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ANNO VICESIMO TERTIO ET VICESIMO QUARTO  
**VICTORIÆ REGINÆ.**  
A.D. 1860,

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**No. 11.**

*An Act to consolidate and amend certain Acts relating to the transfer and encumbrance of freehold and other interests in land.*

[Assented to, 17th October, 1860.]

**W**HEREAS a certain Act was passed in the twenty-first year Preamble.  
of Her present Majesty, No. 15, and intituled "An Act to No. 15, 21 Vict.  
simplify the Laws relating to the transfer and encumbrance of  
freehold and other interests in Land:" And whereas another Act was  
passed in the twenty-second year of Her present Majesty, No. 16, No. 16, 22 Vict.  
and intituled "An Act to amend the Real Property Act;" and  
it is expedient to consolidate and amend the said Acts; and whereas  
the preamble of the first recited Act sets forth that the inhabitants  
of the Province of South Australia are subjected to losses, heavy  
costs, and much perplexity, by reason that the Laws relating  
to the transfer and encumbrance of freehold and other interests in  
land are complex, cumbrous, and unsuited to the requirements of the  
said inhabitants; and whereas, for the effectual removal of the grievance  
therein set forth, it is desirable to substitute for existing titles, subject  
to impeachment or defeasance, other titles which shall not be subject  
to impeachment or defeasance, and to compensate proprietors for loss  
or damage that may be occasioned by reason of such substitution,  
and that thereafter, all transfers and other dealings with land shall  
be effected by means of registration of title, and not by means of  
deeds or other instruments, and that title to land, or to any estate or  
interest therein, acquired by registration, shall be indefeasible and  
not liable to impeachment: Be it therefore Enacted, by the Governor-  
in-Chief of the Province of South Australia, with the advice and  
consent

consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows—

Repeal of previous Acts.

1. From and after the day appointed for this Act to come into operation the said two Acts shall be, and are hereby repealed; and all other Laws, Statutes, Acts, Ordinances, rules, regulations, and practice whatsoever, relating to freehold and other interests in land, so far as inconsistent with the provisions of this Act, are hereby repealed, so far as regards their application to land under the provisions of this Act, or the bringing of land under the provisions of this Act: Provided always, that all lands heretofore brought under or subjected to the provisions of the said recited Acts, shall for all purposes be deemed and taken to be under and subject to the provisions of this Act; and in all questions affecting the validity of any proceedings under the said recited Acts, the provisions of this Act shall be held to apply for the purpose of protecting from adverse claim parties registered as proprietors of any estate or interest in land brought under the provisions of the said Acts; and no certificate of title issued prior to the day appointed for this Act to come into operation shall be impeached on the ground that any such certificate of title varies from the form of certificate given in the Schedule to the said recited Acts; and all proceedings commenced prior to that day, either for the bringing of land under the provisions of the said Acts, or for transferring, mortgaging, or otherwise dealing with land under the provisions thereof, shall be valid and effectual as if the said proceedings had been commenced and taken under the provisions of this Act; and all further steps, if any, necessary for the completion of any proceedings so commenced as aforesaid, shall be taken in accordance with the provisions of this Act.

Short title.

2. This Act may be cited, for all purposes, as the "Real Property Act of 1860."

Interpretation of certain terms.

3. In the construction and for the purposes of this Act, and in all instruments purporting to be made or executed thereunder (if not inconsistent with the context and subject matter) the following terms shall have the respective meanings hereinafter assigned to them, that is to say—

"Land" shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every kind and description, whatever may be the estate or interest therein, together with all paths, passages, ways, waters, water-courses, liberties, privileges, easements, plantations, gardens, mines, minerals, and quarries, and all trees, and timber thereon or thereunder, lying or being, unless the same are specially excepted:

"Grant" shall mean the land grant of any land of the Crown by any Governor or Resident Commissioner of the said Province:

"Proprietor" shall mean any person seised or possessed of any estate or interest at law or in equity, in possession, in futurity,  
or

or expectancy, whether a life estate, or greater or less than a life estate, in any land:

- “Transfer” shall mean the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise:
- “Memorandum of Transfer” shall mean the instrument executed by the person having estate or interest in land with a view to transferring such estate and interest, in form D of the Schedule hereto, or in such form as in conformity with the provisions of this Act may for the like purpose be authorized:
- “Transmission” shall mean the acquirement of title to or interest in land consequent on the death, will, intestacy, bankruptcy, insolvency, or marriage of a proprietor:
- “Certificate of title” shall mean the instrument evidencing the seisin of the fee simple, or of a life estate, executed by the Registrar-General, in form C of the Schedule hereto, or in such form as in conformity with the provisions of this Act may for the like purpose be authorized:
- “Mortgage” shall mean any charge on land created merely for securing a loan:
- “Mortgagor” shall mean the borrower of money on the security of any estate or interest in land:
- “Mortgagee” shall mean the lender of money upon the security of any estate or interest in land:
- “Bill of mortgage” shall mean the instrument in form F of the Schedule hereto, or in such form as in conformity with the provisions of this Act may for the like purpose be authorized, executed by the intending mortgagor with a view to creating such mortgage as last aforesaid.
- “Encumbrance” shall mean any charge on land, created for the purpose of securing the payment of an annuity or sum of money, other than a loan:
- “Encumbrancer” shall mean the person, not being a mortgagor, who shall have charged any estate or interest in land with any annuity or sum of money:
- “Encumbrancee” shall mean the person, not being a mortgagee, for whose benefit any estate or interest in land shall have been encumbered:
- “Bill of encumbrance” shall mean the instrument creating such encumbrance, executed by the person having estate or interest in land in form G of the Schedule hereto, or in such form as in conformity with the provisions of this Act may for the like purpose be authorized:
- “Registration abstract” shall mean the instrument under the hand and seal of the Registrar-General, executed in the form M of the Schedule hereto, or in such form as in conformity with the provisions of this Act, may for the like purpose be authorized, available in lieu of the register book, for the purpose of enabling a person to mortgage or to sell in places, without the limits of the said Province, land whereof he may be seised as proprietor:
- “Lunatic”

"Lunatic" shall mean any person who shall have been found to be a lunatic upon inquiry by the Supreme Court, or by any Judge thereof, or upon a Commission of Inquiry issuing out of the Supreme Court in the nature of a writ *de lunatico inquirendo*:

"Person of unsound mind" shall mean any person not an infant, who, not having been found to be a lunatic shall be incapable, from infirmity of mind, to manage his own affairs:

"Consular Officer" shall include Consul-General, Consul, and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul, or Vice-Consul:

"Instrument" shall mean and include any land grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate or exemplification of will, or any other document in writing relating to the transfer or other dealing with lands:

"Person," used and referred to in the masculine gender, shall include a female as well as a male, and shall include a body corporate:

The describing any person as proprietor, transferor, transferee, mortgagor, mortgagee, encumbrancer, encumbrancee, lessor or lessee, or as trustee, or as seised of or having any estate or interest in any land, shall be deemed to include the heirs, executors, administrators, and assigns of such person:

And, generally, unless the contrary shall appear from the context, every word importing the singular number only, shall extend to several persons or things, and every word importing the plural number, shall apply to one person or thing, and every word importing the masculine gender only, shall extend to a female; and whenever a form in the Schedule hereto is directed to be used, such direction shall apply equally to any form to the like effect signed by the Registrar-General, or which for the same purpose may be authorized, in conformity with the provisions of this Act; and any variation from such forms, not being in matter of substance, shall not affect their validity or regularity; but they may be used, with such alterations as the character of the parties or the circumstances of the case may render necessary.

Functions of the  
Registrar-General  
and his department.

4. The department of the Registrar-General shall be the department authorized to carry into execution the provisions of this Act, and of any Acts to amend or extend the provisions of this Act in force for the time being; and the person holding the office of Registrar-General, and his Deputies, at the time of this Act coming into operation, shall perform all the duties of Registrar-General under this Act: And whenever, by any law for the time being in force in the said Province, anything is appointed to be done by the Registrar-General, the same may be lawfully done by any Deputy Registrar-General.

Appointment of  
Registrar-General.

5. Upon the death, resignation, or removal from office of the Registrar-

gistrar-General, or of any Deputy Registrar-General, as the case may be, it shall be lawful for the Governor, for the time being, by warrant under his hand and the public seal of the said Province, to appoint a fit and proper person to be Registrar-General, or Deputy Registrar-General, as the case may be, and every such person to remove and to appoint another to the said office in his stead.

6. The oath following, shall be taken before one of the Judges of the Supreme Court, by every Registrar-General, and by every Deputy Registrar-General at present holding office, or that may hereafter be appointed, before entering upon the execution of his office—

Oaths of office.

I, A. B., do solemnly swear, that I will faithfully, and to the best of my ability, execute and perform the office and duties of Registrar-General, or Deputy Registrar-General, for the Province of South Australia, according to the provisions of the Real Property Act. So HELP ME GOD.

7. All documents whether purporting to be issued or written by or under the directions of the Registrar-General, and purporting either to be sealed with his seal of office, or signed by him, or by one of his deputies shall be received in evidence, and shall be deemed to be issued or written by or under the direction of the Registrar-General without further proof unless the contrary be shown.

Certificates and documents purporting to be signed and sealed in a given manner to be received as evidence.

8. The Registrar-General shall have and use a seal of office, bearing the impression of the Royal Arms of England, and having inscribed in the margin thereof the words "Registrar-General, South Australia;" and the imprint of such seal shall be valid, whether made in wax, ink, or other substance.

Seal of office.

9. The Registrar-General may, with the consent of the Governor of the said Province, from time to time, make such alterations in the several forms of instruments prescribed in the schedule hereto as he may deem requisite; and shall, before finally issuing any such altered form, give such public notice thereof as he deems necessary in order to prevent inconvenience; and shall cause every such form to be sealed with his seal, or marked with some other distinguishing mark, and to be supplied at the General Registry Office free of charge, or at such moderate prices as he may from time to time fix, or may license any person to print and sell the same; and every such form, if made in a form purporting to be a proper form, and to be sealed or marked as aforesaid, shall be taken to be made in the form hereby required, or in the form sanctioned by the Registrar-General, unless the contrary is proved.

Registrar-General, with sanction of Governor, to issue forms of instruments, &c.

10. Every person who counterfeits, assists in counterfeiting, or procures to be counterfeited, such seal or other distinguishing mark as aforesaid, or who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered any form issued by the Registrar-General, with a view of evading any of the provisions

Penalty for counterfeiting seal, fraudulently altering forms, and for not using forms issued by the Registrar-General.

of this Act, or any condition contained in such form, shall for such offence be deemed guilty of a misdemeanor, and shall incur a penalty not exceeding One Hundred Pounds; or may, at the discretion of the Court before whom such case may be tried, be imprisoned for any period not exceeding twelve calendar months; and every person who, in any case in which a form sanctioned by the Registrar-General is by this Act required to be used, uses without reasonable excuse any form not purporting to be so sanctioned, or who prints, sells, or uses any document purporting to be a form so sanctioned, knowing the same not to be so sanctioned for the time being, or not to have been prepared and issued by the Registrar-General, shall for each such offence incur a penalty not exceeding Ten Pounds.

Powers of Registrar.

11. The Registrar-General may exercise the following powers, that is to say—

To inspect documents.

(1.) He may require the proprietor or other person making application to have any land brought under the provisions of this Act, or the proprietor, or mortgagee, or other person interested in any land under the provisions of this Act, in respect of which any transfer, lease, mortgage, encumbrance, or other dealing, or any release from any mortgage or encumbrance is about to be transacted, or in respect of which any transmission is about to be registered, or registration abstract granted under this Act, to produce any land grant, certificate of title, conveyance, deed, mortgage, lease, will, or other instrument in his possession or within his control affecting such land or the title thereto.

To summon and examine witnesses.

(2.) He may summon any such proprietor, mortgagee, or other person as aforesaid to appear, and give any explanation respecting such land, or the instruments affecting the title thereto, and if, upon requisition, in writing, made by the Registrar-General, such proprietor, mortgagee, or other person refuses or neglects to produce any such instrument, or to allow the same to be inspected, or refuses or neglects to give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives any person hereinbefore authorized to demand any such explanation, he shall for each such offence incur a penalty not exceeding One Hundred Pounds; and the Registrar-General, if the instrument or information so withheld appears to him material, shall not be bound to proceed with the bringing of such land under the provisions of this Act, or with the registration of such mortgage or sale, or with the issuing of such powers of mortgage or sale as the case may be:

To administer oaths.

(3.) He may administer oaths, or, in lieu of administering an oath, may require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination:

To correct errors.

(4.) He may, upon such evidence as shall appear to him and the Lands Titles Commissioners sufficient in that behalf, correct errors in certificates of title, or in the register book, or in entries made therein respectively, and may supply entries

entries omitted to be made under the provisions of this Act: Provided always, that in the correction of any such error he shall not erase or render illegible the original words, and shall affix the date on which such correction was made or entry supplied, with his initials; and every certificate of title so corrected, and every entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted, except as regards any assurance, or instrument, which may have been entered in the register book previously to the actual time of correcting the error or supplying the omitted entry.

- (5.) He may enter caveat on behalf of any person who shall be under the disability of infancy, coverture, lunacy, unsoundness of mind, or absence from the said Province, or on behalf of Her Majesty, Her heirs or successors, to prohibit the transfer or dealing with any land belonging or supposed to belong to any such persons as hereinbefore mentioned. To enter caveats.

12. It shall be lawful for the Governor, with the advice of the Executive Council, by warrant under his hand and the public seal of the said Province, to appoint two persons, not being legal practitioners, who, together with the Registrar-General, shall be Commissioners for investigating and dealing with claims for the bringing of land under the provisions of this Act, and from time to time with like advice and in like manner to remove any of such Commissioners so appointed from office and to appoint another person in his place. Appointment of Land Titles Commissioners.

13. The style of such Commissioners shall be the "Lands Titles Commissioners." The Registrar-General shall receive a reasonable salary. The other Commissioners shall be remunerated by fees on applications referred to them for bringing lands under the provisions of this Act. At meetings of the said Lands Titles Commissioners, two shall form a quorum, and the Registrar-General, if present, shall preside as Chairman. Style, remuneration. Form of procedure.

14. It shall be lawful for the said Commissioners, subject to the approval of the Governor, to appoint two legal practitioners at reasonable salaries, to be their solicitors and permanent counsel, and also, subject to the like approval, to dismiss and discharge such solicitors and to appoint others in their stead: Provided always, that the Lands Titles Commissioners, and their solicitors, holding office by appointment under the hereinbefore recited Acts, shall, upon this Act coming into operation, be held to be appointed under the provisions of this Act: Provided also, that such legal practitioners shall not, directly or indirectly, act as legal practitioners otherwise than as legal practitioners to the said Commissioners. Solicitors to be appointed.

15. All land in the said Province remaining unalienated from the Crown on the day appointed for this Act to come into operation, whether waste lands, or lands set apart as roads, or as reserves for public purposes, shall, when alienated in fee, be subject to the provisions of this Act. Land alienated after this Act, to be subject to provisions of this Act.

16. Land

Lands granted prior to the day on which this Act comes into operation may be brought under the operation of this Act.

16. Land in the said Province alienated from the Crown in fee, prior to the day appointed for this Act to come into operation (whether such land shall constitute the entire or only part of the land included in any grant) may be brought under the provisions of this Act in the following manner, that is to say—The Registrar-General shall receive applications in form A of the Schedule hereto, or in words to the like effect, for bringing land under the provisions of this Act, if made by any of the following persons, that is to say—

By any person (claiming to be the person) in whom the fee simple of the land is vested in possession, either at law or in equity: Provided, that wherever trustees, seised in fee simple, have no express power to sell the land which they may seek to bring under the operation of this Act, the person claiming to be beneficially entitled for the first life estate, or other greater estate than a life estate in the said land, shall consent in such application:

By any person claiming to be entitled beneficially to land for a life estate, or a greater estate than a life estate in possession: Provided, that where the applicant is a married woman her husband shall consent in such application:

By the father (if he shall be living) or (if the father shall be dead) by the mother or other guardian of any minor in the name of such minor:

By the committee or guardian of any lunatic, or person of unsound mind, in the name of such lunatic, or person of unsound mind:

Provided always, that the Registrar-General shall not receive such application from any person claiming to be entitled to an undivided share of any land unless the persons who shall appear to be entitled to the other undivided shares of the said land shall join in such application with a view to bringing the entirety of the said land under the provisions of this Act, nor shall the Registrar-General receive any application from the mortgagor of any land subject to mortgage, to bring such land under the provisions of this Act, unless the mortgagee shall consent in such application; nor from the mortgagee of any land, except in the exercise of a power of sale contained in the mortgage deed.

Undivided shares and mortgaged lands may not be brought under Act except upon conditions.

Applicant to deposit instruments of title and abstract, if required.

17. And such applicant shall, in his application, state the nature of his estate or interest in such land, and of every estate or interest held therein by any other person, whether at law or in equity, in possession, or in futurity, or expectancy, and whether the land be occupied or unoccupied, and if occupied, the name and description of the occupant, and the nature of his occupancy, and whether such occupancy be adverse or otherwise; and shall make and subscribe a declaration to the truth of such statement, and shall deposit with the Registrar-General all instruments in his possession, or under his control, constituting or in any way affecting his title to such land, and also, if required, an abstract of title, in which he shall set forth and describe every instrument constituting  
or



or in any way affecting his title to such land, with the names, and so far as shall be within his knowledge, the addresses of all persons, if any, seised or possessed of any estate or interest in such land, at law or in equity, in possession or in futurity, or expectancy, whether a life estate, or greater or less than a life estate, and shall make and subscribe a declaration to the truth of such abstract, or if such applicant be the sole and only person having estate or interest in such land, then he shall make and subscribe a declaration to that effect.

