

25^o VICTORIAE, 1861.

A BILL

To simplify Deeds and other Instruments.

[MR. HOLDEN;—30 October, 1861.]]

WHEREAS it is expedient to simplify the form of Deeds and the Preamble.
language of Deeds Wills and other Instruments in writing Be it
therefore enacted by the Queen's Most Excellent Majesty by and with the
advice and consent of the Legislative Council and Legislative Assembly
5 of New South Wales in Parliament assembled and by the authority of the
same as follows :—

1. The signing of any writing purporting to be a Deed by any Deeds may be per-
party thereto other than a Corporation in the presence of and attested by
two subscribing witnesses shall render the same effectual as a Deed without
10 sealing or delivery and the presence and attestation of one witness shall
be sufficient if such witness be a Solicitor of the Supreme Court or a
Barrister-at-law or Notary Public or other person authorized to take
affidavits or statutory declarations But nothing herein contained shall But Deeds according
to existing law not to
be invalidated.
15 destroy or alter the effect of any Deed now or hereafter executed in con-
formity to the law in force before the passing of this Act.

2. Nothing in the preceding section shall give to any Deed which Effect of escrow
retained.
shall be retained in the possession or power of the grantor or delivered as
an escrow any further effect before absolute delivery than if this Act had
not passed.

20 3. The indenting of any Deed whether designated an Indenture or Indenting
unnecessary.
not shall be unnecessary.

4. In the construction of any Deed or other Instrument in writing Words of gender or
number.
words importing the masculine gender shall include the female and the
singular the plural and *vice versa* unless the contrary be indicated
25 expressly or by the context.

Land.

5. The word "Land" shall include messuages tenements and hereditaments corporeal and incorporeal of any tenure or description and whatever may be the estate or interest therein unless an intention be indicated by the context to exclude houses or buildings or to restrict the meaning to tenements of some particular tenure or to some particular estate or interest And a conveyance of any specific land shall comprise all buildings and improvements thereon and all ways easements profits and appurtenances thereto belonging or therewith usually occupied or enjoyed unless a contrary intention be indicated in manner aforesaid. 5

Estate.

6. The word "Estate" shall include any estate or interest right title claim or demand lien or incumbrance in law or in equity unless a more limited meaning be indicated in manner aforesaid. 10

Words of transfer.

7. Either or any of the words "convey"—"grant"—"bargain"—"sell"—"alien"—"release"—"assign"—"transfer"—or any other words importing transfer shall together or singly be effectual to convey the whole estate right title interest claim and demand of the transferrer in the subject of transfer which shall thereupon vest in the transferee and be transmissible to his heirs and assigns or executors administrators and assigns according to the nature of the estate without any express words of inheritance or limitation But nothing herein contained shall lessen the effect of any express words qualifying such transfer. 15

Conveyance by more than one person.

8. Whenever such conveyance as aforesaid shall be made by more persons than one such conveyance shall without express words be taken to be made by them jointly or severally or jointly as well as severally as shall be most effectual for the purpose of conveyance. 25

Appropriate acts of joint vendors to be implied.

9. Every person joining with others in such conveyance as aforesaid shall be held to convey release surrender direct appoint consent or confirm as the case may require to give effect to the deed according to and to the full extent of his respective estate interest or power unless some specific and more limited intention be disclosed by the deed. 30

Conveyances to more than one person.

10. Whenever such conveyance as aforesaid shall be made to more persons than one the estate conferred thereby shall be joint unless expressed to be several and pass accordingly to the survivors or survivor and to the representatives and assigns of the last survivor but if the estate be conveyed to more persons than one severally such conveyance shall be sufficient to create a tenancy in common severally transmissible to representatives and assigns and no words of limitation or inheritance shall be necessary to pass the fee in either case Provided however that nothing herein contained shall lessen the effect of any express words qualifying any transfer. 35

11. Whenever any person shall convey or join in conveying land to any other person jointly or in common with himself such conveyance shall be valid and sufficient although no limitation by virtue of the statute commonly called the Statute of Uses shall be interposed and a like transfer of chattel or chattel-real property shall be valid without any intervening transfer to a third party.

Conveyances in which a grantor is one of the grantees.

12. Every contract in writing shall bind the executors and administrators of the contracting party and if by deed the heirs also without express words and shall run with the land without the word assigns if of such a nature as to be capable of running with land And every such contract shall be available to the heirs and assigns or executors administrators and assigns of the party with whom the same shall be made without express words as fully as the nature of each case will respectively admit Provided further that whenever it may be deemed convenient to refer to the persons succeeding to any estate right or obligation of any party therein mentioned after his death or the alienation of his estate or interest any or either of the words "successors," "representatives" or "assigns" shall be sufficient as a collective designation of all the persons capable of so succeeding in the case wherein such designation shall be employed.

Contracts by deed to be transmissible to representatives and assigns without express words.

Or they may be designated by a single word.

13. In every case in which a covenant or obligation would run with the land in the hands of a purchaser deriving title by conveyance it shall equally run with the land although the title be derived through appointment.

Covenants to run with land appointed.

14. Every covenant promise agreement or other obligation by more persons than one shall be taken to be both joint and several unless expressly declared to be joint only.

Joint and several covenants.

15. An acknowledgement of the receipt of money inserted in the body of any writing shall be sufficient evidence of such receipt notwithstanding that no separate receipt shall be indorsed or signed.

Receipt in body of Deed.

16. A Deed according to the form in the Schedule hereto annexed marked A or to the effect thereof without livery of seisin or enrolment or prior lease shall be sufficient as a Conveyance of the fee simple or of any less estate belonging to or disposable by the grantor or vendor of any land.

Statutory form of conveyance.

