

No. X.

AN ORDINANCE to facilitate the Transfer of Real Property
and to simplify the Law relating thereto.

CONVEYANCING.

[18th January, 1842.]

WHEREAS by the law of England there are various forms of assurance for the transfer of property and divers rules relating thereto which by lapse of time have become inconvenient and are altogether unsuitable to the circumstances of this Colony; for the simplifying and amending thereof—

Preamble.

BE IT ENACTED by the Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

I.—WHAT ESSENTIAL TO A DEED.

1. Every deed shall be signed by the conveying parties and shall also be attested by two witnesses; the place of abode of the witnesses, their calling or business, shall be stated, but no particular form of words shall be requisite for the attestation.

Signature and attestation.

2. Sealing shall not be necessary except when a deed is made by a Corporation.

Sealing.

3. Delivery and indenting shall not be necessary in any case.

Delivery &c.

4. An acknowledgment of the receipt of the consideration money contained in the body of a deed shall be as valid and effectual in all respects as if the same had also been indorsed thereon.

Receipt.

5. Every deed executed as by this Ordinance is required shall be a valid execution of a power of appointment by deed or writing

Execution of powers.

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(otherwise than by will), notwithstanding it may have been expressly required that such power should be executed with some additional or other form of execution or solemnity.

II.—CERTAIN CASES IN WHICH DEEDS SHALL BE NECESSARY.

- 6.** No partition or exchange lease assignment or surrender of any land shall be valid unless the same shall be made by deed.
- 7.** No appointment to be made by deed or writing otherwise than by will in exercise of a power shall be valid unless the same shall be executed as a deed is hereby required to be executed: Provided that no order or direction by a married woman to pay any money to which she may be entitled for her separate use shall be deemed an appointment within the meaning of this Ordinance.
- 8.** No disclaimer of any land shall be valid unless the same be made by deed or by matter of record.

III.—WHAT MAY PASS BY DEED.

- 9.** Every chose in action right of entry for condition broken contingent remainder and every contingent or executory or future estate right or interest in real or personal property may be conveyed or assigned by deed: Provided that no person shall be empowered by this Ordinance to dispose of any expectancy which he may have as heir or heir of the body or as next of kin.

IV.—OPERATION OF DEED.

- 10.** A deed according to the form hereunto annexed or to the effect thereof without livery of seizin enrolment or a prior lease shall be valid and effectual to pass any land which before the passing of this Ordinance might have been conveyed by lease and release.
- 11.** When any land shall be conveyed directly and immediately to any person or body corporate, the whole legal and equitable ownership of such land shall vest in such person or body corporate.
- 12.** When any land shall be so conveyed to any person or body corporate to the use of or in trust for any other person, the whole legal ownership of such estate or interest shall vest in the person or body corporate to whom the same shall be so immediately and directly conveyed, subject however to a trust for the benefit of such other person. Every limitation which before the passing of this Ordinance might have been made by way of shifting springing or executory use, may hereafter be made by direct conveyance without the intervention of uses.
- 13.** No land shall pass by a covenant to stand seized or by any contract for the purchase of land or by livery of seizin.
- 14.** No conveyance shall create any estate by wrong or work or forfeiture or have any other effect than a conveyance by lease and release would have had before the passing of this Ordinance.
- 15.** Any person not being named as a party to any deed may take an immediate benefit thereby in the same manner as he might under a deed poll.

V.—INCIDENTS OF DEEDS.

- 16.** In every conveyance of land by way of sale mortgage marriage settlement lease and every other conveyance for valuable consideration, there shall be implied the following covenants by each conveying party severally for himself, his heirs executors and administrators, to the extent of the interest departed with by him, that is to say,—

That such conveying party hath good right and full power to

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to convey and assure the estate and interest purported to be conveyed, and that free and clear from all incumbrances other than such as are therein mentioned. That it shall be lawful for the party to whom such estate or interest is conveyed quietly to enjoy the same without any disturbance by any act whatsoever of such conveying party or any person claiming under him or by any rightful act of any other person.

