

SENATE . . . . . No. 237.

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Commonwealth of Massachusetts.

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SENATE, March 27, 1901.

The committee on Counties, to whom was referred the recommendations and suggestions of the controller of county accounts (House, No. 48), report in part the accompanying bill.

For the Committee,

WILLARD HOWLAND.

## Commonwealth of Massachusetts.

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In the Year One Thousand Nine Hundred and One.

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### AN ACT

To simplify the Transfer of Land.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. In a conveyance of any estate or  
2 interest in land, no covenant shall be implied by  
3 any operative word of conveyance.

1 SECTION 2. It shall not be necessary to use  
2 the words "heirs" or "heirs of the body" in any  
3 conveyance or reservation to vest an estate in fee  
4 simple or fee tail, but the conveyance or reserva-  
5 tion shall take effect according to the intention  
6 expressed in it, so far as it lawfully may, and  
7 shall be deemed to express an intention to vest  
8 an estate in fee simple unless it clearly appears  
9 in the deed that a less estate is intended.

1 SECTION 3. In a conveyance intended to create  
2 a use to be executed by the statute of uses, the  
3 word "use" shall be employed in declaring the

4 use, and provisions introduced by the words "in  
5 trust," or other expressions that might otherwise  
6 create uses, shall be deemed to create trusts and  
7 not uses. And if no use or trust is declared or  
8 indicated in the conveyance, the same shall take  
9 effect as if it were expressed to be for the use and  
10 benefit of the grantee.

1 SECTION 4. It shall not be necessary to men-  
2 tion in any covenant, agreement or condition, in  
3 a conveyance of, or other instrument affecting,  
4 the land heirs, executors, administrators or as-  
5 signs of either party, in order that they may be  
6 bound by, included in, or entitled to the benefit  
7 of the same; but such heirs, executors, adminis-  
8 trators and assigns respectively shall, without  
9 being mentioned therein, be bound by, included  
10 in and entitled to the benefit of the covenant,  
11 agreement or condition, when the context so  
12 admits, in the same manner as if they had been  
13 mentioned therein with proper words for that  
14 purpose.

1 SECTION 5. The holder of a mortgage of land  
2 shall not by virtue of the mortgage have the right  
3 to enter upon or to take possession of the mort-  
4 gaged premises or to receive the rents or profits  
5 thereof before a breach of the condition, unless it  
6 shall be so expressly stated in the mortgage.

1 SECTION 6. When a mortgage provides that,  
2 in case of a breach of condition or in any case

3 specified in the mortgage, the mortgagee or the  
4 holder of the mortgage shall have the statutory  
5 or usual power of sale, the holder of the mortgage  
6 in any such case shall have power, operating to  
7 the same extent and in the same manner as if  
8 it had been expressed in the mortgage, to sell the  
9 mortgaged premises or such part thereof as may  
10 then remain subject to the mortgage, together or  
11 in parcels, by public auction on or near the same,  
12 or at such place as may be designated for that  
13 purpose in the mortgage, and to convey the same  
14 to the purchaser absolutely, and to make any such  
15 sale subject to any prior mortgages or charges  
16 affecting the premises sold, or upon the terms of  
17 all or any of such mortgages or charges then due  
18 and payable being paid off out of the purchase  
19 money, and such sale shall be a perpetual bar to  
20 the right of redemption. But, before selling, the  
21 holder of the mortgage shall publish notice of the  
22 time and place of sale once a week for three suc-  
23 cessive weeks in some newspaper published in the  
24 city or town, or, if there be no such newspaper,  
25 then in some newspaper published in the county,  
26 where the mortgaged premises are; and the first  
27 of such publications shall be not less than twenty-  
28 one days before the day of sale.

1 SECTION 7. The holder of the mortgage, or  
2 any person acting in his behalf, may purchase at  
3 such sale, unless the contrary is declared in the  
4 mortgage.

