if both sums are equal, satisfaction will be entered upon both judgments.

In case the Judge makes an order for the payment of money, and in case of default of payment of the whole, or of any part thereof, the party in whose favor such order has been made may sue out execution against the goods and chattels of the party in default.

In case any person against whom a judgment has been entered up removes to another county without satisfying the judgment, the County Judge of the county to which such party has removed may, upon the production of a copy of the judgment duly certified by the Judge of the county in which the judgment has been entered, order an execution for the debt and costs awarded by the judgment to issue against such party.

If the party against whom an execution has been awarded pays or tenders to the clerk or Bailiff of the Division Court out of which the execution issued, before an actual sale of his goods and chattels, the debt and costs, or such part thereof as the plaintiff

agrees to accept in full of his debt, together with the fees to be levied, the execution will thereupon be superseded, and the goods be released and restored to such party.

The clerk, upon the application of any plaintiff or defendant (or his agent) having an unsatisfied judgment in his favor, will prepare a transcript of the entry of such judgment, and send the same to the clerk of any other Division Court in any other county, with a certificate at the foot thereof signed by the clerk who gives the same, and sealed with the seal of the Court of which he is clerk, and addressed to the clerk of the Court to whom it is intended to be delivered, and stating the amount unpaid upon such judgment and the date at which the same was recovered; and the clerk to whom such certificate is addressed, on the receipt of such transcript and certificate, will enter the transcript in a book to be kept in his office for the purpose, and the amount due on the judgment according to the certificate; and all proceedings may then be taken for the enforcing and collecting the judgment in such last-mentioned Division Court by the officers thereof that could be had or taken for the like purpose upon judgments recovered in any Division Court.

In case of the death of either or both of the parties to a judgment in any Division Court, the party in whose favor the judgment has been entered, or his personal representative in case of his death, may revive such judgment against the other party, or his personal representative in case of his death.

and may issue execution thereon in conformity with any rules which apply to such Division Court in that behalf.

In case an execution be returned *nulla bona*, and the sum remaining unsatisfied on the judgment amounts to the sum of forty dollars, the plaintiff or defendant may obtain a transcript of the judgment from the clerk, under his hand and sealed with the seal of the Court.

Upon filing such transcript in the office of the clerk of the County Court in the county where such judgment has been obtained, or in the county wherein the defendant's or plaintiff's lands are situate, the same will become a judgment of such County Court; and the clerk of such County Court will file the same and make the proper entries in his book on payment of fifty cents.

Upon such filing and entry, the plaintiff or defendant may, until the judgment has been fully paid and satisfied, pursue the same remedy for the recovery thereof or of the balance due thereon as if the judgment had been originally obtained in the County Court.

In case any Bailiff employed to levy an execution against goods and chattels, by neglect, connivance, or omission, loses the opportunity of so doing, then upon complaint of the party aggrieved, and upon proof by the oath of a credible witness of the fact alleged to the satisfaction of the Court, the Judge may order the bailiff to pay such damages as it appears the plaintiff has sustained, not exceeding the sum for which the execution issued; and the

Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal to satisfy the same, payment may be enforced by such means as are provided for enforcing judgments recovered in the Court.

Goods taken in execution are not to be sold until the expiration of eight days at least next after the seizure thereof, unless upon the request in writing under the hand of the party whose goods have been seized.

In case the Judge is satisfied upon application on oath made to him by the party in whose favor a judgment has been given, or by other testimony, that such party will be in danger of losing the amount of the judgment, if compelled to wait till the day appointed for the payment thereof before any execution can issue, such Judge may order an execution to issue at such time as he thinks fit.

Any party having an unsatisfied judgment may procure from the Court wherein the judgment has been obtained, or from any Division Court within the limits of which the defendant dwells or carries on his business, a judgment summons; and if the defendant appears in pursuance thereof, he may be examined upon oath touching his estate and effects and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectations he then had, and as to the property and means he still has of discharging the said debt, damages, or liability, and as to the disposal he has made of any property.

If the party so summoned (1) does not attend as required by the summons or allege a sufficient reason for not attending, or (2) if he attends and refuses to be sworn or to declare any of the things aforesaid; or (3) if he does not make answer touching the same to the satisfaction of the Judge; or (4) if it appears to the Judge, either by the examination of the party or by other evidence, that the party obtained credit from the plaintiff or incurred the debt or liability under false pretenses, or by means of fraud or breach of trust, or that he wilfully contracted the debt or liability without having had at the time a reasonable expectation of being able to pay or discharge the same, or has made or caused to be made any gift, delivery, or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them; or (5) if it appears to the satisfaction of the Judge that the party had, when summoned, or since the judgment was obtained against him has had, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments which the Court in which the judgment was obtained has ordered, and if he has refused or neglected to pay the same at the time ordered, whether before or after the return of the summons, the Judge may, if he thinks fit, order such party to be committed to the common goal of the county in which the party so summoned is resident, for any period not exceeding forty days.

The Judge, before whom such summons is heard, may rescind or alter any order for payment pre-

viously made against any defendant so summoned before him; and may make any further or other order, either for the payment of the whole of the debt or damages recovered and costs forthwith, or by any instalments, or in any other manner that he thinks reasonable and just.

In case the defendant has been personally served with the summons to appear, or personally appears at the trial, and judgment be given against him, the Judge at the trial may examine the defendant and the plaintiff, and any other person, touching the several things before mentioned, and may commit the defendant to prison, and make an order in like manner as in case the plaintiff had obtained a judgment summons.

No imprisonment under the act will extinguish the debt, or protect the defendant from being summoned anew and imprisoned for any new fraud or other default, or deprive the plaintiff of any right to take out execution.

We have stated in the foregoing pages the substance of the enactments of the Division Court Acts, so far as they apply to proceedings for the collection of an ordinary debt. We now proceed to notice the mode of action where the debtor has absconded or attempts to abscond.

If any person indebted in a sum not exceeding one hundred dollars, nor less than four dollars, for any debt or damages, or upon any judgment, (1) absconds from the province, leaving personal property liable to seizure under execution for debt in any county in Ontario, or (2) attempts to remove

such personal property either out of Ontario or from one county to another therein, or (3) keeps concealed in any county of Ontario to avoid service of process; any creditor on making an affidavit or affirmation in the form given at the end of this chapter, and filing same with the clerk, can obtain a warrant, directed to the Bailiff or to any constable of the county, commanding such Bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person within such county liable to seizure under execution for debt, or a sufficient portion thereof, to secure the sum mentioned in the warrant with the costs of the action.

The Judge, or a Justice of the Peace for the county, may take the affidavit and issue the warrant.

If the person against whom an attachment has issued, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out the attachment, and files in Court, a bond with good sureties, to be approved of by the Judge or clerk, in double the amount claimed, that the debtor will, in the event of the claim being proved and judgment recovered, pay the same, or the value of the property taken, to the claimant, or produce such property whenever required, the clerk may supersede the attachment, and the property attached will be restored.

If within one month from the seizure, the party against whom the attachment issued does not appear to give such bond, execution may issue as

soon as judgment has been obtained, and the property seized upon the attachment, or enough thereof to satisfy the judgment and costs, may be sold for the satisfaction thereof; or if the property has been previously sold as perishable, enough of the proceeds thereof may be applied to satisfy the judgment and costs.

If horses, cattle, sheep or other perishable goods, have been taken upon an attachment, the clerk of the Court may at the request of the plaintiff, sell the same at public auction to the highest bidder.

By the last act affecting the Division Courts, provision has been made for the attachment of debts, the effect of which may be shortly stated as follows: If a debtor against whom a judgment has been obtained in the Division Court is himself a creditor of some third party, the judgment creditor, who is called the primary creditor, may obtain an order attaching the debt due by such third party to the judgment debtor, who is called the primary debtor: and thereupon proceedings, called *garnishee proceedings*, may be taken to enforce payment by the third party to the primary creditor of the debt so due, or so much thereof as may be sufficient to satisfy the primary creditor's claim. The form of affidavit required will be found at the end of the chapter.

Besides the ordinary proceedings in a Division Court for the collection of a debt, proceedings may be taken to determine the right to property seized in execution. Such proceedings are termed interpleader. And if goods are illegally distrained for

rent ; or if goods are wrongfully detained from the owner, a replevin summons may be issued. Before the Bailiff will replevy the goods, he will require a bond to produce the goods replevied if judgment is given against the party replevying, or to pay the value thereof, and to pay all costs.

Special provisions are made in the rules with reference to proceedings by and against executors and administrators and other matters; but it would swell the limits of this work beyond due bounds if we were to notice them in detail : besides which it will always be found advisable to consult a professional man whenever the matter in dispute is at all out of the ordinary and common course.

We subjoin a few forms which will be found useful in the progress of a suit. They are the forms appended to the new Division Court rules.

*Undertaking by next friend of infant to be responsible for defendant's costs.*

In the            Division Court in the County of  
I, the undersigned E. F., being the next friend of A. B., who is an infant, and who is desirous of entering a suit in this Court against C. D., of, &c., hereby undertake to be responsible for the costs of the said C. D., in such cause, and that if the said A. B. fail to pay the said C. D. all such costs of such cause as the Court shall direct him to pay to the said C. D., I will forthwith pay the same to the Clerk of the Court.

Dated this        day of        18 .

(Signed) E. F.

Witness

*Affidavit for leave to sue a party residing in an adjoining division.*

In the            Division Court in the County of  
I, A. B., of           , yeoman (or I, E. F., of           ,  
yeoman, agent for A. B., of, &c,) make oath and  
say—

1st. That I have a cause of action against C. D.,  
of           , yeoman, who resides in the            Division  
of the County of            (*if by agent*, “That the said  
A. B. has a cause of action against C. D., of,  
yeoman.”)

2nd. That I (or the said A. B.) reside in the  
Division, in the County of           .

3rd. That the distance from my residence (or  
from the said A. B.’s residence) to the place, where  
this Court is held is about            miles, and to the  
place, where the Court is held in the            Division  
in the County of            is about            miles.

4th. That the distance from the said C. D.’s  
residence to the place where the Court is held in  
the Division where he resides, is about            miles,  
and to the place where this Court is held about  
miles.

5th. That the said Division and this Division ad-  
join each other, and that it will be more easy and  
inexpensive for the parties to have this cause tried  
in this Division than elsewhere.

Sworn, &c.

A. B. (or E. F.)

*Affidavit for leave to sue in a Division, adjoining one  
in which debtors reside, where there are several.*

In the            Division Court in the County of

I, A. B., of \_\_\_\_\_, yeoman, make oath and say,  
(*or* E. F. of \_\_\_\_\_, yeoman, agent for A. B., of, &c.,  
make oath and say):—

1st. That I have (*or* that the said A. B. has) a  
cause of action respectively against each of the  
debtors named in the first column of the Schedule,  
on this affidavit indorsed.

2nd. That the columns in the said Schedule,  
numbered respectively 1st, 2nd, 3rd, 4th, 5th, 6th  
and 7th, are truly and correctly filled up, according  
to the best of my knowledge and belief.

3rd. That the Divisions named in the second and  
third columns of the said Schedule, opposite each  
debtor's name, respectively adjoin each other.

4th. That it will be more easy and inexpensive  
for the parties to have the said causes, respectively,  
tried in this Division, than elsewhere.

Sworn, &c.

A. B. (*or* E. F.)

SCHEDULE REFERRED TO IN THE WITHIN AFFIDAVIT.

COLUMNS.

1st.	2nd	3rd.	4th.	5th.	6th.	7th.
Debtor's name, place of residence and addition.	Division in which suit is to be commenced.	Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which debtor resides.	Number of Miles from creditor's residence to where Court held in Division in which suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where debtor resides.
Jno. Doe, of Saltfleet, of the United Counties of Wentworth and Halton, yeoman.	Division No. 3 in the United Counties of Lincoln & Welland.	Division No. 1 in the United Counties of Wentworth and Halton.	23	1	5	17
Richard Roe, of Mono, County of Simcoe, Esquire.	Division No. 3 of the County of Simcoe.	Division No. 8.	28	11	18	4

*Affidavit for Attachment.*

*(If made after suit commenced, insert style of Court and cause.)*

I, A. B., of the            in the County of           , (or I, E. F., of, &c., agent for the said A. B., of, &c.,) make oath and say:—

1st. That C. D., of (or late of)            in the County of            is justly and truly indebted to me, (or to the said A. B.) in the sum of            dollars and            cents           , on a prommissory note for the payment of            dollars and            cents, made by the said C. D., payable to me (or the said A. B.) at a day now past;

Or for goods sold and delivered

Or for goods bargained and sold

Or for crops bargained and sold

Or for money lent

Or for money paid for the said C. D.

} by me (or the said A. B.)  
to the said C. D.;

Or for and in respect of my (or the said A. B.) having relinquished and given up to and in favor of the said C. D., at his request, the benefit and advantage of work done and materials found and provided and moneys expended by me (or the said A. B.) in and about the farming, sowing, cultivating and improving of certain land and premises;

Or for the use by the said C. D., by my permission (or by the permission of the said A. B.) of messuages and lands of me (or the said A. B.);

Or for the use by the said C. D. of pasture land of me (*or* the said A. B.) and the eatage of the grass and herbage thereon, by the permission of me (*or* the said A. B.);

Or for the wharfage and warehouse room of goods deposited, stowed and kept by me (*or* the said A. B.) in and upon a wharf, warehouse and premises of me (*or* the said A. B.) for the said C. D., at his request;

Or for horse-meat, stabling, care and attendance provided and bestowed by me (*or* the said A. B.) in feeding and keeping horses for the said C. D., at his request; *or* for work done and materials provided by me (*or* the said A. B.) for the said C. D., at his request;

Or for expenses necessarily incurred by me (*or* the said A. B.) in attending as a witness for the said C. D., at his request, to give evidence upon the trial of an action at law then depending in the

Court, wherein the said C. D. was plaintiff, and one E. F. defendant;

Or for money received by the said C. D. for my use (*or* for the use of the said A. B.);

Or for money found to be due from the said C. D. to me, (*or* to the said A. B.) on an account stated between them, (*or other cause of action, stating the same in ordinary and concise language.*)

2nd. I further say that I have good reason to believe and do verily believe that\* the said C. D. hath absconded from that part of the Dominion of Canada which heretofore constituted the Province of Canada, leaving personal property liable to

seizure under execution for debt in the County of  
in this Province.\*

(Or instead of matter between the asterisks, the said C. D. hath attempted to remove his personal property, liable to seizure under execution for debt, out of this Province; or the said C. D. hath attempted to remove his personal property liable to seizure under execution for debt from the County of \_\_\_\_\_ to the County of \_\_\_\_\_, in this Province; or the said C. D. keeps concealed in the County of \_\_\_\_\_ in this Province to avoid service of process) with intent and design to defraud me (or the said A. B.) of my (or his) said debt.

3rd. That this affidavit is not made by me nor the process thereon to be issued from any vexatious or malicious motive whatever.

Sworn, &c.

A. B.

*Replevin.*

*Affidavit to obtain Judge's order for writ of replevin.*

In the \_\_\_\_\_ Division Court in the County of \_\_\_\_\_ County of \_\_\_\_\_, to wit: I A. B., of \_\_\_\_\_, make oath and say:

1st. That I am the owner of (*describe property fully*) at present in the possession of C. D.; or that I am entitled to the immediate possession of (*describe property*), as lessee, (bailee, or agent,) of E. F., the owner thereof (or as trustee for E. F.) (*or as the case may be*), at present in the possession of C. D.

2nd. That the said goods, chattels, and personal

property are of the value of        dollars and not exceeding \$40.

3rd. That on or about the        day of        , the said goods, chattels, and personal property, were lent to the said C. D., for a period which has expired, and that although the said goods, chattels and personal property have been demanded from the said C. D., he wrongfully withholds and detains the same from me, the said A. B.; *or*, that on or about the        day of        , the said C. D., fraudulently obtained possession of the said goods, chattels and personal property, by falsely representing that (*here state the false representation*), and now wrongfully withholds and detains the same from me; *or*, that the said goods, chattels and personal property were on the        day of        , last, distrained or taken by the said C. D., under color of a distress for rent, alleged to be due by me, to one E. F., when in fact no rent was due by me to the said E. F., (*or as the case may be, setting out the facts of the wrongful taking or detention complained of with certainty and precision.*)

4th. That the said C. D. resides (*or carries on business, at        , within the limits of the* Division Court in the County of        , (*or that the said goods, chattels and personal property were distrained*), (*or taken and detained*), (*or detained*), at        , within the limits of the        Division Court of the County of        .

Sworn, &c.

A. B.

*Affidavit to obtain writ without order in first instance.*

*[The first four sections may be as above and the following must be stated in addition :]*

5th. That the said personal property was wrongfully taken, (or fraudulently got) out of my possession within two calendar months before the making of this affidavit, that is to say, on the            day of            last.

6th. I am advised and believe that I am entitled to an order for the writ of replevin now applied for, and I have good reason to apprehend, and do apprehend, that unless the said writ is issued without waiting for an order, the delay will materially prejudice my just rights in respect to the said property.

*[Or if the property was distrained for rent or damage feasant, then the statement given in the last specific alternative under the 3rd clause of the above form will be sufficient to obtain writ without order.]*

*Claim in Replevin.*

In the            Division Court in the County of            .  
 A. B., of            , states that C. D., of            , did on or about the            day of            , A.D. 18            , take and unjustly detain (or detain, as the case may be), and still doth detain his goods, chattels and personal property, that is to say (*here set out the description of property*) which the said A. B. alleges to be of the value of            dollars, whereby he hath sustained damages ; and the said A. B. claims the

said property with damages in this behalf as his just remedy.

*Particulars in cases of contract.*

A. B., of , claims of C. D., of , the sum of \$ , the amount of the following account, viz., (or "the amount of the note, a copy of which is under written,") together with the interest thereon, [or, for that the said C. D. promised (*here state shortly the promise*) which undertaking the said C. D. hath not performed, or, for that the said C. D. by deed under his seal dated the day of , A. D. 18 , covenanted to, &c., and that the said C. D., hath broken said covenant whereby the said A. B. hath sustained damages to the amount aforesaid; or for money agreed by the said C. D. to be paid by the said A. B., together with a horse of the said C. D., in exchange for a horse of the said A. B., delivered by the said A. B. to the said C. D.; or for that the said C. D., by warranting a horse to be then sound and quiet to ride, sold the said horse to the said A. B., yet the said horse was not then sound and quiet to ride; or for that the said C. D., in consideration that the said A. B. would supply E. F. with goods on credit promised the said A. B., that he, the said C. D. would be answerable to the said A. B. for the same, that the said C. D. did accordingly supply the said E. F. with goods to the price of \$ and upwards, on credit, that such credit has expired, yet neither the said E. F. nor the said C. D. has as yet paid for the said goods; or for that the

said A. B. let to the said C. D. a house for seven years, to hold from the            day of            , A. D.            , at \$            a year, payable quarterly, of which rent            quarters are due and unpaid.