18, Upon the receipt of such application, the Registrar-General shall refer the same to the Lands Titles Commissioners for their consideration, and if it shall appear to such Commissioners that the applicant proprietor is the original grantee from the Crown of the land in respect to which application is made, and that such land has been granted on or subsequent to the first day of March, one thousand eight hundred and forty-two, and that no sale, mortgage, or other encumbrance or transaction in any way affecting the title of such land, has at any time been registered in the said Province, then, and in such case, it shall be lawful for such Commissioners to direct the Registrar-General to bring such land under the provisions of this Act forthwith; and if it shall appear to the satisfaction of the said Commissioners that the land referred to in such application was granted prior to the first day of March, one thousand eight hundred and forty-two, and that every mortgage, encumbrance, or beneficial interest affecting the title has been released and satisfied, or if any such mortgage, encumbrance, or interest remains unsatisfied, that the parties interested therein are also parties to such application, then, and in any such case, the said Commissioners shall direct the Registrar-General to cause notice of such application to be advertised once in the *South Australian Government Gazette*, and three times in at least one newspaper published in the City of Adelaide, and shall further limit and appoint a time, not less than one month nor more than twelve months from the date of the advertisement in the said *Government Gazette*, upon or after the expiration of which, the Registrar-General shall, unless he shall in the interval have received a caveat forbidding him so to do, proceed to bring such land under the provisions of this Act; but if it shall appear, to the satisfaction of the said Commissioners, that any parties interested in any unsatisfied mortgage or encumbrance affecting the title to such land, or beneficially interested therein otherwise than as lessees, are not parties to such application, or that the evidence of title set forth by such applicant proprietor is imperfect or incomplete, it shall be lawful for such Commissioners to reject such application altogether, or at their discretion to direct the Registrar-General to cause notice of such application to be published in the *South Australian Government Gazette* and in the *London Gazette*, and in the official *Gazettes* of each of the Colonies of New South Wales, Tasmania, New Zealand, Victoria, Western Australia, and Queensland, or in any one or more of such *Gazettes*, and the said Commissioners shall specify the number of times, and at what intervals such advertisement shall be published in each

Lands granted subsequent to Registration Act of 1842, when applicant proprietor is original grantee, and no transactions have taken place. Lands granted prior to Registration Act of 1842, when applicant proprietor is not original grantee, or mortgages are satisfied, or parties thereto are also parties to application, and no transmissions have taken place. When evidence of title is not clear, or transmissions have taken place, or parties interested in unsatisfied mortgages are not parties to the application.

or any of such *Gazettes*, and shall also limit and appoint a time, not less than two months nor more than three years, from the date of the first of such advertisements in the *South Australian Government Gazette*, upon or after the expiration of which, it shall be lawful for the Registrar-General to bring such land under the provisions of this Act, unless he shall in the interval have received a caveat forbidding him so to do.

Notice of application  
to be published.

19. The Registrar-General shall, under such direction as aforesaid, or under any order of the Supreme Court, cause notice to be published in such manner as by such direction or order may be prescribed, that application had been made for bringing the land therein referred to under the provisions of this Act, and shall also cause copy of such notice to be posted in a conspicuous place in his office, and in such other places as he may deem necessary, and shall forward through the Post Office copy of such notice addressed to the person, if any, stated in the declaration by the applicant proprietor, to be in occupation of such land; and also to such persons as may, upon investigation of the title, appear to have previously held estate or interest in the fee of such land, so far as his knowledge of the addresses of such persons may enable him; and unless within the time limited in such direction, or under any order of the Supreme Court, he shall have received a caveat, as hereinafter described, forbidding him so to do, he shall bring such land under the provisions of this Act, by issuing to the applicant proprietor, or to such person as the applicant proprietor may, by any writing under his hand, request or direct, a certificate of title for the same, as hereinafter described.

Lands brought under  
the Act.

Parties interested may  
enter caveat.

20. It shall be lawful for any person having or claiming an interest in any land so advertised as aforesaid, or for the attorney of any such person, within the time that may by such direction as aforesaid of the Lands Titles Commissioners be for that purpose limited and appointed, to lodge a caveat with the Registrar-General forbidding the bringing of such land under the provisions of this Act, in the form B of the Schedule hereto, and shall particularize the estate, interest, lien, or charge claimed by the person lodging the same; and the person lodging such caveat shall, if required by the Registrar-General, deliver a full and complete abstract of his title, which shall contain the same matters, and be subject to the same regulations as are hereinbefore prescribed for the case of an abstract deposited by the applicant proprietor.

If caveat be received  
within time limited,  
proceedings stayed.

21. The Registrar-General upon receipt of any such caveat, within the time for either case limited as aforesaid, shall notify the same to such applicant proprietor, and shall suspend further action in the matter, and the lands in respect of which such caveat may have been lodged, shall not be brought under the provisions of this Act until such caveat shall have been withdrawn, or shall have lapsed from any of the causes hereinafter provided, or until a decision shall have been obtained from the Court having jurisdiction in the matter.

22. After

22. After the expiration of three calendar months from the receipt thereof, every such caveat shall be deemed to have lapsed, unless the person by whom or on whose behalf the same was lodged, shall, within that time, have taken proceedings, in any Court of competent jurisdiction, to establish his title to the estate, interest, lien, or charge therein specified, and thereof shall have given written notice to the Registrar-General, or shall have obtained from the Supreme Court a distringas restraining the Registrar-General from bringing the land therein referred to, under the provisions of this Act.

Caveats lapse unless proceedings taken within three months

23. If, upon the application of any proprietor to have land of which he is seised brought under the provisions of this Act, the Registrar-General shall refuse so to do, or, if such applicant proprietor shall be dissatisfied with the direction upon his application given by the Lands Titles Commissioners, as hereinbefore provided, it shall be lawful for such applicant proprietor to require the Registrar-General to set forth in writing under his hand, his objections to the title of such applicant proprietor, or the grounds upon which such direction was given, and such applicant proprietor may, if he think fit, at his own costs, summons such Registrar-General to appear before the Supreme Court to substantiate and uphold his objections to such title, such summons to be issued at the request of such applicant proprietor, or his solicitor, under the hand of a Judge of the said Court, and served upon such Registrar-General six clear days at least before the day appointed for the hearing of such objections, and such objections shall be heard by the said Court upon motion, and upon such hearing, the said Court shall, if any such objection be a question of fact, direct an issue to be tried to decide such fact, and it shall thereupon be lawful for the said Court to forbid the bringing of such land under the provisions of this Act, or to order that such land may be brought under the same, after the expiration of such period of time as the said Court shall think fit, not exceeding the period limited by any law for the time being in force in the said Province, as the period within which actions of ejectment may be brought, and the Registrar-General shall obey such order.

Applicant proprietor may summons Registrar-General to show cause if dissatisfied.

24. Upon any such motion, as aforesaid, it shall be lawful for any person interested in any land, touching or concerning the title to which such motion shall be made, and for the Registrar-General, by himself or his counsel, to argue the same before the said Court, in support of or objection to the bringing of such land under the provisions of this Act, and the Registrar-General, or his solicitor, shall have the right of reply; and all expenses attendant upon any of the matters or proceedings aforesaid, shall be borne and paid by the person requiring such land to be brought under the provisions of this Act.

Case may be argued by counsel.

Expense to be borne by applicant.

25. It shall be lawful for any applicant proprietor to withdraw his application at any time prior to the issuing of the certificate of title, and the Registrar-General shall in such case, upon request in writing, signed by such applicant proprietor, return to him the abstract

Applicant proprietor may withdraw his application.

abstract and all instruments of title deposited by such proprietor for the purpose of supporting his application.

Caveats in certain cases not to bar the bringing of land under this Act.

26. The Registrar-General shall not notice any caveat forbidding the bringing of land under the provisions of this Act if the party lodging the same claims only an estate or interest to take effect after the determination, or in defeasance of an estate tail, or forbids the bringing of such land under the provisions of this Act on the plea only of the absence of legal evidence that a former proprietor was in being and capable at the time when any power of attorney executed by such proprietor was exercised by his attorney in the selling, or purchasing, or releasing of such land.

Instruments of title, if they include other property, to be returned to applicant proprietor.

27. Upon issuing a certificate of title, bringing land under the provisions of this Act, the Registrar-General shall stamp as cancelled every instrument of title deposited by the proprietor when making his application: Provided that if any such instrument shall relate to or include any property, whether personal or real, other than the land included in such certificate of title, then the Registrar-General shall endorse thereon a memorandum cancelling the same in so far only as relates to the land included in such certificate of title, and shall return such instrument to such proprietor, otherwise he shall retain the same in his office: Provided also, that the powers or authorities of the husband of any married woman, or of the guardian or committee of any minor, lunatic, or person of unsound mind, shall in no wise be altered or abridged in consequence of the issuing of any certificate of title in the name of such married woman, minor, lunatic, or person of unsound mind.

Certificate of title to issue in name of deceased applicant proprietor.

28. In case an applicant proprietor shall die in the interval between the date of his application to bring land under the provisions of this Act and the date when he shall be entitled to receive a certificate of title to such land, the certificate of title shall be issued in the name of such applicant proprietor, and such land shall devolve in like manner as if the certificate of title had been issued to the applicant proprietor prior to his death.

Succession not interfered with thereby.

Registrar-General to keep register book.

29. The Registrar-General shall keep a book to be called the "Register Book," and shall bind up therein the duplicates of all grants, and of all certificates of title, and each grant and certificate of title shall constitute a separate folium of such book, and the Registrar-General shall record thereon the particulars of all instruments affecting the land included under each such grant, or certificate of title, distinct and apart.

Remaindermen may be registered as such.

30. Whenever a certificate of title shall have been issued to a proprietor in respect of a life estate, or any other estate less than an estate in fee simple, in land under the provisions of this Act, the person entitled as remainderman to the said land, may apply to be entered in the register-book as a remainderman, and the Registrar-General shall thereupon cause the title of such

such applicant to the estate or interest claimed by him to be investigated, and shall take the direction of the Lands Titles Commissioners thereon, and shall cause advertisements to be published in manner hereinbefore prescribed for the case of bringing land under the provisions of this Act, and shall proceed to enter the name of such applicant on the register-book as remainderman of the estate or interest to which he shall appear to be entitled, unless caveat forbidding such entry shall be received by him within the time for that purpose limited, in such direction, or by any order of the Supreme Court, and the Registrar-General shall endorse upon the certificate of title of such land, if produced to him for that purpose, a memorandum setting forth that such applicant had been entered in the register-book as such remainderman, with the day and hour in which such entry had been made, and the Registrar-General shall in every such case receive the same fees and payments, excepting the sum payable to the assurance fund, as are required to be paid by persons applying to bring land under the provisions of this Act.

Name of remainderman to be endorsed on certificate of title.

31. Every remainderman, and every person deriving through a remainderman, registered as such in the register book shall thereafter transfer, mortgage, and encumber, or otherwise deal with the estate or interest in respect to which he is so registered in manner and by the use of the instruments and forms by this Act prescribed in each case for the transfer, mortgage, encumbrance, and other dealing with land under the provisions of this Act, and not otherwise; and the Registrar-General shall enter the particulars of every memorandum of sale, bill of mortgage, bill of encumbrance, or other instrument duly executed by such remainderman, or person deriving through a remainderman, affecting the estate or interest in respect to which he is registered in the register book in manner hereinafter prescribed for the case of transfers, mortgages, encumbrances, and other dealings in land under the provisions of this Act.

Remainderman, registered as such, prohibited from dealing with estate except in manner prescribed in this Act.

Provision not to apply to unregistered remainderman.

32. Upon proof to the satisfaction of the Registrar-General and the Lands Titles Commissioner, that the life estate or other less estate than an estate in fee simple in respect of which a certificate of title of land shall have been issued to any person is determined, or has become vested in the person entitled to the said land for the estate next in remainder, or that the person to whom such certificate has been issued, or a purchaser is absolutely entitled to the said land for a present estate in fee simple in possession, it shall be lawful for the Registrar-General to cancel the existing certificate of title of such land, and in lieu thereof to issue such new certificate of title as the nature of the case and other circumstances may render necessary, and the Registrar-General shall, in such case, enter in the register book, and on the certificate of title when delivered up, the particulars by this Act prescribed to be entered in the case of cancelling a certificate of title consequent on a transfer or transmission: Provided also that previous to issuing any such new certificate of title, the Registrar-General may require the title of the

Certificate of title to be issued to remainderman as soon as his estate shall revert into an estate in possession, and to purchaser entitled to a present estate in simple.

person claiming to be entitled in remainder to the said land to be investigated, and direct advertisements to be published in manner as hereinbefore prescribed for the case of applications made for the purpose of bringing land under the provisions of this Act, and shall receive the same fees and payments, including the sum payable to the assurance fund, as are required to be paid by persons applying to bring land under the provisions of this Act.

Persons registered as joint proprietors to be joint tenants.

Tenants in common to receive each a distinct certificate of title.

Per centage in the pound to be levied for assurance of title.

33. Two or more persons who may be registered as joint proprietors of an estate or interest in land under the provisions of this Act shall be deemed to be entitled to the same as joint tenants, and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, such persons shall be bound to receive separate and distinct certificates of title or other instrument evidencing title to such undivided shares.

34. Upon the first bringing of land under the provisions of this Act, whether by the alienation thereof in fee from the Crown or consequent upon the application of the proprietor of the fee or of a life estate, as hereinbefore provided; and also upon the registration of the title to the fee of any land under the provisions of this Act derived through the will or intestacy of a previous proprietor, there shall be paid to the Registrar-General the sum specified in the Schedule hereto marked R; and in the case of land brought under the provisions of this Act by alienation of the fee from the Crown, the price paid for such land shall be deemed and taken to be the value thereof for the purpose of levying such sum; and in all other cases as aforesaid such value shall be ascertained by the oath or solemn affirmation of the applicant proprietor or person deriving such land by transmission: Provided always, that, if the Registrar-General shall not be satisfied as to the correctness of the value so declared or sworn to, it shall be lawful for him to require such applicant proprietor, or person deriving such land by transmission, to produce a certificate of such value under the hand of a sworn appraiser, which certificate shall be received as conclusive evidence of such value for the purpose aforesaid.

Assurance fund to be invested in Government securities.

35. All sums of money so received as aforesaid shall be paid to the Treasurer of the said Province to constitute an assurance fund, out of which shall be made good the full amount awarded by any verdict or decree of Court to any person deprived of any land, or of any estate or interest therein, by bringing such land under the provisions of this Act, or by the issue of any certificate of title, or by the registration of any transmission, transfer, or other dealing with land under the provisions of this Act, failing recovery from the person who derived benefit thereby; and the said Treasurer shall, from time to time, invest such sums, together with all interest and profits which may have accrued thereon, in the South Australian Government securities: Provided always that, in case of the insufficiency of such assurance fund, the full amount so awarded shall be made good to the person so deprived of any land, or of any estate, or interest therein, out of the General Revenues of the said Province.

36. Every

36. Every certificate of title shall be in duplicate and in the form C of the Schedule hereto, and the Registrar-General shall note by endorsement thereon, in such manner as to preserve their priority, the particulars of all unsatisfied mortgages or other encumbrances, and of every lease, rent charge, or term of years, or outstanding estate or interest whatsoever affecting such land which shall have been registered or of which he may have notice; and, if such certificate be issued to a minor, or to a person otherwise under disabilities, he shall state the age of such minor, or the nature of the disability, so far as known to him; and shall cause one of such certificates of title to be bound up in the register book, and deliver the other to the proprietor entitled to the land described in such certificate, and every such certificate of title, duly authenticated under the hand and seal of the Registrar-General, shall be received in all Courts of Justice as evidence of the particulars therein set forth, and of their being entered in the register book in the manner set forth in such certificate, and shall be conclusive evidence that the property comprised in such certificate of title has been duly brought under the provisions of this Act; and no certificate of title shall be impeached or defeasible on the ground of want of notice, or of insufficient notice of the application to bring the land therein described under the provisions of this Act, or on account of any error, omission, or informality in such application, or in the proceedings pursuant thereto, by the Lands Titles Commissioners, or by the Registrar-General.

Certificate of title to be in duplicate, and to be bound up in register.

37. Every land grant and certificate of title shall be deemed and taken to be registered under the provisions and for the purposes of this Act, so soon as the same shall have been marked by the Registrar-General with the folio and volume as embodied in the register book; and every memorandum of transfer, or other instrument purporting to transfer, or in any way to affect land under the provisions of this Act, shall be deemed to be so registered so soon as a memorial thereof shall have been entered in the register book upon the folium constituted by the existing grant or certificate of title of such land; and every such memorial shall state the date and hour of the production for the purpose of registration of the instrument to which it relates, and shall contain such other particulars as the Registrar-General may direct, and the person named in any grant, certificate of title, or other instrument so registered as seized of, or taking any estate or interest, shall be deemed to be the registered proprietor thereof.

Grants and certificates of title registered when embodied in register book.

38. So soon as a memorial thereof shall have been entered in the register book, every instrument drawn in any of the several forms provided in the Schedule hereto, or in any form which for the same purpose may be authorized, in conformity with the provisions of this Act, shall, for the purposes of this Act, be deemed and taken to be embodied in the register book as part and parcel thereof, and such instrument, when so constructively embodied, shall create and impose the like obligations on the persons signing the same, and for the like period of time as any deed or other instrument made to secure the

Upon entry of particulars, instrument deemed to be part of register book.

the payment of any specialty debt; and every such instrument presented for registration shall be in duplicate, and the Registrar-General, upon registration thereof, shall file one original in his office, and shall deliver the other to the person entitled thereto.

Instruments not effectual until entry in registry book.

