

IRISH CONVEYANCING LAW

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PROFESSIONAL BOOKS LIMITED
Reprint 1983

*Published in 1978 by
Professional Books Limited
Milton Trading Estate, Abingdon, Oxon.
Typeset by Inforum Ltd., Portsmouth
and printed in Great Britain by
Billing & Sons Ltd., Guildford*

ISBN: 0 903486 45 8

REPRINT
1983

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1978

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Also by the author:

IRISH LAND LAW (1975), SUPP. (1980)

To Nicholas

PREFACE

In the Preface to *Irish Land Law* (1975), I expressed the view, somewhat rashly, perhaps, that that book should be regarded as a beginning only and that a comprehensive book on conveyancing law was needed. The Incorporated Law Society of Ireland evidently took the same view, and this book is the result. It was commissioned by the Society in 1976 and, like *Irish Land Law*, has been sponsored by the Arthur Cox Foundation, whose chairman, Mr. Justice Kenny, again very kindly agreed to act as Consultant Editor for the law of the Republic of Ireland.

The general aims of this book are the same as those which were expressed in the preface to *Irish Land Law*. Like the earlier book, it covers the law of both the Republic of Ireland and Northern Ireland. Thus, though integrated treatment of the law in both jurisdictions has been possible for the most part, there have been occasions when separate treatment has been necessary. This book has also been written for both students and practitioners.

So far as I am aware, this is the first textbook which seeks to provide comprehensive coverage of Irish conveyancing law. Its timing is particularly propitious in view of recent developments in both parts of Ireland. In the Republic, the Law Society issued a new contract for sale form, incorporating revised general conditions of sale, in 1976. At the time of writing, this form is in the process of being amended slightly and, when printed, will be known as the 1978 edition. However, throughout this book reference is made to the 1976 edition, the substance of which is exactly the same, except for an amendment to condition 17(2). This amendment is indicated on the form which is reproduced in Appendix A at the end of the text, and for its significance readers are referred to paragraphs 7.026-7 and 7.041 in the text. The Law Society in Northern Ireland has also been revising its general conditions of sale and the new edition is in the final stages of printing at the time of writing. I am most grateful to both Societies for giving me permission to reprint their new forms in Appendix A and, of course, the new conditions of sale are discussed in detail throughout the book. And for ease of cross-reference to the new conditions, I have included in the preliminary pages a table of references to the conditions in the text. There have also been important legislative develop-

ments which have had, or will have, considerable effect on conveyancing practice. Apart from the introduction of new taxes in recent years to which conveyancers must have regard, 1976 saw the enactment in the Republic of the Family Home Protection Act and the Local Government (Planning and Development) Act, both of which have required urgent reconsideration of day-to-day practice. In Northern Ireland, the Land Registration Act (N.I.), 1970, came finally into force on October 1st, 1977, along with the new Rules made under it. Important changes were also introduced by the Solicitors (N.I.) Order, 1976. All these matters are considered in detail in the text.

Perhaps a few more words may be said about the contents of this book. First, it has been written very much as a companion volume to *Irish Land Law* and this has had several consequences. One is that every effort has been made to avoid unnecessary duplication. Readers must bear this in mind, for it explains why a fuller discussion of certain topics is not to be found in this book. Where this occurs, the reason is usually that such discussion will be found in *Irish Land Law* and an appropriate cross-reference has been inserted instead. This has, of course, enabled me to make a considerable reduction in the size of the text, a matter which is so important in these days of escalating printing and publishing costs. It should also be mentioned that I have resisted the temptation to use this book as a method of updating *Irish Land Law*, for that will be done by a supplement which is being planned for the near future. Indeed, the intention is that in future years both books will be kept up-to-date by regular supplements. For this reason, the projected landlord and tenant legislation in the Republic, to which attention is drawn in several places in this book, will be dealt with in more detail in a supplement to *Irish Land Law*.

The absence of any "rival" has, of course, meant that I have had to concentrate on stating the law as it is. However, I hope that I have not failed to point out areas where reform is necessary and to draw attention to those areas of conveyancing law and practice which seem to excite so much public comment nowadays. But the book remains primarily a text written by a lawyer for lawyers.