That such conveying party, his heirs executors or administrators, will, at the cost of the party requiring the same, do and execute all such acts and conveyances for the better assuring of the estate or interest thereby conveyed as by the party to whom the same is conveyed or any person claiming under him may from time to time be reasonably required. The aforesaid covenant for quiet enjoyment shall not be implied against any mortgagor, his heirs executors or administrators, until default in payment of the principal moneys secured by the mortgage, before which default it shall not be lawful for a mortgagee, his heirs executors administrators or assigns, to enter into possession of the mortgaged property.

17. In every conveyance of land by way of mortgage there shall be implied a covenant by the mortgagor, his heirs executors administrators and assigns,— In mortgage by mortgagor.

That he or they will pay the principal money and interest thereby secured after the rate and at the times therein mentioned without any deduction whatever.

18. In every such conveyance as last mentioned there shall be implied an obligation on the part of the mortgagee, his heirs executors administrators and assigns, upon payment of the principal and interest at the time and in the manner mentioned in the mortgage deed, or at any time thereafter upon payment of the principal and interest then due (six clear calendar months' notice of an intention to pay the same having been given), at the request cost and charges of the mortgagor, his heirs or assigns, to re-convey to him or them, or as he or they shall direct, the property comprised in the mortgage free from all encumbrances by the mortgagee, his heirs executors administrators or assigns. By mortgagee.

19. In every such conveyance by way of mortgage there shall be implied the following power in the mortgagee, his executors administrators or assigns, that is to say,— Powers in mortgagee.

That in case default shall be made for the space of three calendar months in payment of the principal money thereby secured or any part thereof, the mortgagee, his executors administrators or assigns, shall cause a written demand of payment thereof to be served on the mortgagor, his heirs or assigns, or left at his or their last or usual place of abode, or, if the mortgage be made by a corporate body, with the Town Clerk thereof.

And if default be made for the further space of three calendar months from the service of such demand, then it shall be lawful for the mortgagee, his executors administrators or assigns, to sell the property thereby mortgaged, or any part thereof, and either altogether or in lots, and either by public auction or private contract or by both of such means, and subject to such conditions as he or they may think fit, and with power to buy in and to resell the same without being liable for any loss occasioned thereby, and to make and execute all such contracts and conveyances as he or they may judge necessary for carrying into effect the powers hereby given, all which sales contracts and conveyances and all matters

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matters and things hereby authorized shall be as valid and effectual as if the mortgagor, his heirs or assigns, had made done or executed the same, and the receipt or receipts in writing of the mortgagee, his heirs executors administrators or assigns, shall be a sufficient discharge to any purchaser of any part of such mortgaged property for so much of his purchase money as may be thereby expressed to be received. No such purchaser or his representatives shall be answerable for the loss misapplication or non-application or be obliged to see to the application of the purchase money by him paid, nor shall he be concerned to inquire as to the fact of any such default or demand as aforesaid having been made. The moneys to arise from such sale as aforesaid shall be applied first in payment of the expenses attending any such sale or otherwise incurred in the execution of the power of sale hereby given; secondly in repayment of the principal money and interest remaining due, together with any costs and expenses occasioned by the non-payment thereof. The surplus (if any) shall be paid to the mortgagor, his heirs executors administrators or assigns.

Leases by lessee.

20. In every lease there shall be implied the following covenants by the lessee, for himself, his heirs executors administrators and assigns:—

That he or they will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property during the continuance of the lease. That he or they will keep and yield up the demised property in good and tenantable repair.

Powers in lessor.

21. And there shall be implied the following powers in the lessor, his heirs executors administrators or assigns:—

That he or they may, by himself or themselves or his or their agents, at all reasonable times, enter upon the demised property and view the state of repair thereof, and may serve upon the lessee, his executors administrators or assigns, or leave at his or their last or usual place of abode, a notice in writing of any defect, requiring him or them, within a reasonable time to be therein prescribed, to repair the same.