*(The above forms are given merely as examples of statements of causes of action, and the claim must show such further particulars as the facts of the case require.)*

*Particulars in cases of Tort.*

A. B. of            , states that C. D. of            , did, on or about the            day of            , A.D. 18            , at the Township of            , unlawfully [take and convert one cow and one calf, the property of the said A. B. ; or break and injure a waggon of the said A. B. ; or falsely represent L. O. as fit to be trusted, the said C. D. at the same time knowing that the said L. O. was insolvent, whereby the said A. B. was induced to give him credit: or assault and beat the said A. B. (*or as the case may be, stating the Tort sued for in concise language*) ;] The said A. B. hath sustained thereby damages to the amount of            , and claims the same of the said C. D.

A. B.

*Landlord's claim for rent.*

Whereas, I have been informed that you have seized the goods of C. D., of            , on his premises at            , to satisfy a certain judgment of the Division Court in            , against the said C. D., at

the suit of A. B. ; I hereby give you notice that I am the landlord of the said premises, and that I claim        for rent now in arrear, being for one quarter (*or as the case may be,*) and I require you to pay the same to me before you apply the proceeds of the sale of said goods or any part thereof to satisfy the said judgment.

E. F.

Dated, &c.                      *Landlord of the said Tenant.*

To V. W.,  
    *Bailiff of,        &c.*

*Particulars of claim on Interpleader.*

In the            Division Court in the County of

BETWEEN A—— B——, *Plaintiff.*

AND

C—— D——, *Defendant.*

E—— F——, *Claimant.*

To whom it may concern—

E. F., of       , claims as his property the following goods and chattels (*or moneys, &c.*) seized and taken in execution, (*or attached*) as it is alleged, namely, (*specify the goods and chattels, or chattels or moneys, &c., claimed*) and the grounds of claim are (*set forth in ordinary language the particulars on which the claim is grounded, as how required, from whom, when, and the consideration paid or*

to be paid, and when) and this the said E. F. will maintain and prove.

E. F.

Dated this      day of      , 18      .

N. B.—*If any action for the seizure has been commenced, state in what Court, and how the action stands.*

*Application for Judgment Summons.*

To X. Y., Clerk of the      Division in the County of      .

Be pleased to summon      , of, &c., to answer according to the Statute in that behalf, touching the debt due me by the judgment of the Court of the      Division Court of the County of      , on my behalf, a minute whereof is hereunto annexed.

A. B., *Plaintiff.*

*Affidavit for order to garnish debt.*

In the      Division Court in the County of      .

BETWEEN A——— B———, *Plaintiff.*

AND

C——— D———, *Defendant.*

I, A. B., of the      of      , in the County of      , the Plaintiff in the suit, (*if the affidavit be made by the Plaintiff's attorney or agent make the necessary alteration*) make oath and say, that

judgment was recovered in this case against the above named Defendant on the            day of A. D. 18    , for the sum of \$            debt and costs, (or according to the judgment,) and that the same remains wholly unsatisfied, (or that \$            part thereof yet remains unsatisfied.)

That I have reason to believe, and do believe, that E. F., residing at            within this Province is, (or if the person indebted to the Defendant be not known, say "that one or more persons residing in this Province, whom I am unable to name, are") indebted to the Defendant in the sum of \$            , (or if the amount be unknown say "in an amount which I am unable to name,") for goods sold and delivered by the Defendant to the said E. F., (or otherwise according to the nature of the debt sought to be garnished.)

Sworn before me at the  
of            , in the County  
of this    day of            ,  
A.D. 18    .  
   X. Y.,  
   Clerk. }

A. B.,

*Defendant's notices to the Plaintiff or Clerk.*

In the    Division Court in the County of

BETWEEN A——— B———, *Plaintiff.*

AND

C——— D———, *Defendant.*

Take notice that I will admit, on the trial, the first, second and third items of the Plaintiff's particulars to be correct [*or the signing and endorsement of the promissory note sued upon (or as the case may be,)*] *or*

Take notice that I dispute the claim of the Plaintiff *in full (or here specify all or any of the grounds of defence.)*

Dated the                    day of                    , A. D. 18

Yours, &c.,

C. D.,

*Defendant.*

To the Plaintiff                    (*or to the Clerk of the said Court.*)

*The several grounds of defence may be stated as follows where they meet the circumstances :*

1. I dispute the following items of your claim, viz., (*here specify the items*), and admit the residue.

Or 2. I will on the trial claim a set-off against your demand, and the particulars thereof are hereunto annexed.

Or 3. I will on the trial insist that your claim is barred by the Statute of Limitations (*or other statutory defence.*)

Or 4. I will on the trial insist that I am discharged from payment of your claim by the provisions of the Insolvent Act.

Or 5. I will admit on the trial the 1st, 9th, 11th (*or other*) items of your particulars of account to be correct.

Or 6. I will admit on the trial the signing [*or endorsement*] of the promissory note [*or bill of ex-*

change] sued upon, (*or as the case may be*), and deny the residue of your claim.

Or 7. I will on the trial insist that you are not a duly certificated Attorney or Solicitor.

Or 8. I will insist upon the defence at the trial that the note (*or bill*) you have sued upon, and which forms (part of) the particulars of your claim, was not duly stamped (*or that the stamp was not duly cancelled according to law.*)

Or 9. I will insist as a defence upon the trial that you have not given the proper notice of action before suit to which I am entitled as a Justice of the Peace (*or Peace officer*) under Con. Stat. of U. C., cap. 126, *or as a Bailiff* of the Division Court under the 193 sec. of the Division Courts Act.

*Affirmation by Quakers, &c., and jurat thereto.*

(Court and style of cause)

I, A. B., of           , &c , do solemnly, sincerely and truly declare and affirm that I am one of the Society called Quakers (*or Menonists, Tunkers, Unitas Fratrum or Moravians, as the case may be*), and I do also solemnly, sincerely and truly declare and affirm as follows, that is to say (*state the facts*).

Solemnly affirmed at	}	A. B.
, in the county of		
, on           , before		
me.		

X. Y., Clerk, &c.

*Or as the case may be.*

*Affidavit of Disbursements to several witnesses.*

In the            Division Court in the County of            ,

BETWEEN A—— B——, *Plaintiff*;

AND

C—— D——, *Defendant*.

I, A. B., of            , the above Plaintiff (*or* C. D., the above Defendant, *or* E. F. agent for the above Plaintiff *or* Defendant) make oath and say :—

1st. That the several persons whose names are mentioned in the first column of the schedule at the foot hereof were necessary and material witnesses on my behalf (*or* on behalf of the said Plaintiff *or* Defendant) and attended at the sittings of this Court on the            day of            as witnesses on my behalf (*or* on behalf of the said Defendant *or* Plaintiff) and that they did not attend as witnesses in any other cause; (*if otherwise state the facts.*)

2nd. That the said witnesses necessarily travelled in going to the said Court, the number of miles respectively mentioned in figures in the second column of the said schedule opposite to the names of each of the said witnesses respectively.

3rd. That the several and respective sums of money mentioned in figures in the third column of the said schedule opposite to the names of the said witnesses, respectively, have been paid by me (*or* by the Plaintiff *or* Defendant) to the said witnesses respectively as in the said schedule set forth for



above named Defendant for \$ , debt, and \$ , costs of suit.

2nd. No part of said moneys so recovered has been paid or satisfied, and the said judgment remains in full force (*or* "the sum of , part only of the said moneys has been paid, and the judgment remains in full force as to the residue of the said moneys so recovered thereby."

3rd. I (*or* "the said Plaintiff") am entitled to have execution of the said judgment, and to issue execution thereupon (for the sum of \$ ) as I verily believe.

Sworn, &c.

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## CHAPTER XI.

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### INSOLVENCY.

But little can be said on the subject of insolvency in a work of this kind. To treat of it efficiently would swell the limits of the present volume far beyond due bounds. Our remarks, therefore, under this head will necessarily be brief and very general.

And first, we observe that the present "Act respecting Insolvency," (Dom. Stat. 32 & 33 Vic., cap. 16,) is restricted in its operation and provisions to "Traders" only. The common definition of a "Trader" is, "one engaged in the business of buy-

ing and selling." Until authoritative decisions have been pronounced by our Courts on the question, who are and who are not traders? it would be somewhat presumptuous in a popular treatise, such as this is, to attempt, with any pretensions to accuracy, to specify the features which distinguish the trader from the non-trader.

According to the Imperial Statutes relating to bankruptcy, the following are some of the parties who are traders:—Auctioneers, bankers, brokers, brickmakers, builders, carpenters, cattle dealers, coach proprietors, cow keepers, dyers, keepers of inns, taverns or hotels, lime burners, livery stable keepers, market gardeners, millers, printers, ship owners, warehousemen and wharfingers. It is presumed that any person who engages in buying and selling *generally*, so as to supply any one who will come to buy, will be held a trader.

Under the act, then, any trader debtor who is unable to meet his engagements, and is desirous of making an assignment of his estate and effects for the benefit of his creditors, may make such assignment to any official assignee resident within the county or place where the insolvent has his domicile or place of abode; or if there be no official assignee there, then to some such assignee in the county or place nearest thereto. The official assignee to whom such assignment is made, is called the "interim assignee." Official assignees are nominated and appointed by the various boards of trade throughout the Province; and in places where no such boards exist; or where, although

existing, they fail to appoint, the County Judge may nominate them.

As soon as the assignment to the interim assignee has been made, a meeting of creditors must be called. This is done by advertisement for two weeks in the "Official Gazette" of the province; and in every issue, during two weeks, of some one newspaper published at or nearest to the insolvent's chief place of business. Notices of such meeting must also be mailed to each creditor, postage paid, at least ten days before, accompanied by a list of the creditors so far as known.

Previous to the meeting the assignee must prepare for exhibition thereat, statements showing the position of the insolvent's affairs, and containing the particulars required by the act: together with a statement of the assets.

The insolvent must assist in the preparation of these statements, and must attend the meeting in order that he may answer any questions that may be put to him touching his affairs. At the meeting he must also file a declaration under oath stating whether or no the assignee's statements are correct, and if incorrect, in what particulars.

At the meeting the creditors who have proved their claims may appoint an assignee, who will thereupon take the place of the interim assignee, and to whom the estate and effects of the insolvent will thenceforth stand assigned. If no assignee is appointed, or being appointed, refuses to act, the interim assignee will continue. If an interim assignee fails or neglects to execute an assignment within

twenty-four hours after nomination of any assignee, he may be imprisoned for a period not exceeding one month.

An assignment vests in the interim assignee, in the first instance, and afterwards in the creditor's assignee, if one be appointed, the books, vouchers, accounts, letters and papers, relating to the Insolvent's business, and all moneys and negotiable papers, stocks, bonds and other securities, as well as the real estate of the insolvent, and all his interest therein, and all his personal estate, debts, assets and effects, which he has or may become entitled to at any time before his discharge: excepting only such as are exempt from seizure under execution. Pledgees of, and parties having liens on, any of the insolvent's chattels, are entitled to a preferential claim thereon.

Where an insolvent possesses real estate, the assignment to the assignee should be registered in the usual way.

The foregoing observations apply to *voluntary* assignments. In the following cases a trader is declared to be insolvent and *compulsory* liquidation may be enforced:

1. If a trader debtor absconds, or is immediately about to abscond, with intent to defraud, defeat or delay any creditor, or to avoid being arrested, or served with legal process, or being absent, remains so with such intent, or conceals himself with such intent.

2. If he secretes or is immediately about to secrete his estate and effects with such intent.

3. If he assigns, removes or disposes of any of his property ; or is about to do so : with such intent.

4. If with such intent he procures his effects to be taken in execution for a sum exceeding \$200.

5. If he has been imprisoned or on the gaol limits for more than 30 days in a civil action for more than \$200 ; or if he has escaped.

6. If he wilfully refuses or neglects to appear on any rule or order to be examined as to his debts.

7. If he wilfully refuses or neglects to obey or comply with any rule or order for payment of debts.

8. If he wilfully neglects or refuses to obey or comply with an order of the Court of Chancery for payment of money.

9. If he has made any general assignment for benefit of creditors otherwise than under the act ; or being unable to meet his liabilities in full, makes any sale or conveyance of his assets without the consent of his creditors, or without satisfying their claims.

10. Or if he permits any execution to remain unsatisfied till within four days of time fixed for sale, or fifteen days after seizure.

In case any creditor, by affidavit of himself or other person, shows, to the satisfaction of the Judge, that he is a creditor for not less than \$200, and also shows, by affidavits of two credible persons, such facts and circumstances as satisfy such Judge that the debtor is insolvent as above mentioned, the Judge may make an order for an attachment to issue, under which the debtor's effects will be seized and handed over to an official assignee, who

is called the "guardian." Application may be made by the debtor to set aside the attachment, if he can show that the creditor has not a sufficient claim, or that he (the debtor) is not insolvent within the meaning of the act. If the attachment is not set aside, the Judge will order a meeting of creditors to be called, and they will appoint an assignee, who will thereupon take possession of the insolvent's effects as in the case of voluntary assignments.

If a debtor ceases to meet his liabilities generally, as they become due, one or more creditors for sums exceeding in the aggregate \$500, may require him to make an assignment; and if he fails to do so, they may proceed to compulsory liquidation.

Immediately upon his appointment the assignee gives notice thereof by advertisement and notice mailed to the creditors calling upon them to file their claims with him within one month. The assignee will then proceed to realise the insolvent's estate, and divide the proceeds amongst the creditors. Clerks and servants of the insolvent are entitled to be paid their wages in full, not exceeding four months arrears; but such amount may be increased by the creditors if they please.

An insolvent may procure his discharge at any time by consent of a majority of his creditors for sums of \$100 and upwards, and who represent at least three-fourths in value of the liabilities. This is effected by deed of composition and discharge, which, upon being confirmed by an order of the

Judge, will operate as a final discharge. If the insolvent cannot or does not procure such consent, he may at the expiration of one year from the date of the assignment or attachment, apply to the Judge for his discharge.

The foregoing is a very general outline of the Insolvent act of 1869, which occupies fifty-five pages of the Statutes, and contains one hundred and fifty-five sections. It is obvious, therefore, that any attempt at greater particularity and detail would be incompatible with the design of this work. The principal object of this chapter was simply to furnish creditors with the means of proving their own claims without the intervention of a solicitor. As for the insolvent, he must necessarily put himself in communication with an official assignee, who will instruct him as to the mode of procedure; although he will find it, in most cases, better at once to secure the services of a professional man.

We subjoin the form in which a creditor's claim should be presented to the assignee for proof.

*Insolvent Act of 1869.*

In the matter of A—— B—— *an Insolvent,*

AND

C—— D—— *Claimant.*

I, C. D., of, &c., (*stating name in full and place of residence and occupation*), being duly sworn in depose and say:

1. I am the claimant, (or the duly authorized agent of the claimant in this behalf, and have a personal knowledge of the matter hereinafter deposed to, or a member of the firm of , claimants in the matter, and the said firm is composed of myself and E. F., of .)

2. The insolvent is indebted to me (or to the claimant) in the sum of \$ for (here state the nature and particulars of the claim for which purpose reference may also be made to accounts or documents annexed).

3. I (or the claimant) hold no security for the claim, [or I, (or the claimant) hold the following, and no other, security for the claim, namely; (state here the particulars of the security), To the best of my knowledge and belief, the security is of the value of dollars.]

Sworn before me at }  
 , this day of , }  
 18 . . . }

And I have signed  
 C. D.

## CHAPTER XII.

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### LANDLORD AND TENANT.

The relation of landlord and tenant is that which subsists between the owner of houses or lands, and the person to whom he grants the use of them. It may be created by contract in writing, as lease, or agreement for a lease ; or by verbal agreement as is usually the case in a letting from year to year. The owner, who is called the landlord or lessor, grants the possession and use of the property to the tenant or lessee for a specified time at a stipulated sum denominated rent.

A lease may be made for the life either of the landlord or the tenant, or it may be made for any number of years, or it may be at will,—that is, determinable at any moment at the will either of the lessor or lessee. An agreement for a lease must be in writing, as required by the Statute of Frauds (29 Car. II., c. 3, s. 4), before referred to ; and all leases exceeding three years in duration must now be by deed ; and if for more than seven years they must also be registered. A lease in writing, *not under seal*, for a term exceeding three years in duration will amount only to an *agreement* for a lease for the term specified.

A letting and hiring of land for a year or any less period may arise, by implication of law, from the relative situations of the parties and the silent language of their actions and conduct, as well as by express words and stipulations. Whenever the house or land of one man has been occupied and used by another, the presumption is that the use and occupation are to be paid for, and the landlord is entitled to maintain an action to recover a reasonable hire and reward for the use of the land, unless the tenant can show that he entered into possession of the property under circumstances fairly leading to an opposite conclusion. A landlord, on the other hand, who has permitted a tenant to occupy property, and has received rent from the latter for such use and occupation, will be bound by his own acts, and cannot afterwards treat such tenant as a trespasser, and turn him out of possession, without a proper notice to quit.

Leases may be made to commence from a day that is passed, or from a day to come, as well as from the day of the making of the lease.

If a tenant holds over after the expiration of his lease; and the landlord receives from him rent which has accrued due subsequently to the expiration of the lease, he becomes a tenant from year to year upon the terms of the original demise.

A tenancy from year to year is ordinarily implied from the payment and acceptance of rent; but this *prima facie* presumption may, of course, be rebutted by showing that the money was paid or received by mistake.

If an annual rent is reserved, the holding is from year to year, although the lease or agreement provides that the tenant shall quit at a quarter's notice. Such a contract differs only from the usual letting from year to year in the agreement by the parties to reduce the ordinary six months' notice to quit to three months. But if it is expressly agreed that the tenant is always to be subject to quit at six months' notice, given him at any time, this constitutes a *half-yearly* tenancy, and the lessee will be presumed to hold from six months to six months from the time that he entered as tenant. If he is to hold till one of the parties shall give to the other three month's notice to quit at the expiration of such notice, the tenancy will be a quarterly tenancy.

The landlord's remedy for the non-payment of rent is either by action or distress. Where the rent reserved is a fixed ascertained rent, the landlord may distrain. But if no certain ascertained rent has been reserved or covenanted or agreed to be paid, there is no right to distrain: the landlord can only recover a fair compensation for the use and occupation of the premises in an action at law. It is essential to the lawful exercise of the power of distress that the distrainor be the *immediate* landlord or owner of the estate. If after the making of the lease the landlord has sold and transferred his estate or interest to some third party, he has no right or power to distrain. A landlord cannot distrain twice for the same rent, unless the distress has been withdrawn at the instance or

request of the tenant, or unless there has been some mistake as to the value of the things taken.