39. No instrument shall be effectual to pass any estate or interest in any lands under the provisions of this Act, or to render such land liable as security for the payment of money, but, so soon as any instrument shall have been registered in accordance with the provisions of this Act, the estate or interest shall pass, or as the case may be, the land shall become liable as security in manner, and subject to the covenants, conditions and contingencies set forth and specified in such instrument, or by this Act declared to be implied in instruments of a like nature; and should two or more instruments, executed by the same proprietor, and purporting to transfer or encumber the same estate or interest in any land, be at the same time presented to the Registrar-General for registration and endorsement, he shall register and endorse that instrument, under which the person claims property, who shall present to him the grant or certificate of title of such land for that purpose.

Instruments not to be registered unless in accordance with prescribed forms.

40. The Registrar-General shall not register any instrument purporting to transfer or otherwise to deal with or affect any estate or interest in land under the provisions of this Act except in the manner herein provided, nor unless such instrument be in accordance with the provisions hereof.

Estate of registered proprietor paramount.

41. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which, but for this Act, might be held to be paramount, or to have priority, and, except in the case of fraud, the registered proprietor of land, or of any estate or interest in land under the provisions of this Act, shall hold the same subject to such encumbrances, liens, estates, or interests, as may be notified, by entry or memorial, on the folium of the register book, constituted by the land grant, or certificate of title of such land, but absolutely free from all other encumbrances, liens, estates, or interests whatsoever, except the estate or interest of a proprietor claiming the same land under a prior certificate of title, or under a prior grant registered under the provisions of this Act, and except as regards the omission or misdescription of any right of way or other easement, created in or existing upon any land, or the wrong description of any land, or of its boundaries.

Memorial to be recorded on duplicate grant or other instrument.

42. Whenever a memorial of any instrument has been entered in the register book, the Registrar-General shall record the like memorial on the duplicate grant, certificate of title, lease, or other instrument evidencing title to the estate or interest intended to be dealt with, or in any way affected, unless the Registrar-General shall in any case dispense with the production of the same; and the Registrar-General shall endorse on every instrument so registered a memorandum



dum of the date and hour on which the said memorial was entered in the register book, and shall authenticate each such endorsement by signing his name and affixing his seal thereto; and every instrument so endorsed and authenticated, shall be received in all Courts of Justice as conclusive evidence of the particulars therein set forth, and of all covenants, conditions, and matters therein expressed, or by this Act declared to be implied, and that such instrument has been duly registered.

Endorsement signed by Registrar-General to be evidence.

43. So soon as any land shall have been brought under the provisions of this Act, no transferee or mortgagee shall be entitled to the production of any deed or other instrument surrendered by the applicant proprietor, or any memorandum of transfer or other instrument dated prior to the existing certificate of title of such land, unless such instrument be recorded in the register book, and upon the existing certificate of title, as an incumbrance, lien, or interest in or affecting the said land: Provided that this clause shall in no way supersede any order that may be made by a Judge of the Supreme Court for the production of any such deed or instrument in case of *lispendens*.

Surrendered deeds and instruments, dated prior to existing certificate of title, not to be produced.

44. When land under the provisions of this Act is intended to be transferred, the transferor shall execute a memorandum of transfer in form D of the Schedule hereto, which memorandum shall, for description of the land intended to be transferred, refer to the grant or certificate of title of such land, or shall give such description as may be sufficient to identify that particular portion of land intended to be transferred, and shall contain an accurate statement of the estate or interest intended to be transferred; and a memorandum of all mortgages and other encumbrances affecting the same, and if such land be leased, the name and description of the lessee, with a memorandum of the lease, and every such memorandum of transfer shall be attested by a witness.

Transfer.

45. Whenever any easement or any incorporeal right other than an annuity or rent charge affecting any land under the provisions of this Act, is created for the purpose of being annexed to or used and enjoyed together with other land under the provisions of this Act, the Registrar-General shall enter a memorial of the instrument creating such easement or incorporeal right upon the folium of the register-book constituted by the existing grant or certificate of title of such other land.

Easements and incorporeal rights to be registered.

46. If the memorandum of transfer purports to transfer an estate in fee-simple, in the whole or in part, of the land mentioned in any grant or certificate of title, the transferor shall deliver up the grant or certificate of title of the said land; and the Registrar-General shall, in such case, enter on such grant or certificate of title, a memorandum cancelling the same, either wholly or partially, according as the memorandum of transfer purports to transfer the whole or part only of the land mentioned in such grant or certificate of title, and setting forth the particulars of the transfer occasioning such surrender and cancelling.

If estate in fee-simple be transferred, certificate of title to be delivered up and cancelled, so far as regards the portion of land transferred.

Fresh certificate to be issued to purchaser.

47. The Registrar-General upon cancelling any grant or certificate of title, either wholly or partially, pursuant to any such transfer, shall make out to the purchaser or other registered transferee, a certificate of title to the land mentioned in such memorandum of transfer; and every such certificate of title shall refer to the original grant of such land, and to the memorandum or other instrument of transfer to the purchaser or other registered transferee thereof; and the Registrar-General shall retain every such cancelled or partially cancelled grant or certificate of title, and whenever required thereto, by the proprietor of an unsold portion or balance of land included in any such partially cancelled grant or certificate of title, or by a registered purchaser or transferee of such portion or of any part thereof, shall make out to such proprietor, purchaser, or transferee, a certificate of title for such portion, or for any part thereof, of which he is the proprietor, purchaser, or transferee.

A certificate for the balance, if any untransferred, to be issued to proprietor when demanded, or to a registered transferee thereof.

Lands under the provisions of this Act—how leased.

48. When any land under the provisions of this Act is intended to be leased or demised for a life or lives, or for any term of years exceeding three years, the proprietor shall execute a lease in form E of the Schedule hereto; and every such lease shall refer to the description that is given in the grant or certificate of title of the land, or shall give such other description as may be necessary to identify such land, and shall be attested by a witness: Provided always, that no lease of mortgaged or encumbered land, executed subsequently to the registration of any bill of mortgage or bill of encumbrance, shall be valid and binding against the mortgagee or encumbrancee, unless such mortgagee or encumbrancee shall have consented to such lease prior to the same being registered.

No lease of mortgaged land valid without consent of mortgagee.

Right of purchase may be granted or covenant stipulated.

49. In any such lease a right to purchase the fee simple of the land thereby demised may be granted to the lessee by a stipulation to that effect expressed in such lease, or a covenant to purchase the fee simple of the said land may be entered into by the lessee, and in such case, the true amount of the purchase-money to be paid, the period within which such right may be exercised, or such covenant is to be performed, and such other particulars as may be considered necessary for explaining the terms of such right or covenant shall be stated on such lease; and in case the lessee shall pay the purchase-money stipulated and otherwise observe his covenants expressed and implied in such lease, the lessor shall be bound to execute a memorandum of transfer to such lessee of the said land and the fee simple thereof, and to perform all necessary acts by this Act prescribed to be done, for the purpose of transferring to a purchaser the said land and the fee simple thereof.

Lease may be surrendered by endorsement by lessee with concurrence of lessor.

50. Whenever any lease or demise, which is required to be registered by the provisions of this Act, is intended to be surrendered, and the surrender thereof is effected otherwise than through the operation of a surrender in law, or than under the provisions of any law at the time being in force in the said Province relating to insolvent estates, there shall be endorsed upon such lease, or on the counterpart

counterpart thereof, the word "Surrendered," with the date of such surrender, and such endorsement shall be signed by the lessee and by the lessor as evidence of the acceptance thereof, and shall be attested by a witness, and the Registrar-General thereupon shall enter in the register book a memorandum recording the date of such surrender, and shall likewise endorse upon the lease a memorandum recording the fact of such entry having been made in the register book; and upon such entry being so made in the register book, the estate or interest of the lessee in such land shall revert in the lessor, or in the person in whom having regard to intervening circumstances (if any), the said land would have vested if no such lease had ever been executed, and production of such lease or counterpart, bearing such endorsement and memorandum shall be sufficient evidence that such lease had been so surrendered.

51. Whenever any land or estate or interest in land under the provisions of this Act is intended to be charged or made security in favor of any mortgagee, the mortgagor shall execute a bill of mortgage in form F of the Schedule hereto; and whenever any such land, estate, or interest as aforesaid is intended to be charged with, or made security in favor of any encumbrancee for the payment of an annuity, rent, charge, or sum of money, the encumbrancer shall execute a bill of encumbrance in form G of the Schedule hereto; and every such bill of mortgage or bill of encumbrance shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and shall refer to the description given in the grant or certificate of title of the land in which such estate or interest is held, or shall give such other description as may be necessary to identify such land, together with a statement of all mortgages and other encumbrances affecting the same (if any), and every such bill of mortgage or bill of encumbrance shall be attested by a witness; and shall be registered in the order of time in which the same is produced to the Registrar-General for that purpose; and bills of mortgage, and bills of encumbrance registered in respect to or affecting the same estate or interest, shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other according to the date of registration, and not according to the date of each instrument itself.

Lands under this Act  
—how mortgaged or  
encumbered.

Bill of mortgage or  
encumbrance to be re-  
corded in order of  
time of production.

Priority of mortgages  
and encumbrances.

52. In case default shall be made for the space of one calendar month in payment of the principal money, or interest, or any part thereof, secured by any registered bill of mortgage, or if default shall be made in the observance of any covenant that may be expressed in such bill of mortgage, or that is therein as against the mortgagor hereinafter declared to be implied, or in case such default for the space aforesaid shall be made in payment of the annuity, rent, charge, principal money, or interest, or any part thereof respectively, secured or charged by any registered bill of encumbrance, or if default shall be made in the observance of any covenant that may be expressed in such bill of encumbrance, or that is therein as against the encumbrancer hereinafter declared to be implied, the mortgagee, or encumbrance,

Remedy when mort-  
gagor or encum-  
brancer is in default.

encumbrancee, after giving to the mortgagor or encumbrancer, notice, in writing, to pay the money then due or owing on such bill of mortgage, or bill of encumbrance, or to observe the covenants therein expressed or implied, as the case may be, or after leaving such notice on the mortgaged or encumbered land, or at the usual or last known place of abode in South Australia, of the mortgagor or encumbrancer, or other person claiming to be then entitled to the said land, and after such default in payment or in observance of covenants continuing for the further space of one calendar month from the date of such notice, is hereby authorized and empowered to sell the said land so mortgaged or encumbered, or any part thereof, and all the estate and interest therein of the mortgagor or encumbrancer, and either altogether or in lots, by public auction or by private contract, or both such modes of sale, and subject to such conditions as he may think fit, and to buy in and resell the same without being liable for any loss occasioned thereby, and to make and execute all such instruments as shall be necessary for effecting the sale thereof, all which sales, contracts, matters, and things, hereby authorized, shall be as valid and effectual as if the mortgagor or encumbrancer had made, done, or executed the same, and the receipt or receipts in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of such land, estate or interest, or any portion thereof, for so much of his purchase-money as may be thereby expressed to be received; and no such purchaser shall be answerable for the loss, misapplication, or non-application, or be obliged to see to the application of the purchase-money by him paid, nor shall he be concerned to inquire as to the fact of any default, notice, or requisition having been made or given, as aforesaid; and the purchase-money to arise from the sale of any such land, estate, or interest, shall be applied: First—In payment of the expenses occasioned by such sale: Secondly—In payment of the moneys which may then be due to the mortgagee or encumbrancee, and the surplus, if any, shall be paid to the mortgagor or encumbrancer, as the case may be.

Power to sell.

Appropriation of proceeds.

Registrar-General to give effect to sale by mortgagee or encumbrancee.

53. Upon the registration of any memorandum or instrument of transfer executed by a mortgagee or encumbrancee, for the purpose of such sale as aforesaid, the estate or interest of the mortgagor or encumbrancer therein described as to be conveyed shall pass to and vest in the purchaser freed and discharged from all liability on account of such mortgage or encumbrance, or of any mortgage or encumbrance registered subsequent thereto; and if such memorandum of transfer purports to pass an estate in fee simple the purchaser shall be entitled to receive a certificate of title for the same.

Payments by instalments.

54. The payment of any sum of money by weekly instalments, or other periodical payments, may be secured on any land or on any estate or interest therein, by bill of mortgage, or bill of encumbrance, in the form F or G of the Schedule hereto, by varying such form so as to express fully the terms and modes of payment of such sum of money:

money: Provided also, that the period of time hereinbefore limited as the period after expiration of which it shall be lawful for a mortgagee or encumbrancee to sell an estate pledged as security, in the event of default made in payment of interest or principal, or of any annuity, or rent-charge, or in consequence of the non-fulfilment of any covenant. may, by condition expressed in any such bill of mortgage, or bill of encumbrance, be extended or shortened, and notwithstanding such variations in such form, the like covenants, rights, powers, and obligations shall be implied thereunder and thereby, both against the mortgagor or encumbrancer, and the mortgagee or encumbrancee, as would be implied if no such variation had been made in the form of such Schedule.

Power to vary time of enforcing payment.

55. Every bill of mortgage and bill of encumbrance shall be construed and have effect only as a security for the sum of money, annuity, or rent charge intended to be thereby secured, and shall not operate or take effect as a transfer of the land, estate, or interest intended to be thereby charged with the payment of any money, but it shall be lawful for the mortgagee or encumbrancee, upon default in payment of the money secured by such bill of mortgage or bill of encumbrance or any part thereof, to enter into possession of the mortgaged or encumbered land by receiving the rents and profits thereof, or to distrain upon the occupier or tenant of the said land under the power to distrain hereinafter contained: Provided also, that it shall be lawful for any registered mortgagee or encumbrancee, whenever any principal or interest money, annuity, or rent charge shall have become in arrear, to bring an action of ejectment to obtain possession of the said land either before or after entering into the receipt of the rents and profits thereof, or making any distress as aforesaid, and either before or after any sale of such land shall be effected under the power of sale given or implied in such bill of mortgage or bill of encumbrance, and any such registered mortgagee, or encumbrancee shall be entitled, by suit or other proceedings in equity, to foreclose the right of the mortgagor or encumbrancer to redeem the said mortgaged or encumbered lands.

Bill of mortgage or bill of encumbrance not a transfer.

In case of default, mortgagee or encumbrancee may enter and take possession or may distrain.

May bring action for ejectment or may foreclose right of redemption.

56. Besides his personal remedy against the mortgagor or encumbrancer, as the case may be, every mortgagee or encumbrancee for the better recovery of any principal sum or of any arrears of interest which may be due under any bill of mortgage, or of the arrear of any annuity or rent charge, or principal sum, or any interest which may be due under any bill of encumbrance, shall be entitled after such principal sum, interest, annuity, or rent charge shall have become in arrear for twenty-one days, and after application for the payment thereof shall have been made to the occupier or tenant to enter upon the mortgaged or encumbered land and distrain and sell the goods and chattels of such occupier or tenant, and to retain thereout the moneys which shall be so in arrear, and all costs and expenses occasioned by such distress and sale: Provided that no lessee or tenant occupying such land shall be liable to pay to any mortgagee or encumbrancee of such land a greater sum than the

Mortgagee or encumbrancee may distrain on tenant or occupier for arrears not exceeding the amount of rent due by such tenant or occupier.

No lessee liable for greater sum than the amount of rent actually owing by him.

amount of rent which at the time of making such distress may be then due from such lessee or tenant to the mortgagor, or encumbrancer, or to the person claiming the said land under the mortgagor or encumbrancer.

Mortgagee or encumbrancee of leasehold entering into possession of rent and profits becomes liable to lessor.

57. Any mortgagee or encumbrancee of leasehold land under the provisions of this Act, or any person claiming the said land as a purchaser or otherwise, from or under such mortgagee or encumbrancee, shall, after entering into possession of the said land, or the rents and profits thereof, become and be subject and liable to the lessor of the said land, or the person for the time being entitled to the said lessor's estate or interest in the said land to the same extent as the lessee or tenant was subject to, and liable for, prior to such mortgagee, encumbrancee, or other person entering into possession of the said land, or the rents and profits thereof.

Discharge of mortgages and encumbrances.

58. Upon the production of any such bill of mortgage or bill of encumbrance, having thereon an endorsement signed by the mortgagee or encumbrancee, and attested by a witness discharging the estate or interest pledged, or subjected as security by such bill of mortgage or bill of encumbrance from the whole or part of the principal sum or annuity thereby secured, or discharging any part of the land comprised in such bill of mortgage, or bill of encumbrance from the whole of such principal sum or annuity, the Registrar-General shall make an entry in the register book, noting that the said mortgage or encumbrance is discharged wholly or partially, or that part of the land is discharged as aforesaid, as the case may require, and upon such entry being so made in the register book, the estate or interest, which by such bill of mortgage or bill of encumbrance had been pledged, or subjected as security for any principal sum or annuity, or the portion of land mentioned or referred to in such endorsement as aforesaid, as intended to be discharged from such principal sum or annuity, shall cease to be subject to or liable for the same, or as the case may be, for the part thereof noted in such entry as discharged, pursuant to such entry as aforesaid; and in case any annuity or sum of money shall be secured by any such bill of encumbrance during the life of any encumbrancee or other person, or contingent upon the occurrence of some event or circumstance, the Registrar-General, on the production of such bill of encumbrance, together with proof of the death of such annuitant or other person, or together with proof of the occurrence of the event or circumstance upon which, in accordance with the provisions of such bill of encumbrance, such annuity or sum of money shall cease to be payable, as the case may be, and upon proof of all arrears of the said annuity, and interest or money having been paid, satisfied, or discharged to the said annuitant or other person entitled to the same, shall make an entry in the register book, noting that such annuity or sum of money is satisfied and discharged, and shall cancel such bill of encumbrance, and upon such entry being made in the register book, the land, estate, or interest which had been pledged or subjected as security for the payment of such annuity

annuity or sum of money shall cease to be subject to or liable for the same, or any charges incident thereon; and the Registrar-General shall in any or either such case as aforesaid endorse on the grant, certificate of title, or other instrument evidencing the title of the mortgagor or encumbrancer to the land, estate, or interest mortgaged or encumbered, a memorandum of the date on which such entry as aforesaid was made by him in the register book whenever such grant, certificate of title, or other instrument shall be presented to him for that purpose: Provided always that the discharge of part only of the land comprised in any bill of mortgage, or bill of encumbrance by such endorsement as aforesaid, shall only have the effect of discharging the portion of land so described in such endorsement as intended to be discharged, and shall not have the effect of discharging the whole of the land so comprised as aforesaid from such principal sum or annuity.