17. Special covenants may be inserted in any conveyance in accordance with the intention of the parties but if or so far as no contrary intention shall be expressed in any statutory conveyance under this Act covenants to the effect contained in Schedule B hereto annexed shall on the part of any vendor beneficially interested be implied in such conveyance and be read in connexion with any special provisions to be inserted therein.

Covenants implied in statutory conveyance.

Trustees covenant.

18. Whenever any person who shall convey or join in conveying land shall be a mere trustee or without beneficial interest a covenant shall be implied on his part with the purchaser that he has not done or knowingly permitted any act to incumber or prejudice the title to the land contrary to the expressed intent of the conveyance.

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Statutory form of mortgage.

19. A Deed according to the form of Schedule C hereto annexed or to the effect thereof shall be sufficient for the conveyance of the estate of a mortgagor in like manner as hereinbefore provided with respect to a conveyance to a purchaser by the statutory form in Schedule A.

Covenants implied in statutory mortgage.

20. Special covenants and provisions may be inserted in any mortgage according to the intentions of the parties but if and so far as no contrary intention shall be expressed in any statutory mortgage provisions and covenants to the effect contained in Schedule D hereto annexed shall be implied and shall be read in connexion with the special provisions contained in such statutory mortgage.

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Transfer of mortgage.

21. The transfer of a mortgage thereupon indorsed or thereunder written in the form or to the effect of the form in Schedule E hereto annexed and signed and attested as required in respect of Deeds by the first section of this Act shall be sufficient (unless or except so far as the right of transfer be restricted by the terms of the mortgage Deed) to transfer all the estate and interest of the mortgagor or transferrer signing the same and to confer upon the transferee all the estate powers and remedies of the original mortgagee including authority to act as his attorney in relation to the property mortgaged and the money thereon secured so far as the same shall be subsisting or capable of taking effect at the time of transfer.

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Discharge of mortgage.

22. An acknowledgement of receipt and satisfaction in full of the moneys secured by any mortgage thereupon indorsed or thereunder written signed by the person or duly authorized agent of the person entitled to receive the same and attested as required in respect of Deeds by the first section of this Act shall operate as an extinction of the mortgage and the estate in the mortgaged property shall thereupon revert to revert in and belong to the mortgagor or in such person claiming under him as would have been entitled thereto if the mortgage had not existed.

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Mode of creating and exercising usual power of appointment in conveyances.

23. Any Deed which shall be sufficient in law as a conveyance shall be effectual as an appointment under any subsisting power to appoint by Deed and shall operate primarily by way of appointment unless a contrary intention be expressed and if the words "or his appointees" be

inserted

inserted after the name of the person to whom any conveyance or appointment shall be made they shall confer on such person a power of appointment as effectually and of like nature and operation as if a conveyance were made to him and his heirs to such uses as he shall by Deed or Will
5 appoint and such power shall be in addition to and collateral with the ordinary rights of owner in fee and not exclusive thereof.

24. In all cases in which the acknowledgment of any Deed before a Judge or other Officer is or shall be necessary to give effect or any special effect thereto such acknowledgment shall continue to be necessary
10 or necessary for such purpose as the case may be in addition to the form of execution prescribed by this Act. Acknowledgment not dispensed with where now requisite.

25. The Act eleventh Victoria number twenty-eight is hereby repealed save only as regards leases made in pursuance thereof before the passing of this Act. Leases. Repeal of Act 11 Vict. No. 28.

15 26. A Deed according to the form of Schedule F hereto annexed or to the effect thereof shall be sufficient as a lease and construed in accordance with such of the provisions of this Act as are applicable thereto. Statutory form of lease.

20 27. Special provisions and covenants may be inserted in any such lease according to the intentions of the parties but if and so far as no contrary intention shall be expressed provisions and covenants to the effect contained in Schedule G hereto annexed shall be implied in every such lease and be read in connexion with the special provisions to be therein inserted. Implied covenants &c. in leases.

25 28. The repairs to which the covenant in the said Schedule G shall apply shall if different from those expressed therein be fully stated in the Deed but the other special provisoes and covenants contained in Schedule H hereto annexed may be expressed in any statutory lease by the abridged form of words printed in the last named Schedule in the
30 margin of each such proviso or covenant and which shall have the same operation as if such proviso or covenant respectively were fully set forth in the Deed with such qualifications nevertheless if any as shall be also therein expressed. Short forms of special clauses in leases.

29. A power to grant Leases given by any Deed or Will or other
35 writing referring to this Act shall be construed to confer such power according to the form and effect of Schedule I hereto annexed unless and except so far as altered or qualified by the express language of the instrument. Power of leasing.

Power to grant building leases.

30. A power to grant building leases given in manner aforesaid shall be construed to confer such power according to the form and effect of Schedule K hereto annexed unless and except so far as altered or qualified by the express language of the instrument.

Power to sell and exchange.

31. A power to sell and exchange given in manner aforesaid shall be construed according to the form and effect of Schedule L hereto annexed unless and except so far as altered or qualified by the express language of the instrument.

Implied authority to revoke uses in aid of powers.

32. Wherever the revocation of existing uses and declaration of new uses shall be requisite to give complete effect to any power of sale exchange or leasing and the party conferring such power shall be entitled to authorize such revocation and declaration such authority shall be implied without express words and in the exercise of any power of sale exchange or leasing such revocation and declaration shall in like manner be implied as shall be required to give full effect to the intention of the instrument if valid in all other respects.

Power of maintenance &c.

33. A power of maintenance education and advancement given by any Deed or Will or other writing shall be construed according to the form and effect of Schedule M hereto annexed unless and except so far as altered or qualified by the express language of the instrument.

Power to appoint new trustees.