When an annual rent is reserved, it may be made payable monthly or quarterly, or at any period of time that the parties may think fit to appoint, whatever may be the duration of the term of hiring. It may also be made payable in advance, so as to entitle the landlord to distrain for it at the commencement, instead of at the end, of each quarter. There may be a yearly tenancy with an annual rent, payable quarterly; or there may be a quarterly tenancy with a quarterly rent, payable weekly or monthly; or at any successive periods of time.

A distress by the landlord after tender of the rent to him or to his bailiff, authorized to distrain, without a fresh demand on the tenant, is illegal; and if the landlord distrains before the rent has become due, the tenant may resist the entry and seizure by force, and, after a seizure has been made, he may rescue his goods at any time before they have been impounded; but when once the goods have been impounded they are in the custody of the law, and the tenant cannot then break pound and retake them. As soon as the distrainer has made out and delivered to the tenant, or has left upon the premises, an inventory of the goods he has taken, they are said to be impounded.

Formerly the landlord could not have distrained *after* the expiration of the term for rent that accrued due *before* the determination thereof; but now, by the statute 8 Ann. c. 14, ss. 6, 7, landlords are

authorized to distrain, provided the distress be made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due.

The tenant has the whole day on which the rent becomes due to pay such rent ; and a distress, therefore, cannot be made until the day after the day appointed for the payment of the rent. Unless the rent is made payable at some particular *specified* place, the tenant is bound to seek out the landlord and pay or tender him the money. A landlord or his bailiff, cannot lawfully break open gates or break down inclosures, or force open the outer door of any dwelling-house or building, in order to make a distress ; but he may draw a staple or undo fastenings which are ordinarily opened from the outside of the house. A distress cannot be made in the night, or after sunset, or before sunrise, nor upon land which does not form part or parcel of the demised premises, and from which the rent reserved does not issue, unless the goods of the tenant have been removed thereto from the demised premises within sight of the distrainer coming to distrain, or unless they have been fraudulently removed thereto by the tenant to avoid distress. If the tenant fraudulently or clandestinely removes goods and chattels from the demised premises, to prevent the landlord from distraining them for rent in arrear, the landlord may, within thirty days after such removal, take and seize them wherever they may be found, unless they have in the meantime been sold

*bona fide* to some person ignorant of the fraud. But if it be necessary to break open any door in order to seize such goods, the landlord must call a constable to his assistance, and must force the door in his presence, and in the daytime. If it appears that rent was due at the time of such removal, and that the goods were taken away on or after the day the rent became due, for the purpose of putting them out of the reach of a distress, the removal is fraudulent. It is not necessary that the rent should be in *arrear* and a right to distrain exist, at the time of the removal. Therefore, if the goods are removed on quarter-day, they may be followed, though the rent is not in arrear, and there is no right to distrain, until the day after. If there are sufficient goods on the demised premises, independently of the goods removed, to satisfy the rent, the removal is not fraudulent, and the landlord cannot follow them.

Goods in the custody of a Sheriff's officer or Bailiff, having been seized under an execution or attachment, cannot be distrained; but before such goods can be removed the Sheriff or Bailiff must pay to the landlord one year's rent, or the rent for any less period that may happen to be due at such seizure. And by the Division Courts Act it is enacted that when goods are taken in execution under the process of any Division Court; the landlord shall be entitled by writing under his hand, or under the hand of his agent, stating the terms of holding, and the rent payable for the same, and delivered to the Bailiff making the levy, to claim any rent in arrear then due to him not exceeding

the rent of four weeks, where the tenement has been let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent accruing due in one year.

Property of third parties on the demised premises in the possession and use of the owners, and not in the possession or under the charge of the tenant, cannot be distrained for rent; nor can the goods and chattels of third parties placed upon the demised premises in the possession and under the care of the tenant in the ordinary course of trade; nor the goods and chattels of travellers in hotels. Fixtures, implements of trade and husbandry, and beasts of the plough are privileged from distress so long as they are in actual use, but not afterwards, or unless there are other goods on the demised premises sufficient to satisfy the rent without them.

It is not necessary, in order to make a distress for rent, that the landlord or his agent should take corporal possession of the things intended to be distrained. It is sufficient if the landlord in person, or by deputy, enters upon the demised premises and announces the distress to the tenant or his servants, or to the persons in actual occupation of the property. When the landlord distrains by an agent or bailiff, he should give his agent authority in writing for the purpose. This authority is called a *Distress Warrant*.

As soon as the distress is made, whether by the landlord or his bailiff, an inventory of the goods

distraigned should be made and served upon the tenant, together with the notice of the distress. The notice of the distress should set forth the amount of rent distraigned for, and the particular things taken. If the tenant, after he has received notice, neglects for five days—to be computed inclusive of the last day and exclusive of the day of seizure—to pay the rent or replevy the goods, the landlord may sell them for the best price that can be got for them, and apply the purchase-money in discharge of the rent and the costs of the distress and sale, paying the overplus, if any, to the tenant.

The costs of distresses under eighty dollars are regulated by Con. Stat. U. C., c. 123, and are as follows :—

Levying distress.....	\$1 00
Man keeping possession, per diem.....	75
Appraisement, whether by one appraiser or more, two cents in the dollar on the value of the goods.	
If any printed advertisement, not to exceed in all.....	1 00
Catalogues, sale, and commission, and delivery of goods, five cents in the dollar on the net produce of the sale.	

Every broker or other person who makes any distress is bound to give a copy of his charges, and of all the costs and charges of the distress, signed by him, to the person on whose goods and chattels any distress shall have been levied, although the rent demanded may exceed the sum of eighty dollars. When the rent distraigned for exceeds eighty dollars, the costs are not limited to any particular amount or fixed scale of charge ; but they must be fair and reasonable.

When, in consequence of the rent not being *fixed* and *ascertained*, the landlord has no right to distrain, his only remedy is by action at law, in which he can recover from the tenant a proper compensation for the use and occupation of the premises.

With regard to repairs, it may be remarked generally, that in the absence of an express covenant or agreement to repair, there results from the demise and acceptance of the lease by the tenant an implied covenant or promise to use the property demised in a tenantlike and proper manner; to take reasonable care of it, and restore it, at the expiration of the term for which it is hired, in the same state and condition as it was in when demised, subject only to the deterioration produced by ordinary wear and tear, and the reasonable use of it for the purpose for which it was known to be required.

When a lease is determinable on a certain event or at a particular period, no notice to quit is necessary, because both parties are equally apprized of the determination of the term. If, therefore, a lease be granted for a term of years, or for one year only, no notice to quit is necessary at the end of the term. In the case of a tenancy at will, no notice to quit is necessary, but there must be a formal demand of possession, or notice of the determination of the will, on the part of the landlord, before any action of ejectment can be brought. The tenant at will, too, in order to discharge himself from his liability for rent, or for a reasonable compensation for use and occupation, must give notice to the landlord of the fact of his abandonment of the possession, and

of his election to rescind the contract and put an end to the tenancy. If the holding is a general holding for a year, and onwards from year to year so long as both parties please, a half-year's notice must be given on either side in order to determine the yearly hiring and tenancy; and this notice may be given in the first as well as any subsequent year of the tenancy. The notice may be in writing or by word of mouth. In the case of a yearly tenancy it must be a six months' notice, to expire at that period of the year corresponding with the period at which the tenancy commenced.

It is better that a notice to quit should be served upon the landlord or tenant (as the case may be) personally; but it is sufficient if served upon the wife or servant at the dwelling-house of the party to be served.

A landlord may recover possession of his property by ejectment or proceedings under the "Act respecting Overholding Tenants:" in either case it will be necessary for him to employ an attorney.

The following forms may be found useful:—

*Lease of House.*

This Indenture made the        day of        , 18 .  
Between A. B., of, &c., of the first part, and C. D.,  
of, &c., of the second part, Witnesseth, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said party of the second part, his executors, administrators and assigns, to be paid, observed and

performed, He, the said party of the first part, hath demised and leased, and by these presents doth demise and lease, unto the said party of the second part, his executors, administrators and assigns, all that messuage or tenement situate, lying and being, &c., (*here describe the premises*), Together with all houses, out-houses, yards and other appurtenances thereto belonging, or usually known as part or parcel thereof, or as belonging thereto: To have and to hold the same for and during the term of years, to be computed from the day of 18 , and from thenceforth next ensuing, and fully to be complete and ended.

Yielding and paying therefor yearly and every year during the said term hereby granted unto the said party of the first part, his heirs, executors, administrators or assigns, the sum of \$ , to be payable quarterly on the following days and times, that is to say, (*here state the days of payment*), the first of such payments to become due and be made on the day of next.

Provided always, and these presents are upon this express condition, that if the said yearly rent, hereby reserved, or any part thereof, shall at any time remain behind or unpaid for the space of twenty-one days next over or after any of the days on which the same shall become due and payable, then, and in every such case, it shall be lawful for the said party of the first part, his heirs, executors, administrators or assigns, into and upon the said premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, re-

possess and enjoy, as if these presents had never been executed.

And the said party of the second part, for himself, his heirs, executors, administrators and assigns, doth hereby covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, in manner following, that is to say :

That he, the said party of the second part, his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, to the said party of the first part, his heirs, executors, administrators or assigns, the said yearly rent hereby reserved at the times and in manner hereinbefore appointed for payment thereof.

And also shall and will, from time to time, and at all times during the said term, keep in good and sufficient repair the said premises hereby demised, (reasonable wear and tear and accident by fire excepted), and the same so kept in repair shall and will, at the end, expiration or other sooner determination of the the said term, peaceably and quietly yield and deliver up to the said party of the first part, his heirs, executors, administrators or assigns.

And also shall and will well and truly pay, or cause to be paid, all taxes, rates, levies, duties charges, assessments and impositions whatsoever, whether parliamentary, local, or otherwise, which now are, or which during the continuance of this demise shall at any time be, rated, taxed or imposed on, or in respect of the said demised premises, or any part thereof.

And also that it shall be lawful for the said party of the first part, his heirs, executors, administrators, and assigns, and their agents respectively, either alone or with workmen or others, from time to time at all reasonable times in the daytime, during the said term, to enter upon the said demised premises, and every part thereof, to view and examine the state and condition thereof; and in case any want of reparation or amendment be found on any such examination, the said party of the second part, his executors, administrators or assigns, shall and will from time to time cause the same to be well and sufficiently repaired, amended, and made good, within one month next after notice in writing shall have been given to them or left at or upon the said demised premises for that purpose. And if the said party of the second part, his executors, administrators or assigns, fail in making the necessary repairs in manner hereinbefore described, that it shall be lawful for the said party of the first part, his heirs, executors, administrators and assigns, and their agents, to enter into and upon the said hereby demised premises, and have the same repaired in a proper manner, and to render the account for such repairs to the said party of the second part, his executors, administrators and assigns, and demand payment for the same, and if default is made, to sue for the same in any Court of Law having jurisdiction over the same.

And the said party of the second part, his executors, administrators or assigns, shall not, nor will at any time or times during the continuance of this

demise, sell, assign, let or otherwise part with this present lease, or the said premises hereby demised, or any part thereof, to any person or persons whomsoever, for the whole or any part of the said term, nor alter, change or remove any part of the said premises, yards or offices, externally or internally, without the licence and consent in writing of the said party of the first part, his heirs, executors, administrators or assigns, from time to time, first had and obtained.

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

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 the presence of

Y. Z.

A. B. [L.S.]

C. D. [L.S.]

*Lease of Land.*

This Indenture, made the        day of       , 18   ,  
Between A. B., of, &c., of the first part, and C. D.,

of, &c., of the second part, Witnesseth, that in consideration of the rent, covenants and agreements hereinafter reserved and contained, and to be paid, observed and performed by the said party of the second part, his executors, administrators and assigns, He, the said party of the first part, Hath demised and leased, and by these presents Doth demise and lease, unto the said party of the second part, his executors, administrators and assigns, All that certain parcel or tract of land and premises situate, lying and being (*here describe the lands*), To have and to hold the said parcel or tract of land, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from the            day of           , 18   , for the term of           , from thence next ensuing, and fully to be complete and ended: Yielding and paying therefor, unto the said party of the first part, his executors, administrators and assigns, the yearly rent or sum of \$           , of lawful money of Canada, by equal yearly payments, on the            day of           , in each and every year during the said term, the first payment to be made on the            day of           , next ensuing the date hereof. (*The t:im:s of payment may be quarterly or half-yearly, if desired.*)

And the said party of the second part doth hereby, for himself, his heirs, executors, administrators and assigns, covenant, promise and agree with and to the said party of the first part, his executors, administrators and assigns, that he, the said party of the second part, his executors, administrators and assigns, shall and will well and truly pay, or cause

to be paid, to the said party of the first part, his executors, administrators or assigns, the said yearly rent hereby reserved, at the times and in manner hereinbefore mentioned for payment thereof, without any deduction or abatement whatsoever thereout for or in respect of any rates, taxes, assessment, or otherwise: And also shall and will, on or before the            day of           , now next, at his own costs and charges, fence in the premises hereby demised, in a good and substantial manner, (*add here such covenants as to mode of cultivation, &c., as may be agreed on.*)

And it is hereby agreed, on the part of the said party of the first part, his heirs, executors, administrators and assigns, that if at any time within the said term of            the said party of the second part, his heirs, executors, administrators or assigns, shall desire to purchase the fee simple of the land hereby demised, he shall be allowed to do so by paying the sum of \$           , of lawful money aforesaid, provided the said rent shall have been regularly paid up to the time when he may so desire to purchase; and provided he gives to the party of the first part, three months previous notice of his intention to purchase.

And it is hereby agreed, on the part of the said party of the second part, his executors, administrators and assigns, that if at any time or times during the said term, the said rent, or any part thereof, shall be in arrear and unpaid for the space of thirty days after any of the days or times whereon the same ought to be paid, as aforesaid, then it shall

be lawful for the said party of the first part, his heirs, executors administrators or assigns, to enter into and take possession of the premises hereby demised, whether the same be lawfully demanded or not, and the same to sell and dispose of, either by public auction or private sale, as to him or them may seem best, without the let, hindrance or denial of him the said party of the second part, his heirs, executors, administrators and assigns: And further, that the non-fulfilment of the covenants hereinbefore mentioned, or any of them, on the part of the lessee or lessees, shall operate as a forfeiture of these presents, and the same shall be considered null and void to all intents and purposes whatsoever; And also, that the said party of the second part, his executors, administrators, and assigns, shall not, nor will, during the said term, grant or demise, or assign, transfer, or set over, or otherwise, by any act or deed, procure or cause the said premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, assigned, transferred, or set over, unto any person or persons whomsoever, without the consent in writing of the said party of the first part, his heirs or assigns, first had and obtained.

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 the presence of

Y. Z.

A. B. [L.S.]

C. D. [L.S.]

*Lease of a House and Farm.*

This Indenture made the           , day of           , 18   , Between A. B., of, &c., of the one part, and C. D., of, &c., of the other part, Witnesseth, that for and in consideration of the rent, covenants, conditions and agreements hereinafter reserved and contained, and which, on the part and behalf of the said C. D., his executors, administrators and assigns, are or ought to be paid, done and performed, the said A. B. hath demised, leased, set and to farm let, and by these presents doth demise, lease, set and to farm let, unto the said C. D., his executors and administrators, All that parcel or tract of land, &c., [*describing the lot*] together with the frame dwelling-house, barns, stables, and other out-houses thereupon erected, standing and being, together with all ways, paths, passages, waters, water-courses, privileges, advantages, and appurtenances whatsoever, to the same premises belonging, or in any wise appertaining. To have and to hold the said parcel or tract of land, dwelling-house, buildings and premises hereby demised unto the said C. D., his executors, administrators and assigns, from the day of the date of these presents, for, and during, and until the full end and term of           years from thence 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 and assigns, the yearly rent or sum of \$           , of lawful current money of Canada by two equal half-yearly payments, to be made on the           day of           , and the           day of

in each and every year during the said term, without any deduction or abatement thereout for or upon any account or pretence whatsoever. Provided always, nevertheless, that if it shall happen that the said yearly rent hereby reserved, or any part thereof, shall be behind and unpaid for the space of twenty-one days next over or after either of the said days hereinbefore mentioned and appointed for payment of the same (being lawfully demanded) or if the said C. D., his executors or administrators, shall assign over, underlet or otherwise depart with this indenture, or the premises hereby leased, or any part thereof, to any person or persons whomsoever, without the consent of the said A. R., his heirs or assigns, first had and obtained in writing, under his or their hands, for that purpose; then, and in either of the said cases, it shall and may be lawful to and for the said A. B., his heirs or assigns, into the said premises hereby demised, or any part thereof, in the name of the whole, to re-enter and the same to have again, retain, repossess and enjoy, as in his and their first and former estate or estates, any thing herein contained to the contrary thereof in any wise, notwithstanding. And the said C. D. doth hereby, for himself, his heirs, executors, administrators and assigns, covenant, promise and agree to and with the said A. B., his heirs and assigns, in manner following, that is to say: That he, the said C. D., his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs and assigns, the said yearly rent of \$ , by equal half-yearly pay-

ments, on or at the days or times and in the manner hereinbefore mentioned and appointed for payment thereof. And also that he, the said C. D., his executors, administrators and assigns, shall and will, at his and their own costs and charges, well and sufficiently repair and keep repaired the dwelling-house, buildings, fences and gates now erected, or which shall at any time or times hereafter during the said term be erected, upon the said demised premises, he, the said A. B., his heirs and assigns, upon request and notice to them made, finding and allowing on the said premises, or within miles' distance thereof, all rough timber, brick, lime, tiles, and all other materials whatsoever, (except straw), for doing thereof, to be carried to the said hereby demised premises at the charge of the said C. D., his executors, administrators or assigns, or otherwise permitting and allowing him or them, at their like costs and charges, to cut and fell such and so many timber-trees upon some part of the premises hereby demised as shall be requisite and necessary for the purpose (damage happening by accidental fire, tempest, or other inevitable accident being always excepted): And further, that he, the said C. D., his executors, administrators and assigns, shall and will at all times during the said term cultivate and farm such part or parts of the said lands and premises as now are or shall hereafter be brought into cultivation during the said term in a proper husbandlike manner. And shall and will at the expiration or other sooner determination of this lease peaceably and quietly leave, surrender

and yield up unto the said A. B., his heirs and assigns, the whole of the said premises hereby demised in such good and sufficient repair as aforesaid, (reasonable use and wear thereof, and damage by accidental fire, tempest or other inevitable accident, as aforesaid, always excepted): And also, that it shall and may be lawful to and for the said A. B., his heirs and assigns, after six days' previous notice in writing, twice or oftener in every year during the said term, at seasonable and convenient times in the day, to enter and come into and upon the said demised premises, or any part thereof, to view the condition of the same, and of all defects and wants of reparation and amendment which shall then and there be found, to leave notice in writing at the said demised premises to or for the said C. D., his executors, administrators or assigns, to repair and amend the same within the space of three calendar months. And the said C. D., doth hereby, for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators or assigns, shall and will within three calendar months next after every and any such notice shall have been so given or left as aforesaid, well and sufficiently repair and amend the same accordingly (except as before excepted, and upon being provided or allowed materials for the same, as aforesaid), and also that he, the said C. D., his executors, administrators or assigns, shall not, nor will at any time during the said term, pull

down, or cause or permit to be pulled down, or make, or cause or permit to be made, any alteration by cutting new door-ways or otherwise in the said dwelling-house, or in any of the buildings upon the said demised premises, without the consent in writing of the said A. B., his heirs or assigns, for that purpose first had and obtained; And moreover shall not, nor will at any time during the continuance of this demise, bargain, sell, assign, transfer or set over this Indenture of Lease, or let, set, demise, underlease, or underlet the said dwelling-house and premises hereby demised, or any part thereof, or in any other manner part with this Indenture of Lease, or the possession or occupation of the premises hereby demised, without such license and consent as aforesaid. Provided always, nevertheless, and these presents are upon this express condition, that if the said yearly rent or sum of \$           , hereby reserved, or any part thereof, shall be unpaid in part or in all by the space of twenty-one days next after either of the days on which the same ought to be paid as aforesaid, being lawfully demanded; or in case the said C. D., his executors or administrators, shall at any time during the said term hereby granted, without such license as aforesaid, assign, transfer or set over, underlease or underlet, the premises hereby demised, or any part thereof, or in any other manner part with the possession or occupation of the same, or any part thereof; or if all, or any of the covenants, conditions or agreements in these presents contained, on the part and behalf of the said