59. In case any mortgagee of property under the provisions of this Act shall be absent from the said Province, or in case there shall be no person authorised to give a receipt to the mortgagor for the mortgage money at or after the date appointed for the redemption of any mortgage, it shall be lawful for the Treasurer of the said Province to receive such mortgage money, with all arrears of interest then due thereon, in trust for the mortgagee or other person entitled thereto, and the Registrar-General shall, upon the receipt of the said Treasurer for the amount of the said mortgage money and interest, make an entry in the register book discharging such mortgage, stating the day and hour on which such entry is made, and such entry shall be a valid discharge for such mortgage, and shall have the same force and effect as is hereinbefore given to a like entry when made upon production of the bill of mortgage with the receipt of the mortgagee; and the Registrar-General shall endorse on the grant, certificate of title, or other instrument as aforesaid, and also on the bill of mortgage, whenever those instruments shall be brought to him for that purpose, the several particulars hereinbefore directed to be endorsed upon each of such instruments respectively, and upon and after the date of such payment to the said Treasurer, the interest upon such mortgage shall cease to run or accrue.

Mortgage money may be paid to Registrar-General if mortgagee be absent from the Colony, and mortgage discharged.

60. A registered mortgage, a registered lease, or the interest of a registered encumbrancee may be transferred to any person by memorandum of transfer as aforesaid, or by an instrument in the form H of the Schedule hereto, which instrument may be endorsed upon the bill of mortgage, lease, or bill of encumbrance; and upon such memorandum of transfer, or other instrument, being registered, the estate or interest of the transferor, as set forth in such instrument, with all rights, powers, and privileges thereto belonging or appertaining, shall pass to the transferee, and such transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in such instrument originally as mortgagee, encumbrancee, or lessee of such land, estate, or interest.

Transfer of mortgage and of encumbrance and of lease.

61. By

Transfer of mortgage or lease includes transfer of right to sue thereunder.

61. By virtue of every such transfer as is hereinbefore mentioned, the right to sue upon any bill of mortgage, bill of encumbrance, or other instrument, and to recover any debt, sum of money, annuity, or damages thereunder (notwithstanding the same may be deemed or held to constitute a chose in action), and all interest in any such debt, sum of money, annuity, or damages, shall be transferred so as to vest the same at law, as well as in equity, in the transferee thereof: Provided always, that nothing herein contained shall prevent a Court of Equity from giving effect to any trusts affecting the said debt, sum of money, annuity, or damages, in case the transferee shall hold the same as a trustee for any other person.

Saving powers to Courts of Equity to give effect to trusts.

General covenants to be implied in instruments.

62. In every instrument creating or transferring any estate, interest, or charge for valuable consideration under the provisions of this Act, there shall be implied the following covenants by the party creating or transferring such estate, interest, or charge, that is to say—That such covenanting party will, at the cost of the party requiring the same, do all such acts, and execute all such instruments, as in accordance with the provisions of this Act may be necessary to give effect to all covenants, conditions, and purposes expressly set forth in such instrument as aforesaid, or as are by this Act declared to be implied against such covenanting party in any such instrument.

Transferee of land subject to mortgage or encumbrance to indemnify transferor.

63. In every instrument transferring an estate or interest in land under the provisions of this Act subject to a bill of mortgage or of encumbrance, there shall be implied the following covenant by the transferee of such estate or interest, that is to say—That such transferee will pay the interest or annuity secured by such bill of mortgage or of encumbrance, after the rate and at the times therein mentioned, and will indemnify and keep harmless the transferor from and against the principal sum secured by such bill of mortgage or of encumbrance, and from and against all liability in respect of any of the covenants therein contained, or by this Act implied, on the part of the transferor.

Covenants to be implied in every bill of mortgage.

64. In every bill of mortgage there shall be implied the following covenants against the mortgagor, that is to say—

- (1.) That he will pay the principal money and interest thereby secured, after the rate and at the times therein mentioned, without any deduction whatsoever.
- (2.) That the mortgagor will repair and keep in repair all buildings or other improvements erected and made upon such land, and that the mortgagee may, at all convenient times, until such mortgage be redeemed, be at liberty, with or without surveyors or others, to enter into and upon such land to view and inspect the state of repair of such buildings or improvements.

Covenants to be implied in every lease against the lessee.

65. In every lease there shall be implied the following covenants against the lessee, that is to say—

- (1.) That he will pay the rent thereby reserved at the times therein mentioned,



mentioned, and all rates and taxes which may be payable, in respect of the demised property, during the continuance of the lease.

- (2.) That he will keep and yield up the demised property in good and tenantable repair.

66. In every lease there shall also be implied the following powers in the lessor, that is to say—

Powers to be implied in lessor.

- (1.) That he may, by himself or his agents, at all reasonable times, enter upon the demised property, and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode in this Province, or upon the demised property, a notice in writing of any defect requiring him within a reasonable time, to be therein prescribed, to repair the same.
- (2.) That in case the rent, or any part thereof, shall be in arrear for the space of six calendar months, or in case default shall be made in the fulfilment of any covenant, whether expressed or implied in such lease on the part of the lessee, and shall be continued for the space of six calendar months, or in case the repairs required by such notice, as aforesaid, shall not have been completed within the time therein specified, it shall be lawful for such lessor to re-enter upon and take possession of such demised premises.

67. In any such case the Registrar-General, upon proof to his satisfaction of re-entry and recovery of possession by a lessor by any proceeding in law, shall note the same by entry in the register-book, and the estate of the lessee in such land shall thereupon determine, but without releasing him from his liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar-General shall cancel such lease if delivered up to him for that purpose.

Registrar-General to note particulars of re-entry in register-book.

68. Such of the covenants hereinafter set forth, as shall be expressed in any lease or mortgage, as to be implied against the lessee or mortgagor, shall, if expressed in the form of words hereinafter appointed and prescribed for the case of each such covenant respectively, be so implied against such lessee or mortgagor as fully and effectually as if such covenants were set forth fully and in words at length in such lease or mortgage, that is to say, the words "that he will insure," shall imply as follows—that he will insure, and so long as the term expressed in the said mortgage or lease shall not have expired, will keep insured in some public insurance office to be approved by such mortgagee or lessor, against loss or damage by fire to the full amount specified in such lease or bill of mortgage; or, if no amount be specified, then to their full value, all buildings, tenements, or premises erected on such land, which shall be of a nature or kind capable of being insured against loss or damage by fire; and that he will at the request of the mortgagee or lessor, hand over to and deposit with him the policy of every such insurance, and produce to him the receipt or receipts for the annual or other premiums payable on account

Abbreviated form of words for expressing covenants to be as effectual as if such covenants were set forth in words at length.

Insure.

count thereof: Provided always, that all moneys to be received under or by virtue of any such insurance, shall, in the event of loss or damage by fire, be laid out and expended in making good such loss or damage: Provided also, that if default shall be made in the observance or performance of the covenant last above-mentioned, it shall be lawful for the mortgagee or lessor, without prejudice, nevertheless to and concurrently with the powers granted him by his bill of mortgage or lease in manner in and by this Act provided to insure such building, and the costs and charges of such insurance shall, until such mortgage be redeemed or such lease shall have expired, be a charge upon the said land. The words "and paint outside every alternate year," shall imply as follows, viz.—and also will in every alternate year, during the currency of such lease, paint all the outside woodwork and ironwork belonging to the hereditaments and premises mentioned in such lease, with two coats of proper oil-colors, in a workmanlike manner. The words "and paint and paper inside every third year," shall imply as follows, viz.—and will in every third year, during the currency of such lease, paint the inside wood, iron, and other works, now or usually painted, with two coats of proper oil-colors, in a workmanlike manner, and also re-paper, with paper of a quality as at present, such parts of the said premises as are now papered, and also wash, stop, whiten, or color such parts of the said premises as are now whitened or colored respectively. The words, "and will fence," shall imply as follows, viz.—and also will, during the continuance of the said lease, erect and put up on the boundaries of the land therein-mentioned, or upon such boundaries upon which no substantial fence now exists, a good and substantial fence. The words, "and cultivate," shall imply as follows, viz.—and will at all times, during the said lease, cultivate, use, and manage all such parts of the land therein-mentioned, as are or shall be broken up or converted into tillage, in a proper and husbandmanlike manner, and will not impoverish or waste the same. The words, "that the lessee will not use the said premises as a shop," shall imply as follows, viz.—and also that the said lessee will not convert, use, or occupy the said hereditaments and premises mentioned in such lease, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or permit or suffer the said hereditaments and premises or any part thereof to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said lessor. The words, "and will not carry on offensive trades," shall imply as follows—and also that no noxious, noisome, or offensive art, trade, business, occupation, or calling shall at any time during the said term be used, exercised, carried on, permitted, or suffered in or upon the said hereditaments and premises above-mentioned; and that no act, matter, or thing whatsoever shall at any time during the said term be done in or upon the said hereditaments and premises, or any part thereof, which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of the adjoining lands and hereditaments. The words, "and will not, without leave, assign or sublet," shall imply as follows, viz.—and also that the said lessee

Paint outside.

Paint and paper inside.

Fence.

Cultivate.

Not use as a shop.

Offensive trades.

Assign or sublet.

lessee shall not nor will during the term of such lease assign, transfer, demise, sublet, or set over, or otherwise by any act or deed procure the lands or premises therein-mentioned, or any of them, or any part thereof, to be assigned, transferred, demised, sublet, or set over unto any person whomsoever, without the consent in writing of the said lessor first had and obtained. The words "and will not cut timber," shall imply as follows—and also that the said lessee shall not nor will cut down, fell, injure, or destroy any growing or living timber or timber-like trees standing and being upon the said hereditaments and premises above-mentioned, without the consent in writing of the said lessor. The words, "and will carry on the business of a publican, and conduct the same in an orderly manner," shall imply as follows, viz.—and also that the said lessee will at all times during the currency of such lease, use, exercise, and carry on in and upon the premises therein-mentioned, the trade or business of a licensed victualler or publican, and retailer of spirits, wines, ale, beer, and porter, and keep open and use the messuage, tenement, or inn, and buildings standing and being upon the said land as and for an inn or public-house for the reception, accommodation, entertainment of travellers, guests, and other persons resorting thereto or frequenting the same, and manage and conduct such trade or business in a quiet and orderly manner, and will not do, commit, or permit or suffer to be done or committed any act, matter, or thing whatsoever whereby or by means whereof any licence shall or may be forfeited or become void, or liable to be taken away, suppressed, or suspended in any manner howsoever. The words, "and will apply for renewal of licence," shall imply as follows, viz.—and also shall and will from time to time during the continuance of the said term, at the proper times for that purpose, apply for and endeavor to obtain at his own expense, all such licences as are or may be necessary for carrying on the said trade or business of a licensed victualler or publican in and upon the said hereditaments and premises, and keeping the said messuage, tenement, or inn open as and for an inn or public-house as aforesaid: The words "and will facilitate the transfer of licence" shall imply as follows, viz.—and also shall and will, at the expiration or other sooner determination of the said lease, sign and give such notice or notices, and allow such notice or notices of a renewal or transfer of any licence as may be required by law to be affixed to the said messuage, tenement, or inn, to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf, and generally to do and perform all such further, acts, matters, and things as shall be necessary to enable the said lessor, or any other person authorized by him to obtain the renewal of any licence, or any new licence, or the transfer of any licence then existing and in force.

Cut timber.

Business of publican in orderly manner.

Apply for renewal of licence.

Facilitate the transfer of licence.

69. Where any memorandum of transfer or other instrument in accordance with the provisions of this Act, is executed 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

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

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 memorandum of sale or other instrument, any law or practice to the contrary notwithstanding.

Covenants declared to be implied, to have the same force as if the same had been expressed.

70. Every covenant which shall be implied by virtue of this Act, shall have the same force and effect and be enforced in the same manner as if it had been set out at length in the instrument wherein the same shall be implied.

Covenants declared to be implied, may be negatived or modified.

71. Every covenant and power to be implied in any instrument by virtue of this Act may be negatived or modified by express declaration on the instrument, or endorsed thereon.

Lands may be vested in trust by instrument of nomination.

72. Whenever the registered proprietor of any land under the provisions of this Act, or of any estate or interest in such land, is desirous of vesting the same in any trustees, it shall be lawful for such proprietor to execute an instrument in form I of the Schedule hereto, nominating trustees of the said land, estate, or interest; and every such nomination of trustees shall contain an accurate statement of the estate or interest intended to be vested in any trustees; and shall refer to the description given in the grant or certificate of title of the land in which such estate or interest is held, or shall give such other description as may be necessary to identify such land, and shall be attested by a witness.

Trusts may be declared either by schedule to instrument of nomination, or by separate deed or instrument.

73. The trusts which are intended to be declared of any land, estate, or interest vested in trustees, as hereinbefore mentioned, may be declared, either by a Schedule to the aforesaid instrument effecting such nomination of trustees, or by any separate instrument or deed. Whenever the said trusts are declared by a separate instrument or deed, the same may include as well land under the provisions of this Act as land which is not under the provisions of this Act: Provided that the description of the several parcels of land contained in such separate instrument or deed shall sufficiently distinguish the land which is under the provisions of this Act from the land which is not under the provisions of this Act; and whenever such trusts are declared by a separate instrument, a duplicate or attested copy of such instrument shall be deposited with the Registrar-General for the purpose of safe custody and reference; but such duplicate or attested copy shall not be registered.

Instrument declaring trusts to be deposited, but not registered.

No entry of trusts to be made in register-book.

74. Whenever any land, or any estate or interest in land, under the provisions of this Act shall be settled, or shall become vested in trustees upon any trust, whether expressed, implied, or constructive, the Registrar-General shall not make any entry of the said trusts in the register-book; and the trustees, after the entry in the register-book of the nomination of trustees, in manner hereinbefore provided, shall,

Trustees to receive certificate of title, and deal with same, as if beneficial owners.

shall, notwithstanding any trust affecting the said land, estate, or interest, be entitled to sell, transfer, mortgage, or otherwise deal with the same in the like manner as if the said trustees had been the beneficial owners of the said land, estate, or interest, and, in case the fee-simple of such land be so settled or vested in trust, such trustees shall be entitled to receive a certificate of title for the same.

75. It shall be lawful for the registered proprietor of any land under the provisions of this Act, or of any estate or interest in such land, to insert the words "no survivorship" in any instrument intended by such registered proprietor to operate as a nomination of trustees; and whenever such words shall be so inserted, it shall not be lawful for any less number of trustees than the number named in the aforesaid instrument to sell, transfer, mortgage, or otherwise deal with the said land, estate, or interest, without obtaining the sanction of the Supreme Court or Judge thereof, by an order on motion or petition made under the provisions of this Act, which application shall be made by or on behalf of some person beneficially interested in such land, estate, or interest; and it shall be lawful for the said Court or Judge, by such order as aforesaid, to give directions for the appointment of any new trustee or trustees in the place of any former trustee or trustees, and for the investment or application of the purchase-money or mortgage-money as the said Court or Judge may think fit, for the benefit of the persons beneficially interested therein, and such order accompanied by the memorandum of transfer, bill of mortgage, or instrument purporting to transfer or affect the said land, estate, or interest, shall be deposited with the Registrar-General, who shall thereupon make the entry in the register-book, which, under the provisions of this Act, is required for the purpose of giving effect to the said memorandum of transfer, bill of mortgage, or other instrument, as the case may be; and the receipt of such trustee, or (except in cases where the words "no survivorship" have been entered in the register-book, as hereinafter provided) the receipt of the surviving trustees or trustee, or of the legal personal representative of the last surviving trustee, shall be a sufficient discharge to any purchaser or mortgagee of such land, or any part thereof, whether such purchaser or mortgagee had notice or not of the said trusts; and the purchaser or mortgagee of the said land shall not be bound to see to the application of the money paid upon receiving such receipt: Provided that nothing herein contained shall prevent any less number of trustees than the number which may be named in any instrument operating as a nomination of trustees from filling up any vacancy which may arise by nominating any other person to be cotrustee with the acting or continuing trustees, and such new trustee may be nominated by any instrument in form I of the Schedule hereto, with the addition of the words "no survivorship;" and upon the registration of such instrument, the new trustee shall have the like estate, interest, power, and authority as if such new trustee had been originally nominated a trustee by the registered proprietor of such land, estate, or interest.

The words "no survivorship," in any instrument of appointment, shall operate to prevent a less number of trustees than are named in such instrument dealing with the land.

In such case, Supreme Court to give direction for appointment to any vacancy, or for securing moneys.

Receipt of trustees valid discharge, and purchaser or mortgagee not bound to see after application of money.

Continuing trustees may nominate cotrustees, in case of vacancy.

Appointment of new trustees to be noted in register-book.

The words "no survivorship" to be written on certificate of title, if on instrument of nomination.

76. Whenever the words "no survivorship" shall be written upon any instrument intended to operate as a nomination of trustees, the Registrar-General shall, during the existence of such trust, cause the words "no survivorship" to be written on every certificate of title of land issued to such trustees, and also on the duplicate of every such certificate bound up in the register book.