34. A power to appoint new trustees granted in manner aforesaid shall be construed according to the form and effect of Schedule N hereto annexed unless and except so far as altered or qualified by the express language of the instrument.

Trust property to pass to new trustees without formal conveyance.

35. Whenever at any time after the passing of this Act a power of appointing a new trustee shall have been duly exercised the trust property shall forthwith thereupon become legally vested in such new trustee either alone or conjointly with the continuing trustee or trustees (as the nature of the case shall require) as effectually to all intents and purposes as if the same had been by all parties conveyed or transferred in due form of law.

Trustees indemnities implied.

36. All trustees acting gratuitously under any Deed or Will or other writing shall be entitled to such indemnities as are declared in the proviso in this behalf contained in the Schedule O hereto annexed unless the Deed Will or writing declaring the trust or some other instrument obligatory on the trustees shall otherwise direct.

37. A covenant or agreement to refer to arbitration any matter of difference whether existing or contingent shall so far as no other mode of proceeding in regard thereto shall be expressed be construed to imply such provisions in this behalf as are contained in Schedule P hereunto 5 annexed. Reference to arbitrator to imply the provisions expressed in Schedule P.

38. Transcripts or imprints of Deeds or other Instruments shall be deemed full copies for all purposes of registration and for satisfying the claims of purchasers or others without the transcription or imprinting of any of the provisions incorporated or applied in the construction thereof 10 by virtue of this Act. Copy of short deed to be sufficient to register &c.

39. This Act may be cited as the "Deeds Simplifying Act of 1860" and any form or clause in the Schedules hereto may be referred to by prefixing the word "statutory" to the designation thereof. Short Title and mode of reference.

SCHEDULE A.

15 THIS DEED made the _____ day of _____ A.D. one thousand eight hundred and _____ (18) between A.B. of _____ (vendor) of the one part and C.D. of _____ (purchaser) of the other part [Recitals (if any) Now this Deed] witnesseth that in consideration of [£] paid by the said purchaser to the said vendor he the said vendor doth convey to the said purchaser* All that &c. Statutory conveyance.

20 To the intent that this deed may operate as a statutory conveyance under the Deed Simplifying Act (1860) [in connexion with the special provisions herein contained namely :—] *Add "or his appointees" if so intended in accordance with section 24 of Act so as to retain the power of barring dower by appointment to a purchaser.

EXAMPLES OF SPECIAL PROVISIONS.

1. The vendor's covenants for title are not to apply to any claims under [Here refer to any particular lease mortgage or incumbrance intended to be excluded.]
2. The covenant to produce shall apply to the Deeds following viz. : [Specify Deeds.]

Signed by the said the presence of

in }

[Signature] A.B.

25

(As to attestation see section 1 of Act.)

To the above may be added any other special provisions according to the intention of the parties.

SCHEDULE B.

THE Vendor covenants with the purchaser that notwithstanding any act done permitted or omitted by the vendor to be contrary he the vendor at the time of his signing the Deed referring hereto hath in himself (or together with the other persons—if any— 30 joining in the conveyance) good right to convey to the purchaser the land thereby expressed to be conveyed according to the true intent of the said Deed and that it shall be lawful for the purchaser and his successors immediately after the signing of the said Deed to enter upon and enjoy the said land and receive the rents and profits thereof for his and their own use and benefit without any interruption by the vendor or any person claiming or to claim 35 inconsistently with the preceding covenant and that free and clear or otherwise by the vendor sufficiently indemnified against all former and other estates liens and incumbrances created occasioned or permitted by the vendor or any person claiming or to claim as aforesaid and that the vendor and all persons claiming or to claim as aforesaid will at the request and charges of the purchaser or his successors make and perfect all further assurances that shall be

be

be necessary for more effectually or satisfactorily conveying the said land unto the purchaser and his successors in manner aforesaid or otherwise as by him or them or his or their counsel in the law shall be devised and tendered to be done and executed Provided that the person required to do or execute the same be not for that purpose compellable to leave his place of abode and further that the vendor and his successors will at all times hereafter unless prevented by fire or other inevitable accident upon every reasonable request in writing and at the expense of the purchaser or his successors produce to him or them or his or their counsel or solicitor in any part of the Colony of New South Wales at or upon any trial hearing or examination in or directed by any competent Court of Judicature or to any arbitrator or umpire lawfully appointed to be inspected copied pleaded or given in evidence as may be requisite the deeds and documents specified in the statutory conveyance referring hereto for the manifestation or justification of the estate title and interest or the purchaser and his successors in or to the said land and will in the meantime take all proper care to preserve the same Provided nevertheless that if the said deeds and documents shall be hereafter delivered up to any other purchaser of any part of the land to which the same relate and the vendor or his successors shall procure the purchaser to whom the same shall be delivered to enter into a sufficient covenant with the present purchaser or his successors for production and preservation thereof in substitution for that herein contained then the covenant herein contained shall to the extent of such substitution cease and be thenceforth void.

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SCHEDULE C.

Statutory mortgage. THIS DEED made the _____ day of _____ A.D. one thousand eight hundred and (18) between A.B. of _____ (mortgagor) of the one part and C.D. of _____ (mortgagee) of the other part [*Recitals (if any) Now this Deed*] witnesseth that in consideration of _____ pounds (£) lent and paid by the said mortgagee to the said mortgagor (the receipt whereof is hereby acknowledged) he the said mortgagor doth convey to the said mortgagee all that &c. 25
To the intent that this Deed may operate as a statutory mortgage under the Deed Simplifying Act (18) in connexion with the special provisions herein contained namely:—

EXAMPLES OF SPECIAL PROVISIONS IN MORTGAGES.

