



ANNO SECUNDO

## GULIELMI IV. REGIS.

NO. VII.

AN ACT to facilitate and simplify the Transfer of Real Property.

[*March 2nd, 1832.*]

**W**HEREAS, it is desirable to establish some simple, and uniform mode of conveying real property situate within this Colony: Be it enacted by His Excellency the Governor of Western Australia, and its Dependencies, with the advice of the Legislative Council; that from and after the passing of this Act, a Deed or Instrument in writing (according to the form numbered 1 in the Schedule hereunto annexed) duly executed by the parties thereto, shall be valid, and effectual to pass and transfer, both at Law, and in Equity, any Estate thereby expressed to be transferred, in Possession, Remainder, or Reversion, in any Hereditaments, situate within the said Colony, or its Dependencies, without livery of Seizin, Attornment, or other ceremony in the Law whatsoever.

Preamble.

Conveyance in fee by bargain and sale.

Without Livery of Seizin, &c.

Simple form of Mortgage.

II. AND be it further enacted, that an Instrument in writing (according to the Form, numbered 2, in the said Schedule) duly executed by the Parties thereto, accompanied by a Deposit of the Title Deed, or Title Deeds of any Hereditaments therein referred to, and situate within the said Colony, shall (from the Time of Default being made in Payment of the Principal money or Interest thereby secured) have the effect in all Proceedings at Law, or in Equity of a Conveyance or Assignment of the Legal Estate, in the same Hereditaments, to the Mortgagee, or Person in whose favor such last mentioned Instrument shall be executed; and that it shall not be essential to the validity of any Sale, and Conveyance of the same Hereditaments, by the said Mortgagee, under or by virtue of any Power of Sale contained in

Mortgagor need not join in sale under power.

such last mentioned Instrument, that the Mortgagor, His Heirs, or Assigns should join in making and executing such Sale and conveyance, and that the Receipts of the said Mortgagee, his Executors, Administrators or Assigns, shall be sufficient discharges for the purchase money therein expressed to be received, to the purchaser, or purchasers thereof who shall not be obliged to enquire into the legality of any such Sale, and shall not be answerable for the non-application, or misapplication of such purchase money; provided, that every such instrument as last aforesaid, be duly registered within one month from the date of its execution.

Purchasers not answerable for misapplication of the purchase money, nor bound to enquire into legality of the sale.

Mortgage void on payment of money and certificate thereof delivered at Registry Office.

III. AND be it further enacted, that in case the money secured by any such Instrument as last aforesaid, shall be repaid within the time thereby limited, and a verified certificate of such repayment, (in the form required by an Act of Council intituled an Act to provide for the Registration of Deed, Wills, Judgments and Conveyances, affecting real property) shall be delivered into the Registry Office of the said Colony, then and in such case, such last mentioned Instrument, shall immediately after the delivery of such certificate, become null and void, and the estate and interest, of the said Mortgagor, his Heirs, or Assigns, in the Hereditaments thereby charged, shall be the same as if no such instrument had ever been made.

How Married Women may pass their interest in lands.

IV. AND be it further enacted, that from and after the passing of this Act, any married woman, may by Deed, to be by her jointly executed with her Husband, pass and transfer, as fully and effectually as by fine levied, any Estate, Right or Interest, (including her title to dower) in or to any Hereditaments, within the said Colony, or its Dependencies: Provided always, that such Married Women be of the age of twenty-one years at the time of such Execution, and that such Deed be by her executed, in the presence of some Judge, or Commissioner of any Civil Court of the said Colony, or before some Justice of the Peace of the said Colony, who shall previously examine her—apart from her said husband, whether she proposes to execute such Deed, freely, and voluntarily, and without threats, or compulsion, on the part of her said husband, and which said Judge, Commissioner, or Justice, shall also endorse on such Deed, a Certificate under his hand of such examination.

Tenant in tail may bar the entail.

V. AND be it further enacted, that any Tenant in tail, general or special, of any Hereditaments within the said Colony, or its Dependencies, may by Deed, to be by him executed for that purpose, in the presence of any such Judge, Commissioner, or Justice of the Peace, as last aforesaid, bar, and extinguish such estate in tail, and pass, and transfer, all his Estate, Right, and Interest in, or to such last mentioned Hereditaments, as fully and effectually, to all intents and purposes, as if a fine with Proclamation, or a common recovery, had been in due form levied, or suffered respectively, of such Hereditaments; and such Judge, Commissioner, or Justice, shall endorse, on every such last mentioned Deed, a certificate under his hand, that the same was executed before him.

Any other interest in landed property passed by a Deed executed as above.

VI. AND be it further enacted, that any other Estate, Right, or

Interest, in or to any Hereditaments; which by the Laws and usage of England, can be passed, or transferred by fine, or recovery only, may from and after the passing of this Act, (so far as relates to Hereditaments situate within the said Colony) be passed, or transferred by any Deed purporting to be a transfer thereof, and executed, and certified, in manner aforesaid, before and by any such Judge, Commissioner, or Justice of the Peace, as aforesaid, as fully, and effectively, to all intents and purposes, as if a fine, or recovery, had been levied, or suffered thereof.