Proprietor may vest estate jointly in himself and others without limiting any use or executing any assignment.

77. It shall be lawful for the registered proprietor of any land, or of any estate or interest in land under the provisions of this Act, whether such land, estate, or interest shall be of the nature of real or personal property, by any of the forms of instruments of transfer provided by this Act, and containing such alterations (if any) as may be deemed necessary to transfer such land, estate, or interest, or any part thereof, to his wife, or if such registered proprietor be a married woman, it shall be lawful for her to make such transfer to her husband, or it shall be lawful for such registered proprietor to make such transfer, to himself jointly with any other person or persons, and it shall not be necessary for the purpose of such transfer, in any such case, to limit any use or execute any re-assignment; but upon the registration of such transfer, the said land, estate, or interest, shall vest in such registered proprietor.

Registrar-General to carry out order of Supreme Court, vesting trust estate.

78. Whenever any person interested in land under the provisions of this Act shall appear to the Supreme Court to be a trustee of such land, within the intent and meaning of the "Trustee Act, No. 7 of 1855," and any order shall be made in the premises by the Supreme Court, or a Judge thereof, the Registrar-General, on being served with an office copy of such order, shall enter in the register book the date of the said order, the date and hour of its production to him, and the name, residence, and description of the person in whom the said order shall purport to vest the said land, and until such entry shall be made the said order shall have no effect or operation in transferring, or otherwise vesting the said land; and the Registrar-General shall also record the like particulars upon the grant, certificate of title, or other instrument evidencing title, to the said land, in case the same shall be produced to him for that purpose.

Action may be brought by person claiming beneficiary interest in name of trustee.

79. Whenever a person entitled to or interested in land as a trustee for some other person, would be entitled, under the last preceding clause, to bring or defend any action of ejectment in his own name, for the recovering the possession of land under the provisions of this Act, such person shall be bound to allow his name to be used as a plaintiff or defendant in such action of ejectment by any beneficiary, or person claiming an estate or interest in the said land: Provided nevertheless, that the person entitled or interested as such trustee shall in every such case be entitled to be indemnified in like manner as a trustee would before the passing of this Act have been entitled to be indemnified in a similar case of his name being used in any such action, or proceeding by his cestuique trust.

Trustee to be indemnified.

Transmission of land to be authenticated by

80. If any land, or any estate or interest in land under the provisions

visions of this Act shall become transmitted in consequence of the death, bankruptcy, or insolvency of the registered proprietor thereof, such transmission shall be authenticated by a declaration in writing, or in such other manner as the Registrar-General may require, and every such declaration shall state the manner in which, and the party to whom, such land shall have been so transmitted, and whether such land is liable for any outstanding interest or encumbrance within the declarant's knowledge; and shall be made and signed by the person claiming to be entered in the register book as registered proprietor of such estate, or interest, mortgage, or encumbrance. And the Registrar-General shall record on the register book, and on the certificate of title or other instrument evidencing title to such estate or interest, if produced to him for that purpose, the fact that such transmission has been authenticated to him; and every such declaration shall be made before the Registrar-General, or before any of the persons hereinafter appointed respectively, as persons before whom the execution of instruments executed pursuant to the provisions of this Act may be proved.

declaration of party claiming before registered.  
Declaration before whom made.

81. Whenever such transmission shall take place by virtue of the bankruptcy or insolvency of a registered proprietor, an office copy or other duly certified copy of the appointment of the assignees of the bankrupt or insolvent, or such other sufficient evidence of such appointment as the Registrar-General may require, shall be left with the Registrar-General, and the Registrar-General shall thereupon enter a memorandum of the particulars of such appointment in the register book, and upon such entry being made, it shall be lawful for such assignees to transfer to any purchaser or other person, the land, estate, or interest so transmitted as aforesaid, and every memorandum of transfer or other instrument for that purpose executed by such assignees, in accordance with the provisions of this Act, shall have the same validity and effect as a like instrument would have if executed prior to such transmission by bankruptcy or insolvency by the registered proprietor of such land, estate, or interest: Provided always that nothing herein contained shall alter or vary the position of the assignees of a bankrupt or insolvent trustee of any land as between such assignee and any person who may be beneficially interested in any land of which such insolvent trustee is the registered proprietor; but the rights of such persons (if any) as between him and such assignees in respect of such land shall remain entirely unaffected, notwithstanding the insolvency of the registered proprietor of the said land, and the said insolvent shall transfer the said land to the persons beneficially interested therein, and shall do and execute all acts which may be necessary for nominating a new trustee or new trustees of the said land, and carrying into effect any trusts affecting the said land at the date of his insolvency.

Transmission by bankruptcy or insolvency.  
Certified copy of appointment of assignees to be deposited with Registrar-General.

Upon entry of such appointment assignees empowered to deal with lands.

Bankruptcy, or insolvency of trustees not to affect beneficiaries.

82. Whenever a female proprietor entitled to any land, or any estate or interest in any land under the provisions of this Act shall marry, the Registrar-General, on production of the register of such marriage, or other sufficient evidence of the celebration thereof, accompanied

Marriage of female proprietor to be certified to Registrar-General by declaration.

Particulars to be entered in register book.

Instruments to be registered giving effect to dealings in land by married women.

Transmission, will, and probate, or letters of administration, to be produced.

Particulars to be registered.

Heir-at-law or devisee may apply to Judge of Supreme Court to order the Registrar-General to issue certificate of title to him.

accompanied by a declaration to be made of the identity of the woman named in the register book as the proprietor of such estate or interest, with the person named in such register of marriage, shall enter on the register book a memorandum of the day and hour of the production to him of the register, or other evidence of such marriage, and of the particulars certified to him by such declaration, and shall, when required by such female proprietor or other person claiming through her register, any instrument purporting to transfer or otherwise affect the said land, estate, or interest, in accordance with the provisions of this Act: Provided, that every such instrument shall, in all cases, when the same is by law required to be acknowledged by such married woman for the purpose of transferring the said land, estate, or interest, be duly acknowledged by such married woman, in the manner hereinafter provided, previously to the same being so registered.

83. Whenever any mortgage, encumbrance or lease affecting land under the provisions of this Act shall be transmitted in consequence of the will or intestacy of the registered proprietor thereof, probate, or an office copy, of the will of the deceased proprietor, or letters of administration, in case the said proprietor shall have died intestate, shall be produced and left with the Registrar-General for the purpose of recording the same in the register book, and the Registrar-General shall enter in the register book the date of the will and of the probate, or, as the case may be, the date of the grant of the letters of administration, the date and hour of the production to him of such will and probate, or letters of administration, the names of the executors or administrators, and, whenever the same can be ascertained, the date of the death of such proprietor, with such other particulars as he shall deem necessary, and upon such entry being made, such executors or administrators shall be deemed to be registered proprietors of such mortgage, encumbrance or lease.

84. It shall be lawful for the heir-at-law, or devisee, or other person interested in the land of a deceased proprietor, or for the Curator of Intestate Estates in any case in which, by virtue of any law in force in this Province, he may be authorized to take the charge or management of the real or personal estate of a deceased person, at any time to apply to the Supreme Court, or Judge thereof, by motion or petition, in a summary way, to make an order for the Registrar-General to register such heir-at-law, curator, devisee, or other person, as the proprietor of such land, or to register the Curator of Intestate Estates as the proprietor of any mortgage, encumbrance, or lease, in place of such deceased proprietor, and the Supreme Court, or a Judge thereof, shall make such order therein as may seem proper, and may thereby direct any caveat to be entered for the protection of the interests of such other persons (if any) as may be interested in such land, estate, or interest, and may direct advertisements to be made, and notices served in such manner as to such Court may seem fit, and may also direct the costs of such application to be borne



borne and paid out of the estate of the said deceased proprietor, or by such other person, or in such other manner as the Court may think just, and such order shall be left with the Registrar-General, who shall enter the particulars thereof in the register book, and shall forthwith give effect to the said order by complying with the directions therein contained, and upon such entry being made, the person named in the said order shall be deemed to be the registered proprietor of such land, estate, or interest: Provided always, that the person registered consequent upon such order, or any executor or administrator when registered in respect of any mortgage, encumbrance, or lease, shall hold such land, estate, or interest in trust for the persons and purposes to which it is applicable by law; but for the purposes of any dealings with such land, estate, or interest, under the provisions of this Act, he shall be deemed to be absolute proprietor thereof.

85. For the purpose of registration of an estate or interest in land under the provisions of this Act, or on any application for the issuing by the Registrar-General of a certificate of title under the provisions of this Act, it shall be lawful for the Supreme Court, or a Judge thereof, in its equitable jurisdiction, upon motion or petition, to exercise all such powers as are conferred, or as may be applicable for any of the purposes hereinbefore mentioned, under a Statute passed in the sixth year of the reign of Her Majesty Queen Anne, and intituled "An Act for the more effectual discovery of the death of Persons pretended to be alive, to the prejudice of those who claim Estates after their deaths."

Powers of Supreme Court, under Statute of the 6th Queen Anne, applicable to registration under this Act.

86. Whenever any land, or any estate, or interest in land, under the provisions of this Act, shall be sold by the Sheriff, under any writ, or shall be sold under any direction, decree, or order of the Supreme Court, the Registrar-General, on being served with an office copy of the writ, direction, decree, or order, as the case may be, shall enter in the register book, and also upon the instrument evidencing title to the said estate or interest, in case the same shall be produced to him, the date of the said writ, direction, decree, or order, and the date and hour of the production of the same respectively; and after such entry, as aforesaid, the Sheriff, or person authorized by the Supreme Court, shall do such acts and execute such instruments, as under the provisions of this Act may be necessary to transfer the said estate or interest: Provided always, that unless and until such entry has been made as aforesaid no such writ shall bind or affect any land under the provisions of this Act, or any estate or interest therein, nor shall any sale or transfer by the Sheriff be valid as against a purchaser or mortgagee, notwithstanding such writ may have been actually in the hands of the Sheriff at the time of any purchase or mortgage, or notwithstanding such purchaser or mortgagee may have had actual or constructive notice of the issue of such writ.

Sales by Sheriff, or under order of Supreme Court.

87. Whenever it is intended that partition shall be made by

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coparceners,

Partition of coparcenership, or joint tenancy, or tenancy in common.

coparceners, joint tenants, or tenants in common of any land under the provisions of this Act, or of any estate or interest in such land, such coparceners, joint tenants, or tenants in common, may execute a memorandum of transfer, lease, or other such instrument of transfer, as in accordance with the provisions of this Act, the nature of the estate or interest may require, purporting to sell, lease, or otherwise transfer to each or any of such coparceners, joint tenants, or tenants in common respectively, such part of the said land, or their estate or interest in such part of the said land, as shall be expressed and described in such memorandum of transfer, lease, or other instrument of transfer.

Agent holding power of attorney to sell or dispose of the fee, may apply to bring land under Act, and receive certificate of title in the name of his principal.

88. Where any attorney or agent, acting under a power of attorney from a person who would himself be entitled to make application to bring any land under the provisions of this Act and to receive certificate of title for the same, shall, by such power, be authorised to sell or absolutely to dispose of such land, it shall be lawful for such attorney or agent to make a declaration that his principal is so entitled as aforesaid, and to apply on behalf of his principal to bring such land under the provisions of this Act, and to receive certificate of title for the same in the name of said principal, and every instrument dealing with such land, in accordance with the provisions of this Act, and signed by such attorney or agent on behalf of his principal, shall be valid and effectual for the purposes intended by such instrument, and such land shall be considered to have been properly brought under this Act, notwithstanding the absence of any express authority from the principal to sign such instruments or make such declaration or application: Provided, that nothing herein contained shall interfere with any express prohibition to an attorney or agent to bring any land under the operation of this Act.

Upon surrender of existing grants or certificates of title, the proprietor may obtain a single certificate for all the land included therein.

89. Upon the application of any registered proprietor of land held under separate grants or certificates of title, or under one grant or certificate, and the delivering up of such grant or grants, certificate or certificates of title, it shall be lawful for the Registrar-General to issue to such proprietor a single certificate of title for the whole of such land, or several certificates, each containing portion of such land, in accordance with such application, and as far as the same may be done consistently with any regulations at the time being in force respecting the parcels of land that may be included in one certificate of title, having regard to the descriptions of such parcels of land and the plans thereof by this Act required to be delineated on such certificate of title; and upon issuing any such certificate of title, the Registrar-General shall cancel the grant or previous certificate of title of such land so delivered up, and shall endorse thereupon a memorandum, setting forth the occasion of such cancellation, referring to the certificate of title so issued, in which the land described in such cancelled grant or certificate of title is included.

Registrar-General may dispense with

90. It shall be lawful for the Registrar-General, with the consent

sent of the other Lands Titles Commissioners, in case they shall see reasonable cause for so doing, to dispense with the production of any grant, certificate of title, lease, or other instrument, for the purpose of making the endorsement thereon, which by this Act is required to be made upon the transfer or other dealing with land under the provisions of this Act; and the Registrar-General may, in such case, if he shall think proper, require proof to be made by affidavit or otherwise of the identity of the person transferring or otherwise dealing with the said land, with the person who is registered as proprietor thereof; and upon the registration of such transfer or other dealing affecting the said land, the Registrar-General shall notify in the memorial that no endorsement of such transfer or other dealing has been made on the duplicate grant, certificate of title, lease, or other instrument; and such transfer or other dealing shall thereupon be as valid and effectual as if the endorsement had been made upon the duplicate of the grant, certificate of title, or other instrument.

production of duplicates of certificates of title and other instruments in certain cases.

91. In any suit for specific performance brought by a registered proprietor of any land under the provisions of this Act against a person who may have contracted to purchase such land, the certificate of title of such registered proprietor shall be held in every court of law or equity to be conclusive evidence that such registered proprietor has a good and valid title to the land and for the estate or interest therein mentioned or described, and shall entitle such registered proprietor to a decree for the specific performance of such contract.

Registered proprietor bringing suit for specific performance to be entitled to decree.

92. No vendor of any land under the provisions of this Act shall have any equitable lien thereon by reason of the non-payment of the purchase-money, or any part of the purchase-money for the same. and except as hereinbefore provided, in the case of right of purchase granted in a lease, or a covenant to purchase entered into by the lessee, no agreement for the sale, lease, or other dealing with any estate or interest in land under the provisions of this Act to be performed *in futuro* shall be registered.

Vendor to have no equitable lien by reason of balance of purchase-money unpaid.

No contract for sale or dealing with land *in futuro* to be registered.

93. Any person claiming an estate or interest in any land may, by caveat, in the form of the Schedule hereto marked K, or as near thereto as circumstances will permit, forbid the registration of any instrument affecting such land, estate, or interest.

Caveat may be lodged.

94. Upon receipt of any caveat, the Registrar-General shall note the receipt thereof in the register book, and also, if the same be produced to him for that purpose, on the grant, certificate of title, lease, or other instrument evidencing title to the estate or interest affected by such caveat, and if such grant or other instrument as aforesaid be not produced to him, then the Registrar-General shall give notice of the receipt of such caveat to the person registered as proprietor in respect to the estate or interest referred to in such caveat, and to every person presenting, for the purpose of registration, any instrument relating to such estate or interest; and such registered

Notice of caveat to parties.

Person lodging caveat may be summoned to show cause.

registered proprietor, or any person claiming estate or interest in the same land, may, if he think fit, summon the person signing such caveat to attend before the Judges of the Supreme Court of the said Province, or one of them, to show cause why such caveat should not be withdrawn; and it shall be lawful for the said Court, or a Judge thereof, upon proof that such last-mentioned person has been summoned, to make such order in the premises, either *ex parte* or otherwise, as to the said Court or Judge shall seem fit.

Caveats to contain the names and description of parties, and a sufficient description to identify the land. Caveator to leave an address, at which notice may be served.

95. Every caveat left under the provisions of this Act with the Registrar-General, shall state the name and address of the person by whom or on whose behalf such caveat shall be lodged, and shall contain a sufficient description to identify the land which is intended to be affected, and the estate or interest (if any), which shall be claimed by the caveator in the said land, and every such caveat shall be signed by the caveator, or by his solicitor, known agent, or attorney, and all notices relating to such caveat, or any proceedings in respect thereof, shall be served, either at the place of address mentioned in such caveat, or at the office of the solicitor, known agent, or attorney who shall have signed such caveat, and such service shall be deemed sufficient service of the notice, as against all persons who may claim under the said caveat.

No entry to be made in register book affecting lands in respect to which caveat continues in force.

96. So long as any caveat shall remain in force prohibiting the transfer or other dealing with land, the Registrar-General shall not enter in the register book any memorandum of transfer or other instrument purporting to transfer or otherwise deal with or affect the land, estate, or interest, in respect to which such caveat may be lodged.

Registrar-General may cancel caveat upon proof that the interest of parties have been satisfied, or that the interest of the caveator is inadequate to warrant the caveat.

97. Any caveat which may be lodged, under the provisions hereinbefore contained, may be cancelled by the Registrar-General upon its being proved to his satisfaction, and that of the other Lands Titles Commissioners, that the estate, interest, or claim of the caveator has ceased, been abandoned, or withdrawn, or that the rights of the parties on whose behalf such caveat may have been lodged are satisfied or arranged, or in case the Registrar-General and the other Lands Titles Commissioners shall be satisfied that the nature of the estate, interest, or claim of the caveator or person on whose behalf the caveat is lodged is not such as to entitle him to prohibit the sale or mortgage or other dealing with the land, estate, or interest referred to in such caveat.

Compensation for lodging caveat without reasonable cause.