1. The principal sum secured is £ _____ to be paid on the _____ day of _____ one thousand eight hundred and (18).
2. Interest at the rate of _____ per centum per annum to be paid thereon as follows viz.: [*specify mode and times of payment*].
3. Calendar months notice to be given before exercise of power of sale.
4. The power of sale shall be [*limited to public auction*] or [*exercisable either by public auction or private contract*] or [*specify any other restrictions agreed upon*].
5. The mortgagor shall insure against fire in the sum of £ _____.
6. Add any other special provisions intended to apply.

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

[Signature] A.B. 30

(As to attestation see section 1 of this Act.)

SCHEDULE

SCHEDULE D.

Provided that if the mortgagor shall pay unto the mortgagee the principal and interest moneys specified in the Statutory Deed referring hereto at the respective times and in manner therein appointed without any deduction whatsoever then the mortgagee will at
 5 the request and costs of the mortgagor re-convey the mortgaged land unto the mortgagor or as he shall direct free from all mesne incumbrances occasioned by the mortgagee. But if the mortgagor shall make default in payment to the mortgagee of the said principal or interest moneys or of any part thereof on the days and times and in manner appointed for such payments or if the mortgagor shall make default in performance of any of the Covenants on his
 10 part herein contained (of which defaults respectively the production of the Statutory Deed of mortgage referring hereto and executed by the mortgagor shall as between the parties hereto be *prima facie* evidence and in favor of all other persons shall be conclusive evidence) then it shall be lawful for the mortgagee without any further concurrence of the mortgagor to enter into possession of the said land and whether in or out of such possession to make
 15 any lease or leases thereof which he shall think fit. And also after such notice (if any) as prescribed in the Statutory Deed referring hereto the same having been given in some or one of the modes hereinafter provided of his own authority to sell the said land in the mode prescribed by the Statutory Deed referring hereto and if no specific mode be thereby prescribed or so far as not inconsistent therewith then either in one or several lots and either
 20 by public auction or private contract and either for cash or upon credit and generally subject to whatever conditions of sale he shall deem expedient with liberty to buy in the same or rescind any contract for sale without being answerable for any loss or deficiency on re-sale thereof and generally to exercise all the powers of absolute owner in the disposal thereof it being hereby expressly declared that the Contracts Leases Conveyances and all other acts deeds
 25 and assurances of the mortgagee in this behalf shall prevail against the equity of redemption of the mortgagor. And that the receipts in writing of the mortgagee or of any agent or agents lawfully acting and authorized on his behalf for the rents purchase-moneys or other proceeds of the said land shall exempt any persons taking such receipts from all liability in respect of the application of the moneys therein acknowledged to be received and no purchaser of any
 30 land sold under the power hereby conferred shall be bound to inquire whether the proper notice shall have been given pursuant hereto or as to the propriety or regularity of such sale in any other respect nor shall he be affected by express notice of any default or objection in relation thereto. And the mortgagee shall stand possessed of the rents purchase-moneys or other proceeds aforesaid in trust after deducting thereout all expenses incident to the manage-
 35 ment or sale of the said land or otherwise consequent on the default of payment of the said principal and interest moneys or the non-performance of the covenants herein contained (including the costs of any collateral proceedings for the recovery of the said moneys) to retain the principal sum secured and the interest thereof to be computed to the time of receiving and retaining the same notwithstanding the time appointed for payment of the said principal sum
 40 or of the current accruing interest thereon shall not have expired. And after full satisfaction as aforesaid then as to any surplus of the said moneys and any unsold portion of the said land in trust for the mortgagor. Provided nevertheless that nothing herein contained shall prejudice the right of the mortgagee to foreclose the equity of redemption of the said land. And the mortgagor covenants with the mortgagee that the mortgagor will pay unto the mortgagee the
 45 principal sum secured and the interest thereon at the respective times and in manner appointed as aforesaid and will also pay on demand all other sums of money which the mortgagee may have paid in consequence of any default being made in performance of any covenant on the part of the mortgagor herein contained. And further that the mortgagor will forthwith at his own charges insure and will from time to time during the continuance of this security keep insured
 50 all messuages tenements and buildings standing or being on the said land from loss or damage by fire in the name of the mortgagee in some public Insurance Office in Sydney and if the mortgagee shall name any particular office for that purpose then in that office in the sum mentioned in the Statutory Deed referring hereto at the least and will immediately after such insurance and from time to time after the payment of the premiums thereon or the effecting
 55 of any renewed insurance deliver to the mortgagee the policies receipts or other vouchers which shall or ought to be given and held in evidence of every such insurance and payment. And that in case default shall be made in such insurance or in the delivery of such policies receipts or other vouchers contrary to the preceding covenant in that behalf then it shall be