Many people have given me assistance in the writing of this book, but three in particular must have a special mention. First, its writing has resulted in continuation of the most happy working relationship between Mr. Justice Kenny and myself which began several years ago when *Irish Land Law* was being planned. Once again he has acted as Consultant Editor for the law of the Republic of Ireland and he has also agreed again to accept joint responsibility for statements of that law. He has read the entire text and made numerous amendments and additions which I have been only too happy to accept. He was also primarily responsible for the writing of chapter 8. His invaluable contributions to the project have been made when other calls on his time

have been most pressing and I am most grateful for all his efforts, as I am for the very kind hospitality he and his family provided during trips to Dublin.

Mr. John F. Buckley, Solicitor and Member of the Council of the Incorporated Law Society of Ireland, has also seen the entire text and has provided much counsel and advice on law and practice in the Republic. He has also assumed the burden of organising consultations with other solicitors, distributing parts of the text to others for comment and collating replies, tasks which he has had to fit in along with his very busy practice and work on committees of the Law Society. The interest in the project which he has shown, and his encouragement, have been most welcome, as has been the hospitality he and his family have provided in Dublin on numerous occasions in recent years. Mr. Jack Pinkerton, Solicitor and former President of the Incorporated Law Society of Northern Ireland, has provided me with much useful information about practice in Northern Ireland and has commented on several parts of the text. In recording my special thanks to Messrs. Buckley and Pinkerton, I must emphasise that neither of them should be held in any way responsible for the text of the book. Nor should various other bodies or persons who have commented on particular sections of the text or provided information. So far as the Republic is concerned, I am particularly grateful for the comments and advice of the following Dublin solicitors: Messrs. Eric Brunker, Patrick V. Fagan, Ernest B. Farrell, Garrett P. Gill and Rory O'Donnell. I would also like to thank Mr. James J. Ivers, Director-General of the Law Society, and his staff for their co-operation and Mr. Colum Gavan Duffy, the Society's librarian, for help in relation to research material. In Northern Ireland, various members of the Law Society's Conveyancing and the Law of Property Committee commented on parts of the text and the Society's Assistant Secretary, Mr. H. Wynn Evans, provided much useful information and dealt with numerous queries. I am also grateful for the help of the following: Mr. Bill Leitch, Solicitor, former First Parliamentary Draftsman of Northern Ireland and now Law Reform Consultant; Ms. Liz Madill, Law Librarian in the Queen's University of Belfast; Mr. W. Bowden of the Registry of Deeds for Northern Ireland; Mr. Brian McAleenan, Solicitor.

Finally, special mention must be made of my mother who has been responsible for the typing of various drafts of the manuscript and my wife who has helped with preparation of the tables and index. The publishers and printers must also be thanked for their efforts in recent months.

Every effort has been made to state the law as on January 1st, 1978.

University College, Cardiff
February, 1978

J.C.W. Wylie

I think that elementary justice requires that I should state that the entire of the first draft of this book (except that of chapter 8) was written by Mr. Wylie who has also, without any assistance from me, prepared the index to the book and (most tedious and time consuming work) the table of cases and other tables.

Until I read the first draft I did not realise how much conveyancing law is to be found in the nominate Irish Reports and Mr. Wylie's great industry has enabled him to give numerous references to early Irish cases which are never cited in Court.

Ours has, indeed, been a very happy partnership.

Conveyancing law is not taught in any of the university law schools in the Republic of Ireland though there are courses in the subject in King's Inns and in the Incorporated Law Society. One of the excuses frequently offered for this omission is the absence of a suitable text book. That excuse has now been removed and I hope that in the near future conveyancing law will become an optional subject in the four university law schools in the Republic of Ireland.

I have not been in practice as a conveyancer since February 1961 and I know that the practice in that field changes rapidly. In 1961, when I was appointed to the High Court, the sale of flats was unknown. If there are any errors in relation to current practice in the Republic, I am solely responsible.

JOHN KENNY

The Supreme Court
Dublin
February, 1978

THE ARTHUR COX FOUNDATION

Arthur Cox, classical scholar, senator and former President of the Incorporated Law Society of Ireland, was associated both as director of and solicitor to many industries which have become great enterprises. He was a specialist in company law and conveyancing and was Chairman of the Company Law Reform Committee. He made many outstanding contributions to our community. When he decided to retire from practice, a number of his clients, professional colleagues and other friends thought that the most appropriate tribute to him would be a fund to help the publication of legal textbooks. The market in Ireland for these is so small that very few of them have been written and their absence is a severe handicap to lawyers and law students. There was a generous response to our appeal.