C. D., his executors, administrators and assigns, shall not be performed, fulfilled, and kept according to the true intent and meaning of these presents, then and from thenceforth, in any or either of the said cases, it shall and may be lawful to and for the said A. B., his heirs and assigns, into and upon the said demised premises, or any part thereof, in the name of the whole, wholly to re-enter and the same to have again, retain, re-possess and enjoy as in his or their first and former estate, and thereout and from thence the said C. D., his executors, administrators and assigns, and all other occupiers of the said premises, to expel, put out and remove, this indenture or any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. And the said A. B. doth hereby, for himself, his heirs, executors, administrators and assigns, covenant, promise and agree with and to the said C. D., his executors, administrators and assigns, that he, the said C. D., his executors, administrators and assigns, well and truly paying the said yearly rent hereby reserved on the days and in the manner hereinbefore appointed for payment thereof, and observing, keeping and performing all and singular the covenants and agreements in these presents contained, and which, on his and their parts and behalves, are and ought to be paid, kept, done and performed, shall and may lawfully, peaceably and quietly have, hold, use, occupy, possess and enjoy the said demised premises, and every part and parcel thereof, with the appurtenances, during all the said term of                    years hereby



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 party of the first part, his heirs, executors, administrators or assigns, the sum of \$ \_\_\_\_\_, to be payable on the following days and times, that is to say: on, &c., (*state here the days of payment*.) The first of such payments to become due and be made on the day of \_\_\_\_\_, next. That the said (*lessee*) covenants with the said (*lessor*), 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 that he will leave the premises in good repair, proviso for re-entry by the said (*lessor*) on non-payment of rent, or non-performance of covenants; The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.

In witness whereof, the said parties have hereunto set their hands and seals.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.S.]  
C. D. [L.S.]

*Distress Warrant.*

To Mr. A. B., my Bailiff.

I do hereby authorize and require you to distrain the goods and chattels of C. D. (*the tenant*) in the

house he now dwells in, [*or on the premises in his possession*], situate at \_\_\_\_\_, in the county of \_\_\_\_\_, for \_\_\_\_\_ dollars, being one year's rent due to me for the same on first of May last, and to proceed thereon for the recovery of the said rent, as the law directs.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ .  
J. S. (*Landlord.*)

*Inventory and Notice.*

An inventory of the several goods and chattels distrained by me J. S., [*or if as Bailiff, say A. B., as Bailiff to Mr. J. S.*], this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, 18 \_\_\_\_, in the dwelling-house, out-houses and lands [*as the case may be*] of C. D., situate at \_\_\_\_\_, in the county of \_\_\_\_\_, [*and if as Bailiff, say, by the authority and on the behalf of the said J. S.,*] for the sum of \_\_\_\_\_ dollars, being one year's rent due to me [*or to the said J. S.,*] for the said houses and premises on first of May last, and as yet in arrear and unpaid.

*In the Dwelling-house.*

1. *In the Kitchen.*

Two pine tables, six old chairs, five copper sauce-pans, &c., &c.

2. *In the Parlour.*

One large pier looking-glass, two sconces in gilt frames, two mahogany card tables, one pembroke table, &c., &c.

3. *In the Dining Room.*

Six hair-bottom chairs, mahogany frames, &c., one set of dining tables, &c., &c.

4. *In the Outhouses.*1. *Barn.*

Six sacks of wheat, six hurdles, &c., &c.

2. *Stable, &c.*

*And so on, describing the things as correctly as may be according to the place from which they are taken. At the bottom of the inventory subscribe one of the following notices to the tenant according as the case may be.*

Mr. C. D.

Take notice that I have this day distrained [or that I, as Bailiff to J. S., your landlord, have this day distrained] on the premises above mentioned, the several goods and chattels specified in the above inventory, for the sum of        dollars, being one year's rent due to me [or to the said J. S.,] on first of May last, for the said premises, and that unless you pay the said arrears of rent with the charges of distraining for the same, or replevy the said goods and chattels within five days from the date hereof, the said goods and chattels will be appraised and sold according to law.

Given under my hand the        day of        , 18 .

J. S. (*Landlord.*)

or A. B. (*Bailiff.*)

*Notice of Distress of Growing Crops.*

Mr. C. D.

Take notice that I have this day taken and distrained, [*or that as Bailiff to J. S., your landlord, I have taken and distrained,*] on the lands and premises known as lot number one in the township of &c., &c., the several growing crops specified in the inventory for the sum of \$ \_\_\_\_\_, being one year's rent due to me [*or to the said J. S.,*] on the first of May last, for the said lands and premises; and unless you previously pay the said rent with the charges of distraining for the same, I shall proceed to cut, gather, make, cure, carry and lay up the crops when ripe, in the barn or other proper place on the said premises, and in convenient time sell and dispose of the same towards satisfaction of the said rent, and of the charges of such distress, appraisement and sale, according to the form of the Statute in such case made and provided.

Given under my hand the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ .  
 J. S. (*Landlord.*)  
 or A. B. (*Bailiff.*)

A true copy of the above inventory was this day of \_\_\_\_\_, delivered to the above mentioned C. D., in the presence of us. G. H.  
 J. K.

*Tenant's request for delay.*

Mr. A. B.

I hereby desire you will keep possession of my goods which you have this day distrained for rent due or alleged to be due from me to you, in the

place where they now are, being the house No. 3 Dean Street, Toronto, for the space of seven days from the date hereof, on your undertaking to delay the sale of the said goods and chattels for that time to enable me to discharge the said rent, and I will pay the man for keeping the said possession.

Witness my hand this            day of            18 .

C. D.

Witness,

R. S.

*Notice to quit by Landlord.*

To C. D., (*tenant*).

I hereby give you notice to quit and deliver up the premises which you now hold of me, situate at (*here describe the premises*) on the            day of            , 18 .

Dated the            day of            , 18 .

Yours, &c.

A. B., (*landlord.*)

*Notice to quit by Tenant.*

To A. B., (*landlord*).

I hereby give you notice that on the            day of            next, I shall quit and deliver up to you, the peaceable and quiet possession of the premises now held by me, with the appurtenances, situate at            , in the township of            , in the county of            , in this province.

Dated this            day of            , 18 .

Yours, &c.,

C. D., (*tenant.*)

## CHAPTER XIII.

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### LINE-FENCES AND WATER-COURSES.

The statutes which regulate these matters are cap. 57 of the Con. Stat. U. C., and the Ontario Stat. 32 Vic. c. 46.

By the first of these statutes, each of the parties occupying adjoining tracts of land must make, keep up, and repair, a just proportion of the division or line-fence on the line dividing such tracts, and equally on either side thereof.

Any fence coming within the meaning of a lawful fence in any by-law of the municipal council in that behalf, is to be considered a lawful fence; and when no such by-law exists, any fence-viewers, when called upon, are to exercise their own judgment, and decide what they consider to be a lawful fence.

The owner of the whole or part of a division or line fence, which forms part of the fence inclosing the occupied or improved land of another person, may not take down or remove any part of such fence:

1. Without giving at least twelve months' previous notice of his intention to the owner or occupier of such adjacent inclosure;

2. Nor unless such last-mentioned owner or occupier, after demand made upon him in writing by the owner of such fence, refuses to pay therefor a sum to be determined, as provided in the next sub-section ;

3. Nor if such owner or occupier will pay to the owner of such fence, or of any part thereof, such sum as three fence-viewers, or a majority of them, in writing, determine to be the reasonable value thereof.

When any land which has laid uninclosed or in common, is afterwards inclosed or improved, the occupier must pay to the owner of the division or line-fence standing upon the divisional line between such land and the inclosure of any other occupant or proprietor, a just proportion of the value thereof.

When a water fence, or a fence running into the water, is necessary, the same is also to be made in equal parts, unless the parties otherwise agree.

When lands belonging to or occupied by different persons, are divided from each other by any river, brook, pond or creek, which of itself is not a sufficient barrier, and it is impracticable to fence upon the true boundary-line, the fence must be set up on one side of the river, brook, pond or creek, or partly on one side and partly on the other, as may be just.

When it is the joint interest of parties resident to open a ditch or water-course for the purpose of letting off surplus water from swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such

several parties must open a just and fair proportion of such ditch or water-course, according to their several interests

Three fence-viewers of the municipality, or a majority of them, may decide all disputes between the owners or occupants of adjoining lands, or lands so divided or alleged to be divided as aforesaid, in regard to their respective rights and liabilities under this act, and also all disputes respecting the opening, making or paying for ditches and water-courses, under this act.

Every determination or award of fence-viewers must be in writing, signed by such of them as concur therein; and they must transmit the same (or a certified copy thereof) to the clerk of the municipality, and deliver a copy to every party requiring the same; and such determination or award will be binding on the parties thereto.

When the dispute is as to the commencement or extent of the part of the fence to be made or repaired by either party; or as to the opening of a ditch or water-course; or as to the part, width, depth or extent that any person should open or make; either party may, by writing, notify the fence-viewers of the dispute, and name in the notice for the investigation thereof the time and place of meeting, and notify the other party to appear at the same time and place.

On receiving such notice, the fence-viewers will attend at the time and place named, and, after being satisfied that the other party has been also duly notified, they will examine the premises and

hear the parties and their witnesses, if demanded, and, according to the subject-matter of the reference, will decide the commencement or extent of the part of the fence which either party claims to have made or repaired, or refuses to make or repair, or divide or apportion the ditch or water-course among the several parties, having due regard to the interests of each in the opening thereof, and fully determine the matters in dispute.

On any reference regarding the opening or making of a ditch or water-course, the fence-viewers will decide what length of time each of the parties should have to open the share of the ditch or water-course which the fence-viewers decide each such party should open; and if it appears to the fence-viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening of the ditch or water-course to make him liable to perform any part thereof, and at the same time that it is necessary for the other party that such ditch should be continued across such tract, they may award the same to be done at the expense of such other party; and after such award the last-mentioned party may open the ditch or water-course across the tract, at his own expense, without being a trespasser.

When, by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award previously made ceases, in the opinion of either of the parties, to be equitable between them, such party may obtain another award of fence-viewers.

by a like mode of proceeding; and if the fence-viewers called upon to make a subsequent award find no reason for making an alteration, the whole cost of the reference must be borne by the party at whose instance it has been made. (S. 13.)

If any party neglects or refuses, upon demand made in writing as aforesaid, to open, or make and keep open, his share or proportion of the ditch or water-course allotted or awarded to him by the fence-viewers, within the time allowed by them; any of the other parties may, after first completing his own share or proportion, open the share or proportion allotted to the party in default, and will be entitled to recover not exceeding forty cents per rod for the same from the party so in default.

If after an award of fence-viewers, or after being required by a demand in writing by the party occupying the adjoining tract, or a tract separated therefrom by a river, pond or creek, a party in the occupation of any tract of land neglects or refuses for a period of thirty days to make or repair (as the case may be) his proportion of the division or line-fence between his tract and such adjoining or separated tract; or if the party making the demand neglects or refuses for the like period, to make or repair his own proportion of the fence, either party, after first completing his own proportion, may make or repair in a substantial manner and of good sound materials, the whole or any part of the fence which ought to have been made or repaired by the other party, and may recover from him the value thereof.

To ascertain the amount payable by any person

who, under the authority of the act, makes or repairs a fence, or makes, opens or keeps open any ditch or water-course, which another person should have done, and to enforce the payment of such amount, the following proceedings may be taken:—

1. Any of the persons interested may apply to a Justice of the Peace residing within the municipality or township in which any such fence is situated, and if there be no such Justice residing therein, then to any Justice of the Peace residing in any adjacent municipality or township, and thereupon such Justice will issue a summons under his hand and seal, directed by name to three fence-viewers of the municipality in which the fence is situated, requiring them to attend at the place and on the day and hour therein mentioned, to view such fence and to appraise the same.

2. The Justice will, at the same time, issue a summons to the party so having neglected or refused to make or repair his proportion thereof (who will thenceforth be considered the defendant in the case), requiring him to appear at the same time and place to show cause why the party claiming payment (who will thenceforth be considered the plaintiff in the case) should not recover the same.

3. The fence-viewers must be personally served with the summons at least four days before the day named for their attendance.

4. If either party desires to procure the attendance of any person to give evidence before the fence-viewers, the Justice will, upon the application of such party, issue a summons to such witness or

witnesses to attend before the fence-viewers at the time and place mentioned in the summons to the fence-viewers.

5. The fence-viewers, when met at the time and place appointed, must, whenever desired by either party, or whenever they themselves think it proper, administer an oath to any witness, which oath may be in the following form:—

“You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the fence-viewers now present, touching the matters which they are now to examine and determine. So help you God.”

6. The fence-viewers, or any two of them, being present, must, after having duly examined the fence and received evidence, determine whether the plaintiff is entitled to recover any and what sum from the defendant.

7. In case the commencement or extent of the part of the division or line-fence which each should make or repair, has not been previously determined by the award of fence-viewers, the fence-viewers named in the summons, or any two of them, must determine the same; and if they determine that the plaintiff is entitled to recover from the defendant, they must also state what distance of fence the defendant should have made or repaired.

8. The fence-viewers, if required by either party, before they report, must give to such party a copy of their determination.

9. The fence-viewers must report their determination in writing, under their hands, to the Justice

who issued the summons ; and such determination will be final.

10. The Justice to whom the determination of fence-viewers is returned, must transmit the same to the clerk of the Division Court having jurisdiction over that part of the municipality ; and also certify and transmit a copy thereof to the clerk of the municipality, to be entered in the book in which the municipal proceedings are recorded.

11. After the expiration of forty days from the time of the determination, the clerk of the Division Court may issue an execution against the goods and chattels of the defendant, in the same manner as if the party in whose favor the determination has been made, had recovered judgment in the Division Court for the sum which the fence-viewers have determined him to be entitled to receive, with costs. (S. 16.)

#### FEEs.

(See Con. Stat., cap. 57, s. 17.)

##### *To the Justice of the Peace.*

For summons to fence-viewers, twenty-five cents.

For subpoena which may contain three names, twenty-five cents.

For transmitting copy of fence-viewers' determination to Division Court and to clerk of the municipality, twenty-five cents.

##### *To the Fence-Viewers.*

One dollar per day each ; if less than half a day employed, fifty cents.

*To the Bailiff or Constable employed.*

For serving summons or subpoena, twenty cents.

Mileage—per mile, six and two-thirds cents.

To witness—per day, each, fifty cents.

If the party, in whose favor the determination of the fence-viewers has been made, makes an affidavit that such fees have been duly paid and disbursed to the persons entitled thereto, the Clerk of the Division Court will include the amount thereof in the execution; and when collected, will pay over the same to the party.

By the second of the Statutes above mentioned, (Ontario Stat. 32 Vic. cap. 46,) the Consolidated Statute has been amended, and its provisions extended, so as to make them applicable to unoccupied or non-resident lands, and the owners thereof: so far as the same relate to water-courses.

The several enactments of the amended act are the following:

1. The provisions of the Con. Stat., so far as the same relate to water-courses, are to be construed to apply to unoccupied, and non-resident lands, and to the owners thereof: to the same extent as to occupied lands, and the occupants thereof; and the fence-viewers are in like manner as in other cases, to determine the share of the expense of any water-course made under the Con. Stat. as amended, (which expense is to be borne by the owner of such unoccupied or non-resident lands) and report the same to the justice who is to transmit such report to the clerk of the municipality. The share of the

expense of any water-course, chargeable against such unoccupied and non-resident lands, must not exceed the sum of twenty-five cents per rod.

2. The clerk is to bring such report before the council of the municipality, at its first meeting after the receipt thereof; and the council are to cause the amount so reported to be paid to the party entitled thereto, together with a proportionate share of the costs attending the investigation and report.

3. Forthwith after such payment the clerk is to transmit to the County Treasurer an account of the amount and date of such payment, and the land against which the same is chargeable, and the County Treasurer, upon receipt thereof, is to charge the same against such land in the same manner as the wild land tax; and the same will thereupon become to all intents and purposes a charge upon the said land, and be subject to the provisions of the Statutes respecting such tax, and may be collected by distress, or by the sale of such land, in the same manner as such tax may be collected.

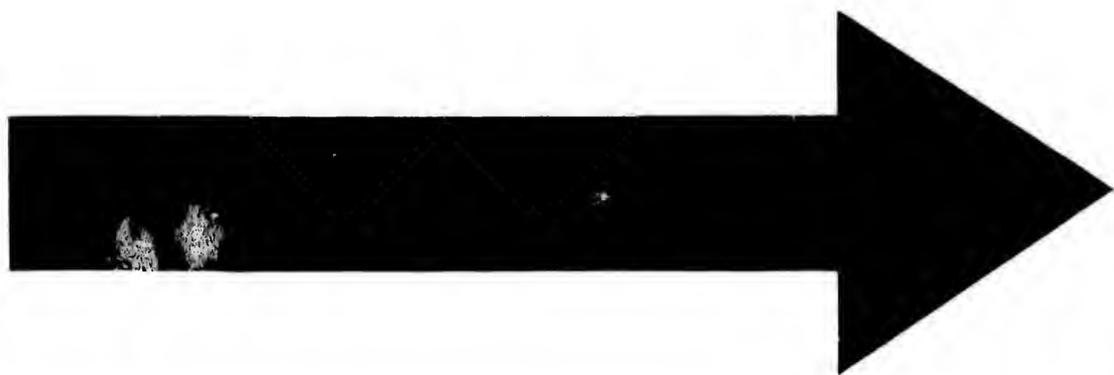
4. In collecting the amount of such charge, there shall be added to the same eight per centum thereof, and all fees and incidental expenses in the same way, and to the same amount, as in the case of such tax.