lawful for the mortgagee if he shall see fit either immediately or at any time afterwards during the continuance of this security and of such default himself to effect such insurance and keep the same on foot and that the repayment of all the moneys thereby expended with interest thereon at the rate reserved on the principal money secured shall be a charge upon the said lands in the same manner as the principal and interest primarily secured without 5 prejudice nevertheless to the right of the mortgagee immediately to recover the same either by an action on the preceding covenant or as money paid and expended for the use of the mortgagor and further that the said land shall be enjoyed and disposed of according to the true intent of the security hereby effected and the powers hereby conferred without any interruption or denial and free from all incumbrances occasioned by any persons whomsoever 10 And also that the mortgagor and every person rightfully claiming any estate or interest in the said land will at the request of the mortgagee but at the costs of the mortgagor until the foreclosure of the equity of redemption or sale of the said land under the power herein contained and thereafter at the costs of the persons requiring the same make and perfect such further assurances of the said land as the mortgagee or his successors shall 15 reasonably require Provided that if the said land shall be sold under the power herein contained and the mortgagor shall join in the conveyance to the purchaser and thereupon undertake such qualified liability in respect of title as the purchaser shall be entitled to require then the absolute covenants hereinbefore entered into in that behalf shall thenceforth be void And provided always that until default 20 shall be made in payment of the principal and interest moneys secured or of some part thereof respectively or until default shall be made in performance of the covenants herein contained it shall be lawful for the mortgagor to hold and enjoy the said land without any interruption by the mortgagee And it is further declared that the notice (if any) required by the Statutory Deed referring hereto to be given previously to sale shall be in 25 writing signed by the mortgagee or by his solicitor or agent and the same may be given either personally or be left at the usual or last known place of abode or business of the mortgagor or be sent through the Post Office addressed to him at such place of abode or business or be published in the New South Wales *Government Gazette* or in two Sydney newspapers either of such modes being at the option of the mortgagees and any one of them 30 sufficient And it is hereby declared that the mortgagee shall not be answerable for any more moneys than he shall actually receive nor for any loss or misfortune which may befall the said land or the moneys to arise therefrom unless the same shall happen through his wilful neglect or default And it is hereby further declared and agreed that in case the buildings on the said land or any part thereof shall be wholly destroyed by fire before the 35 satisfaction of the principal money and interest hereby secured the mortgagee shall be at liberty to apply the money to be received by him on account of any insurance to be effected as hereinbefore is provided either in the re-building of the premises that may be destroyed or in or towards the liquidation of the principal money and interest which shall be then charged on the said premises as he shall in his discretion think proper.

SCHEDULE E.

FIRST TRANSFER.

I A.B. [*mortgagor or his personal representative*] in consideration of £ paid to me by C.D. of &c. transfer the within mentioned mortgage debt and security to the said C.D. 45

Signed in the presence of A.B.
(See section 1 of Act.)

SECOND (OR SUBSEQUENT) TRANSFER.

I C.D. [*transferee or his personal representative*] in consideration &c. (as above).

SCHEDULE

SCHEDULE F.

THIS DEED made the _____ day of _____ (18) between A.B. Statutory Lease.
of _____ (lessor) of the one part and C.D. of _____ (lessee) of the other part
witnesseth that the said lessor demises to the said lessee all that &c.
5 to hold to the said lessee for the term of _____ years computed from the
day of _____ yielding and paying for the same the yearly rent
of _____ pounds (£) by equal _____ ly payments of _____ pounds
to be made on the days following namely:—
in each year the first of such payments to be made on the _____ day of _____
10 next And it is declared that this Deed is intended to operate as a Statutory Lease under the
Deed Simplifying Act (18) in connexion with the preceding reservation of rent and with
the special provisions herein contained (namely:—

15 Signed by the said A.B. }
in the presence of }
And by the said C.D. }
in the presence of }

(Signature) { A.B.
C.D.

(As to attestation see Section I of this Act.)

SUGGESTIONS FOR SPECIAL PROVISIONS.

1. The lessee's Covenant to repair to apply as follows viz. — [Insert particulars of repairs stipulated if different from those inserted in Schedule G.]
(See remarks and examples in Schedule H.)
Then insert any further Covenants.
If such as are comprised in Schedule H. the short marginal references may be employed See Act Sec. 20.

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SCHEDULE G.

THE lessee covenants with the lessor that he will pay to the lessor the rent reserved in the Statutory Lease referring hereto on the days and in manner therein mentioned. Ordinary clauses applicable to leases.

And also will (unless and except so far as therein otherwise provided) pay or cause to be paid all taxes rates and assessments parliamentary parochial or otherwise which now are
25 or during the continuance of the term shall be imposed charged or assessed upon or in respect of the demised premises or the rent thereof.

And also will during the continuance of the term at his own costs and charges well and sufficiently repair uphold support amend and keep the demised premises with all such reparations and amendments as are required on the part of the lessee by the Statutory Lease
30 referring hereto and if or so far as not thereby otherwise provided then in such reparations and amendments as shall be necessary to maintain the demised premises in as good a state of repair as that in which the same now are or shall be put by the said lessor (reasonable wear and tear and damage by fire and tempest only excepted) when where and as often as shall be requisite during the said term And the said demised premises being so repaired amended
35 and kept will peaceably yield up to the lessor at the expiration of the said term.

And further that it shall be lawful for the lessor with workmen or others twice in every year during the term at reasonable and convenient times in the daytime to enter into and upon the demised premises or any part thereof to view and examine the condition thereof and if found necessary upon such view and examination to give to the lessee or leave on the
40 premises for him notice in writing to repair and amend the same within three calendar months then next following within which period of three calendar months the lessee will repair amend and make good all such repairs and amendments being in conformity with his covenant in that behalf herein contained as shall be mentioned in such notice.

And the lessor hereby covenants with the lessee that he the said lessor will make or
45 cause to be made the repairs (if any) which by the Statutory Lease referring hereto are required to be made by or on the part of the lessor and will also fulfil all other the special stipulations and provisions contained in the said Statutory Lease which by or on behalf of the said lessor are thereby agreed to be performed and that the lessee and his successors paying the rent reserved and performing the covenants and conditions on his and their part to be
50 performed shall peaceably hold and enjoy the demised premises during the continuance of the term granted without any interruption by the said lessor or by any person claiming under him

him Provided always that if the rent reserved by the said Statutory Lease or any part thereof shall remain unpaid for twenty-one days next after any one of the days whereon the same ought to be paid being first lawfully demanded at any time after the expiration of the twenty-one days and not paid when demanded or if any of the covenants or conditions on the lessee's part shall be broken then and thenceforth it shall be lawful for the lessor into and upon the demised premises or on any part thereof in the name of the whole to re-enter and the same to re-possess and re-enjoy as if this lease had not been made. 5

SCHEDULE H.