After his retirement he was ordained a priest and went to Zambia to do missionary work. He died there as a result of a motor car accident.

He often spoke to me about the importance of having textbooks on Irish law and their vital role in the education of students in the practice of the law. As Mr. Wylie and I had co-operated in the writing of *Irish Land Law* and as our relationship was such a happy one, I was glad to accept his invitation to act as Consultant Editor for this book. The Trustees of the Foundation (Mr. C. Russell Murphy F.C.A., the Incorporated Law Society and I) are glad to have been able to sponsor the publication of this book.

JOHN KENNY

The Supreme Court
Dublin
May, 1978

TABLE OF STATUTES

[*N.B.* References in this Table are to *paragraph* numbers]

I. STATUTES OF THE PARLIAMENT OF IRELAND

	<i>Para.</i>
1634 Statute of Uses (10 Chas. 1, sess. 2, c.1)	14.12, 16.077, 16.086, 16.090
Conveyancing Act (10 Chas. 1, sess. 2, c.3)—	
s. 1.....	13.67
s. 3.....	13.67
s.10.....	13.67
s.14.....	13.67
1695 Statute of Frauds (7 Will. 3, c.12) . . .	3.097, 9.017, 9.027, 9.030, 9.033, 9.036, 9.037, 9.042, 9.043, 9.045, 9.048, 9.049, 9.051, 9.055, 9.061, 9.062, 9.067, 9.074, 9.092, 10.001, 10.002, 10.006, 10.051, 12.46, 15.22, 20.03
s.2	1.06, 3.015, 3.071, 3.088, 3.100, 9.003, 9.005, 9.006, 9.007, 9.008, 9.009, 9.010, 9.011, 9.013, 9.014, 9.016, 9.032, 9.034, 9.047, 12.43, 12.45
s.4	9.009
1707 Registration of Deeds Act (6 Ann. c.2).....	1.15
s.6	16.129
1779 Tenantry Act (19 & 20 Geo. 3, c.30).....	13.76

2. STATUTES OF THE PARLIAMENTS OF ENGLAND, GREAT BRITAIN AND THE UNITED KINGDOM

1290 Statute of Westminster III (Quia Emptores) (18 Edw. 1, cc.1-2).....	19.05
1677 Statute of Frauds (29 Chas. 2, c.3)—	
s.4	9.009
1774 Fires Prevention (Metropolis) Act (14 Geo. 3, c.78)—	
s.83.....	11.34
1828 Revenue Solicitors Act (9 Geo. 4, c.25)—	
s.1	1.41
1832 Registry of Deeds (Ireland) Act (2 & 3 Will. 4, c.87)—	
s.32.....	13.53
1833 Licensing (Ireland) Act (3 & 4 Will. 4, c.68).....	6.30
1834 Apportionment Act (4 & 5 Will. 4, c.22).....	18.05
1835 Statutory Declarations Act (5 & 6 Will. 4, c.62).....	6.22, 6.54, 10.012, 13.81
1836 Grand Jury (Ireland) Act (6 & 7 Will. 4, c.116)—	
ss. 50-8	7.091
1837 Wills Act (7 Will. 4 & 1 Vict. c.26).....	1.34
s.9	9.027
1845 Auctioneers Act (8 & 9 Vict. c.15)	3.008
ss. 2-6.....	3.011
s.7	3.011
Companies Clauses Consolidation Act (8 & 9 Vict. c.16)	9.108
Lands Clauses Consolidation Act (8 & 9 Vict. c. 18).....	9.108, 9.117
ss.6-15	9.108
s.24.....	9.108
ss.69-75	9.112