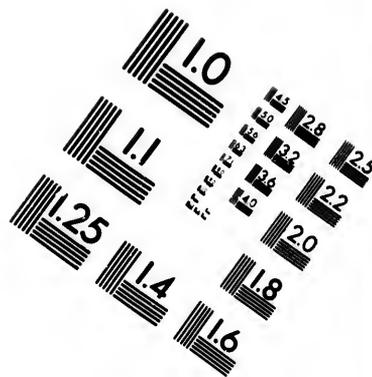
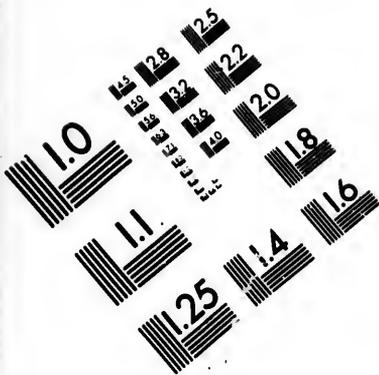
5. Where the owner of such unoccupied or non-resident lands cannot be found, after reasonable diligence, or is absent from the province, the Justice may cause such owner to be notified by letter, mailed to his last known place of residence, and

may proceed and cause all subsequent proceedings to be taken in his absence, and all such proceedings are to be as valid as if the notification required by the said act to be given to an occupant had been given to such owner.

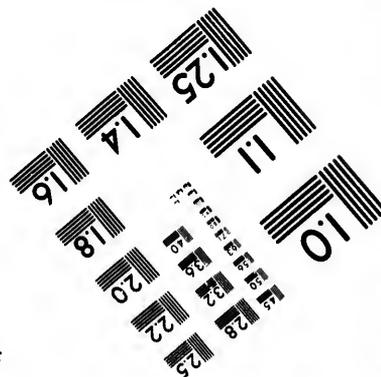
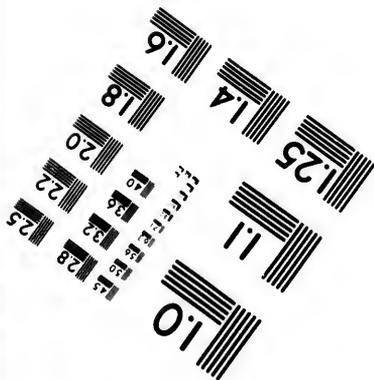
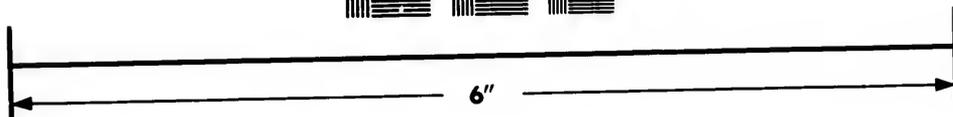
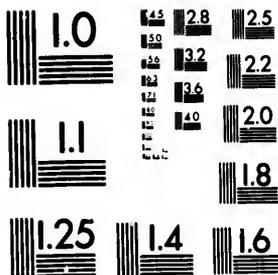
6. When any ditch or water-course is extended to the limit or boundary of a township and in order to be effective should be continued into or through another or adjoining municipality, such adjoining municipality must extend and continue such ditch or water-course through the whole or such part of its territorial limits, as may be necessary for making such ditch or water-course effective.

If the lands in both municipalities are benefited in an equal degree, in proportion to the extent of such work in each; then the duty of deciding in what proportion the expense shall be borne, by and amongst the owners of occupied and unoccupied lands in each municipality, devolves upon, and appertains to, the fence-viewers in each such municipality; and the proceedings provided by the first act, as amended by the second act, are to be taken and apply; but if such ditch or water-course does not benefit the land in both municipalities in an equal degree in proportion to the expense of the work in each, then the duty of deciding in what proportion the expense shall be borne by and amongst the owners of occupied and unoccupied lands, in both the municipalities, devolves upon and appertains to, six fence-viewers (three from each of such municipalities) to be nominated, and





**IMAGE EVALUATION  
TEST TARGET (MT-3)**



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Corporation**

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notified of such nomination, by some Justice of the Peace having jurisdiction in such municipalities or one of them; and the decision of such fence-viewers or the majority of them will be binding, and must be in duplicate, and one of such duplicates is to be transmitted by the Justice to the clerk of each such municipalities.

7. Any party affected by any decision of the fence-viewers may appeal to the Judge of the County Court within which the said land is situate, against such decision, within thirty days after the same shall be filed with the clerk of the municipality in this act mentioned.

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## CHAPTER XIV.

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### MASTER AND SERVANT.

The relation of Master and Servant is so extensive, entering into all the walks of life, that this work would be incomplete without a chapter devoted to the subject.

In order to constitute a contract of hiring and service, the contract creating the relation of master and servant, there must be either an *express* or an *implied* mutual engagement, binding one party to employ and remunerate, and the other to serve, for

some determinate term or period. If the employer merely agrees to pay so long as the servant continues to serve, leaving it optional either with the servant to serve, or with the employer to employ, there is no contract of hiring and service; but if the servant binds himself to serve for some determinate term, and the employer, expressly or impliedly, agrees or promises to retain the servant in his service for the term, there is a contract of hiring and service.

A contract of hiring and service need not be authenticated by writing unless the hiring exceeds a year in duration. The Master and Servant Act (Con. Stat. U. C., c. 75, s. 3) provides that a "verbal agreement shall not exceed the term of one year." In the absence of an express contract between the parties, a hiring may be presumed from the mere fact of the service, unless the service has been with near relations. If a man, for example, serves a stranger in the capacity of a clerk, or of a domestic servant, or farm-servant, for a continued period, the law presumes that the service has been rendered in fulfilment of a contract of hiring and service; and if the party has served without anything being said as to wages, the law presumes that the parties agreed for customary and reasonable wages. But if the service has been with a parent or uncle, or other near relation, of the party serving, a hiring cannot be implied or presumed from it, but an express hiring must be proved in order to support a claim for wages; for the law regards services rendered by near relations to one another as

gratuitous acts of kindness and charity, and does not presume that they are to be paid for unless there is an express agreement to that effect.

When the employment of a servant is of a permanent nature, and annual wages are to be paid, the hiring is in all cases a yearly hiring; and when the servant is not a household or domestic servant, the hiring cannot be put an end to by either party, without the consent of the other, before the termination of the current year. A general hiring of household or domestic servants, where no time is mentioned for the duration of the service, is a hiring for a year, and so on from year to year, determinable by custom and usage, at the option of either of the parties, on giving a month's warning or tendering a month's wages. When wages are to be paid weekly, and there is nothing in the original contract importing a different agreement, the hiring is a weekly hiring, and may be terminated by a week's warning or a week's wages.

It is the first duty of the master, after the contract of hiring and service has been entered into, to take the servant into his employ, and enable him to earn the hire or reward agreed to be paid, and if he neglects so to do, he renders himself liable forthwith to an action for a breach of contract. Every servant, on the other hand, impliedly undertakes to obey the just and reasonable commands of the master, and to be careful, diligent and industrious in the performance of the work intrusted to him to execute. He is not bound to fulfil the unjust and unreasonable commands of a hard taskmaster, nor

to perform work and services not fairly coming within the scope of his employment.

If a servant wilfully disobeys or habitually neglects the just and reasonable orders of the master, if he absents himself repeatedly from the service, or refuses to perform his work or to submit to the domestic regulations of the house, or is guilty of gross moral misconduct, the contract may be dissolved by the master, and the servant dismissed.

If a household servant hired for a year or any portion of a year is hurt or disabled, or falls sick, whilst doing his master's business, the master is not entitled to make any deduction from the agreed wages for the time that the servant was incapacitated for the performance of his ordinary work. And if after having taken the servant in his service he improperly dismisses him, or prevents him by a continued system of persecution from continuing in his service, he is bound to make compensation to the servant for all the damages sustained by the latter ; for the law implies, from a person who contracts to pay a salary for services for a certain term, a contract to permit those services to be performed.

When the employer exercises some trade, craft or mystery, and it is made part of the agreement that he shall teach as well as employ, and remunerate the servant for some specific period in return for the service rendered, the contract amounts to an *apprenticeship*. Contracts of apprenticeship, being usually for more than one year, require to be in writing. An indenture of apprenticeship is sufficiently executed by the apprentice desiring a by-

stander to write his name opposite the seal, and by his then taking the deed and delivering it to his master.

As the contract of apprenticeship is invariably created by deed, the liabilities resulting therefrom will depend upon the terms and covenants of the particular contract. The apprentice and his father, or some one or more of his relations or friends, usually covenant that he shall faithfully serve the master during the term of the apprenticeship, keep his secrets, obey his lawful commands, and preserve and protect his property, and, generally, that he shall behave himself in all things as a faithful apprentice.

The master usually covenants to take the apprentice into his service and teach him the art or trade he himself exercises or carries on; to find him in meat, drink and lodging, and sometimes with wearing-apparel, washing and all other necessaries, during the term. The sickness of the apprentice, or his incapacity to serve and to learn by reason of ill health, or an accident, does not discharge the master from his covenant to provide for him and to maintain him, inasmuch as the latter takes him for better and for worse, and must minister to his necessities in sickness as well as in health.

Voluntary contracts of service or indentures entered into by any parties within Ontario are not binding for a longer period than nine years from the day of the date of the contract.

There are two acts of Parliament bearing particularly upon the subject of this chapter,—the “Mas-

ter and Servant Act," Con. Stat. U. C., cap. 75, as amended by 29 Vic. cap. 33; and the "Act respecting Apprentices and Minors," Con. Stat. U. C., cap. 76.

The former of these acts provides that if after any engagement has been entered into, and during the period of such engagement, the servant refuses to go to work, or without permission or discharge leaves the employ of the master, or refuses to obey his lawful commands, or neglects the service or injures the property of the master, the offender, on complaint of the master, shall be liable to the punishment provided by the act; and that if any tavern or boarding-house keeper, or other person, induces or persuades any servants or laborers to confederate for demanding extravagant or high wages, and prevents their hiring, then, on due proof of offence, such tavern-keeper shall forfeit his licence, in addition to any fine, and be subject to fine or imprisonment.

The penalty for contravention of the foregoing provisions is a fine not exceeding twenty dollars, or imprisonment not exceeding one month nor less than one day.

If a master refuses to pay his servant's wages, or ill uses him, or refuses to provide necessary food, the servant may apply to a Justice of the Peace, who may discharge the servant from the employ of such master and may order payment of any wages found due, not exceeding forty dollars.

By the amended act (29 Vic. c. 33) it is provided that if after the termination of an engagement be-

tween master and servant, any dispute should arise between them in respect of the term of such engagement, or of any matter appertaining to it, the Justice or Justices of the Peace who shall receive the complaint shall be bound to decide the matter in accordance with the provisions of the act respecting master and servant, and as though the agreement between the parties still subsisted—proceedings however must be taken within one month after the engagement has ceased.

When any dispute comes before a Magistrate he must, if he takes the complainant's evidence, also take the defendant's evidence if it is tendered.

Any person who thinks himself aggrieved by any such conviction, or order for payment of wages, may appeal to the General Sessions against such conviction or order.

The act respecting apprentices and minors provides that where a minor (that is, a person under twenty-one years of age) over the age of sixteen, who has no parent or legal guardian, or who does not reside with such parent or guardian, enters into an engagement, written or verbal, to perform any service or work, such minor shall be liable upon the same, and shall have the benefit thereof in the same manner as if of legal age.

A parent or other person having the care or charge of a minor not under the age of fourteen years may, with consent of the minor, put and bind him as an apprentice, by indenture, to any master-mechanic, farmer, or other person carrying on a

trade or calling, until such minor attains twenty-one.

When the father of an infant child abandons and leaves the child with the mother, the mother, with the approbation of two Justices of the Peace, may bind the child as an apprentice until the child attains twenty-one if a male, or eighteen if a female. The mother and the Justices must sign the indenture. No child fourteen years old or upward's is to be so apprenticed without his or her consent.

The Mayor, or Police Magistrate of any city or town, and in a county, the chairman of and at the General Sessions, may apprentice orphan children, and children who have been deserted by their parents, or whose parents have been committed to gaol.

If the master of an apprentice dies, the apprentice by operation of law, and without any new writings, becomes transferred to the person (if any) who continues the master's business.

A master may transfer his apprentice to any person who is competent to receive or take an apprentice, and who carries on the same kind of business.

Every master must provide to his apprentice suitable board, lodging and clothing, or such equivalent therefor as is mentioned in the indenture, and must also properly teach and instruct him, or cause him to be taught and instructed, in his trade or calling.

Every apprentice must faithfully serve his master, obey all his lawful commands, and not absent him-

self from his service, day or night, without consent.

A master convicted before any Justice, Mayor or Police Magistrate, on the complaint of the apprentice, of any ill usage, cruelty or refusal of necessary provisions, is liable to a fine not exceeding twenty dollars and costs, and to imprisonment in default for a term not exceeding one month.

An apprentice convicted of refusal to obey lawful commands, or of waste or damage to property, or of any other improper conduct, may be imprisoned for a term not exceeding one month.

An apprentice absenting himself before the time of service expires, may be compelled to make good the loss by longer service or pecuniary satisfaction; and if he refuses or neglects to do so, may be committed to gaol for a term not exceeding three months; but the master must proceed to enforce such service or satisfaction within three years after the expiration of the term for which the apprentice contracted to serve.

Persons harboring or employing an absconding apprentice, are liable to pay the master the full value of the apprentice's labor.

The apprenticeship indentures may be cancelled if the apprentice become insane, or be convicted of felony, or be sentenced to the Provincial Penitentiary, or abscond. The master must, within one month, give notice in writing to the other parties to the indenture of his intention to cancel the indentures, which notice must be served on the parties,

or published in the Gazette, or in a local county or city newspaper.

Masters or apprentices may appeal to the General Sessions against any Magistrate's decision.

*Apprenticeship Indenture.*

This Indenture, made the        day of        , 18    ,  
Between W. J., of, &c., of the first part, H. J., his  
son, now of the age of fifteen years, of the second  
part, and T. M., of, &c., printer, of the third part,  
Witnesseth, That the said W. J., with the consent  
of his said son H. J., (a minor now of the age of  
fifteen years or thereabouts), testified by his being  
a party to and executing these presents, doth  
hereby put, place, bind and indent him, the said  
H. J., to the said T. M., to learn the art and trade  
of a printer, and with him, the said T. M., his ex-  
ecutors, administrators and assigns, after the man-  
ner of an apprentice to dwell and serve from the  
day of the date hereof until the        day of        ,  
18    , being a period of        years, when the said  
minor will arrive at the age of twenty-one years.

And the said W. J. doth hereby, for himself,  
his heirs, executors and administrators, covenant,  
promise and agree to and with the said T. M., his  
executors, administrators and assigns, that during  
the said term of        years, the said H. J. shall  
well and faithfully serve the said T. M., his secrets  
keep, and lawful commands at all times obey, and  
shall give and devote to him his whole time and  
labor; that he shall not marry during the said term,  
nor use ardent spirits, nor practice gaming or any

other unlawful sports, nor waste, injure or destroy the property of his master, but conduct himself in a sober, temperate, honest manner, and as a good and faithful apprentice ought to do, during all the time aforesaid.

And the said T. M., for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said W. J., his executors and administrators, that he, the said T. M., his executors and administrators, shall and will teach and instruct, or cause to be taught and instructed, the said H. J. in the art, trade and mystery of a Printer, and shall and will find and provide for the said apprentice sufficient meat, drink, apparel, washing and lodging during the said term; and at the expiration thereof shall and will give his said apprentice two suits of apparel (*any other special terms may be here inserted*); and the said T. M. further agrees to pay to the said W. J. father of the said H. J., the following sums of money, to wit: for the first year's service, twenty-five dollars; for the second year's service, seventy-five dollars; and for each and every subsequent year, until the completion of his term, one hundred dollars; which said payments are to be made on the first day of May in each year.

And for the true performance of all and singular the covenants and agreements hereinbefore contained, the said parties bind themselves each unto the other, jointly by these presents.

In witness whereof, the said parties to these pre-

resents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered

in the presence of

R. J.

W. J. [L.S.]

H. J. [L.S.]

T. M. [L.S.]

*Indenture of Apprenticeship for a Girl to learn Housework, &c.*

This Indenture, made the        day of        , 18        ,  
Between M. F., of, &c., Widow, of the first part,  
S. F., her daughter, now of the age of fifteen years,  
of the second part, and R. H., of the same place,  
Farmer, of the third part, Witnesseth that the said  
S. F., by and with the consent of the said M. F.  
her mother, testified by her execution of these presents,  
hath bound and put herself, and by these presents doth bind  
and put herself, apprentice to the said R. H., with him to dwell  
and serve from the day of the date hereof until the full end of  
the term of six years next ensuing, fully to be completed and  
ended; during which term the said S. F. her said master  
faithfully shall and will serve in all lawful business, according  
to her power and ability, and honestly and obediently in all  
things demean and behave herself toward her said master  
during the term aforesaid.

And the said R. H. shall and will teach and instruct, or  
cause to be taught and instructed, the said apprentice in  
sewing, knitting and housewifery; the management of the  
dairy, and all matters connected with the calling of a farmer,  
properly

to be taught to her the said apprentice, together with reading, writing and the other usual branches of a common school education ; and shall and will during the said term find, provide and allow her sufficient meat, drink, clothing, lodging, washing, and all other necessaries ; and at the expiration of the term aforesaid shall and will give unto the said apprentice two suits of apparel.

In Witness, &c. (*Conclude as in last firm*).

Signed, &c.,

T. J.

M. F. [L.S.]

S. F. [L.S.]

R. H. [L.S.]

*Assignment of an Indenture of Apprenticeship.*

Know all men by these presents, that I, the within named T. M., by and with the consent of H. J., my within named apprentice, and W. J., his father (*or as the case may be*), parties to the within Indenture, testified by their signing and sealing these presents, for divers good causes and consideration, have assigned and set over, and do hereby assign and set over, the within Indenture, and the said H. J., the apprentice within named, unto J. T., of, &c., Printer, his executors, administrators or assigns, for the residue of the within mentioned term, he and they performing all and singular the covenants therein contained on my part to be kept and performed.