That whenever the rent reserved shall be in arrear for twenty-one days, he or they may levy the same by distress.

That in case the rent or any part thereof shall be in arrear for the space of six calendar months, or in case the repairs required by such notice as aforesaid shall not have been completed within three calendar months after the service or leaving thereof, it shall be lawful for him or them to re-enter upon the demised property and to determine the estate of the lessee therein, but without releasing him from his liability in respect of the breach of any covenant therein expressed or implied.

Powers implied in marriage settlement.

22. In every conveyance of land by way of marriage settlement there shall be implied the following powers in every tenant for life in possession of the property, or of any undivided share thereof, or in his guardian, or in the Committee of his estate; or in case there shall be no tenant for life in possession, then in the trustees of the settlement, their executors administrators and assigns, that is to say,—

That he or they may demise or lease or concur in respect of such share in demising or leasing the property in settlement for any term not exceeding twenty-one years, to take effect in possession at a reasonable yearly rent, without taking any fine or premium for the making of such lease, and so that the lessee or lessees do execute a counterpart thereof.

There

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There shall also be implied in the trustees of the settlement, their executors administrators or assigns, at the request in writing of any tenant for life in possession, or his guardian or Committee, or if there be no such tenant for life then at their own discretion, the following power, that is to say,—

That they may dispose of the property in settlement or any part thereof either by way of sale or in exchange for other property of the like nature and tenure situated within the Colony; or where such property shall consist of an undivided share, may concur in a partition of the entirety of such property, and may give or take any money by way of equality of exchange or partition: Provided that the moneys to arise from any such sale or be received for equality of exchange or partition shall with all convenient speed be laid out in the purchase of other property of like nature and tenure situate within this Colony; and moreover, any property so purchased or taken in exchange shall be settled in the same manner and subject to the same trusts powers and provisoes as the property so sold or given in exchange: Provided also that until the moneys received in consequence of such sale exchange or partition shall be laid out as aforesaid, the same shall be invested on real security in this Colony, and the interest thereof shall be paid to the persons entitled to the rents and profits of the property in settlement.

23. In every conveyance or reconveyance by trustees or mortgagees there shall be implied the following covenant by each trustee or mortgagee severally for himself, his heirs executors or administrators, that is to say,—

Covenant by trustees.

That he hath not done or executed or been privy to any act or deed by means whereof the property comprised within the trust or mortgage may have been charged or encumbered in any way whatsoever.

24. In every case where any of the covenants or powers aforesaid would be implied by or in any woman if unmarried, the same shall be implied by or in her husband if she shall be married.

Against husband.

25. Every covenant which shall be implied by virtue of this Ordinance shall have the same force and effect and be enforced in the same manner as if it had been set out at length in the deed wherein the same shall be implied.

Remedy in cases of implied covenants.

26. Every covenant and power to be implied in any deed by virtue of this Ordinance may be negatived or modified by express declaration in the deed, or indorsed thereon.

Implications may be negatived.

27. Neither the word "grant" nor the word "exchange" shall have the effect of creating any warranty or right of re-entry.

Grant.

28. Whenever any trustees or trustee appointed either by deed or will shall die, or shall decline to act, or shall be absent from the Colony for the space of six calendar months, or shall be desirous of being discharged from or become incapable of acting in the trusts of such deed or will, it shall be lawful for the continuing trustees or trustee or the executors or administrators of the continuing trustee, or if all the trustees shall decline to act then for the majority of the persons so declining, but in every case with the consent in writing of the persons for the time being beneficially entitled in possession under the trusts, their guardians or Committees, to appoint by deed any persons or person to be trustees or trustee in the place of the trustees or trustee so dying, or declining to act, or being absent, or being desirous of being discharged, or becoming incapable of acting as aforesaid. And upon every such appointment the trust property shall vest, without any conveyance or assignment, in the continuing trustees or

Appointment of new trustees.

Vesting of trust property.

trustee,

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trustee, and such new trustees or trustee, their heirs executors or administrators, as joint tenants, or if there be no continuing trustee then in the new trustees, their heirs executors or administrators, upon the same trusts and with the same powers as the original trustees or trustee.