1845 Lands Clauses Consolidation Act (<i>cont.</i>)	<i>Para.</i>
ss.73-5	9.112
ss.76-9	9.112
ss.81-3	9.108
ss.85-91	9.108, 9.113
Scheds. A and B	9.108
Railway Clauses Consolidation Act (8 & 9 Vict. c.20)	9.108
Real Property Act (8 & 9 Vict. c.106)—	
s.2	15.02, 16.048
s.3	15.02
s.4	16.049
s.5	16.007, 16.008, 16.013
1849 Renewable Leasehold Conversion Act (12 & 13 Vict. c.105)	17.39
s. 1	13.11, 13.56
s. 7	13.11, 13.56
s.37	13.76
1850 Judgment Mortgage (Ireland) Act (13 & 14 Vict. c.29)	8.19, 14.65
1851 Railways (Ireland) Act (14 & 15 Vict. c.70)	9.108
ss.3-4	9.108
ss.5-15	9.108
s.8	9.108
1854 Towns Improvement (Ireland) Act (17 & 18 Vict. c.103)	7.099, 8.19, 8.20, 8.21, 8.23
s.72	7.094
1857 Irish Bankrupt and Insolvent Act (20 & 21 Vict. c.60)—	
s.115	11.22
ss.118-42	11.22
ss.153-6	11.22
ss.267-8	11.21
s.269	14.69
s.272	11.39
s.328	11.22
s.332	11.22
1858 Chancery Amendment Act (21 & 22 Vict. c.27)	12.04, 12.53, 12.54
s.2	12.53
1859 Law of Property Amendment Act (22 & 23 Vict. c.35)	13.66
s.21	16.085
s.24	10.034, 13.61
1860 Law of Property Amendment Act (23 & 24 Vict. c.38)—	
s.8	10.034, 13.61
Railways (Ireland) Act (23 & 24 Vict. c.97)	9.108
s.13	9.108
Landlord and Tenant Law Amendment, Ireland, Act (23 & 24 Vict. c.154)	10.102, 16.074, 17.39
s. 1	16.053
s. 3	9.009, 17.15, 17.37
s. 4	9.009, 9.034, 15.02
s.16	16.098, 17.31
s.41	17.26, 17.29, 19.05
s.42	17.29
1864 Conveyancers (Ireland) Act (27 & 28 Vict. c.8)—	
s.3	1.43
Railways (Ireland) Act (27 & 28 Vict. c.71)	9.108
Improvement of Land (Ireland) Act (27 & 28 Vict. c.72)	12.39

	<i>Para.</i>
1867 Sale of Land by Auction Act (30 & 31 Vict. c.48).....	3.021
s.4.....	3.022
s.5.....	3.022, 3.023, 3.024
s.6.....	3.022
s.7.....	3.021, 3.032, 10.125, 10.126
s.8.....	3.021
Sales of Reversions Act (31 & 32 Vict. c.4).....	19.35
1868 Documentary Evidence Act (31 & 32 Vict. c.37).....	16.031
1869 Irish Church Act (32 & 33 Vict. c.42).....	10.027, 13.45
1870 Coinage Act (33 & 34 Vict. c.10).....	18.29
Apportionment Act (33 & 34 Vict. c.35)—	
s.2.....	18.05
s.3.....	18.05
s.7.....	18.05
Landlord and Tenant (Ireland) Act (33 & 34 Vict. c.46).....	1.13
s.3.....	1.43
1871 Judgments Registry (Ireland) Act (34 & 35 Vict. c.72)—	
s.12.....	14.65
1872 Bankruptcy (Ireland) Amendment Act (35 & 36 Vict. c.58)—	
ss.20-2.....	11.22
s.21.....	11.22
s.52.....	13.67
s.55.....	11.22
s.75.....	11.21
s.91.....	11.21
ss.97-8.....	11.21, 11.39
s.97.....	15.02
1874 Building Societies Act (37 & 38 Vict. c.42).....	4.08
Vendor and Purchaser Act (37 & 38 Vict. c.78)—	
s.1.....	13.54, 13.69, 13.70
s.2.....	13.54, 13.69, 13.70, 13.72, 13.73, 13.74
(1).....	13.71
(2).....	13.51, 16.028
s.9.....	12.02, 12.25, 12.26, 12.35
1875 Building Societies Act (38 & 39 Vict. c.9).....	4.08
1876 Legal Practitioners (Ireland) Act (39 & 40 Vict. c.44)—	
s.3.....	18.53
1877 Supreme Court of Judicature (Ireland) Act (40 & 41 Vict. c.57).....	6.65,
	9.051, 12.53
s.28 (6).....	5.42
(7).....	12.10
(11).....	16.044
s.78.....	1.40
Building Societies Act (40 & 41 Vict. c.63).....	4.08
1878 Public Health (Ireland) Act (41 & 42 Vict. c.52).....	7.099, 10.022
s.41.....	7.022
s.42.....	7.022, 7.023
s.51.....	7.094
ss.108-25.....	7.094
1881 Conveyancing Act (44 & 45 Vict. c.41).....	10.102, 13.73, 17.52
Pt. V.....	15.09
s.2(ii).....	17.13
(v).....	3.050, 16.082