And I, the said H. J., do hereby covenant on my part, with the consent of my father, the said W. J., faithfully to serve the said J. T. as an apprentice for the residue of the term within mentioned, and

to perform toward him all and singular the covenants within mentioned on my part to be kept and performed.

And I, the said J. T., for myself, my executors, administrators and assigns, do hereby covenant to perform all and singular the covenants within mentioned on the part of the said T. M. to be kept and performed toward the said apprentice.

Witness our hands and seals this . . . day of  
 , 18 .

Signed, sealed, &c.

J. S.

T. M. [L.S.]

H. J. [L.S.]

W. J. [L.S.]

J. T. [L.S.]

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## CHAPTER XV.

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### MORTGAGES.

According to the text writers, a mortgage may be defined to be a debt by specialty, secured by a pledge of lands, of which the legal ownership is vested in the creditor, but of which, in equity, the debtor, and those claiming under him, remain the actual owners, until debarred by judicial sentence, by legislative enactment, or their own laches. In popular language, and speaking with reference to real estate, or landed property only, it may be called

a pledge of land : whereby the *debtor* or *pledgor*, or, as he is commonly called, the *mortgagor*, conveys his land to the creditor or pledgee, or, as he is commonly called, the *mortgagee*, subject to a condition or proviso that, if the debt is discharged by a day named, the pledge shall be void, and the mortgagor shall be entitled to receive back and hold the lands, free from all claims created by the mortgage. By virtue of a mortgage, the right of property to the land mortgaged, passes to the creditor, subject to be divested by the payment of the debt at the appointed time. Assuming the mortgage to have been drawn in the usual form, with a proviso that on payment of the debt and interest, the mortgage should be void ; upon payment, the property will re-vest in the mortgagor without any deed or instrument of re-conveyance. In practice, however, it is usual to take a discharge of mortgage, which operates as a re-conveyance. If the debt be not paid on the day named, the land, *at law*, becomes the absolute property of the mortgagee, and he may proceed to take possession of it : quietly, if he can ; if not, by means of ejectionment. The Court of Chancery will, however, give the mortgagor liberty to redeem, at any time within *twenty years*, on payment of what is due for principal and interest. When the debt is paid *after* the appointed day, a re-conveyance or discharge of mortgage is requisite in order to re-vest the property in the mortgagor.

A mortgagee may take a release of the equity of redemption from the mortgagor, or may purchase

the same under a power of sale in his mortgage, without thereby merging his debt: that is to say, without thereby losing the right to hold the lands against any person having a claim on them *subsequent* to the mortgagee's, until his debt and interest be paid; and if such subsequent creditor should afterwards take proceedings in Chancery to foreclose his mortgage, he will only be allowed to do so, subject to the rights of the mortgagee who has so acquired the equity of redemption.

Mortgages should be executed in duplicate, and one part left in the Registry office, as in the case of a deed of land. A mortgagee has several remedies if his mortgage be not paid at maturity. He may bring an action at law upon the covenant to recover the amount of principal and interest due; or he may bring an action of ejectment, and take possession of the premises: in which case he will be entitled to hold the lands until the full amount of principal and interest has been discharged out of the rents and profits; or he may file a bill in equity to have the mortgage foreclosed: in which case he will acquire a title to the lands discharged with all equity of redemption; or sold: in which case the premises will be sold under the direction of the Court, and the debt due paid out of the proceeds, if sufficient; and if insufficient, the mortgagor will be ordered to pay the deficiency. If the mortgage contains a power of sale, the lands may be sold without going to the Court.

When a mortgage is paid off, a discharge should be signed and registered: it will then be marked

as discharged in the books of the Registry. A discharge must be signed by the mortgagee, or his assignee, if the mortgage has been assigned; or by his executor or administrator, if he be dead. When a mortgage has been made in favor of a married woman, both husband and wife must sign the discharge. It is sufficient to sign in the presence of one witness; and the usual affidavit of execution must be made by him.

The act "respecting Short Forms of Mortgages," is the 27 & 28 Vic., c. 31: passed in 1864.

*Statutory Mortgage.*

This indenture, made the       day of       , 18       , in pursuance of the act respecting short forms of mortgages, Between A. B., of, &c., (hereinafter called the mortgagor) of the first part; C. D., wife of the said party of the first part, of the second part; and E. F., of, &c., (hereinafter called the mortgagee,) of the third part, Witnesseth that in consideration of \$       , of lawful money of Canada, now paid by the said (*mortgagee or mortgagees*), to the said (*mortgagor or mortgagors*), (the receipt whereof is hereby acknowledged,) the said (*mortgagor or mortgagors*), doth (*or do*) Grant and Mortgage unto the said (*mortgagee or mortgagees*), his (*her or their*) heirs and assigns, for ever all &c., (*here describe the premises.*) And the said C. D., wife of the said mortgagor, hereby bars her dower in the said lands. Provided this mortgage to be void on payment of \$       (*here state amount of principal*

*money*) of lawful money of Canada, with interest at (*here specify the rate of interest*) per cent. as follows: (*here set out the terms of re-payment*) and taxes and performance of statute labor. The said mortgagor covenants with the said mortgagee, That the mortgagor will pay the mortgage money and interest, and observe the above proviso; That the mortgagor has a good title in fee simple to the said lands; And that he has the right to convey the said lands to the said mortgagee; And that on default, the mortgagee shall have quiet possession of the said lands, free from all incumbrances; And that the said mortgagor will execute such further assurances of the said lands as may be requisite; And also that the said Mortgagor will produce the title deeds enumerated hereunder, and allow copies to be made, at the expense of the mortgagee; And that the said mortgagor has done no act to encumber the said lands; And that the said mortgagor will insure the buildings on the said lands, to the amount of not less than \$            currency; And the said mortgagor doth release to the said mortgagee, all his claims upon the said lands: subject to the said proviso. Provided that the said mortgagee, on default of payment for (*three*) months, may on (*one*) month's notice, enter on, and lease, or sell, the said lands. Provided that the mortgagee may distrain for arrears of interest. Provided that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable. Provided that until default of payment, the mortgagor shall have quiet possession of the said lands.



all moneys due on, or to grow due on, (or hath satisfied the sum of \$ , mentioned in,) a certain mortgage made by A. B., of, &c., to me, (or if the mortgage has been assigned to G. H. of, &c.,) which mortgage bears date the day of A.D. 18 ; and was registered in the Registry office for the county of , on day of A.D. 18 , at minutes past o'clock noon, in liber for , as No. . [If the mortgage has been assigned, go on to say, "and which mortgage was assigned to me by indenture, dated the day of , 18 , made between, &c., (stating the names of the parties to the assignment) registered in the said Registry office, on the day of , A.D. 18 , at minutes past o'clock noon, in liber for , as No. "; and so on, in the same manner, with reference to all assignments, where there are several. If the mortgage has not been assigned, state the fact thus: "and that the said mortgage has not been assigned."]

And that I am the person entitled by law to receive the money, and that such mortgage, (or such sum of money as aforesaid; or such part of the lands as is herein particularly described, that is to say: (here set out the lands intended to be discharged, if a part only of the lands is to be released,) is therefore discharged.

Witness my hand this day of , A.D. 18 .

Signed in the presence of A. B.

Y. Z.

(One witness is sufficient,) of, &c., (here state residence and occupation.)

*(An affidavit of execution of the discharge, must be made by the witness ; it will be in a form similar to that of the execution of the mortgage.)*

*Assignment of Mortgage.*

This indenture made the        day of        , 18        ,  
Between E. F., of, &c., (hereinafter called the assignor,) of the first part ; and G. H., of, &c., (hereinafter called the assignee), of the second part,  
Whereas, by indenture of mortgage, bearing date the        day of        , 18        , made between one A. B., of, &c., of the first part ; C. D., (wife of the said A. B., and for the purpose of barring her dower), of the second part ; and the said E. F., of the third part ; the said A. B. did convey and assure the lands and premises hereinafter described, unto the said E. F., his heirs, executors, administrators and assigns, subject to a proviso for redemption on payment of \$        , and interest thereon, at the rate of        per cent. per annum, on the days and times, and in the manner, in the said indenture of mortgage mentioned. And whereas, there is now due upon the said mortgage, for principal money, the sum of \$        ; and for interest, the sum of \$        . Now this indenture witnesseth, that in consideration of the sum of \$        , of lawful money of Canada, now paid by the said assignee to the said assignor, the receipt whereof is hereby acknowledged, He, the said assignor, doth hereby grant, assign, and transfer unto the said assignee, his heirs, executors, administrators and assigns, the said indenture of mortgage, and the principal

and interest moneys thereby secured, and the lands and premises thereby conveyed : to wit, All and singular (*here describe the premises*), To have, hold, receive and take, the said indenture of mortgage, and the principal and interest moneys thereby secured, and the lands and premises thereby conveyed, unto the said assignee, his heirs, executors, administrators and assigns, to and for his and their sole any only use : subject nevertheless to the proviso for redemption in the said mortgage contained. And for the better enabling the said assignee, his executors, administrators and assigns, to recover and receive the said principal moneys and interest, from the said A. B., his executors or administrators, he the said assignor doth hereby nominate and appoint the said assignee, his executors, administrators and assigns, to be the true and lawful attorney and attorneys of him the said assignor, his executors or administrators, for him, the said assignor, his executors or administrators, and in his, or their, names or name, but at the cost and charges of the assignee, his executors, administrators or assigns, to sue for and recover the said principal moneys and interest, in any Court of Law or Equity ; and on receipt or recovery, to give good and sufficient discharges ; and generally to do, and execute, all such acts, deeds, matters and things, as may be requisite and necessary, for the recovery of the said mortgage money and interest. And the said assignor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said assignee, his executors, ad-

ministrators and assigns, that the said indenture of mortgage, is a good, valid and subsisting security, free from all incumbrances ; and not discharged or released ; and that the principal moneys and interest hereinbefore mentioned, are now justly due and owing upon the security of the said mortgage ; and that the said assignor has good right to assign and transfer the said mortgage ; and will not at any time hereafter release or discharge the same, without the consent of the said assignee, his executors, administrators or assigns ; and that the said assignor, his heirs, executors or administrators, will at all times, on the request, but at the costs and charges of the assignee, his executors, administrators and assigns, execute such further assignments or assurances of the said indenture, and the moneys thereby secured, and the lands therein comprised, as may be necessary ; and the said assignee doth hereby, for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the assignor, his heirs, executors, and administrators, that he the said assignee, his executors or administrators, in case he or they shall act upon the power of attorney hereinbefore contained, will save harmless, and indemnify, the said assignor, his heirs, executors and administrators, of and from all costs, charges and expenses, to which he or they may become liable, or be put unto, in consequence thereof.

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



or tract of land, and all other the premises comprised in and demised by the said hereinbefore in part recited Indenture of Lease: Together with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom: To have and to hold the same, with the appurtenances thereunto belonging, unto the said party of the second part, his executors, administrators and assigns, from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any), and other the interest of the said party of the first part therein. Subject to the payment of the rent, and the observance and performance of the lessee's covenants and agreements, in the said Indenture of Lease reserved and contained; and to the proviso for redemption hereinafter contained.

Provided always, that if the said party of the first part, his executors or administrators, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the full sum of \$ \_\_\_\_\_, with interest for the same, at \_\_\_\_\_ per cent. per annum, on the days and times and in manner following, that is to say, (*here specify terms of payment*) without making any deduction, defalcation or abatement thereout, on any account whatsoever; then these presents, and every clause, covenant, matter and thing herein contained, shall cease, determine and be absolutely void to all intents and purposes whatsoever, as if the same had never been executed.

And the said party of the first part doth hereby,

for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said party of the second part, his executors, administrators and assigns, in manner following, that is to say :

That he, the said party of the first part, his executors and administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the said principal sum and interest in the above proviso mentioned, at the times and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents.

And that the said hereinbefore in part recited Indenture of Lease is, at the time of the sealing and delivery of these presents, a good, valid, and subsisting lease in the law, and not surrendered, forfeited or become void or voidable; and that the rent and covenants therein reserved and contained have been duly paid and performed by the said party of the first part, up to the day of the date thereof.

And that the said party of the first part now hath in himself good right, full power, and lawful and absolute authority to assign the said lands and premises in manner aforesaid, and according to the true intent and meaning of these presents.

And that in case of default in payment of the said principal money or interest, or any part thereof, contrary to the proviso and covenant aforesaid, it

shall be lawful for the said party of the second part, his executors, administrators and assigns, to enter into and upon and hold and enjoy the said premises for the residue of the term granted by the said Indenture of Lease, and any renewal thereof (if any), for their own use and benefit, without the let, suit, hindrance, interruption, or denial of the said party of the first part, his executors, administrators or assigns, or any other persons whomsoever; and that free and clear, and freely and clearly acquitted, exonerated and discharged, or otherwise; by and at the expense of the said party of the first part, his executors and administrators, well and effectually saved, defended and kept harmless of, from and against all former and other gifts, grants, bargains, sales, leases, and other incumbrances whatsoever.

And that the said party of the first part, his executors, administrators and assigns, and all other persons claiming any interest in the said premises, shall and will, from time to time, and at all times hereafter, so long as the said principal sum or any part thereof shall remain due and owing on this security, at the request and costs of the said party of the second part, his executors, administrators or assigns, make, do and execute, or cause and procure to be made, done and executed, all such further assignments and assurances in the law of the said premises for more effectually assigning and assuring the said premises for the residue of the said term, and any renewal thereof (if any), subject to the proviso aforesaid, as by the said party of the

second part, his executors, administrators or assigns, or his or their counsel in the law, shall be reasonably advised or required.

And that the said party of the first part, his executors, administrators or assigns, shall and will, from time to time, until default in payment of the said principal sum or the interest thereof, and until the said party of the second part shall enter into possession of the said premises as aforesaid, well and truly pay, or cause to be paid, the said yearly rent by the said Indenture of Lease reserved, and all taxes payable on the said premises, and perform and keep all the lessee's covenants and agreements in the said lease contained, and indemnify and save harmless the said party of the second part therefrom, and from all loss, costs, charges, damages, and expenses in respect thereof.

And also shall and will, from time to time, and at all times hereafter, so long as the said principal money and interest, or any part thereof, shall remain due on this security, insure and keep insured the buildings erected or to be erected on the land hereby assigned, or any part thereof, against loss or damage by fire, in some Insurance Office, to be approved of by the party of the second part, in the full amount hereby secured, at the least, and, at the expense of the said party of the first part, immediately assign the Policy, and all benefit thereof, to the said party of the second part, his executors, administrators and assigns, as additional security for the payment of the principal money and interest hereby secured; and that in default of such in-

insurance it shall be lawful for the said party of the second part, his executors, administrators, or assigns, to effect the same, and the premium or premiums paid therefor shall be a charge or lien on the said premises hereby assigned, which shall not be redeemed or redeemable until payment thereof, in addition to the said principal money and interest as aforesaid.

Provided, lastly, that until default in payment of the said principal money and interest hereby secured, it shall be lawful for the said party of the first part, his executors, administrators or assigns, to hold, occupy, possess and enjoy the said lands and premises hereby assigned, with the appurtenances, without any molestation, interruption or disturbance of, from or by the said party of the second part, his executors, administrators or assigns, or any person or persons claiming or to claim by, from, through, under or in trust for him, them, or any of 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 the presence of

Y. Z.

A. B. [L.S.]

C. D. [L.S.]

Received on the date hereof, the sum of \$ ,  
being the full consideration above mentioned.

Witness,

Y. Z.

A. B.

## CHAPTER XVI.

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### NATURALIZATION.

The residents in every country, are divided into three classes: they are either aliens, denizens or natives. An alien is a foreigner, (that is, one born in a foreign country), who has not been naturalized. A denizen is a foreigner, who is resident in some country other than that in which he was born, and has acquired certain civil rights in the country of his adoption. A native, is one born in the country in which he is resident.

Naturalization then, is the process by which an alien, or foreigner, is transformed into a denizen, and thereby becomes entitled to certain of the privileges of a native born subject. In Canada, a denizen, or person duly naturalized, is entitled to all the privileges, rights and capacities, of a natural born subject of the British Crown.

The law at present affecting aliens, who desire to be naturalized, is to be found in the act passed in the Dominion Parliament, in 1868: usually cited as Dom. Stat.: 31 Vic. c. 66. It applies to the whole Dominion: comprising the four Provinces of Nova Scotia, New Brunswick, Quebec and Ontario. The laws formerly in force, with reference to aliens,

being various in the different Provinces, it was thought fit to assimilate them; and the first provision of the existing act is therefore that any alien, who, before the passing of the present act, had been naturalized in any of such Provinces, under the laws heretofore in force in such Province, is now to be considered as a denizen, or naturalized subject, of the whole Dominion.

The next provision is that any alien woman, who is married to a natural born British subject, or to a person naturalized under the present act, or the several acts formerly in force in the several Provinces, is to be deemed herself naturalized.

The following provisions are then made for the naturalization of all aliens, except an alien woman so married to a native born, or naturalized subject: such alien woman becoming naturalized by the mere act of marriage.

Every alien, resident in any part of the Dominion, *with intent to settle therein*, and who, after a continued residence therein for a period of three years or upwards, has taken the oaths or affirmations of residence and allegiance, and procured the same to be filed of record, as hereinafter mentioned, so as to entitle him or her to a certificate of naturalization, will thenceforth enjoy, and may transmit, all the rights and capacities of a natural born subject.

The first thing for an alien to do, if he desires to be naturalized, is to take and subscribe the oaths of *residence* and *allegiance*. If the alien is a person entitled, by the laws of the Province where he

resides, to make an affirmation in lieu of an oath he may do so.

In Ontario, these oaths or affirmations must be taken and subscribed before a Judge of a Court of Record, or before some person authorized to administer oaths in the Courts of General Sessions of the Peace; or before a Commissioner appointed by the Governor for the purpose; or before a Justice of the Peace of the County where the alien resides. When taken, the Judge, Commissioner or Justice, on being satisfied by evidence produced by the alien, that he or she has been a resident of Canada for a continuous period of three years or upwards, and is a person of good character, will grant a certificate: setting forth that such alien has taken and subscribed the said oath or affirmation; and, (if the fact is so), that such Judge, Commissioner or Justice, has reason to believe that such alien has been so resident within the Province for a period of three years, or upwards: that he or she is a person of good character; and that there exists to the knowledge of the Judge, Commissioner or Justice, no reason why the alien should not be granted all the rights and capacities of a natural born British subject. This certificate must then be presented to the Court of General Sessions of the Peace of the county, within the jurisdiction of which the alien resides, in open Court, on the first day of some general sitting thereof. The Court will thereupon order the certificate to be openly read; and if, during such general sitting, the facts mentioned in the certificate are not controverted, or any other valid

objection made, to the naturalization of such alien, the Court will, on the last day of such general sitting, direct that such certificate be filed of record in the Court; and thereupon, the alien will be admitted and confirmed in all the rights and privileges of British birth, to all intents whatever, as if he or she had been born within the Dominion.