SPECIAL PROVISIONS IN LEASES.

(I. With regard to Repairs.) 10

NOTE.—The lessee's covenant to repair as contained in Schedule G is limited to the maintenance of the property in the state in which it is received from the lessor with allowance for wear and tear and exception of accidents by fire and tempest. It is considered that any obligation in excess of this should be matter of distinct agreement and clearly expressed in the deed. The particulars of stipulated repairs are therefore to be set forth in full and if they differ from those set forth in Schedule G will be read in place of them the formal language of the covenant being applied in other respects. 15

The following examples are given as illustrations only. It will be easy for the parties to express their own intentions in each case when the attention is limited to a mere statement of the repairs stipulated for:— 20

1. *Tenantable Repair (inside) House Property.*

To repair support amend paint and cleanse the demised premises (except the roof and outside walls) in such manner as to maintain the same in good and tenantable condition reasonable wear and tear and damage by fire and tempest excepted. [*One or both of these exceptions as may be intended.*] 25

2. *Tenantable Repair (generally) House Property.*

To repair support amend paint and cleanse the whole of the demised premises with the appurtenances in such manner &c. [Complete as in No. 1.]

3. *Repair (unqualified) House Property.*

To repair support &c. the demised premises and all the party and other walls rails lights pavements grates sinks privies drains and sewers thereunto belonging or which shall belong to the same with all and all manner of needful reparation cleansings and amendments whatsoever. 30

4. *(To paint periodically) House property.*

To paint once in every year (*or state any other period if so intended*) during the term the outside wood and iron work or so much as is usually painted of the messuage &c. (*describe building to which covenant is to apply*) with good oil colors in a workmanlike manner Also once at least in every (*state period*) during the said term to paint the inside wood and iron work of the said messuage &c. or so much thereof as is or ought to be painted with good oil colors in such workmanlike manner as aforesaid. 40

5. *(Country property.)*

So much of the preceding forms as may be applicable adding reference to fences If new fences are to be erected—say—will during the continuance of the lease (*or before some specified period*) erect and put up on the boundaries of the land thereby demised or upon such boundaries upon which no substantial fence now exists a good and substantial fence capable of resisting the trespass of horses and horned cattle (*query pigs*) and such fences will from time to time maintain in good and sufficient repair. 45

SPECIAL PROVISIONS IN LEASES.

(II. Short forms authorized by Section 28.)

To apply as follows:—That the lessee his executors administrators or assigns will insure and during the lease keep insured in some public Insurance Office to be approved by the lessor against loss or damage by fire to the full amount specified in the covenant referring hereto 50

EXAMPLE OF REFERENCE HERETO.

The lessee's covenant to repair shall apply as follows viz:—
[Insert in full such of the forms here given or such other form of words as will express the intention.]

That lessee will insure or that lessee will insure to the amount of (specify sum) or in the office of (specify office.)

hereto and if no amount be specified then to their full value all buildings tenements or premises erected on the land comprised in the lease which shall be of a nature capable of being so insured and will at the request of the lessor hand over and deposit with him the policy of every such insurance and the receipts or vouchers for premiums requisite to
 5 maintain the same on foot and all moneys to be received by virtue of such insurance shall in the event of loss or damage by fire be expended in making good the same And in case default shall be made in effecting such insurance and handing over such policies receipts or vouchers as aforesaid such insurance may be effected by the lessor and all costs and charges incident to the effecting thereof shall if not paid by the lessee on demand be added to the
 10 rent of the premises and recoverable by distress or entry as rent in arrear.

To apply as follows:—That the lessee his executors administrators and assigns will
 at all times during the continuance of the lease cultivate use and manage all such parts of the land thereby demised as are or shall be broken up or converted into tillage in a proper and husbandlike manner and will not impoverish or waste the same.

That the lessee will cultivate properly.

15 To apply as follows:—That the lessee his executors administrators and assigns will not convert use or occupy the demised premises or any part thereof into or as a shop warehouse or other place for carrying on any trade or business whatsoever or suffer the same to be used for any other purpose than a private dwelling-house without the consent in writing of the lessor.

That the lessee will not use the premises as a shop.

20 To apply as follows:—That no noxious noisome or offensive art trade business or calling shall at any time during the term be used exercised carried on permitted or suffered in or upon the demised premises and no act matter or thing whatsoever shall at any time during the term be done in or upon the said premises or any part thereof which shall or may be or grow to the annoyance nuisance grievance damage or disturbance of the occupier or
 25 owner of the adjoining premises.

That the lessee will not carry on offensive trades or create or suffer any nuisance.

To apply as follows:—The power of re-entry contained in Schedule G shall take effect if the lessee or his successors shall become insolvent or assign his or their estate for benefit of creditors or do or suffer any act to cause his or their interest in the demised premises to be taken in execution.

Power of re-entry shall extend to insolvency.

30 To apply as follows:—In case the demised premises or any part thereof shall be destroyed or rendered uninhabitable or useless by fire or tempest during the term then and so often as the same shall happen the rent hereby reserved or a just proportion thereof according to the nature of the injury shall cease and be suspended during so long as the premises or such part thereof shall remain uninhabitable or unfit for use by the means
 35 aforesaid And if any dispute shall arise between the parties in regard to the amount of the abatement to be made in the rent or the period for which the same shall be suspended such dispute shall be referred to arbitration in manner provided by the clause contained in Schedule P of this Act.

In case of destruction by fire or tempest rent shall be suspended.

40 To apply as follows —The lessee his executors or administrators will not assign or otherwise dispose of the demised premises or any part thereof or his estate or interest therein (other than by will to his wife or children or other relations by blood or marriage) without the consent in writing of the lessor his heirs or assigns first obtained but which consent shall not extend to any future assignee or be construed a waiver of the present covenant for restraining the future assignment of the term or interest then unexpired in the lease hereby granted.