1881 Conveyancing Act (*cont.*)

	<i>Para.</i>
(viii).....	16.033
s.3 (1).....	13.69, 13.70, 13.72
(3).....	13.59, 14.11, 14.24, 16.029
(4).....	13.75
(5).....	13.75
(6).....	10.119, 13.18, 13.49, 13.50, 14.60, 16.102
(9).....	13.50, 13.59, 13.74, 16.102
(11).....	14.24
s.6.....	10.019, 10.045, 16.054, 16.071
(1).....	16.010, 16.054
(2).....	16.054
(3).....	16.054
(4).....	16.054
(5).....	16.054
s.7.....	16.049, 16.100, 17.26, 17.31, 17.46, 19.05, 19.07, 19.08, 19.14
(1).....	19.11, 19.13
(1)(A).....	19.15, 19.16, 19.25, 19.27
(1)(B).....	19.15
(1)(C).....	19.16, 19.24
(1)(D).....	19.16, 19.24
(1)(E).....	19.17
(2).....	19.19
(3).....	19.20
(4).....	19.09
(5).....	17.26, 19.05
(6).....	19.10, 19.22
s.8(1).....	16.127
s.9.....	16.102, 16.103
(1).....	16.105
(2).....	16.104
(3).....	16.104-5
(4).....	16.104
(5).....	16.104
(6).....	16.104
(7).....	16.104
(8).....	16.104
(9).....	16.105
(10).....	16.105
s.13(1).....	13.69, 13.70
(2).....	13.74
s.21(2).....	14.19
s.49(1).....	16.048
s.50.....	16.085
(1).....	16.085
s.53(1).....	16.039
(2).....	16.039
s.54(1).....	16.043, 16.044
s.55(1).....	16.045
s.56.....	18.31
(1).....	16.046
s.58.....	16.105, 19.22
s.59.....	16.098
s.60(1).....	16.097

1881 Conveyancing Act (<i>cont.</i>)	Para.
(3)	16.097
s.62(1)	16.077
s.63	16.082, 16.083
(1)	16.082
(2)	16.082
s.66(1)	13.73
(2)	13.73
s.70(1)	10.126
3rd Sched	15.09
4th Sched	15.09
Solicitors Remuneration Act (44 & 45 Vict. c.44)	1.48
Land Land (Ireland) Act (44 & 45 Vict. c.49)	1.13
1882 Documentary Evidence Act (45 & 46 Vict. c.9)	16.031
Settled Land Act (45 & 46 Vict. c.38)	1.34, 13.77, 13.78, 14.19, 16.014
s. 4(1)	16.042
s.45(3)	14.19
Conveyancing Act (45 & 46 Vict. c.39)—	
s.3(1)	5.02, 6.38, 6.51
(i)	5.20, 6.38
(ii)	6.38
1884 Building Societies Act (47 & 48 Vict. c.41)	4.08
1888 Law of Distress and Small Debts (Ireland) Act (51 & 52 Vict. c.47)	3.038
1889 Interpretation Act (52 & 53 Vict. c.63)—	
s.20	9.027
s.26	10.100
1890 Public Health Acts Amendment Act (53 & 54 Vict. c.59)—	
s.23	7.022
(3)	7.022
Settled Land Act (53 & 54 Vict. c.69)	1.34, 13.77, 13.78, 14.19, 16.014
Houses of the Working Classes Act (53 & 54 Vict. c.70)—	
Sched. 2	9.108, 9.109
1891 Stamp Act (54 & 55 Vict. c.39)	1.31, 18.35
s. 1	18.37
s. 5	16.042
s.14	14.13
s.15	18.35
(1)	18.35
(2)	16.010, 18.35
(3)	18.35
s.54	18.38
s.58(4)	18.39
(5)	18.39
s.59	18.38
s.62	18.37
s.73	18.37
s.117	10.117, 14.13
Sched. 1	18.37
Local Registration of Title (Ireland) Act (54 & 55 Vict. c.66)	1.02, 1.14, 6.21, 8.16, 13.25, 16.069
s.19	16.070
s.21	16.070
s.22	1.14
s.25	13.13