1 SECTION 8. The holder of the mortgage, out  
2 of the money arising from such sale, may retain  
3 and pay the expenses incurred in the sale, and all  
4 sums which any holder of the mortgage shall  
5 properly have paid by reason of any default of  
6 the mortgagor or the person entitled to the prop-  
7 erty subject to the mortgage, with interest on such  
8 sums, and the money then secured by the mort-  
9 gage, whether then or thereafter payable, and  
10 shall pay the residue to the grantor or his as-  
11 signs on demand. No person other than the  
12 holder of the mortgage shall be bound to see to  
13 the application of the money arising from such  
14 sale.

1 SECTION 9. When any land shall have been  
2 sold under the power hereinbefore mentioned or  
3 any power contained in the mortgage, an affidavit  
4 or affidavits, setting out the events that have hap-  
5 pened authorizing the sale and the things that  
6 have been done in the exercise of the power, or  
7 any of such events or things, may be made and  
8 registered or recorded in the registry of deeds  
9 within thirty days after the date of the deed of  
10 conveyance under the power. If any such affi-  
11 davit be made by a person other than the holder  
12 of the mortgage, it shall state that he makes the  
13 affidavit by the authority or on behalf of such  
14 holder. Such affidavit or affidavits or a duly certi-  
15 fied copy of the record thereof or of the registered  
16 affidavit or affidavits shall be evidence of the mat-  
17 ters therein contained for the purpose of show-

18 ing that the sale was authorized by the power and  
19 that the power was duly exercised. And the  
20 parties may provide in the mortgage that such  
21 affidavit or affidavits or copy shall be conclusive  
22 evidence in favor of bona fide purchasers as to  
23 such matters or any of them.

1 SECTION 10. In an assignment of a mortgage  
2 the word "mortgage," used as a description of  
3 what is thereby assigned, shall include the  
4 debt, note, money or claim secured, and all the  
5 estate conveyed by the mortgage, subject to the  
6 right of redemption, unless a different intention  
7 clearly appears in the assignment.

1 SECTION 11. A mortgage may be discharged  
2 by a deed or other instrument in writing, ac-  
3 knowledging satisfaction or payment of or ex-  
4 pressing an intention to discharge the mortgage;  
5 and such deed or instrument shall have the same  
6 effect as a deed of release, and, being acknowl-  
7 edged or proved according to the statute, may be  
8 registered or recorded.

1 SECTION 12. The fees for registering or re-  
2 cording instruments drawn in accordance with the  
3 provisions of this act shall be the same as now  
4 required by law, but in no case shall the charge  
5 for recording a deed of conveyance be less than  
6 fifty cents, or for recording a mortgage less than  
7 one dollar.

1 SECTION 13. Forms similar to those in the  
2 schedule hereto may be used, and shall be suffi-  
3 cient for the purposes therein specified, and they  
4 may be adapted to other cases by such variations  
5 as circumstances may require.

### SCHEDULE OF FORMS.

1. [Conveyance with General Covenants for Title and Warranty.]

6 Be it known that I, A. B., of, etc., in considera-  
7 tion of one thousand dollars to me paid by C. D.  
8 of, etc., do hereby grant unto the said C. D.,  
9 all that parcel of land situate, etc., [in case of  
10 a trust add, To hold the premises hereby granted  
11 in trust, etc.]. And I covenant, with the  
12 grantee that I am lawfully seized in fee simple of  
13 the premises hereby granted, that they are free  
14 from all incumbrances, that I have good right to  
15 grant the same as aforesaid, and that I will war-  
16 rant and defend the same forever. In witness  
17 whereof, I [having no wife] have hereto set my  
18 hand and seal the third day of January in the  
19 year nineteen hundred and one.

20 Signed, sealed and delivered in presence of

21 [Acknowledgment.]

22 Acknowledged by the said A. B. at Boston the  
23 third of January, nineteen hundred and one.

24 Before me,

G. H.

*Justice of the Peace.*

2. [Conveyance with Limited Covenants for Title and Warranty.]