The lessee will not assign without leave.

45 SCHEDULE I.

It shall be lawful for the donees of the power of leasing specially indicated by the
 statutory deed referring hereto and if there be no such donees specially indicated then for
 the tenant for life for the time-being (whether in law or equity) of the estate having attained
 the age of twenty-one years and if there be none such having so attained then for the trustees
 50 for the time-being with the consent of such (if any there be) of their *cestuisque trust* as shall have attained the age of twenty-one years and if there be none such then of the proper authority of such trustees from time to time by any deed or deeds to lease any part of the land to which this power is applicable to any person or persons for any term not exceeding twenty-one years to take effect in possession and not in reversion or by way of future interest so that there be reserved in every such lease the best or most improved yearly rent that can

Power to lease.

EXAMPLES OF REFERENCE HERETO.

The statutory power of leasing shall apply qualified as follows—
 e.g. The power shall be exercisable by [state by whom] or the term shall not exceed [14] years or the lease may extend to any term not exceeding [30] years or any other variation or addition as intended.

be

be reasonably obtained to be incident to the immediate reversion without any fine foregift or other payment of like nature for the making thereof and so that there be contained in every such lease a condition of re-entry for non-payment within a reasonable time to be therein specified or the rent to be thereby reserved and so that the lessee do execute a counterpart and do thereby covenant for payment of the rent thereby reserved and be not by any express words therein contained made dispunishable for waste. 5

SCHEDULE K.

Power to grant building lease.

It shall be lawful for the donees of this power to grant building leases specially indicated &c.—[As in Schedule I. to the word "persons" in line 8]—who shall improve the same by erecting and building thereon any new house or houses building or buildings or by repairing or rebuilding any of the houses or buildings which are now or shall hereafter be standing thereon or by otherwise expending in improvements such moneys as shall be deemed adequate for the interest to be parted with for any term of years not exceeding ninety-nine years to take effect &c.—[As in Schedule I. to the end.] 10

EXAMPLES OF REFERENCE HERETO.
[See Schedule I.]

SCHEDULE L.

Power of sale and exchange.

It shall be lawful for the donees of the power to sell and exchange specially indicated in the statutory deed referring hereto and if or so far as there shall be no such donees specially indicated it shall be lawful for the trustees for the time-being with the consent in writing of the persons specially indicated in this behalf by the said deed and if none be so indicated then with the consent in writing of such persons beneficially interested in the trust property as shall have attained the age of twenty-one years and if there shall be no person qualified to give such consent then at the sole discretion of the trustees to dispose of and convey either by way of absolute sale or in exchange for other land situate as specially provided in this behalf in the said deed and if there be no such special provision then situate in the Colony of New South Wales all or any part of the lands held or to be hereafter held on the trusts hereby created to any persons whomsoever for such prices in money or such equivalent or recompense in land as to the said trustees shall seem reasonable and upon every such exchange as aforesaid to give or receive any sum of money for equality of exchange and every such sale may be made either by public auction or private contract and the trustees shall have full power to make such stipulations or conditions in any particulars of sale by which the said lands or any part thereof may be sold or in any contract for the sale thereof or of any part thereof as to the title to be required by the purchasers or the evidence to be produced in support of the same or otherwise as the trustees shall deem fit and shall also have power to buy in the same premises or any part thereof at any sale or sales by auction and to rescind or alter any contract whether on sale by public auction or private contract and to resell the premises so bought in or in respect of which the contract shall be rescinded without being responsible for any loss that may be thereby occasioned and the receipts in writing of the trustees for any moneys arising from any such sale as aforesaid or received for equality of exchange shall be sufficient discharge to the persons to whom such receipts shall be given who shall not be in any manner bound to see to the application or answerable for any loss misapplication or non-application of the said moneys. 15 20 25 30 35 40

EXAMPLES OF REFERENCE HERETO.

The statutory power of sale and exchange shall apply or the statutory power of sale and exchange shall apply qualified as follows—
e.g. The power shall not be exercised without the consent of [state of whom] The land to be taken in exchange or purchased as new investment shall be situate [state where if limited otherwise than to New South Wales] or may be situate [state where if less restricted e.g. in any part of the British dominions wherein any of the parties beneficially interested shall be for the time-being resident.]

2. The moneys to arise from any such sale or for equality of exchange as aforesaid shall with all convenient speed be laid out and invested by the trustees in the purchase of other lands situate as before prescribed with regard to lands receivable in exchange of a clear indefeasible estate in possession yet so that every such purchase be made with the same consent as hereby prescribed with regard to the sales or exchanges hereby authorized if any person qualified to give such consent shall be then living and the trustees shall settle or cause to be settled all the lands so purchased or taken in exchange to the same uses and upon and for the same trusts intents and purposes as subsisting in regard to the lands sold or exchanged as aforesaid. 45

3. Until the moneys to arise from such sales or received for equality of exchange as aforesaid shall be disposed of in manner lastly directed it shall be lawful for the trustees (with the like consent as prescribed with regard to such sales exchanges or new purchases as aforesaid but if no person qualified to give such consent shall be then living 5 then at their sole discretion) to place out such moneys at interest upon Government or real securities in Great Britain or New South Wales in the names of the trustees for the time-being and from time to time to vary transfer and dispose of the said securities And the interest dividends and annual produce of such securities shall go to be paid to the same persons and be applied for the same purposes and in the same manner as the rents issues 10 and profits of the land purchased therewith would have been applicable in case such purchase had been actually made.

SCHEDULE M.