	<i>Para.</i>
1891 Local Registration of Title (Ireland) Act (<i>cont.</i>)	
s.29(3)	6.22
s.34	16.070
s.44(2)	11.05, 11.42, 11.43
(3)	11.42
s.45	11.44
s.47	6.22, 11.44
s.55	10.014
s.58	10.014
s.59(1)	10.014, 16.070
(2)	10.014
s.69	11.42, 11.44
s.70	11.42
s.95	11.43
1893 Voluntary Conveyances Act (56 & 57 Vict. c.21)	13.67
Trustee Act (56 & 57 Vict. c.53)	1.34, 16.030
s.17	16.047
s.20	16.036
s.30	9.107
s.31	9.107, 12.55
s.33	9.107, 12.55
Sale of Goods Act (56 & 57 Vict. c.71)	5.26, 9.009
s.12	10.016
s.62	9.009
1894 Finance Act (57 & 58 Vict. c.30)—	
s.1	1.27
s.8(2)	14.42
s.9(2)	14.42
s.11	14.42
Building Societies Act (57 & 58 Vict. c.47)	4.08
1895 Documentary Evidence Act (58 & 59 Vict. c.9)	16.031
Finance Act (58 & 59 Vict. c.16)—	
s.12	18.38
1896 Finance Act (59 & 60 Vict. c.28)—	
s.6	18.38
Land Law (Ireland) Act (59 & 60 Vict. c.47)	1.13
1898 Solicitors (Ireland) Act (61 & 62 Vict. c.17)—	
s.4	1.40
Local Government (Ireland) Act (61 & 62 Vict. c.37)—	
s.54	14.45
1900 Finance Act (63 & 64 Vict. c.7)—	
s.10	18.38
Colonial Solicitors Act (63 & 64 Vict. c.14)	1.41
1902 Finance Act (2 Edw. 7, c.7)—	
s.9	18.37
1903 Irish Land Act (3 Edw. 7, c.37)—	
s.21	7.101
s.54(1)	7.096, 8.04
1909 Irish Land Act (9 Edw. 7, c.42)—	
s.32(4)	7.096
1910 Finance (1909-10) Act (10 Edw. 7 & 1 Geo.5, c.8)—	
s.4	18.42, 18.43
(3)	18.42
s.74	18.35, 18.40

1910 Finance (1909-10) Act (<i>cont.</i>)	Para.
(5).....	18.35, 18.40
(5).....	18.37, 18.40
(6).....	18.37
1911 Conveyancing Act (1 & 2 Geo. 5, c.37).....	10.102
s.5(1).....	14.19
1913 Forgery Act (3 & 4 Geo. 5, c.27)—	
s.1(1).....	16.010
(2).....	16.010
1914 Bankruptcy Act (4 & 5 Geo. 5, c.59)—	
s.37(1).....	11.22
1919 Housing (Ireland) Act (9 & 10 Geo. 5, c.45)—	
s.33.....	7.072
Acquisition of Land (Compensation) Act (9 & 10 Geo. 5, c.57)..	7.035, 9.112
s.2.....	7.035, 9.108, 9.109, 9.116, 9.121
r.(2).....	7.035, 9.116
r.(11).....	7.035
r.(12).....	7.035
r.(13).....	7.035, 9.116
1920 Coinage Act (10 & 11 Geo. 5, c.3).....	18.29
Finance Act (10 & 11 Geo. 5, c.18)—	
s.64(3).....	18.42
4th Sched.	18.42
Government of Ireland Act (10 & 11 Geo. 5, c.67)—	
s.5(1).....	7.081
1923 Finance Act (13 & 14 Geo. 5, c.14)—	
s.28.....	18.43
1925 Settled Land Act (15 & 16 Geo. 5, c.18).....	1.34, 13.77
Trustee Act (15 & 16 Geo. 5, c.19).....	1.34
Law of Property Act (15 & 16 Geo. 5, c.20).....	1.34
s.1(1)(a).....	7.059
s.7.....	7.059
ss.34-6.....	9.011, 13.77
s.40.....	9.074
(1).....	9.006, 9.009, 9.011
(2).....	9.048
s.44(1).....	13.54
(5).....	13.72
s.45(1).....	13.59
(4)(a).....	13.50
(6).....	16.028
(9).....	16.102
(10).....	16.102
s.47.....	11.34
s.48(1).....	10.116
(2).....	10.116
s.49(1).....	12.25
(2).....	12.34
(3).....	12.25
s.51.....	15.02
s.56.....	5.42
(1).....	16.008, 16.013
(2).....	16.007
s.57.....	16.007