VII. AND be it further enacted, that all Deeds, Wills, Conveyances, Letters of Attorney, or other Instruments in Writing, affecting any Hereditaments, situate within the said Colony or its Dependencies, which shall be made or executed by any person or persons whatsoever, out of the said Colony, and acknowledged by the parties thereto, or proved by any subscribing witness thereto, before the Lord Mayor of London, or before the Mayor, or Chief Magistrate of any other Borough, City, or Town corporate, within the United Kingdom of Great Britain, and Ireland, or before the Governor of any of His Majesty's Colonies, and certified under the common Seal of such City, Borough, or Town corporate, or under the Seal of His Majesty's Colony, where the said Deed, Will, Letter of Attorney, or Instrument, shall have been executed, shall be as good and effectual in the law, for the several and respective purposes for which such Deeds, Wills, Letters of Attorney or other Instruments shall be intended, as if the same had been respectively executed, and acknowledged before any Judge, Commissioner, or Justice of the Peace, of the said Colony, in manner aforesaid.

Instruments affecting land in this colony, executed out of the colony, in what manner.

“ JAMES STIRLING,”

GOVERNOR AND COMMANDER-IN-CHIEF.

Passed the Legislative Council  
This 2nd. Day of March, 1832.

M. J. CURRIE,  
Clerk to the Council.

SCHEDULE REFERRED TO BY THE ANNEXED ACT.

Form No. 1.

Form of Conveyance in Fee, by Bargain and Sale.

*THIS INDENTURE* made the                      day of                      between *A. B.*  
(Vendor) of                      of the one part and *C. D.* (Purchaser) of  
of the other part, witnesseth that in consideration of the sum of                      pounds paid by  
the said *C. D.* to the said *A. B.* (the receipt whereof is hereby acknowledged)

he the said A. B. doth grant, bargain, and sell, unto the said C. D. his Heirs and Assigns, ALL (here describe, the Parcels, or Lands, or Houses sold, their situation, the extent of the Lands in Acres, by admeasurement, or estimation, their Boundaries, with a particular reference to the number and section of the Land, in the Maps of the Surveyor General's Office) and all Easements, Rights, Privileges, and Appurtenances, to the said Hereditaments, hereby bargained, and sold, in any wise appertaining: And all the Right, Title, and Interest, of him the said A. B. in the said Hereditaments with the appurtenances: And all Deeds, and Writings relating solely to the said Hereditaments, now in the possession or power of the said A. B. TO HAVE AND TO HOLD the said Hereditaments hereby bargained and sold, with the Appurtenances, to the said C. D. his Heirs and Assigns, for ever. AND the said A. B. doth hereby for himself, his Heirs, Executors, and Administrators, covenant, promise, and agree, with and to the said C. D. his Heirs, and Assigns, that he the said A. B. now hath in himself, good right to bargain and sell the said Hereditaments, hereby bargained and sold, with the appurtenances, unto the said A. B. and his Heirs and Assigns, in manner aforesaid, and that free from all claims, charges, and incumbrances whatsoever: And moreover, that he the said A. B. his Heirs or Assigns, shall and will, make, and perfect all such further assurances, as may be necessary for the more effectually or satisfactorily conveying the said Hereditaments, hereby bargained and sold, with the Appurtenances, unto the said purchaser) his Heirs, or Assigns, as by the said (purchaser) his Heirs, or Assigns, or his or their counsel in the law, shall be devised, or tendered to be executed: In witness whereof the said parties, have hereunto set their Hands and Seals the Day and Year first above written.

A. B. (L. S.)

C. D. (L. S.)

Signed, Sealed, and Delivered }  
by the above named A. B. } E. F.  
and C. D. in the presence of } G. H.

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Form No. 2-

Form of Mortgage, by Deposit of Title Deeds, accompanied by a written Agreement, containing a power of sale.

Memorandum of an Agreement made the      day of      between (Mortgagor)  
of the one part, and (Mortgagee) of the other part. The said (Mortgagor) for  
himself, his Heirs, Executors, and Administrators, in consideration of the sum of  
this day lent and advanced to him by the said (Mortgagee) hereby agrees to deposit

with the said (Mortgagee) the Title Deeds and writings mentioned in the Schedule hereunder written of certain Lands, and Hereditaments, of the said (Mortgagor) situate at by way of Mortgage of the same Hereditaments, to secure the repayment of the said sum of on or before the day of next, together with interest thereon in the mean time, after the rate of for every one Hundred Pounds, by the year; such interest to be paid half-yearly on the day of and the day of in each and every year. And in case default shall be made in payment of the said principal sum of on the said day of or of any of the said half-yearly instalments of interest, on days hereinbefore appointed for payment of the same (or in case the interest payable on the said principal sum of after the rate aforesaid, shall be in arrear, and unpaid, for the space of twelve months, as the agreement may be) in either of the said cases it shall be lawful for the (Mortgagee) without any further consent or concurrence of the said Mortgagor, to sell the said Hereditaments, by Public Auction, of which days public notice, shall be duly given, and to convey and assure the same Hereditaments, when so sold, unto the purchaser, or purchasers thereof, in the same manner as if the fee simple of such Hereditaments had been vested in the said Mortgagee, by a bargain and sale, or other instrument of transfer, and by and out of the proceeds of sale, to repay and satisfy himself the expenses of such sale, and the said principal sum of and all arrears of interest thereon, or to repay and satisfy himself, so much of such principal money and interest as shall then remain due, and to pay over the surplus of such proceeds to the said Mortgagor, his Heirs or Assigns. In witness whereof the said parties, have hereunto set their Hands the Day and Year first above written.

Signed by the above named }  
Mortgagor and Mortgagee }  
in the presence of . . . . }

E. F.

A. B.

C. D.

#### SCHEDULE.

To be subjoined to the above written agreement, containing a list of Title Deeds and Writings deposited in pursuance thereof; a receipt to be taken by the Mortgagor from the Mortgagee, of the Title Deeds, or Writings received by the latter.