It shall be lawful for the trustees or trustee for the time being of any Deed or Will purporting to confer powers of maintenance and education to apply with such consent as by 15 such Deed or Will shall be required and if none be so required then of the proper authority of such trustees or trustee the interest dividends rents or other annual income arising from the trust property or share of trust property held in trust for any infant *cestuique trust* or any portion of such income which shall be deemed requisite in or towards the maintenance and education of such infant *cestuique trust* during minority And as to any unappropriated 20 surplus of such income the same shall be accumulated by re-investment upon Government or real securities for the benefit of the person entitled to the principal fund.

And if any such Deed or Will as aforesaid shall also purport to confer a power of advancement it shall further be lawful for the said trustee or trustees with the like consent or of the like proper authority to apply such portion of the principal trust fund or property 25 as shall be authorized by such Deed or Will as aforesaid and if no particular portion be thereby specified then the whole or any proportion at the discretion of the said trustees or trustee of the share of the principal trust fund or property to which any such infant *cestuique trust* shall be entitled for his or her benefit or advancement in life during minority.

Power of maintenance and advancement

EXAMPLES OF REFERENCE HERETO.

The trustees shall have the statutory powers of maintenance or powers of maintenance and advancement or shall &c. qualified as follows—*c. g.* Such powers shall not be exercised without the consent in writing of the said A.B. (parent) if living or the power of maintenance shall be limited to [state amount or proportion of income of share] or the power of advancement shall be limited to [state proportion of share of capital] or the accumulated funds shall be invested as follows viz.—[any other variations or additions intended].

SCHEDULE N.

30 If the trustees or any of them or any future trustee or trustees to be applied under this provision shall die or refuse or be or become incapable to act in the trust or be desirous of being discharged therefrom then and so often as the same shall happen it shall be lawful for the person or person specially indicated in this behalf in the Deed or Will referring hereto and if there be no person so indicated then for the trustees or trustee for the time 35 being whether relinquishing the trust or not or for the executor or administrator of the last surviving trustee with the consent in writing of such persons beneficially interested in the property as shall have attained the age of twenty-one years and if there be none such then of the proper authority of the persons upon whom the power is conferred by any Deed or Deeds duly executed to substitute and appoint one or more person or persons to be a trustee or 40 trustees in the stead of the trustee or trustees so dying refusing or becoming incapable or desirous of being discharged as aforesaid and immediately after every such appointment the trust property shall belong to and vest in the trustees thereby constituted whether in the new trustees jointly with any continuing trustees or in the new trustees solely as the case may require And such new trustees shall possess conjointly with the continuing trustees or 45 alone as the case may be all the powers and authorities of the trustees originally appointed.

Power to appoint new Trustees.

EXAMPLE OF REFERENCE HERETO.

The statutory power to appoint new trustees shall apply or shall apply limited as follows viz.—*c. g.* Such power shall be exercised by the said A.B. and C.D. if living or by the survivor of them after the decease of either and if neither shall be living then in manner indicated by the statutory power.

SCHEDULE O.

No trustee shall be charged or chargeable with any other moneys than he shall actually receive by virtue of the trust notwithstanding his giving or signing or joining in giving or signing any receipt for the sake of conformity nor shall any trustee be answerable 50 or accountable for any of the acts neglects or defaults of the others or other of them but each for his own acts neglects or defaults only nor shall any trustee be answerable or accountable for any banker broker or other person with whom or in whose hands any of the trust moneys or property shall be deposited for safe custody or otherwise in the execution of the trusts hereinbefore mentioned nor for the deficiency of any security upon which the trust

Trustees indemnity clause.

trust moneys shall be invested nor for any other misfortune loss or damage which may happen in the execution of the trust or in relation thereto unless the same shall happen through his own respective wilful default And it shall be lawful for each and every trustee by and out of the moneys which shall come to his hands by virtue of the trusts to retain to himself and allow to his co-trustee or co-trustees all costs charges damages and expenses 5 which he or they or any of them shall suffer sustain expend disburse or be put into in the execution of the trust or in relation thereto.

SCHEDULE P.

Arbitration Clause.

(Examples of reference hereto.)

Every dispute which shall arise between the said (name parties) with respect to (state subject matter) shall be referred to arbitration in conformity to the arbitration clause of the Deed Simplifying Act or every &c. (as above) qualified as follows—
e.g. The time for making the award shall be limited to (state any different period intended) after appointment of the third arbitrator or the time for making the award may be extended for reasonable cause by writing under the hands of the arbitrators, or any two of them without a rule of Court or the matters in difference shall be reduced into writing by the party giving notice of reference and stated in such notice and the reference limited to the matters therein stated (or any other variation or addition desired)

Every difference or dispute referred or agreed to be referred to arbitration shall so far as no other and different mode of reference shall be directed by the deed authorizing the 10 reference be referred in manner following namely—the person or persons maintaining one side of the question in difference shall be at liberty to name one arbitrator and to require the person or persons maintaining the opposite side to name a second arbitrator and in case of the omission or neglect of the person or persons on either side to name an arbitrator after four- 15 teen days notice in writing requiring the same from the person or persons on the other side the last named person or persons shall be entitled to name both of the said arbitrators and such two arbitrators when appointed in either of the said modes shall within fourteen days after their own appointment and before proceeding in the reference name a third arbitrator who shall at their discretion be either associated with them in the whole proceedings of the 20 reference or called in only in the event of their differing between themselves and the award of the three arbitrators so appointed or of any two of them shall be conclusive on both or all of the parties in difference so that their award be made in writing within three calendar months after the third of the said arbitrators shall have been appointed or within such further time as upon reasonable cause being shewn for delay any Judge of the Supreme Court shall by 25 any rule or order direct and it is agreed that this submission or any award to be made in pursuance thereof may on the application of any party interested be made a rule of the Supreme Court of New South Wales.