



ANNO SEXTO ET SEPTIMO

VICTORIÆ REGINÆ.

No. 15.—1843.

*By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Provinces of South Australia and its Dependencies and Vice-Admiral of the same by and with the advice and consent of the Legislative Council.*

*AN ORDINANCE to Facilitate Conveyances of Real Estate.*

WHEREAS great inconvenience and expense is incurred by an adherence in Deeds of Conveyance to the forms in use in England and it is expedient to facilitate Conveyances :

BE IT THEREFORE ENACTED BY HIS EXCELLENCY THE GOVERNOR of South Australia with the advice and consent of the Legislative Council thereof That from and after the commencement hereof it shall not be necessary in the Conveyance of any lands tenements or hereditaments in this Province to have separate Deeds of bargain and sale for a year and release as hath been hitherto usual in conformity with the practice of England but every Conveyance of Land by the words bargain sell and release either alone or together with other words of conveyance or assurance not repugnant thereto contained

Land may be conveyed by simple form of Deed.

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tained in one Deed of Conveyance duly executed according to Law shall pass and vest the freehold or inheritance (as the case may be) of the lands tenements and hereditaments therein specified as fully and effectually as if such lands tenements or hereditaments had been conveyed by separate Deeds of bargain and sale for a year and release and that all uses and trusts raised or created or intended to be raised or created by such Deed of Conveyance shall be as effectually raised and created thereby as if such uses and trusts had been expressed in a Deed of release preceded by a Deed of bargain and sale.

Covenants implied in Conveyances for valuable consideration.

II. And be it further enacted that in any Deed of Conveyance of the freehold or inheritance on sale for a valuable consideration it shall not be necessary to express the usual covenants for title quiet enjoyment and further assurance but unless the contrary shall be expressed in such Deed of Conveyance or there shall be something therein inconsistent with the covenants aftermentioned the same shall be implied against the party conveying and his heirs executors and administrators, and all persons claiming under him or them for his and their own acts deeds and defaults and for the acts deeds and defaults of the wife where a wife shall be a conveying party and where the estate intended to be conveyed shall have been derived to the conveying party by devise or descent or by other means than by purchase for a valuable consideration then for the acts deeds and defaults of the predecessors in title of the conveying party since and including the last purchaser for a valuable consideration and such covenants shall be implied as strongly as if expressed in such Deed of Conveyance That is to say: that the conveying party has at the time of making the deed of conveyance good right and title to convey and assure according to the purport true intent and meaning of the deed and that the same hereditaments and premises with their appurtenances and the rents issues and profits thereof may be peaceably and quietly held received and enjoyed according thereto without any eviction or interruption free and clear or by the party conveying his heirs executors or administrators kept indemnified from and against all other estates rights titles charges or incumbrances and lastly that the party conveying and every person rightfully claiming through under or in trust for him or any of his predecessors in title including the last purchaser for a valuable consideration will at any time or times at the request and costs of the party to whom or for whose use the premises are conveyed his heirs or assigns do and execute every such act deed conveyance or assurance for more effectually assuring the premises as shall be reasonably advised and required and as shall be tendered to be done or executed.

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III. And be it enacted that in every Conveyance of the freehold or inheritance by way of mortgage the following covenants shall be in like manner implied against every Mortgagor his heirs executors and administrators and for the acts deeds and defaults of the wife when the wife shall be a conveying party except that such Mortgagor shall be deemed and held to make such covenants with the Mortgagee absolutely and not in the qualified manner before mentioned that is to say: that the said Mortgagor his heirs executors administrators or assigns will pay or cause to be paid unto the Mortgagee his executors administrators or assigns the mortgage money with interest as expressed in the mortgage deed at the time and in the manner therein appointed for payment thereof and also that the Mortgagor has good right to assure the hereditaments and premises with their appurtenances in manner therein mentioned and that the same may be peaceably and quietly held and enjoyed and the rents issues and profits thereof taken accordingly without any eviction interruption or denial whatsoever free and clear or by the Mortgagor his heirs executors or administrators kept indemnified from or against all other estates rights titles charges and incumbrances and that the Mortgagor and every person rightfully claiming any estate right or interest in or to the mortgaged premises or any part thereof shall and will at any time and from time to time at the request of the Mortgagee his heirs administrators or assigns but at the costs of the Mortgagor his heirs executors administrators or assigns do and execute every such act deed conveyance or assurance for more effectually assuring the premises with their appurtenances or any part thereof to the uses aforesaid or otherwise according to the direction of the Mortgagee his heirs executors administrators and assigns as shall be required or advised: Subject always to the following proviso which shall be implied against the Mortgagee his heirs executors administrators and assigns in every such mortgage, that is to say, that until default in payment of the mortgage money and the interest thereof at the time and in manner aforesaid it shall be lawful for the Mortgagor his heirs or assigns to hold and enjoy and take the rents and profits of the premises without interruption or denial from or by the Mortgagee his heirs executors administrators or assigns or any person or persons rightfully claiming through or under him but no purchaser or purchasers under power of sale shall be affected by this provision.