Trustee's receipt.

29. The receipt in writing of any person to whom any money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication or non-application thereof, and from inquiring into the necessity or propriety of any transaction in consequence whereof such money may have become payable.

Liability of trustees.

30. Every trustee shall be chargeable for such moneys only as he shall actually have received, although he shall have joined in any receipt for moneys received by any co-trustee, and shall not be answerable for the act of any co-trustee, or for any loss which may arise by reason of any trust moneys being deposited in the hands of any banker or agent, or from the insufficiency or deficiency of any security upon which the trust moneys or any part thereof may be invested, nor for any loss in the execution of the trust unless the same shall happen through his own wilful neglect or default.

Costs of trustees.

31. Every trustee may, out of the moneys which shall come into his hands by virtue of the trust, retain to himself and allow to his co-trustee all costs charges and expenses which may have been reasonably incurred in or about the execution thereof: Provided always that no solicitor who shall act as a trustee shall be allowed the costs of any professional services performed by him in the execution of the trust unless the contrary shall have been expressly declared by the instrument whereby such trust was created.

VI.—AMENDED RULES OF LAW.

Words of limitation.

32. Where any land shall be conveyed to any person without any words of limitation, such conveyance shall be construed to pass the fee simple or other whole estate or interest which the party conveying had power to dispose of.

Freehold *in futuro*.

33. An estate of freehold, to take effect at a future time, may be created by any deed by which a present estate of freehold may be created.

Estate in chattel real.

34. Any estate or interest which can be created by will in any chattel real may also be created by deed.

Contingent remainder

35. A contingent remainder shall be capable of taking effect notwithstanding the destruction or determination or merger of the particular estate immediately preceding, and notwithstanding it may have been created expectant on the termination of a term of years.

Rule in Shelly's case.

36. Whenever any deed or will shall contain a limitation to any person for life, followed mediately or immediately by a limitation to the heirs or the heirs of the body of such person, the latter limitation shall not be deemed to coalesce with the former but shall take effect as a contingent remainder.

Possibility upon a possibility.

37. No estate shall be void on account of its being made to depend on a possibility upon a possibility.

Conveyance to wife or husband.

38. Any real or personal property may be conveyed by a husband to his wife or by a wife to her husband either alone or together with any other persons.

Tenants in common.

39. Any two or more persons in whom any real or personal property shall be vested as tenants in common, may by deed declare that they will be joint tenants thereof, and thereupon the same shall be vested in them as joint tenants.

40. The

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40. The executor or administrator of a deceased mortgagee shall have power, upon payment to him of the moneys remaining due on account of the principal and interest of the mortgage debt, to convey by deed the property comprised in the mortgage, and such conveyance shall be as effectual as if the same had been made by the heir or devisee of the mortgagee, their heirs or assigns.

Conveyance by
executor of mortgagee.

41. A mortgagee shall not in any case be entitled to foreclose the equity of redemption.

Foreclosure.

42. No land shall be charged or affected by way of equitable mortgage or otherwise by reason of any deposit of title deeds relating thereto, whether or not such deposit shall be accompanied by a written memorandum of the intent with which the same shall have been made.

Equitable mortgage.

43. No vendor of any land shall have any equitable lien thereon by reason of the non-payment of the purchase money or any part of the purchase money for the same.

Vendor's lien.

44. Where the reversion of any land subject to a lease shall be merged in any remainder or other reversion or future estate, the person entitled to the estate into which such reversion shall have merged, and his heirs executors or administrators, shall have the same remedy for non-performance of the conditions or covenants expressed or implied in the lease as the person who would for the time being have been entitled to the mesne reversion which shall have been merged would have had.

Merger of reversion.

45. Any rent charge may be apportioned in like manner as any other rent.

Apportionment of
rent charge.