98. Any person lodging any caveat with the Registrar-General without reasonable cause, shall be liable to make to any person who may have sustained damage thereby such compensation as may be just, and such compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat.

Power of attorney.

99. The proprietor of land under the provisions of this Act, or any person

person registered as having estate or interest therein, may authorize and appoint any person to act for him, or on his behalf, in respect to the leasing of such land, or the transfer or mortgage of his estate or interest therein, or otherwise lawfully to deal with such land, estate, or interest, in accordance with the provisions of this Act by executing a power in any form heretofore in use for the like purpose, or in form L of the Schedule hereto, and upon any such power being brought to the Registrar-General, he shall enter a memorial of the same in the register book; and from and after the date of such entry in the register book all acts lawfully done or performed by the person so appointed under authority of, and within the limits prescribed in such power, shall have the same force and effect, and be equally binding on such proprietor, as if the said acts had been done or performed by such proprietor; and every such power, bearing endorsement that the memorial of the same has been so entered, signed by the Registrar-General, shall be received in evidence as sufficient proof that the person to whom such power has been granted, is duly authorized to make all contracts, to sign all instruments, and to perform all other lawful acts in accordance with the powers therein limited and appointed for the attainment of the objects therein specified or any of them: Provided always, that an original or an attested copy of such power shall be deposited with the Registrar-General.

100. The Registrar-General, upon the application of any registered proprietor of land under the provisions of this Act, shall grant to such proprietor a registration abstract, in the form M of the Schedule hereto, enabling him to transfer, mortgage, or otherwise deal with his estate or interest in such land at any place without the limits of the said Province, and shall, at the same time, enter in the register book a memorandum, recording the issue of such registration abstract, and shall endorse on the grant, certificate of title, or other instrument evidencing or constituting the title of such applicant proprietor a like memorandum recording the issue of such registration abstract, and from and after the issuing of any such registration abstract, no transfer, mortgage, lease, or other transaction, transferring, encumbering, or in any way affecting the estate or interest in respect of which such registration abstract is issued, shall be entered in the register book until such abstract shall have been surrendered to the Registrar-General to be cancelled, or the loss or destruction of such abstract proven to his satisfaction.

Registration abstract for registering dealings without the limits of the Province.

101. Whenever any transfer, mortgage, or lease is intended to be transacted under any such registration abstract, a memorandum of transfer, bill of mortgage, or lease, as the case may require, shall be prepared in duplicate in form hereinbefore appointed, and shall be produced to some one of the persons hereinafter appointed as persons before whom the execution of instruments without the limits of the said Province may be proven; and, upon memorial of such instrument being entered upon the registration abstract, and authenticated by the signature of such authorised person as aforesaid, in manner hereinbefore directed for the entry of memorials

Mode of procedure under registration abstract.

memorials in the register book, such transfer, mortgage, or lease shall be as valid and binding to all intents, as if the same had been made within the limits of the said Province, and recorded in the register book by the Registrar-General, and subject to the rules hereinafter for each such case prescribed, every person whose name shall have been so recorded as transferee, mortgagee, or lessee of such land upon such registration abstract, shall be held and taken to be registered as such, and shall have the same rights and powers, and be subject to the same liabilities as he would have had and been subject to if his name had been registered in the register book instead of on such abstract, as proprietor, mortgagee, or lessee of such land, or of such estate or interest therein.

General rules applicable to powers of attorney and registration abstracts.

102. The following rules shall be observed as to powers of attorney and registration abstracts:—

- (i.) The power shall be exercised in conformity with the directions contained therein.
- (ii.) No transfer, mortgage, or lease, *bonâ fide* made thereunder, shall be impeached by reason of the person by whom the power was given dying before the making of such transfer, mortgage, or lease.
- (iii.) No transfer, mortgage, or lease, *bonâ fide* made to a purchaser, mortgagee, or lessee without notice, shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given.
- (iv.) If transfer be effected, there shall be delivered up to the Registrar-General the memorandum of transfer, by which the land, or any estate or interest therein is contracted to be transferred, the registration-abstract, and the grant, certificate of title, lease, or other instrument of title; the Registrar-General shall enter in the register book a memorandum of the particulars of such transfer and of the cancelling of such abstract, and shall endorse on such memorandum of transfer, and also on the grant, certificate of title, lease, or other instrument of title, a memorandum of the date and hour on which such entry was made; and if a full estate in fee-simple in such land, or in any part thereof, shall have been passed by such memorandum of transfer, he shall cancel the grant or certificate of title delivered up, and shall issue a certificate of title of such land, or of the portion thereof transferred, and if part only be transferred, he shall also issue a certificate of title of the remainder to the proprietor; and shall, before issuing the same, endorse on each of such certificates of title a memorandum of the particulars of all unsatisfied mortgages or encumbrances appearing in the register-book or on the registration-abstract affecting the land included under each such certificate of title respectively.
- (v.) Every mortgage which is so endorsed as aforesaid on the registration-abstract shall have priority over all bills of mortgage of

of the same estate, executed subsequently to the date of the entry of the issuing of such abstract in the register book; and if there be more mortgages than one so endorsed, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled, one before the other, according to the date at which a record of each instrument is endorsed on such abstract, and not according to the date of the bill of mortgage.

(vi.) The discharge and also the transfer of any mortgage so endorsed on such abstract, may be endorsed on such abstract by any person hereinbefore authorized to record a mortgage thereon, upon the production of such evidence and the execution of such instruments as are hereinbefore required to be executed and produced to the Registrar-General on the entry of the discharge or transfer of a mortgage in the register-book; and such endorsement so made on such abstract, shall have the same effect and be as valid to all intents as if such transfer or discharge had been entered in the register book by the Registrar-General in manner hereinbefore provided.

(vii.) Upon proof, at any time, to the satisfaction of the Registrar-General, that any power or registration-abstract is lost, or so obliterated as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised, then upon proof of the several matters and things that have been done thereunder, it shall be lawful for the Registrar-General, as circumstances may require, either to issue a new power or registration-abstract, as the case may be, or to direct such entries to be made in the register book, or such other matter or thing to be done as might have been made or done if no such loss or obliteration had taken place.

Revocation of power  
of attorney.

(viii.) Upon the delivery of any abstract to the Registrar-General, he shall, after recording in the register book in such manner as to preserve its priority, the particulars of every lease, and of every unsatisfied mortgage registered thereon, cancel such abstract, and enter the fact of such cancellation in the register book; and shall also, by endorsement on the grant, or certificate of title, lease, or other instrument evidencing the title of such proprietor to such land, note the particulars of every such unsatisfied mortgage, and of every such lease, and the cancellation of such registration abstract, and every registration abstract so cancelled shall be void, to all intents; and shall file in his office the duplicates of every memorandum of transfer, bill of mortgage, lease, or other instrument executed thereunder, which may for that purpose be delivered to him.

103. The registered owner for the time being of any land in respect of which a power of attorney has been issued, may, for the purpose of revoking such power, execute an instrument in the form N of the Schedule hereto; and the Registrar-General shall, except in any case

case where a registration-abstract is outstanding, enter the particulars thereof in the register book, and shall record thereon the date and hour in which such entry was made; and from and after the date of such entry the Registrar-General shall not give effect to any memorandum of transfer or other instrument executed pursuant to such power of attorney; and if the holder of such power shall neglect or refuse to surrender the same to such owner or his agent, exhibiting such revocation-order, he shall be guilty of a misdemeanor, and on conviction thereof, shall forfeit and pay a sum not exceeding One Hundred Pounds, unless it shall be made to appear, to the satisfaction of the Court before whom the case may be tried, that the powers given therein had been exercised prior to the presentation of such revocation-order.

Transferee not affected by notice.

104. A transferee, whether voluntary or not, of land under the provisions of this Act, shall not be affected by actual or constructive notice of any claims, rights, titles, or interests other than those which have been notified or protected by entry in the register book, according to the provisions of this Act, any rule of law or equity to the contrary notwithstanding: Provided always, that nothing herein contained shall be held to deprive creditors of any rights or remedies given or provided by a statute passed in the thirteenth year of Her Majesty Queen Elizabeth, Chapter 5.

Consent may be given by endorsement.

105. If the consent or direction of any person shall be requisite or necessary, upon a sale or other disposition of land under the provisions of this Act, or any estate or interest therein, such consent or direction may be endorsed upon the memorandum of transfer, or other instrument executed for the purpose of transferring or otherwise dealing with such land or estate, or interest therein, in the words following, that is to say—"I consent hereto," which consent or direction, when signed by such consenting or directing party, and attested in manner hereinafter prescribed, shall have full validity and effect.

Provision for cases of infancy, or other incapacity.

106. If any person interested in any land, or in any estate or interest in land, under the provisions of this Act is, by reason of infancy, lunacy, or other inability, incapable of making any declaration, or doing anything required or permitted by this Act to be made or done by a proprietor, in respect of registry, transfer, or transmission, mortgage or encumbrance of such land, or the release of the same from any mortgage or encumbrance, or the leasing, assigning, or in any other manner dealing with such land, estate, or interest, then the guardian or committee, if any, of such incapable person, or if there be none, any person appointed by any Court, or Judge, possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making of such declaration or doing such thing, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall be as effectual as if done by the person for whom he is substituted.



107. In all cases where married women are interested in land under the provisions of this Act, it shall be lawful for the Registrar-General, or a Judge of the Supreme Court, or the Master thereof, on the transfer or other dealing with such land, by such married woman, and whether the instrument of transfer or other dealing shall embrace or relate solely to land under the provisions of this Act, or shall embrace or relate both to land under the provisions of this Act and also land not under its provisions, to take the acknowledgment of such married woman touching the instrument executed by her for the purpose of transferring, or otherwise dealing with such land in such manner as the deed of any married woman is now required to be acknowledged by her before a Judge of the Supreme Court or the Master thereof, and also to examine her apart from her husband touching her knowledge of such instrument, and ascertain whether she freely and voluntarily consents thereto: And the Registrar-General, or Judge, or Master, (or other person), taking such acknowledgment and examination shall sign a memorandum to be endorsed on such instrument, in form O of the Schedule hereto, and an entry of the said acknowledgment shall be made in the register-book, and every such instrument so acknowledged by any married woman and recorded in the register-book, shall be as effectual to pass all the estate, right, title, or interest of the married woman by whom the same is executed in the lands to which the same relates as if she had been then unmarried.

Acknowledgment of married women interested in land under this Act may be taken by Registrar-General, as well as by Judge, or Master of Supreme Court.

Memorandum of such acknowledgement to be endorsed on instrument in form of Schedule, and entered in register-book.

108. The benefits and liabilities in respect to any covenants or powers under the provisions of this Act, shall, in the case of a married woman, extend to and be implied against such married woman and her husband conjointly during coverture.

Rights and liabilities during coverture.

109. A Corporation, for the purpose of transferring or otherwise dealing with land under the provisions of this Act, in lieu of signing the proper instrument for such purpose prescribed, may affix thereto the common seal of such Corporation, with a certificate that such seal was affixed by the proper officer, verified by his signature.

Seal of Corporation substituted for signature.

110. Instruments executed pursuant to the provisions of this Act, if attested by one witness shall be held to be duly attested, and the execution thereof may be proved, if the parties executing the same be resident within the said Province, then before the Registrar-General, or before a Notary Public, Justice of the Peace, or a Commissioner for taking affidavits; if the said parties be resident in the United Kingdom of Great Britain and Ireland, then before the Mayor or other Chief Officer of any Corporation, or before a Notary Public; if the said parties be resident in any British Possession, then before the Chief Justice, Judge of any Superior Court having jurisdiction in such Possession, or before the Governor, Government Resident, or Chief Secretary thereof; if the said parties be resident at any foreign place, then before the British Consular Officer resident at such place.

Attestation of instruments.

Execution of instruments before whom to be proved.

Mode of proving instruments.

111. The execution of any such instrument, or of any release, transfer, or surrender may be proved before any such person as aforesaid by the oath or solemn affirmation of the parties executing the same, or of a witness attesting the signing thereof, and if such witness shall answer in the affirmative each of the questions following, that is to say—

Are you the witness who attested the signing of this instrument, and is the name or mark purporting to be your name or mark as such attesting witness, your own handwriting?

Do you personally know \_\_\_\_\_ the person signing this instrument, and whose signature you attested?

Is the name purporting to be his signature his own handwriting—is he of sound mind—and did he freely and voluntarily sign the same?

Then the Registrar-General, Justice, or other person, before whom such witness shall prove such signature as aforesaid, shall endorse upon such instrument a certificate in form P of the Schedule hereto: Provided also, that, if any person signing any such instrument, transfer, release, or surrender, as aforesaid, as the maker thereof, shall be personally known to the Registrar-General, Justice, or other person, as aforesaid, it shall be lawful for such person to attend and appear before such Registrar-General, Justice, or other person, to whom he is personally known, and then and there acknowledge that he did freely and voluntarily sign such instrument, transfer, release, or surrender; and, upon such acknowledgment, the Registrar-General, Justice, or other person, as the case may be, shall endorse on such instrument a certificate in the form or to the effect of the Schedule heretomarked Q, and it shall not be necessary for such instrument to be proved by the attesting witness in manner aforesaid: Provided also, that such questions as aforesaid may be varied as circumstances shall or may require, in case any person shall sign such instrument by his mark: Provided also, that, on the signing of any such instrument by any married woman, and the acknowledgment thereof by her in manner mentioned or referred to in this Act, no further or other proof or acknowledgment shall be requisite or necessary, and every such certificate as aforesaid shall be sufficient evidence that the execution of such instrument has been duly proved.

Provision in case of lost grant.

112. In the event of the grant or certificate of title of land under the provisions of this Act being lost, mislaid, or destroyed, the proprietor of such land, together with other persons, if any, having knowledge of the circumstances, may make a declaration before the Registrar-General, or before any of the persons hereinbefore appointed as persons before whom the execution of instruments may be proved, stating the facts of the case, the names and description of the registered owners, and the particulars of all mortgages, encumbrances, or other matters affecting such land and the title thereto, to the best of declarant's knowledge and belief; and the Registrar-General, if satisfied as to the truth of such declaration, and the *bonâ fides* of the transaction, may,

may, with the consent of the other Lands Titles Commissioners, issue to such applicant a provisional certificate of title of such land, which provisional certificate shall contain an exact copy of the original grant, or certificate of title bound up in the register-book, and of every memorandum and endorsement thereon at the time appearing, and shall also contain a statement of the circumstances under which such provisional certificate is issued, and the Registrar-General shall at the same time enter in the register-book notice of the issuing of such provisional certificate and the date thereof, and the circumstances under which it was issued, and such provisional certificate shall be available for all purposes and uses for which the grant, or certificate of title so lost, or mislaid, would have been available, and as valid to all intents as such lost grant, or certificate: Provided always, that the Registrar-General, before issuing such provisional certificate, shall give at least thirteen days notice of his intention so to do in the *Government Gazette*, and at least in one newspaper published in the City of Adelaide.

113. From the day appointed for this Act to come into operation, all public maps delineating the Waste Lands of the Crown in the said Province for the purpose of sale, shall be made in duplicate, and the Surveyor-General shall sign each duplicate, and shall certify the accuracy of the same, and such duplicates of such maps shall be deposited in the Registry Office, and whenever, in any instrument relating to land under the provisions of this Act, and executed subsequent to that day, reference is made to the public maps of the said Province, deposited in the office of the Surveyor-General, such reference shall be interpreted and taken to apply equally, and with the same force and effect, and for the same purposes, to either of such duplicates.

Duplicates of future public maps to be deposited.

114. Any proprietor subdividing any land under the provisions of this Act, for the purpose of selling the same in allotments as a township, shall deposit with the Registrar-General a map of such township, provided that such map shall exhibit, distinctly delineated, all roads, streets, passages, thoroughfares, squares, or reserves, appropriated or set apart for public use, and also all allotments into which the said land may be divided, marked with distinct numbers or symbols, and every such map shall be certified as accurate by declaration of a licensed surveyor before the Registrar-General or a Justice of the Peace.

Proprietor may deposit map.

115. The Registrar-General may require the proprietor applying to have any land brought under the provisions of this Act, or desiring to transfer or otherwise to deal with the same, or any portion thereof, to deposit at the Registry Office, a map or plan of such land, certified by a Licensed Surveyor, in manner aforesaid, and if the said land, or the portion thereof proposed to be transferred or dealt with, shall be of less area than one statute acre, then such map or plan shall be on a scale not less than one inch to two chains, and if such land, or the portion thereof about to be transferred or dealt with, shall be of greater area than one statute acre, but not exceeding five statute acres, then such map or plan shall

Registrar-General may require map to be deposited.

shall be upon a scale not less than one inch to five chains, and if such land, or the portion thereof, as aforesaid, shall be of greater area than five statute acres, but not exceeding eighty statute acres, then such map or plan shall be upon a scale of not less than one inch to ten chains, and if such land, or the portion thereof, as aforesaid, shall be of greater area than eighty statute acres, then such map or plan shall be upon a scale of one inch to twenty chains, and if such proprietor shall neglect or refuse to comply with such requirement, it shall not be incumbent on the Registrar-General to proceed with the bringing of such land under the provisions of this Act, or with the registration of such transfer or lease: Provided always, that subsequent subdivisions of the same land may be delineated on the map or plan of the same so deposited, if such map be upon a sufficient scale, in accordance with the provisions herein contained, and the correctness of the delineation of each such subdivision shall be acknowledged in manner prescribed for the case of the deposit of an original map.

Search allowed.

116. Any person may, upon payment of a fee specified in Schedule R hereto, have access to the register-book for the purpose of inspection, at any reasonable time during the hours and upon the days appointed for search.

Certified copies signed and sealed to be furnished by Registrar-General, and to be received in evidence.