Covenants implied in mortgages.

IV. And be it enacted that in every Conveyance wherein the party conveying is a Trustee only and not the party beneficially interested in the property conveyed in lieu of the Covenants for title quiet enjoyment and farther assurance before mentioned there shall be implied a covenant on the part of such Trustee that

Covenants implied on the part of Trustees.

that he hath not at any time before the making such deed done or knowingly suffered to be done any act matter or thing whereby or by means whereof the hereditaments expressed to be conveyed can or may be impeached charged encumbered or in any manner prejudicially affected in title estate or otherwise howsoever which Covenant shall be implied against such Trustee as strongly as if expressed in the Conveyance.

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Covenants implied in assignments of Leases.

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V. And be it enacted that in every assignment of any Lease for years the following covenants shall be implied against the Assignor and his heirs executors and administrators and against all persons claiming under him or them for his and their own acts deeds and defaults and for the acts deeds and defaults of the wife when the wife is a conveying party and for the acts deeds and defaults of the person from whom he shall have derived his title to such lease other than the Lessor or than any Assignor to him for a valuable consideration that is to say—That the Assignor has not done or permitted any act matter or thing whereby the tenements and premises assigned are or may be incumbered or prejudicially affected and that the recited Lease is a valid and subsisting Lease and not liable to be defeated by re-entry or otherwise and that the Assignor has good right to assign or otherwise assure the premises with the appurtenances for the residue of the term in manner therein mentioned according to the true intent of the deed and that it shall be lawful for the Assignor his executors and administrators and assigns thenceforth during the continuance of the term peaceably and quietly to hold and enjoy the premises and take the rents and profits thereof subject to the rent covenants and conditions mentioned in the Lease without any eviction or denial from or by the Assignor or any person claiming through under or in trust for him free and clear of or kept indemnified against all former and other estates rights titles charges and incumbrances created by the Assignor or any person claiming through under or in trust for him and also that he and every such person as aforesaid (except the person for the time being entitled to the benefit of the said rents covenants and conditions in respect only of such benefit) will at any time at the request and costs of the Assignee his executors administrators or Assigns make do or execute every such act deed assignment or assurance for more effectually assuring the premises according to the true intent of the deed as by the Assignee his executors or Assigns or their counsel may be reasonably required: And in every such assignment the following covenants shall be implied against the Assignee for himself his heirs executors administrators and Assigns that is to say that he will thenceforth pay the rent and observe and perform the covenants and conditions reserved and

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and contained in the Lease and will keep indemnified the Assignor his heirs executors and administrators from all actions suits and other proceedings and all costs losses damages and expenses by reason of the non-payment of the rent or the non-observance or non-performance of the covenants and conditions or any of them or by reason of any matter or thing relating thereto.

*See 17th  
196-10-2*

VI. And be it enacted that where any such Conveyance is made by more parties than one such implied Covenants shall be construed to be several and not to bind the parties jointly and in any declaration in an action for a supposed breach of any such covenants the covenant alleged to be broken may be set forth and it shall be lawful to allege that the party against whom such action is brought did so covenant precisely in the same manner as if such covenant had been expressed in words in such Deed of Conveyance any Law or practice to the contrary notwithstanding.

Such covenants may be set forth in declaration in actions for breach.

VII. And whereas many Conveyances of lands and hereditaments have been heretofore made in this Province by means of Deeds of Feoffment and Deeds of Release without any accompanying livery of seisin having been made in the case of such Conveyances by way of feoffment and without any previous actual entry or Deed of bargain and sale or lease in the case of such Deeds of Release and it is apprehended that great difficulty will hereafter arise in the establishing a good title to lands and hereditaments so conveyed by either of the means aforesaid and it is therefore deemed expedient to provide against such an evil: Be it therefore enacted that all Conveyances heretofore made of lands and hereditaments in this Province for money paid or other valuable consideration given to the conveying party either by means of Deeds of Feoffment without any accompanying livery of seisin or by means of Deeds of Release without any previous Deed of Bargain and sale or lease shall be and shall be deemed as effectual for conveying and assuring the lands or hereditaments in such Deeds of Feoffment or Release mentioned to the party to whom the same are thereby expressed to be conveyed and assured as if livery of seisin of such lands and hereditaments in the one case and a previous Deed of Bargain and sale or lease thereof in the other had been actually made and executed: Provided always that nothing herein contained shall be deemed to relate to any lands or hereditaments respecting the title whereto any action or suit shall have been commenced before the passing of this Ordinance.

Remedying defects in Conveyances hitherto made.

VIII. And

VIII. And be it enacted that this Ordinance shall commence on the First day of December next.

GEORGE GREY,  
Governor and Commander-in-Chief.

*Passed in the Legislative Council, this Fourteenth day of November, 1843.*

W. L. O'HALLORAN,  
Clerk of Council.

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