46. The release from a rent of any part of the land out of which it shall be payable shall not be a discharge of the residue of such land from the rent: Provided that where the owner of the part which shall be released shall not be the owner of the residue of the land charged with the rent, the owner of such residue shall be entitled to the same contribution from the owner of the part released as he would have been entitled to if no release had been made.

Release of rent.

47. A condition or covenant not to assign or underlet or do any other act without license shall not be released or determined by such license.

License to assign.

48. The assignment of any lease by the assignees of a bankrupt or insolvent debtor, or by the Sheriff under an execution, shall not be a breach of any condition or covenant not to assign unless the contrary shall be therein expressly declared.

Assignment by
assignees.

49. A married woman may assign by deed any reversionary or other future interest in personal property as validly and effectually as she may dispose of the like interest in money to arise from the sale of land.

Assignment by
married woman.

50. A married woman may by deed disclaim any land.

Disclaimer.

51. Every deed made by any married woman by virtue of this Ordinance shall be acknowledged by her in the same manner as a deed by which she might dispose of land is required by law to be acknowledged.

Acknowledgment of
deed.

52. Every deed or will executed out of this Colony shall be received in evidence in every Court of Justice in the Colony: Provided the execution thereof shall be verified on oath by any one of the witnesses thereto in manner following, that is to say,—

Deeds &c. executed
abroad.

Where the same shall have been executed in Great Britain or Ireland, it shall be so verified before the Mayor, Provost, or other Chief Magistrate of any corporate town.

If in any British Colony, before the Officer Administering the Government thereof, or before two Justices of the Peace.

If

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If in any foreign country, then before any British Consul resident therein.

Provided also that such verification shall be certified under the Seal of such Body Corporate, Officer, or Consul, or under the hands of such Justices, as the case may be.

Scale of conveyancing fees.

53. And for the purpose of further securing the simplicity and brevity of conveyances in ordinary use, and of affording at the same time an adequate remuneration for the trouble and responsibility of solicitors: Be it enacted that the sum to be recovered for the drawing copying and engrossing of any purchase deed or mortgage deed shall be a percentage upon the consideration money of such deed according to the following rate and no more, that is to say, such—

Where the consideration money shall not exceed one hundred pounds, then the sum to be recovered shall be any sum not exceeding one pound; and where the consideration money shall exceed one hundred pounds, the additional sum to be recovered shall be any sum not exceeding the rate of ten shillings for every additional one hundred pounds of such consideration money.

Solicitor only to practice as such.

54. And be it enacted if any man not being a solicitor of the Supreme Court shall act as attorney or solicitor, or if any man not being a barrister or solicitor of the Supreme Court shall act as conveyancer, he shall forfeit and pay for every such offence the sum of fifty pounds, to be recovered by action in the Supreme Court by any one who shall sue for the same.

Interpretation clause.

55. For the purposes of this Ordinance, the word "land" shall be deemed to mean any estate or interest in real property.

Commencement.

56. This Ordinance shall come into operation on the first day of March, one thousand eight hundred and forty-two.

FORM OF CONVEYANCE IN FEE SIMPLE.

THIS deed, made the first day of January, one thousand eight hundred and forty-two, between A.B., of Auckland, in the County of Eden, merchant, of the one part, and C.D., of the same place, carpenter, of the other part [*Recitals, if any*] and (Now this deed) Witnesseth, that in consideration of the sum of One Hundred Pounds paid by the said C.D. to the said A.B. (the receipt whereof is hereby acknowledged), the said A.B. doth hereby convey and assure unto the said C.D. and his heirs [*or unto the said C.D.*] all that piece of land (parcels) [*Referring to the marks and numbers in the Surveyor-General's map, and describing particularly the situation boundaries and measurement, and specifying any variation in any of the above particulars, since the date of the last conveyance.*] with all the appurtenances thereto belonging.

[*Special provisions, if any.*]

In witness whereof the said A.B. hath hereunto subscribed his name.

A.B.

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

E.F., of Queen Street, Auckland, Solicitor.

G.H., of Fort Street, Auckland, Clerk of the said E.F.