117. The Registrar-General, upon payment of the fee specified in the Schedule R hereto, shall furnish to any person applying at a reasonable time for the same, a certified copy of any registered instrument affecting land under the provisions of this Act, and every such certified copy signed by him, and sealed with his seal, shall be received in evidence in any Court of Justice, or before any person having by law, or by consent of parties, authority to receive evidence as *prima facie* proof of all the matters contained or recited in or endorsed on the original instrument, and the production of any such certified copy so signed and sealed shall be as effectual in evidence to all intents as the production of the original.

No action of ejectment to lie except in cases mentioned in this Act.

118. Except in the case hereinbefore provided of a mortgagee or encumbrancee against a mortgagor or encumbrancer, or in the case of a lessor as against a lessee or tenant, or in the case of a person deprived of any land by fraud as against a person registered as proprietor through fraud, or against a person deriving otherwise than as a purchaser or mortgagee *bonâ fide* for value from or through a person registered as proprietor through fraud, or in the case of a person deprived of any land by reason of a wrong description of any land or of its boundaries, and except in the case of a registered proprietor, claiming under a prior certificate of title, or under a prior grant, registered under the provisions of this Act, in any case in which two grants or two certificates, or a grant and a certificate, may be registered under this Act in respect of the same land, no action of ejectment shall lie or be sustained against a registered proprietor for the recovery of land under the provisions of this Act; and except in any of the cases aforesaid, the grant or certificate of title shall be held in every Court of Law or Equity to be an absolute bar and estoppel to any such action against the person named in such grant or certificate of title, as seised of or entitled to such land. 119. In

119. In the event of the recovery of any land, by action of ejectment, from a fraudulent proprietor, or from any of the persons against whom action of ejectment is not by this Act expressly barred, it shall be lawful for the Supreme Court to make an order for cancelling or altering any certificate of title, or other instrument, or entry in the register book, relating to the said land, and for substituting any fresh certificate of title, or instrument, or entry in lieu thereof, and directing and ordering such other acts and instruments to be done and executed as such Court shall, under the circumstances, deem necessary and just, and the Registrar-General shall give effect to the said order.

Supreme Court may order the cancelling of any entry in the register book obtained through fraud, and the substitution of any other entry.

120. Any person deprived of any land, or of any estate or interest in land, in consequence of fraud, or in consequence of the issue of a certificate of title to any other person, or in consequence of any entry in the register book, or of any error or omission in any certificate of title, or in any entry in the register book, may bring and prosecute an action-at-law in the Supreme Court for the recovery of damages against the person who derived benefit by such fraud, or in consequence of the issue of such certificate of title, or by such entry, or in consequence of such error, whether by wrong description of land or of its boundaries or otherwise, or omission: Provided always, that no such action shall lie or be sustained unless the same shall be commenced within the period of six years, to be computed from the date of such deprivation: Provided also, that nothing in this Act contained shall be interpreted to subject to any action of ejectment, or for recovery of damages, any purchaser or mortgagee *bonâ fide* for valuable consideration, of any land under the provisions of this Act, although his vendor or mortgagor may have been registered as proprietor through fraud or error, or may have derived from or through a person registered as proprietor through fraud or error, whether by wrong description of land, or of its boundaries, or otherwise.

Persons defrauded may bring action against fraudulent proprietor for damages.

Saving the case of a purchaser or mortgagee for valuable consideration.

121. In case the person against whom such action for damages is directed to be brought as aforesaid shall be dead, or shall have been adjudged insolvent, or shall have absconded out of the jurisdiction of the Supreme Court, then in such case it shall be lawful to bring such action for damages against the Registrar-General, as nominal defendant, for the purpose of recovering the amount of the said damages and costs against the assurance fund hereinbefore described; and in any such case, and also in any case in which damages may be awarded in any action against the person deriving benefit by any fraud, or in consequence of the issue of any certificate of title or otherwise, as aforesaid, and the Sheriff shall make a return of *nulla bona*, or shall certify that the full amount, with costs awarded, cannot be recovered from such person, the Treasurer of the said Province, upon receipt of a certificate of the Chief Justice of the Supreme Court, and of a warrant under the hand of the Governor, as hereinafter provided, shall pay the amount of such damages and costs as may be awarded, or the unrecovered balance thereof, as the case may be, and

If registered proprietor be dead, action to be against Registrar-General as nominal defendant.

charge the same to the account of the assurance fund: Provided that the assurance fund shall not be liable for payment of any damages after the expiration of six years, to be computed from the time when the cause of action arose: Provided also, that any person so absconding beyond the jurisdiction, if subsequently found within the jurisdiction, shall be liable to be sued, in the name of the Registrar-General, for the amount of the damages and costs so recovered from the assurance fund.

Actions for recovery of damages may in certain cases be brought against the Registrar-General as nominal defendant.

Treasurer on receipt of warrant from Governor to pay amount of award.

Notice of action to be served on Registrar-General and Attorney-General.

Process and notice to be served on Attorney-General.

If action discontinued or plaintiff nonsuited, the nominal defendant entitled to costs.

Registrar-General may summon person by whom a certificate of title or entry has been fraudulently or wrongfully obtained.

122. Every action which shall be brought by any person to recover damages for or by reason of any loss or damage occasioned by any omission, mistake, or misfeasance of the Registrar-General, or any of his officers or clerks in the execution of their respective duties, under the provisions of this Act, shall be brought against the Registrar-General, as nominal defendant, and in case in any such action the plaintiff recover final judgment against such nominal defendant, then upon the application or motion of such plaintiff the Chief Justice of the Supreme Court shall, and he is hereby directed to certify to the Treasurer of the said Province the fact of such judgment having been recovered, and the amount of damages and costs recovered, and thereupon or before the expiration of two calendar months after such judgment is so certified, the said Treasurer, upon the receipt of a warrant under the hand of the Governor, countersigned by the Chief Secretary of the said Province, shall pay the amount of such damages and costs to the person recovering the same, his executors or administrators, and shall charge the same to the account of the assurance fund hereinbefore described: Provided always that notice in writing of every such action, and of the cause thereof shall be served upon the Attorney-General of the said Province, and also upon the Registrar-General one calendar month at least before the commencement of such action. Provided also that the Registrar-General shall not be personally chargeable upon any judgment recovered as aforesaid, nor shall any process or notice in or relating to any such action (except as aforesaid) be served upon the Registrar-General, but all such processes and notices shall be served upon the Attorney-General of the said Province for the time being.

123. If in any such action judgment be given in favor of the nominal defendant, or the plaintiff discontinue or become nonsuit, the plaintiff shall be liable to pay the full costs of defending such action, and the same when taxed shall be levied in the name of the nominal defendant by the like process of execution, as in other actions on the case.

124. If any grant, certificate of title, or other instrument affecting land under the provisions of this Act, or any entry, memorandum, or endorsement, in, or upon any such instrument, shall be fraudulently or wrongfully obtained from or procured to be made or issued by the Registrar-General, or if any such instrument shall be wrongfully retained by any person, it shall be lawful for the Registrar-General

General to summon before him the person who shall have so fraudulently or wrongfully obtained or retained the same, or procured the same to be made or issued, and in case such person shall not attend at the time so appointed, having no lawful impediment to be notified to the Registrar-General at the time so appointed, the Registrar-General may apply to a Judge of the Supreme Court to issue a warrant authorizing and directing some person to be therein named to apprehend and arrest the person so summoned, and bring him before a Judge of the Supreme Court for examination, and such Judge shall thereupon issue such warrant for that purpose.

If summons disregarded Registrar-General may apply for a warrant for such person to be apprehended and brought before a Judge of the Supreme Court.

125. In case it shall be shown by affidavit to the satisfaction of the Registrar-General that the person to whom a summons ought to be directed as hereinbefore mentioned is keeping out of the way and cannot be personally served therewith, and that due pains have been taken to effect such personal service, it shall be lawful for the Registrar-General to order by endorsement upon the summons that the delivery of a copy of such summons to the wife or servant, or some adult inmate of the house or family of such person at his usual or last known place of abode or business, explaining the purport thereof to such wife, servant, or inmate, shall be equivalent to personal service, and in every such case the service of such summons in pursuance of such order shall be deemed and taken to be of the same force and effect to all intents and purposes, as if the party to whom such summons was directed had been personally served therewith.

In case person summoned keeps out of the way, summons may be served upon any servant or inmate of his last known place of abode.

126. Upon the appearance before the Registrar General, or Court or Judge, of any person summoned or brought up by virtue of a warrant as aforesaid, it shall be lawful for the Registrar-General, or Court or Judge, to examine such person upon oath, and in case the same shall seem proper to order such person to deliver up such grant, certificate of title, or other instrument as aforesaid, and upon refusal or neglect by such person to deliver up the same within a time to be named for that purpose, in such order, the Registrar-General, with the consent of the other Lands Titles Commissioners, shall issue to the proprietor of the said land such certificate of title, or other instrument as is herein provided to be issued in the case of any grant or certificate of title being lost, mislaid, or destroyed, and the Registrar-General shall enter in the register book notice of the issuing of the said certificate of title, or other instrument, and the circumstances under which the same was issued, and such other particulars as having regard to the estate or interest of the registered proprietor of such land he may deem necessary to be entered therein.

Party appearing may be examined on oath.

Registrar-General or Court may order the delivery of the instrument to the Registrar-General.

In case of neglect or refusal, Registrar-General may issue a fresh certificate or other instrument.

127. If the person who is charged with having so fraudulently or wrongfully obtained from or procured to be made or issued by the Registrar-General, or with having wrongfully retained such grant, certificate of title, or other instrument or such entry, memorandum, or endorsement as hereinbefore mentioned shall be proved to the satisfaction

If party abscond proceedings to be conducted as in the case of party attending upon summons or warrant.

satisfaction of the Registrar-General, or Court, or Judge to have absconded, so that the Judge's warrant or summons of the Registrar-General cannot be served upon him, the same proceedings may then be taken as if such person had been duly summoned or been brought up by virtue of a warrant as aforesaid, and had refused or neglected to deliver up such grant, certificate of title, or other instrument.

Registrar-General or Court to award costs and expenses.

128. In every proceeding under this Act, relating to any summons, examination, or warrant; it shall be lawful for the Registrar-General, Court, or Judge, to give or withhold to or from either of the parties who may attend any such summons, examination or warrant, his reasonable costs and expenses, and shall direct by whom such costs and expenses are to be borne and paid.

Costs unpaid may be levied by distress.

129. In case such costs and expenses shall not be paid pursuant to the direction for payment thereof, the amount of such costs and expenses shall be levied by distress, and the Registrar-General or Judge shall issue his warrant of distress accordingly, and the sum therein directed to be levied shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained.

No distress to be trespass for want of form.

130. No distress levied by virtue of this Act shall be deemed unlawful; nor shall any person making the same be deemed a trespasser on account of any defect or want of form in the application, warrant of distress, or other proceeding relating thereto, nor shall such person be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action on the case.

Indemnity of Registrar-General.

131. The Registrar-General shall not, except as hereinbefore is provided, be subject to be sued or prosecuted by any person whomsoever on account of any act done or default made by him in his character as Registrar-General, unless the same has happened through his wilful act; and the person, goods, or lands of the Registrar-General shall not be liable to execution of any legal process by reason of any act or default made or done by him in his character of Registrar-General; but he shall be indemnified out of the assurance fund, or out of the general revenues of the said Province in case such assurance fund shall prove to be insufficient; in respect of all losses, costs or damages, which may be incurred or recovered by any person under any action or suit brought or prosecuted under the provisions of this Act, touching or concerning any matter or thing relating to the execution of this Act and the powers hereby granted.

Witnesses to have expenses tendered.

132. Every person summoned to attend before the Registrar-General



General as a witness in respect of any instrument required to be produced, or any act, matter, or thing, by this Act authorized to be done, proceeded with, or inquired into by or before the Registrar-General, shall have his necessary expenses tendered to him in like manner as is now by law required upon service of a subpoena to a witness in an action at law.

133. It shall be lawful for the Registrar-General with the sanction of the Governor to name fit and proper persons to be Land Brokers for transacting business under the provisions of this Act, and, with like sanction, to prescribe the charges recoverable by such brokers for such business, by any scale not exceeding the charges specified in the Schedule hereto, marked S; and upon proof to his satisfaction of the malfeasance or incapacity of any such licensed broker, and with the sanction as aforesaid to revoke such licence, and for every such licence to charge and receive the fee of Five Pounds annually, and before granting any such licence the Registrar-General shall receive bond from the person to whom the same is to be issued in the sum of Five Hundred Pounds, with two sureties, each in the sum of Two Hundred and Fifty Pounds, conditioned that such person shall duly and faithfully act in the capacity as such licensed Land Broker in accordance with the provisions of this Act, and shall also administer to such person the oath following:—

Registrar-General  
may license Land  
Brokers.

I, A.B., do solemnly swear that I will faithfully and to the best of my ability execute and perform all such business or duties as may be entrusted to or imposed upon me as Licensed Land Broker, according to the provisions of the Real Property Act, SO HELP ME GOD.

134. The Registrar-General shall not receive any application for bringing land under the provisions of this Act, or any instrument purporting to deal with or affect any land under the provisions of this Act, unless there shall be endorsed thereon a certificate that the same is correct for the purposes of this Act, signed by the applicant or party claiming under or in respect of such instrument, or by his solicitor, or by a licensed land-broker employed by him; and the Registrar-General shall not be required to compare the said instrument with the duplicate thereof, and shall not incur or become subject to any liability, action, or other proceeding in consequence of any error, mistake, or discrepancy therein; but the person who shall falsely or negligently certify to the correctness of any such application or other instrument, shall incur therefor a penalty not exceeding fifty pounds: Provided always that such penalty shall not prevent the person who may have sustained any damage or loss in consequence of error or mistake in any such certified instrument, or any duplicate thereof from recovering damages against the person who shall have certified the same.

Authority to register.

Penalty for registering  
incorrect instruments.

135. It shall be lawful for the Registrar-General to charge and recover

Fees to be charged.

recover such fees as shall be appointed by the Governor of the said Province, by and with the consent of the Executive Council, not in any case exceeding the several fees specified in the Schedule hereto marked R.

Registrar-General to pay moneys into Treasury, and to render accounts.

136. The Registrar-General shall keep a correct account of all such sums of money as shall be received by him in accordance with the provisions of this Act, and shall pay the same into the public Treasury of the said Province at such times, and shall render accounts of the same to such persons, and in such manner as may be directed in any regulations that may for that purpose be prescribed by the Governor-in-Chief of the said Province, by and with the advice of the Executive Council thereof; and the Registrar-General shall address to the said Treasurer requisitions to pay moneys received by him or by the said Treasurer, in trust or otherwise, on account of absent mortgagees or other persons entitled in accordance with the provisions of this Act, which requisitions, when proved and audited in manner directed, by any such regulations framed as aforesaid at the time being in force in the said Province, and accompanied by warrant for payment of the same under the hand of the Governor, countersigned by the Chief Secretary thereof, the said Treasurer shall be bound to obey; and all fines and fees received under the provisions of this Act, except fees payable to the Lands Titles Commissioners for the bringing of land under the operation of this Act, shall be carried to account by the said Treasurer as general revenue.

Parties entitled to be paid by Treasurer, upon proper warrant.

Penalty for falsifying register book or procuring entries or instruments by fraud or misrepresentations.

137. Any person who shall wilfully or knowingly, by fraud or misrepresentation, make, or cause, or obtain to be made in the register book, any entry which might in any way affect the right, title, estate, or interest of himself, or of any person, in any land under the provisions of this Act, or who shall wilfully or knowingly, by fraud or misrepresentation, procure from the Registrar-General any certificate of title, registration, abstract, or other instrument evidencing or relating to title, or estate, or interest in land under the provisions of this Act, or shall cause or procure to be made any entry, certificate, memorandum, or endorsement by this Act prescribed to be made in or upon any such certificate, abstract, or other instrument, or who shall use or utter any such certificate, abstract, or other instrument, knowing the same to be counterfeited, forged, or altered, or to have been obtained by fraud or misrepresentation, or to contain or bear any entry, memorandum, certificate, or endorsement as aforesaid, forged, counterfeited, or altered, or obtained by fraud or misrepresentation, and who shall be thereof lawfully convicted shall be deemed guilty of felony, and be sentenced to be imprisoned for any period not exceeding four years, and to be kept to hard labor or solitary confinement for any part of the period aforesaid; and if any person shall wilfully or knowingly make a false oath or declaration touching or concerning any matter or procedure made or done in pursuance of this Act, and be thereof lawfully convicted, such person shall be deemed guilty of perjury, and be imprisoned for the period and

Person making false oath or affirmation, guilty of perjury, and liable to be imprisoned, in addition to damages recoverable by the party damaged.

and in the manner aforesaid; and in addition to such punishment, any person damnified, or suffering loss by any such fraud, misrepresentation, forgery, counterfeit, alteration, use, or utterance of any such certificate, abstract, or other instrument as aforesaid, or by the making of any such false oath or declaration, shall have a right of action against and be entitled to recover damages from the person guilty of such fraud, misrepresentation, forgery, counterfeit, alteration, use, or utterance, or making such false oath or declaration, the amount of all damages he may have sustained thereby, with full costs of suit, as hereinbefore provided.

138. Unless in any case herein otherwise expressly provided, all offences against the provisions of this Act may be prosecuted, and all penalties or sums of money imposed or declared to be due or owing, by or under the provisions of the same, may be sued for and recovered in the name of the Attorney-General or of the Registrar-General, before any Court in the said Province having jurisdiction for punishment of offences of the like nature, or for the recovery of penalties or sums of money of the like amount. Jurisdiction.

139. This Act shall commence and take effect from and after the fifteenth day of October, one thousand eight hundred and sixty. Commencement of Act.