These formalities having been gone through, the alien will be entitled to receive from the Court, a certificate of naturalization, under the seal of the Court, and the signature of the clerk thereof, that he or she hath complied with the several requirements of the act. A copy of this certificate may, at the option of the party, be registered in the Registry office of any county or registration division within the Dominion, and a certified copy of such registry is sufficient evidence of such naturalization, in all Courts and places.

Any alien, entitled at the time of the passing of the act, (22 May, 1868), to be naturalized under the provisions of any of the acts then in force, may take the oaths of residence and allegiance, and obtain certificates, in the same manner, and with the same effect, as aliens naturalized under the new act.

The clerk of the Court, for reading and filing the certificate of residence, and preparing and issuing the certificate of naturalization under the seal of the Court, is entitled to receive twenty-five cents, and no more; and the Registrar for recording the certificate of naturalization, is entitled to receive a fee of twenty-five cents; and a further fee of

twenty-five cents for every search and certified copy of the same, and no more.

*Oath of Residence.*

I, A. B., do swear (*or, being one of the persons allowed by law to affirm in judicial cases, do affirm*), that I have resided three years in this Dominion, with intent to settle therein, without having been, during that time, a stated resident in any foreign country. So help me God.

*Oath of Allegiance.*

I, A. B., do sincerely promise and swear, (*or being one of the persons allowed by law to affirm in judicial cases do affirm*), that I will be faithful, and bear true allegiance, to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Dominion of Canada, dependent on, and belonging to, the said United Kingdom; and that I will defend Her to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made against Her person, Crown and dignity; and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her heirs and successors, all treasons and traitorous conspiracies, and attempts, which I shall know to be against Her or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation. So help me God.

## CHAPTER XVII.

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### PARTNERSHIP.

A partnership is an association of two or more persons contributing, in equal or unequal proportions, money, labor, skill, care, attendance or services in the prosecution of some trade or manufacture or the accomplishment of any other common object, upon the express, or implied understanding that the profit, or loss, attending the transaction, is to be shared among the parties in certain proportions. The contract of partnership is founded wholly on the consent of parties, and may be created by their acts and deeds, and their common participation in the profit and loss of a trade or business, or of a particular speculation or adventure, as well as through the medium of an express contract. If parties are not to share the profit and loss, there can be no partnership as between themselves: whatever may be their apparent situation and position as regards the public. If one man joins another in the furtherance of a particular undertaking, and contributes work and labor, services and skill, towards the attainment of the common object, upon the understanding that the remuneration is to depend upon the realization of

profits, so that, if the business is a losing business, he is to get nothing, he stands in the position of a partner in the undertaking, and not in that of a laborer or servant for hire. But a person who merely receives out of the profits the wages of labor, or a commission, as a hired servant or agent, such as a factor, foreman, clerk or manager, and who has no interest or property in the capital stock of the business, is not a partner in the concern, although his wages may be calculated according to a fluctuating standard, and may rise and fall with the accruing profits.

A partner in a private commercial partnership (not being a public joint-stock company with transferable shares) cannot introduce a stranger into the firm, as a partner, without the consent of all the members of the co-partnership.

Every person who stipulates with another for a share of the profits of a business, is a partner in the business as regards the public and third parties, and liable as such, whatever may be the private stipulations and agreements between him and the parties who appear to the world as the managers and conductors of the business; because the profits form a portion of the fund on which the creditors have a right to rely for payment.

A *general* partnership is one formed for trade or business generally, without limitations. A *special* partnership is one in which the joint interest extends only to a particular concern, as, for example, in the erection of a hotel. A *limited* partnership is one in which one or more of the partners put in a certain

amount of capital, which is liable for the contracts of the firm; but beyond that amount the party advancing is not liable.

A person who lends his name as a partner, or who suffers his name to continue in the firm after he has actually ceased to be a partner, is still responsible to third persons as a partner.

A partner may buy and sell partnership effects; make contracts in reference to the business of the firm; pay and receive money; draw and indorse and accept bills and notes; and all acts of such a nature, even though they be upon his own private account, will bind the other partners, if connected with matters apparently having reference to the business of the firm, and transacted with other parties, ignorant of the fact that such dealings are for the particular partner's private account. So also the representation, or misrepresentation, of any fact, made in any partnership transaction by one partner, or the commission of any fraud in such transaction, will bind the entire firm, even though the other partners may have no connection with, or knowledge of, the same.

Dormant and secret partners, whose names do not appear to the world, may be made responsible for the engagements of a trading firm of which they are members.

Persons may become clothed with the legal liabilities and responsibilities of partners as regards the public and third parties, by holding themselves out to the world as partners, as well as by contracting the legal relationship of partners among them-

selves. If a man, therefore, allows himself to be published to the world as a member of a particular firm ; if he permits his name to appear in the partnership name or to be used in the business ; if he suffers it to be exhibited to the public over a shop-window ; or to be written or printed in invoices or bills of parcels or prospectuses ; or to be published in advertisements, as the name of a member of the firm, he is an ostensible partner and is chargeable as a partner, although he is not in point of fact a partner in the concern, and has no share or interest in the profits of the business. But if a man's name is used *without* his knowledge and consent, and he is represented by others to be a partner *without* his authority or permission, he cannot, of course, be made responsible as a partner, upon the strength of such false and fraudulent representation.

An incoming partner, cannot be made responsible for the non-performance of contracts entered into by the firm *before* he became an actual or reputed member of it.

Dormant and secret partners may release themselves from all further liability by a simple relinquishment of their share in the profit and loss of the business ; but, if they are not strictly *secret* as well as dormant partners, notice of the termination of their connection with the co-partnership must be given. A general notice is sufficient as to all but actual customers : these must have some kind of actual notice.

If no time has been limited for the dissolution of a general trading partnership, it is a partnership at

will, and may be dissolved at any time at the pleasure of any one or more of the partners. If the partnership was established by deed, the renunciation and disclaimer of it by the party who withdraws from the firm ought to be made by deed. But if the partnership was contracted *without* deed, or, as it is technically called, by parol, it may be renounced in the same manner. If the partners have agreed that the partnership shall continue for a definite period, it cannot be dissolved before the expiration of the term limited, except on the mutual consent of all the parties, or by the outlawry, felony or death of any one or more of them, or by the decree of a Court of Equity. If a partnership for a definite term has been created by deed, the mutual agreement of the parties to dissolve it, must be by deed also. The partnership is dissolved by the death or insolvency of one of the partners; or by an assignment by any partner of his share and interest in the business. A dissolution by one partner is a dissolution as to all.

An executor, administrator or personal representative, continuing in the business after the death of a partner, is personally responsible as partner for all debts contracted.

Immediately after a dissolution, a notice of the same should be published in the public papers, for general information, and a special notice sent to every person who has had dealings with the firm. If these precautions be not taken, each partner will still continue liable for the acts of the others to all persons who have had no notice of the dissolution.

Under the "Act respecting Limited Partnerships," Con. Stat. Can., c. 60, limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within the Province of Canada may be formed by two or more persons, upon certain terms and conditions; but the provisions of the act are not to be construed to authorize any partnership for the purpose of banking or insurance.

Such partnerships are to consist of one or more persons, called "general partners," and of one or more persons who contribute, in actual cash payments, a specific sum as capital to the common stock, and who are styled "special partners." General partners are jointly and severally responsible for all debts and engagements of the partnership, in the same manner as ordinary partners in any trade or business; but special partners are not liable for any debts beyond the amounts contributed by them to the capital. All business is to be transacted by the general partners alone; and they only are authorized to sign for and bind the partnership.

Persons desirous of forming a limited partnership must make and sign a certificate which is to contain: firstly, the name or firm under which the partnership is to be conducted; secondly, the general nature of the business intended to be transacted; thirdly, the names of all the general and special partners interested therein; distinguishing which are general and which are special partners, and their usual places of residence; fourthly, the amount of capital stock which each special partner has contributed; fifthly, the period at which the

partnership is to commence, and the period at which it will terminate.

The certificate is to be in the form given in the act, and which will be found hereafter, and must be signed by the several persons forming such partnership, before a notary public, who will duly certify the same. The certificate so signed and certified must, in Ontario, be filed in the office of the clerk of the County Court of the county in which the principal place of business of partnership is situate, and in Quebec, in the office of the Prothonotary of the district and of the Registrar of the county, and is to be recorded by him at large in a book kept for the purpose and open to public inspection.

No partnership will be deemed to have been formed until such certificate has been made, certified, filed and recorded; and if any false statement be made in such certificate, all the persons interested in the partnership will be liable for all the engagements thereof as *general* partners.

If it is desired to renew or continue the partnership beyond the time originally fixed for its duration, a new certificate must be made, certified, filed and recorded in the manner required for its original formation; and every partnership otherwise renewed or continued will be deemed a general partnership.

If any alteration be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, it will be deemed a dissolution of the partnership; and every

partnership in any manner carried on after any such alteration has been made, will be deemed a general partnership, unless renewed as a special partnership in the way above mentioned.

The business of the partnership is to be conducted under a name or firm in which the names of the general partners, or some or one of them, only shall be used; and if the name of any special partner is used in such firm with his privity, he will be deemed a general partner.

No part of the sum which any special partner has contributed to the capital stock can be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum contributed by him, if the payment of such interest does not reduce the original amount of the capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profits. If, however, it should afterwards appear that by the payment of any interest or profits to any special partner the original capital has been reduced, the partner receiving such interests or profits shall be bound to restore the amount necessary to make good his share of the deficient capital with interest.

Special partners are at liberty, at all times, to examine into the state and progress of the partnership concerns, and may advise as to their management; but they must not transact any business on account of the partnership, nor be employed for

that purpose as agents, attorneys or otherwise ; and if any special partner interferes in that manner, he will be deemed a general partner, and become liable as such.

General partners are liable to account to each other, and to the special partners, for their management of the concern, in the same manner as partners in any other trade or business.

A limited partnership may be dissolved before the expiration of the term specified in the original certificate, by filing a notice of dissolution in the office in which the original certificate was recorded, and publishing such notice once a week for three weeks in a newspaper published in the county or district where the partnership has its principal place of business, and for the same time in the *Ontario Gazette*.

The fee for filing and recording every certificate is fifty cents.

By an act of the Ontario Legislature, passed in 1869, (33 Vic., c. 20), it is enacted that all persons, who, at the time of the passing of the act, or thereafter, should be associated in partnership for trading, manufacturing or mining purposes, should cause to be delivered to the Registrar of the county, city or riding, in which they carry on business, a declaration in writing, signed by the members of the co-partnership : which declaration is to contain the names, surnames, additions and residences of each partner, and the style of the firm, and the period of the partnership ; and also a statement that there are no other members.

Such declaration must be filed within six months after the passing of the act, as to all partnerships in existence at that time : and within six months of formation, as to all others ; and a similar declaration must be filed whenever any change is made in the names of the members, or the style of the firm, or place of residence.

The penalty for non-compliance with this act is \$200, to be sued for in a civil action : half of which goes to the informer, and half to the Crown.

For registering such declaration, the Registrar is entitled to 50 cents, if it does not contain more than 200 words, and 10 cents per folio of 100 words over 200.

Until a new declaration has been signed and filed, the members of the original partnership will remain liable.

*Partnership Deed.*

Articles of agreement, made the      day of      ,  
18      , Between A. B , of, &c., C. D., of, &c., E. F.,  
of, &c., and G. H., of, &c.

Whereas, the said parties hereto respectively are desirous of entering into a co-partnership 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 others and other of them, their and his executors and administrators, in manner following ; that is to say :

1st. That the said parties hereto respectively will henceforth be and continue partners together in the said business of \_\_\_\_\_, for the full term of \_\_\_\_\_ years, to be computed from the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

2nd. That the said business shall be carried on under the style or firm of A. B. & Co.

3rd. That the said partners shall be entitled to the profits of the said business in the proportions following; that is to say, (*here state the shares*;) 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 wilful 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.

4th. 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 \$ \_\_\_\_\_ 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.

5th. 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.

6th. 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; and 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.

7th. That the said partners will be true and just to each other in all matters of the said co-partnership, and will 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 will not transact or engage in any other business or trade whatsoever; and will not either in the name of the said partnership, or individually in their own names, draw, accept or endorse any accommodation bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully 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, attached, or taken in execution for their own private debts or liabilities; 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, or any one or more of them may give notice in writing to such partner offending in what respects he is deemed to be so in default; and in case such failure or default is not rectified by a time to be specified for that purpose, in such notice, the said partnership shall thereupon at once, or at any other time to be so specified as aforesaid, be dissolved and determined accordingly.

8th. That in case either of the said partners shall die before the expiration of the term of the said co-partnership, the said partnership shall thereupon cease, and the surviving partner or partners 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 co-partnership.

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

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.S.]

C. D. [L.S.]

E. F. [L.S.]

G. H. [L.S.]

*Dissolution of Partnership.*

*By Indorsement.*

We, the undersigned, do hereby mutually agree that the partnership heretofore subsisting between us, as Wholesale Grocers, under the within articles



regards the said A. B. All debts due to the said partnership are to be paid, and those due from the same discharged, at \_\_\_\_\_, where the business will be continued by the said C. D., E. F. and G. H., under the firm of "D. & Co."

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18 \_\_\_\_\_.

Witness,

Y. Z.

A. B.

C. D.

E. F.

G. H.

*Limited Liability Certificate.*

We, the undersigned, do hereby certify that we have entered into co-partnership, under the style or firm of C. D. & Co., as (*Grocers and Commission Merchants*), which firm consists of A. B., residing usually at \_\_\_\_\_, and C. D., residing usually at \_\_\_\_\_, as general partners; and E. F., residing usually at \_\_\_\_\_, and G. H., residing usually at \_\_\_\_\_, as special partners; the said E. F. having contributed \$4000, and the said G. H. \$8000 to the capital stock of the said partnership. Which said co-partnership commences on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, and terminates on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Signed in the presence of

Y. Z.

A. B.

C. D.

E. F.

G. H.

*Declaration for Registration of Partnership.*

Province of (*Ontario*),  
County of (*York*.)

We, A. B., of (*Toronto*), Grocer, C. D., of (*Toronto*), Grocer, and E. F., of (*Toronto*), Grocer, do certify and declare that we have carried on, and intend to carry on business as Grocers in (*Toronto*) in partnership under the name, style or firm of "A. B. and Company;" and that the said partnership has existed since the day of , 18 , (or is to exist until the day of , 18 ; ) and that we, the said A. B., C. D. and E. F., are the only members of such co-partnership.

Witness,  
G. H.

A. B.  
C. D.  
E. F.

[NOTE.—*The form given in the schedule to the act (Ont. Stat. 33 Vic., c. 20) is somewhat confused, and is not referred to in the body of the act. The above form contains all that is required by sec. 2, and may be easily adapted to suit circumstances.*]

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## CHAPTER XVIII.

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### PATENTS OF INVENTIONS.

The Patent office in Canada is attached to the Department of Agriculture, and the Minister of Agriculture for the time being, is the Commissioner of patents. Patents of invention are grants by the

Crown of the exclusive right to make, use and sell any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement not known and used by others. The statute now in force relating to patents is the Dom. Stat. 32 & 33 Vic., c. 11, passed in 1869. Under the act, the Commissioner is empowered to make rules and regulations, subject to the approval of the Governor in Council.

Any person who has been a resident of Canada for at least one year next before his application, and has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used by others before his invention or discovery thereof, or not being at the time of the application in use, or on sale, in any of the Provinces of the Dominion with the consent or allowance of the inventor or discoverer thereof, may petition for a patent. No patent will issue for an invention or discovery having an illicit object in view, nor for any mere scientific principle or abstract theorem. The fact that the inventor or discoverer has previously obtained a patent in a foreign country, will not deprive him of his right to a patent in Canada, if such foreign patent has been obtained within six months next preceding the filing of his specification as required by the act. Patents may be granted to the assignee of an inventor.

Every application for a patent must be by peti-

tion, addressed, it is presumed, to the Commissioner of patents.

A patent may be granted for an improvement only ; but such a patent will not confer the right of selling or using the original invention ; nor will the original inventor have the right to use or sell the improvement. Where joint applications are made, the patent will issue in the names of all ; and in the event of any assignment from one to another, such assignment must be registered as in the case of other assignments.

Every applicant must make oath, or when entitled by law to make an affirmation instead of an oath, then an affirmation, that he verily believes that he is, or that the person whose assignee or representative he is, is, or was, the true inventor or discoverer of the invention or discovery for which the patent is solicited, and that he, or such person, was a resident of Canada for one year before application, or if dead, before his death. This oath or affirmation may be made before any Justice of the Peace ; or if the applicant is out of Canada at the time, it may be made before a Minister Plenipotentiary, Consul or Consular Agent of the United Kingdom, or any Judge of the country in which the applicant happens to be.

The petitioner must elect some known and specified place in Canada as his domicile or place of residence, and state the same in his petition. The petition must also state the place in Canada at which the petitioner, or the person whose assignee or representative he is, was resident during the

year of residence, and the period of residence at each such place. The petitioner must insert the title or name of his invention or discovery—its object and a short description of the same, and distinctly allege all the facts which are necessary to entitle him to a patent. A written specification, in duplicate, must accompany the petition describing the same in such full, clear and exact terms as to distinguish it from all contrivances or processes for similar purposes. It must correctly and fully describe the mode of operating contemplated by the applicant; and the contrivances and things which are claimed as new, and for the use of which an exclusive property and privilege is claimed; and it must bear the name of the place and date where made, and be signed by the applicant and two witnesses. In the case of a machine, the specification must fully explain the principle and the several modes in which it is intended to apply and work out the same. Where the invention admits of illustration by means of drawings, the applicant must send in drawings, in duplicate, showing clearly all parts of the invention. Each drawing must bear the name of the inventor, and contain references corresponding with the specification, and a certificate of the applicant that it is the drawing referred to in the specification. A working model must also be delivered, unless the Commissioner dispenses with it. Specimens of ingredients and composition, used in the invention, sufficient for experiment, must also be delivered to the Com-

missioner, where they are not explosive or dangerous.

Forms of petition and specification, &c., will be found at the end of this chapter.

The patent, when issued, will grant to the patentee his assigns and legal representatives, or in trust, the exclusive right, privilege, and liberty of making, constructing, using, and selling to others to be used, the invention or discovery. It will be valid for five years; but the holder of the patent may obtain an extension for two separate periods of five years each; thus making a period of fifteen years in all.