25 Be it known that I, A. B., of, etc., in con-  
26 sideration of one thousand dollars to me paid by  
27 C. D. of, etc., do hereby grant unto the said

28 C. D. all that parcel of land situate, etc. And  
29 I covenant with the grantee that the premises  
30 hereby granted are free from all incumbrances  
31 made or suffered by me, and that I will warrant  
32 and defend the same forever against the lawful  
33 claims and demands of all persons claiming by,  
34 through or under me. In witness whereof, I  
35 [having no wife] have hereto set my hand and  
36 seal the third day of January in the year nineteen  
37 hundred and one.  
38 Signed, sealed, and delivered in presence of

## 3. [Deed of Mortgage.]

39 Be it known that I, A. B., of etc., in con-  
40 sideration of one thousand dollars to me paid by  
41 C. D. of, etc., do hereby grant unto the said  
42 C. D. all that parcel of land scituate, etc. And  
43 I covenant with the grantee that I am law-  
44 fully seized in fee simple of the premises hereby  
45 granted, that they are free from all incumbrances,  
46 that I have good right to grant the same as afore-  
47 said, and that I will warrant and defend the same  
48 forever: *provided, always*, that if I shall pay to  
49 the grantee the sum of one thousand dollars in  
50 one year from the date hereof, with interest at the  
51 rate of six per centum per annum payable semi-  
52 annually, and until such payment shall pay all  
53 taxes, charges, and assessments laid under the  
54 laws of Massachusetts upon the said premises or  
55 the debt or moneys hereby secured, and insure  
56 and keep insured against fire the buildings thereon  
57 for not less than five hundred dollars in such in-



58 surance office or offices and upon such terms as  
59 the holder of this mortgage shall approve, pay-  
60 able to him in case of loss, and shall deliver over  
61 to him the policy or policies, and shall not commit  
62 or suffer any strip or waste of the granted premi-  
63 ses, then this deed, and a promissory note for the  
64 said sum and interest, bearing the same date here-  
65 with, made by me, and payable to the grantee or  
66 order at the times aforesaid, shall be void; *pro-*  
67 *vided, also*, that, in case of any breach of the  
68 above condition, the holder of this mortgage shall  
69 have the statutory power of sale [and if so  
70 agreed, add, And upon any sale purporting to  
71 be made in pursuance of the said power, an affi-  
72 davit or affidavits made and recorded as provided  
73 by the statute in that behalf, or a duly certified  
74 copy of the record thereof, shall be conclusive  
75 evidence in favor of bona fide purchasers as to the  
76 matters therein contained, for the purpose of  
77 showing that such sale was authorized by the said  
78 power, and that the said power was duly exer-  
79 cised]. In witness whereof, we, the said A. B.  
80 and E. B., his wife, who releases all rights of  
81 dower and homestead and other interest in the  
82 premises hereby granted, have hereunto set our  
83 hands and seals the third day of January in the  
84 year nineteen hundred and one.  
85 Signed, sealed and delivered in presence of

## 4. [Transfer of a Mortgage.]

86 Be it known that I, C. D., of etc., the mort-  
87 gagee named in a deed of mortgage made by

88 A. B. of etc., dated the third day of January,  
89 nineteen hundred and one, and recorded with  
90 Suffolk deeds (lib. fol. ), in consideration of  
91 one thousand dollars to me paid by E. F. of, etc.,  
92 assign the said mortgage unto the said E. F.  
93 In witness whereof, I have hereto set my hand  
94 and seal the eleventh day of February in the  
95 year nineteen hundred and one.

96 Signed, sealed and delivered in presence of

5. [Discharge of a Mortgage.]

97 Be it known that I, C. D., of etc., the mort-  
98 gagee named in a deed of mortgage made by A.  
99 B. of, etc. [or E. F., assignee of a mortgage made  
100 by A. B. of, etc., to C. D. of, etc.], dated the  
101 third day of January, nineteen hundred and one  
102 and recorded with Suffolk deeds (lib. fol.  
103 ) do acknowledge the satisfaction of the  
104 said mortgage. In witness whereof, I have hereto  
105 set my hand and seal the sixth day of April in  
106 the year nineteen hundred and one.

107 Signed, sealed and delivered in presence of