Where an error occurs in the specification, through mistake or inadvertence, and without fraudulent intention, a patent may be surrendered and a new one issued. And if an inventor obtains, through inadvertence and mistake, without wilful intent to defraud, a patent for more than he is entitled to, he may disclaim. Such disclaimer must be in writing, and in duplicate, and attested by two witnesses, one copy to be filed and the other attached to the patent.

Patents may be assigned either in whole or in part. The assignment must be in writing, and must be registered in the patent office. An unregistered assignment will be void as against one subsequently registered. The Government have a right to use any patented invention or discovery, but they will pay the patentee therefor such sum as the Commissioner may report to be a reasonable compensation for the use thereof.

The remedy for the infringement of a patent is by an action at law, for damages, and an injunction may be obtained to restrain any future infringement. Such an injunction may be obtained from the Court of Law in which any action for damages is pending; or it may be obtained from the Court of Chancery.

If any material allegation in the petition or declaration of the applicant be untrue, or if the specifications and drawings contain more or less than is necessary, and such omission or addition be wilfully made for the purpose of misleading, the patent will be void.

A patent will cease to be operative after three years, unless the patentee has, within that period, commenced, and since carried on, the construction or manufacture of the invention.

Patents issued under any of the acts of the several provinces now forming the Dominion, prior to the 1st day of July, 1869, remain in force for the term for which they were originally granted, subject to the provisions of the new act, so far as applicable.

The following fees are payable to the Commissioner, and must be paid in advance:

On petition for patent for five years.....	\$20 00
"    for extension to ten years.....	20 00
"    for extension to fifteen years.....	20 00
On registering assignment.....	2 00
On attaching a disclaimer.....	4 00

There are other fees payable in respect of some matters which have not been noticed in this chapter: such matters being beyond and out of the

ordinary routine of applying for a patent, and registering an assignment.

If an inventor is afraid that some person may get the advantage of him by applying for a patent before he (the inventor) has perfected his invention or discovery, he may file a description of such invention in the patent office, with or without plans; and such filing will operate as a *caveat*, and will entitle him to notice in case any one else should apply for a patent.

Every patentee must stamp or engrave on each patented article sold or offered for sale, the year of the date of the patent, thus; "Patented 1869," (*or as the case may be.*) The penalty for neglect to do this is fine and imprisonment.

*Petition for Patent.*

TO THE HONORABLE THE COMMISSIONER OF PATENTS FOR INVENTIONS.

The petition of A. B., of, &c., (*state here name, residence and occupation in full.*)

SHEWETH:—

That your petitioner has invented (*or discovered*) a new and useful (*art, machine, manufacture, or composition of matter, or a new and useful improvement on such art, &c. : inserting here the title or name of his invention, or discovery, its object, and a short description of the same*), not known or used by others before his invention (*or discovery*) thereof, (*or not being at this time in public use, or on sale in any of the Provinces of the Dominion, with the consent or allowance of the inventor or discoverer thereof.*

That your petitioner has elected his domicile at (*state here some known place in Canada*), and that he has resided for one year and upwards, prior to the time of this application for a patent at (*state where, and if in several places, state where, and the period of residence at each place.*)

Your petitioner therefore prays that a patent may issue in his favor granting him the exclusive property in the said invention (*or discovery.*)

Dated the            day of            , 18   .

A. B.

*Oath or Affirmation.*

Province of            , County of            , to wit :  
I, A. B., of &c., (*insert name, residence and occupation*), make oath and say (*or if an affirmation, say: do solemnly and sincerely declare and affirm*) as follows :

1. That I verily believe that I am [or that E. F., of &c., whose assignee (or representative) I am, is (*or was*)] the true inventor (*or discoverer*) of the (*here insert the name or title of the invention or discovery*), for which I am soliciting a patent.

2. That I have (*or the person whose assignee or representative he is, has been*) a resident of Canada for one year now last past.

Sworn (*or affirmed*) }  
before me, at            , in the }  
County of            , this } A. B.  
day of            , A.D. 18   . }

Y. Z.

J. P. (*or as the case may be*).

*Specification.*

Whereas I, A. B., of, &c., have invented (or discovered) a new and useful (*art. machine, &c., state here the proper name or title of the invention or discovery; or if an improvement only so state it*); and the following is a full, clear and exact description of the same; (*here describe the invention or discovery in such exact and clear terms, as to distinguish it from all contrivances or processes for similar purposes: correctly and fully describe the mode of operating; and the contrivances and things which are claimed as new. If the invention is a machine, explain fully the principle and several modes of appliance. Where the invention or discovery admits of illustration by drawings, refer to them here thus:*) The plans and drawings accompanying this specification, show clearly all parts of the invention (or discovery). Figure No. 1 shows &c., (stating clearly what each figure illustrates).

Witness my hand at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_.

Signed in presence of

A. B.

C. D.

E. F.

[NOTE.—*The specification and drawings must be in duplicate; and the latter must bear the name of the inventor, and contain written references to the specification, and be certified by the applicant to be the drawings referred to in the specification.*

*Surrender for Re-Issue.*

TO THE HONORABLE THE COMMISSIONER OF PATENTS FOR INVENTIONS.

The petition of A. B., of, &c., sheweth :

That your petitioner did obtain letters-patent under the seal of the patent office for a new (*thrashing-machine*), which letters-patent are dated the day of \_\_\_\_\_, A.D. 18 \_\_\_\_\_.

That your petitioner now believes that the same letters-patent are inoperative, or invalid, by reason of insufficient description or specification, (*or by reason of his claiming more than he had a right to claim as new*), which error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention.

Your petitioner therefore prays that he may be allowed to surrender the said letters-patent, and that new letters-patent may issue to him for the same invention for the residue of the period for which the original patent was issued, in accordance with the corrected description and specification herewith presented.

A. B.

(*A corrected specification and declaration must accompany this petition.*)

*Disclaimer.*

Know all men by these presents, That I, A. B., of, &c., to whom letters-patent under the Seal of the Patent office, for a new (*thrashing-machine*),

did issue on the      day of      , A.D. 18      , did by mistake, accident or inadvertence, and without any wilful intent to defraud or mislead the public, make my specification too broad, claiming more than that of which I was the original or first inventor, [*or, claiming to be the first inventor, or discoverer of a material and substantial part of the said (thrashing-machine), of, which I was not the first inventor or discoverer, and which I have no legal or just right to claim*]. Now know ye, That I, the said A. B., do hereby disclaim that part of the specification and claim which is in the following words, to wit: [*Insert here that part which is disclaimed, in the words of the original. State also the extent of the interest which the disclaiming party has in the patent, whether an entire or partial interest.*]

Witness my hand, at      , this day of      , A.D. 18      .

Signed in the presence of      A. B.

C. D.

E. F.

*Assignment of an Entire Interest in a Patent.*

To all to whom these presents shall come, A. B., of, &c., sends, greeting :

Whereas, the said A. B., has invented a certain (      ), and has applied for and obtained letters-patent from the patent office in Canada, granting to him and to his assigns the exclusive right to make and vend the same ; which letters-patent are dated on the      day of      , A.D. 18      .

And whereas, C. D., of, &c., has agreed to purchase from the said A. B. all the right, title and interest which he, the said A. B., now hath in the said invention under the said letters-patent, for the price or sum of        dollars.

Now these presents witness, that for and in consideration of the said sum of        dollars, by the said C. D. paid to the said A. B. at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), he, the said A. B., hath assigned and transferred, and by these presents doth assign and transfer, unto the said C. D., his executors, administrators and assigns, the full and exclusive right to the invention made by him, and secured to him by the said letters-patent, together with the said letters-patent, and all his interest therein or right thereto.

In witness whereof, the said A. B. hath hereunto set his hand and seal, this        day of        , A.D. 18        .

Signed, sealed and delivered  
in the presence of        A. B. [L.S.]  
X. Y.

*(An assignment of a partial interest may be readily framed from the foregoing. Every assignment must be registered in the patent office.)*

## CHAPTER XIX.

### WILLS AND INTESTACY.

A will is the instrument by which the owner of property declares the mode in which he desires that property to be disposed of after his death. When a man makes a will, he is called a testator; and when a woman makes a will, she is called a testatrix. When moveable property is given by will, it is said to be *bequeathed*, on the other hand, when land is given, it is said to be *devised*. The person taking a legacy is called a *legatee*; but he to whom land is given is called a *devisee*.

Any person of sound mind may make a will; but the will of a married woman is subject to some restrictions, to be noticed presently. No person under the full age of twenty-one years can make a will of lands, but a will of personalty may be made by males at the age of fourteen, or by females at the age of twelve, *if of sufficient discretion*. What may amount to *sufficient discretion* cannot be defined here: it must remain for the decision of the proper tribunal, whenever a will is impeached on that ground. The right to dispose of landed property by will was first given by an act of Parliament called the Statute of Wills, passed in the

reign of Henry VIII. Personal or moveable property was always subject to such a disposition, but not to its present extent. Anciently, by the general common law, a man who left a wife and children could not deprive them by his will of more than one equal third part of his personal property; if, however, he left a wife and no children, or children and no wife, he was then enabled to dispose of one-half, leaving the other half for the wife, or for the children. At the present day, however, there is no such limitation; a man may, if sufficiently devoid of all natural affection, bequeath the whole of his property to strangers, and leave his wife and children penniless.

All wills require to be in writing, except the wills of soldiers, made when on actual military service, and of seamen, when at sea. A will of lands must not only be in writing, but must also be *signed* by the testator or testatrix, in the presence of *two* witnesses; and these two witnesses must subscribe their names in the *presence* of each other. A will of moveable or personal property does not require the same formalities, although in practice it is usual to observe them. It is neither necessary that the writing should be signed, nor, as a consequence, that it should be witnessed. A writing, however, it *must* be, though it does not require signing or attesting. If a man should give instructions to his lawyer to prepare his will, and those instructions are in writing, or a *draft will* prepared from them, it is sufficient. Such a writing operates as a will of movables, although it may be informally

drawn up and neither signed nor attested. Notwithstanding, however, that such is the case, it is highly desirable that all wills should be signed and attested, if for no other reason, yet for this,—that a will so signed and attested is more susceptible of easy and satisfactory proof.

In every will of personalty there should be an appointment of some person or persons as executor or executrix. Any person may be appointed; but if an infant—that is, a person under twenty-one—be appointed, he will not be allowed to exercise his office during his minority; but during this time the administration of the goods of the deceased will be granted to the guardian of the infant, or to such other person as the Surrogate Court may think fit. If a married woman should be appointed an executrix, she cannot accept the office without the consent of her husband; and, having accepted it, with his consent, she is unable, without his concurrence, to perform any act of administration which may be to his prejudice: for, as the general rule of law is, that a husband and wife are but one person, the power, and, with it, the responsibility, are vested in the husband.

There is this difference between a will of lands and a will of personal property. Under the former, the devisee, or person to whom the land is given, takes the land direct, without the intervention of any executor; while, on the other hand, a legatee of personal property can only get the same through the executor. The moment a testator dies, the executor becomes entitled to the possession of the

whole of the personal property, and is bound to see that all the testator's debts are paid, before he pays a single legacy, or parts with any of the property to the legatees to whom it may be given.

Before an executor can act, he must get himself lawfully clothed with the necessary authority. This he does by *proving* the will. Wills must be proved in the Surrogate Court of the county where the testator had, at the time of his death, his fixed place of abode; and if he had no fixed place of abode in, or resided out of, Ontario, at the time of his death, then in the Court of any county in which he had any personal or landed property. The first thing, then, for an executor to do is, to take the will to the clerk of the Surrogate Court, who is generally the same individual as the clerk of the County Court; there the necessary affidavits and documents will be filled up and the will proved in due form. A Surrogate clerk will be found in every county town.

When the will has been proved, it is the duty of the executor to pay the testator's debts out of the personal estate, to which such executor becomes entitled by virtue of his office. For this purpose the executor has reposed in him by the law the fullest powers of disposition over the personal estate of the deceased; whatever may be the manner in which it has been bequeathed by the will. When the debts have been paid, the legacies left by the testator are then to be discharged. In order to give the executor sufficient time to inform himself of the state of the assets and to pay the debts of the de-

ceased, he is allowed a twelvemonth from the date of the death of the testator, before he is bound to pay any legacies. Notwithstanding the lapse of a year from the testator's death, the executor is still liable to any creditor of the deceased to the amount of the property which may have come to the executor's hands; and if he should have paid any legacies in ignorance of the claims of the creditor, his only remedy is to apply to the legatees to refund their legacies, which they will be bound to do, in order to satisfy the debt. From this liability to creditors an executor cannot be discharged, unless he throw the property into Chancery, in which case the Court undertakes the administration, and the executor is consequently exonerated from all risk. The executor, however, is, of course, not answerable to the testator's creditors beyond the amount of property which has come to his hands, unless he should, for a sufficient consideration, have given a written promise to pay personally, or should do any act amounting to an admission that he has property of the testator sufficient for the payment of the debts.

After payment of the testator's debts and legacies, the residue of his personal estate must be paid over to the residuary legatee, if any, named in the will; and if there be no residuary legatee, then to the testator's next of kin.

When a person dies without making a will, he is said to die intestate, and his property is then distributed according to the provisions of the acts of Parliament passed to regulate such matters. The lands of a person dying intestate descend first to all

his children, sons and daughters, equally, and if any child should be dead leaving children, these grand-children will stand in their parent's place and be entitled to the share which would have fallen to their parent, had such parent been alive. Failing children, the lands will go to the intestate's father; and if the father be dead, then to the mother; and if the mother be dead, then to the brothers and sisters and collateral relatives. If, however, the land came to the intestate in right of his mother, then upon his death without children, such land will revert to the mother if living, and if dead, to the father for life, and then to the brothers and sisters.

We have not pretended to give the whole law of descent of real property: we have only given an outline of the way in which land of an intestate will go in an ordinary and simple case. It would be useless to do more, and would swell the limits of this work far beyond our design. The law of descent of real property is much too intricate to warrant any attempt to popularize it.

The application of an intestate's personal property, after payment of all his debts, is now regulated by statutes of the reign of Charles II. and James II., commonly called the Statutes of Distribution, by which statutes the rights of the relations of the deceased appear to have been first definitely ascertained and rendered legally available. Under these statutes, if the intestate leave a widow and any child or children, the widow shall take a third part of the surplus of his effects. If he leave no

child or descendant of a child, she takes one-half. If the intestate leave children, two-thirds of his effects if he leave a widow, or the whole if he leave no widow; shall be equally divided among his children, or, if but one, to such child. If the intestate leave no children or representatives of them, his father, if living, takes the whole; or, if the intestate should have left a widow, then one-half. If the father be dead, the mother, brothers and sisters of the intestate shall take in equal shares, subject, as before, to the widow's right to a moiety. If there be no brother or sister, the mother shall take the whole, or, if the widow be living, a moiety only, as before; but a step-mother can take nothing. The children of brothers or sisters who are dead stand in their parent's place.

If a married woman is possessed of property, real or personal, in her own separate right, she may dispose of the same by her will to or among her children, and, failing children, then to her husband. Such will must be in writing, and signed by the testatrix in the presence of two witnesses, neither of whom, however, must be the husband. The separate personal property of a married woman dying intestate is to be distributed in the same proportions between her husband and children as the personal property of a husband dying intestate is to be distributed between his wife and children.

When a person dies intestate, any of the next of kin may obtain letters of administration from the Surrogate Court, which will clothe the party obtaining such letters with the same authority that an

executor has. An administrator's duties and liabilities are precisely the same as those of an executor, so that it is unnecessary to refer to them again.

A codicil is a supplement or addition made to a will by the testator, to be taken as part of the same, being intended for its explanation or alteration, or to make some addition to, or subtraction from, the former disposition of the testator. It should be executed in the same manner and with the same formality as the original will.

No precise form of words is essential to the validity of a will; but great care should be taken that the wishes of the testator are clearly expressed in proper terms.

Wills are revoked by the marriage of the testator or testatrix, and by subsequent wills and codicils, so far as such subsequent wills and codicils are inconsistent or incompatible with the original will.

*Short Form of Will.*

This is the last will and testament of me, A. B., of, &c., 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 C. D., his heirs, executors, administrators and assigns, to and for his 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 E. F., of \_\_\_\_\_, executor of this my will; And hereby, revoking all other wills, I declare this only to be my last will and testament.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

A. B. [L.s.]

Signed, sealed, published and declared by the said A. B., the testator, as and for his last will and testament, in the presence of us, who at his request, and in the presence of each other, have hereunto subscribed our names, as witnesses to the due execution thereof.

R. S.

X. Z.

*General form of a Will disposing of Real and Personal Estate, in Legacies.*

I, T. T., of \_\_\_\_\_, in the county of \_\_\_\_\_, gentleman, being of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

1st. I hereby constitute and appoint my wife, E. T., to be sole executrix of this my last will, directing my said executrix to pay all my just debts and

funeral expenses, and the legacies hereinafter given, out of my estate.

2nd. After the payment of my said debts and funeral expenses, I give to each of my children the sum of \_\_\_\_\_ dollars, to be paid to each of them as soon after my decease, but within one year, as conveniently may be done.

3rd. And for the payment of the legacies aforesaid, I give and devise to my said executrix all the personal estate owned by me at my decease (except my household furniture and wearing-apparel), and so much of my real estate as will be sufficient, in addition to the said personal estate herein given, to pay the said legacies.

4th. I give to my said executrix all my household furniture and wearing-apparel, for her sole use.

5th. I devise to my said executrix all the rest and residue of my real estate, as long as she shall remain unmarried, and my widow, with remainder thereof, on her decease or marriage, to my said children and their heirs respectively, share and share alike.

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 \_\_\_\_\_.

T. T. [L.s.]

Signed, sealed, published and declared by the said T. T., as and for his last will and testament, in the presence of us, who in the presence of each other,

and at his request, have subscribed our names as witnesses hereto.

X. Z.

R. S.

*Codicil to a Will.*

This is a codicil to the last will and testament of me, A. B., of, &c., bearing date the            day of            , A.D. 18    , (*the date of the will.*)

I do hereby revoke the bequest of all my household furniture to my son John, and do give and bequeath the same to my daughter Jane, to and for her own absolute use and benefit forever.

I give and bequeath to my daughter Mary, in addition to the legacy bequeathed to her by my said will, the further sum of \$400.

In all other respects I do confirm my said will.

In witness whereof, I have hereunto set my hand and seal, this            day of            , A.D. 18    .

A. B. [L.s.]

Signed, sealed, published and declared by the said A. B., the testator, as and for a codicil to his last will and testament, in the presence of us, who at his request, and in the presence of each other, have hereunto subscribed our names as witnesses to the due execution hereof.

R. S.

X. Z.

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