**SCHEDULE REFERRED TO.**

**A**

*Application to bring land under the provisions of the Real Property Act of 1860.*

I, A.B., of \_\_\_\_\_, do declare (that I am) or (on behalf of \_\_\_\_\_ of \_\_\_\_\_ that he is) (here state the description of the estate, whether in fee simple or a lesser estate, or as trustee or held in trust for uses) in all that piece of land situated in (here state the situation) containing (here state the area) be the same a little more or less (exclusive of roads intersecting the same if any) with (here state rights of way and other privileges or easements appertaining, and set forth a sufficient description to identify the land) which piece of land is of the value of £ \_\_\_\_\_ and no more, and is (the town allotment or country section, or is part of the town allotment, country section, or reserve), originally granted to \_\_\_\_\_, by land grant under the hand and seal of \_\_\_\_\_, formerly Governor (or Resident Commissioner) of the Province of South Australia. Dated the \_\_\_\_\_ day of \_\_\_\_\_, numbered \_\_\_\_\_ in the plan of the (district, township, or county) of \_\_\_\_\_, as delineated on the public maps of the Province, deposited in the Survey Office Adelaide. And I do further declare that I am not aware of any mortgage, encumbrance, or claim affecting the said land, or that any person hath any claim, estate, or interest in the said land, at law or in equity, in possession or in expectancy, other than is set forth and stated as follows, that is to say—(here state particulars of all unsatisfied mortgages, encumbrances, claims, or interests, if any.) And I further declare that there is no person in possession or occupation of the said lands adversely to my estate or interest therein, and that the said land is now (here state name and description of occupier, or that the land is unoccupied), and I make this solemn declaration conscientiously believing the same to be true.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Made and subscribed by the above-named \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ in the presence of me \_\_\_\_\_, Registrar-General, or Justice of the Peace.

I, A.B., the above declarant, do hereby apply to have the piece of land described in the above declaration brought under the provisions of the Real Property Act of 1860.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Witness to signature—C.D.

A.B.

**B**

*Caveat forbidding lands to be brought under the Real Property Act of 1860.*

Take notice that I \_\_\_\_\_, claiming estate or interest (here state the nature of the estate or interest claimed, and the ground on which such claim is founded) in lands described as (here state particulars of description from declaration of applicant) in notice dated the \_\_\_\_\_ day of \_\_\_\_\_, advertising the same as land in respect to which claim has been made, to have the same brought under the provisions of the Real Property Act of 1860, do hereby forbid the bringing of the said land under the provisions of the said Act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

A.B.

Signed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_  
To the Registrar-General of the Province of South Australia.

## C

SOUTH

[Royal Arms.]

AUSTRALIA.

## Certificate of Title.

A. B., of (here insert description, and if certificate be issued pursuant to any transfer, reference to memorandum of transfer) is now seised of an estate (here state whether in fee simple), subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the (County, Hundred, or Township) of (here insert sufficient description to identify the land), which said piece of land is (or is part of) the (Country Section, or Town allotment), marked delineated in the public map of the said (County, Hundred, or Township), deposited in the office of the Surveyor-General, originally granted the day of \_\_\_\_\_, under the hand and seal of \_\_\_\_\_ Governor (or Resident Commissioner) of the said Province, to C. D.

S. 36

In witness whereof, I have hereunto signed my name, and affixed my seal, this day of \_\_\_\_\_

Registrar-General. (L.S.)

Signed, sealed, and delivered, in presence }  
of the day of }

## D

SOUTH AUSTRALIA.

## Memorandum of Transfer.

I, A. B., being registered as the proprietor of an estate (here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate) subject however to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in all that piece of land situated in the (County, Hundred, or Township) of \_\_\_\_\_, containing (here state area), be the same a little more or less (exclusive of roads intersecting the same, if any. Here state rights of way, privileges, or easements, if any, intended to be conveyed; and if the land to be dealt with contain all that is included in an existing grant or certificate, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries in chains, links, or feet, and refer to plan delineated on the margin, or annexed to the instrument, or deposited in the Registry Office), which said piece of land is (or is part of) the (Country Section, or Town allotment), marked \_\_\_\_\_, delineated in the public map of the said (County, Hundred, or Township), deposited in the office of the Surveyor-General, which was originally granted the day of \_\_\_\_\_, under the hand and seal of \_\_\_\_\_ Governor (or Resident Commissioner) of the said Province, to C. D., in consideration of the sum of £ \_\_\_\_\_, paid to me by E. F., the receipt of which sum I hereby acknowledge, do hereby transfer to the said E. F., (all my estate or interest, or a lesser estate or interest, describing such lesser estate), in the said piece of land. In witness whereof, I have hereunto subscribed my name, this day of \_\_\_\_\_

Signed on the day above-named, by the }  
said A. B., in the presence of G. H. }

## E

## Lease.

I, A.B., being registered as proprietor of an estate (here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate), subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the (county, hundred, or township) of \_\_\_\_\_ containing (here state area), be the same a little more or less (exclusive of roads intersecting the same, if any [here state rights of way, privileges, or easements, if any intended to be conveyed.] If the land to be dealt with contains all that is included in an existing grant or certificate of title, refer thereto for description and diagram; otherwise set forth the boundaries in chains, links, or feet, and refer to a plan thereof on margin of or annexed to the lease, or deposited in the Registry

*Registry Office*), which said piece of land is (or is part of) the (country section, or town allotment) marked \_\_\_\_\_, delineated in the public map of the said (county, hundred, or township), deposited in the office of the Surveyor-General, which was originally granted the \_\_\_\_\_ day of \_\_\_\_\_, under the hand and seal of Governor (or Resident Commissioner) of the said Province, to C.D., do hereby lease to E.F., of (here insert description), all the said lands, to be held by him, the said E.F., as tenant for the space of \_\_\_\_\_ years, at the yearly rental of £ \_\_\_\_\_, payable (here insert terms of payment of rent) subject to the following covenants, conditions, and restrictions (here set forth all special covenants, if any, and state what covenants declared by the Real Property Act of 1860, to be implied against a lessor and lessee respectively are intended to be barred or modified, and in what manner.)

I, E.F. of (here insert description), do hereby accept this lease of the above-described lands, to be held by me as tenant, and subject to the conditions, restrictions, and covenants above set forth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Signed by the above-named A.B., as lessor, and by the above-named E.F., as lessee, this \_\_\_\_\_ day of \_\_\_\_\_, in presence of X.Y.

(Signed)

A.B., Lessor.

E.F., Lessee.

## F

### Bill of Mortgage.

I, A.B., being registered as proprietor of an estate (here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate) subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the (county, hundred, or township) of \_\_\_\_\_, containing (here state area), be the same a little more or less, (exclusive of roads intersecting the same, if any [here state rights of way, privileges, or easements, if any appertaining]), and if the land to be dealt with contains all that is included in an existing grant or certificate of title, refer thereto for description of parcels and diagram; otherwise set forth the boundaries in chains, links, or feet, and refer to plan thereof on margin of or annexed to the mortgage, or deposited in the Registry Office). which said piece of land is (or is part of) the (country section, or town allotment) marked \_\_\_\_\_, delineated in the public map of the said (county, hundred, or township) deposited in the office of the Surveyor-General, which was originally granted the \_\_\_\_\_ day of \_\_\_\_\_, under the hand and seal of Governor (or Resident Commissioner) of the said Province to C.D.

In consideration of the sum of £ \_\_\_\_\_, this day lent to me by E.F., of (here insert description), the receipt of which sum I hereby acknowledge, do hereby covenant with the said E.F., that I will pay to him, the said E.F., the above sum of £ \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_. Secondly, that I will pay interest on the said sum at the rate of £ \_\_\_\_\_ by the £100 in the year, by equal payments on the \_\_\_\_\_ day of \_\_\_\_\_, and on the \_\_\_\_\_ day of \_\_\_\_\_, in every year. Thirdly (here set forth special covenants, if any are intended, and state what covenants declared by the Real Property Act of 1860, to be implied in mortgages are intended to be barred or modified, and if so in what manner). And for the better securing to the said E.F. the repayment in manner aforesaid of the said principal sum and interest, I hereby mortgage to the said E.F. all my estate and interest in the said land above described.

In witness whereof I have hereto signed my name this \_\_\_\_\_ day of \_\_\_\_\_

A.B., mortgagor.

Signed by the above-named A.B., as mortgagor, this \_\_\_\_\_ day of \_\_\_\_\_ in presence of G.H.

## G

### Bill of Encumbrance for securing a sum of Money.

I, A.B., being registered as proprietor of an estate (here state nature of the estate or interest) subject, however, to such encumbrances, liens, and interests as are notified by \_\_\_\_\_

by memoranda endorsed hereon, in that piece of land situated in (*the county, hundred, or township*) of \_\_\_\_\_, containing (*here state area*), be the same a little more or less (*exclusive of roads intersecting the same, if any [here also state rights of way, privileges, or easements, if any appertaining]*), and if the land to be dealt with contains all that is included in an existing grant or certificate of title, refer thereto for description of parcels and diagram; otherwise set forth the boundaries in chains, links, or feet, and refer to plan thereof on margin of or annexed to the bill of encumbrance, or deposited in the Registry Office), which said piece of land is (*or is part of*) the (*country section, or town allotment*) marked \_\_\_\_\_, delineated in the public map of the said (*county, township or hundred*), deposited in the office of the Surveyor General, which was originally granted the \_\_\_\_\_ day of \_\_\_\_\_, under the hand and seal of \_\_\_\_\_, Governor (*or Resident Commissioner*) of the said Province to

And desiring to render the said land available for the purpose of securing to and for the benefit of C.D. the (*sum of money annuity, or rent charge*) hereinafter mentioned, do hereby encumber the said land for the benefit of the said C.D. with the (*sum, annuity, or rent charge*) of £ \_\_\_\_\_, to be raised and paid at the times and in the manner following, that is to say—(*here state the times appointed for the payment of the sum, annuity, or rent charge intended to be secured, the interest, if any, and the events on which such sum annuity or rent charge shall become and cease to be payable, also any special covenants or powers, and any modification of the powers or remedies given to an encumbrancee by the Real Property Act of 1860*): And subject as aforesaid the said C.D. shall be entitled to all powers and remedies given to an encumbrancee by the Real Property Act of 1860.

In witness whereof I have hereunto signed my name this \_\_\_\_\_ day of \_\_\_\_\_ in the presence of E.F.

## H

*Transfer of Mortgage, Lease, or Encumbrance, to be endorsed on Original Mortgage, Bill of Encumbrance, or Lease.*

I, the within-mentioned C.D., in consideration of £ \_\_\_\_\_, this day paid to me by X.Y., of \_\_\_\_\_, the receipt of which sum I do hereby acknowledge, hereby transfer to him the estate or interest in respect to which I am registered proprietor, as set forth and described in the within-written security, together with all my rights, powers, estate, and interest therein. In witness whereof I have hereunto subscribed my name this \_\_\_\_\_ day of \_\_\_\_\_

C.D.

Signed by the above-mentioned C.D., in the presence }  
of E.F., the \_\_\_\_\_ day of \_\_\_\_\_ }

## I

*Nomination of Trustees.*

I, A.B., being registered as the proprietor of an estate (*here state nature of the estate or interest*) subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the (*County, Hundred, or Township*) of \_\_\_\_\_, containing (*here state area*) be the same little more or less, exclusive of roads intersecting the same, if any (*here also state rights of way, privileges, or easements if any, intended to be conveyed in trust, and if the land to be dealt with contains all that is included in an existing grant or certificate; refer thereto for description of parcels and diagram otherwise set forth, the boundaries in chains, links, or feet, and refer to plan delineated in margin, or annexed to instrument, or deposited in Registry Office*) (which said piece of land is (*or is part of the country section or town allotment*)) marked \_\_\_\_\_, deposited in the office of the Surveyor-General, which was originally granted the \_\_\_\_\_ day of \_\_\_\_\_, under the hand and seal of \_\_\_\_\_, Governor, or Resident Commissioner of the said Province, do hereby transfer all my estate or interest in the said land above described to C.D., of \_\_\_\_\_, E.F., of \_\_\_\_\_, and G.H., of \_\_\_\_\_, as trustees of the same, under the provisions of the Real Property Act of 1860.

In witness whereof I have hereunto signed my name, this \_\_\_\_\_ day of \_\_\_\_\_, in the presence of \_\_\_\_\_ A.B.

Accepted—C.D., E.F., G.H., in the presence of \_\_\_\_\_

*Schedule of Trusts.*

It is agreed that the above described land shall be held by the above-named trustees upon the trusts following, that is to say—

K

## K

*Caveat forbidding registration of dealing with estate or interest.*

To the Registrar-General of South Australia.

Take notice, that I \_\_\_\_\_, claiming estate or interest (*here state the nature of the estate or interest claimed, and the grounds on which such claim is founded*) in (*here describe land*) forbid the registration of any memorandum of sale, or other instrument affecting the said land, until this caveat be by me, or by the order of the Supreme Court, or some Judge thereof, withdrawn. Dated this (*here insert date of caveat*) day of \_\_\_\_\_ 18 \_\_\_\_\_ A.B.

## L

*Power of Attorney.*

I, A.B., being registered as proprietor of an estate (*here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate*) subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in (*here refer to schedule for description and content of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificate of title or land grant of each parcel*) do hereby appoint C.D. attorney on my behalf, to (*here state the nature and extent of the powers intended to be conferred, as whether to sell, lease, mortgage, &c.*) the lands in the said schedule described, subject nevertheless to the restrictions and limitations declared and set forth at foot hereof, and to execute all such instruments, and do all such acts, matters, and things as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants, or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage, or trespass.

I declare the said lands (*or my estate or interest in the said lands*) shall not be sold for less than £ \_\_\_\_\_, (*here insert conditions, if any to be imposed*).

I declare the amount of money to be raised by mortgage on the security of the said lands under this power shall not exceed £ \_\_\_\_\_, or be less than \_\_\_\_\_, and that the rate of interest at which the same is raised shall not exceed £ \_\_\_\_\_ for every £100, by the year.

I declare the said land shall not be leased for any term of years exceeding \_\_\_\_\_ or at a less rent than £ \_\_\_\_\_, (*here insert conditions, such as whether right of purchase may be given, and at what price, &c., &c.*)

I declare that this power shall not be exercised after the expiration of \_\_\_\_\_ from the date hereof.

In witness whereof I have hereunto subscribed my name this \_\_\_\_\_ day of \_\_\_\_\_ Signed by the above-named A.B. this \_\_\_\_\_ day of \_\_\_\_\_ in the presence of X.Y. Schedule referred to.

## M

*Registration Abstract.*

I, A.B., being registered as proprietor of an estate (*here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate*) subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in (*here refer to schedule for description and content of the several parcels of land intended to be dealt with, which schedule must contain reference to the existing grants or certificates of title of the said parcels of land*) request that a registration abstract of my title to the said lands may be granted, enabling me to sell, lease, or otherwise deal with the same, at places without the limits of the said Province.

(Signed)

A.B.

To the Registrar-General  
Signed by the above-named A.B., this \_\_\_\_\_ day of \_\_\_\_\_, in the presence of X.Y.



I, \_\_\_\_\_, Registrar-General of the Colony of South Australia, do hereby certify that the above particulars relating to the above-described land, and to the estate and interest therein of A.B., whose signature is above subscribed, are correct as appears by entries recorded in the register book of the said Province, Vol. \_\_\_\_\_ Fol. \_\_\_\_\_.

Pursuant therefore to the above application, and by virtue of the powers in me vested by Act of the Legislature of the said Province, intituled "The Real Property Act, of 1860," this registration abstract is issued for the purpose of enabling the said A.B. to deal with the said lands at places without the limits of the said Province.

This abstract shall continue in force from the date thereof to the \_\_\_\_\_ day of \_\_\_\_\_, unless sooner delivered up.

In witness whereof I have hereunto signed my name and affixed my seal this day of \_\_\_\_\_

Signed, sealed, and delivered the \_\_\_\_\_ day of \_\_\_\_\_, in the presence of X.Y. Registrar-General.  
Schedule referred to.

N

*Revocation Order.*

I, A.B., of \_\_\_\_\_, being seised of an estate (*here state the nature of the estate, whether in fee-simple or of a less description*), all that piece of land (*here describe land, referring to the existing grant, certificate, or other instrument of title*), hereby revoke the power of mortgaging (*or selling*) the said land, given by me to \_\_\_\_\_ by a power of attorney dated the \_\_\_\_\_ day of \_\_\_\_\_.

In witness whereof I have hereunto subscribed my name this day of \_\_\_\_\_

I, M.M., Registrar-General, hereby certify that the above-named proprietor has executed this revocation order in manner above appearing, and that the particulars thereof are entered in the register-book.

(Signed) \_\_\_\_\_, Registrar-General.

O

*Certificate of Registrar-General upon acknowledgement of instrument to be made by a Married Woman.*

I certify that this instrument was this day produced before me, the undersigned M.N. (*Registrar-General, Judge, or Master of the Supreme Court*), of South Australia, (*or A.B., a Commissioner duly authorised, in pursuance of an Ordinance of the Governor, with the advice and consent of the Legislative Council and House of Assembly of South Australia, in that behalf, for taking acknowledgments of married women, or E.F., the Commissioner named in the commission hereunto annexed, or G.H., Judge, Mayor, or Chief Magistrate of \_\_\_\_\_*), and was acknowledged by \_\_\_\_\_, the wife of \_\_\_\_\_, therein named, being personally present before me, and being of full age, and competent understanding, to be her act and instrument; previous to which acknowledgment, the said \_\_\_\_\_ being examined by me separately and apart from her husband, touching her knowledge of the contents of the said instrument, and her consent thereto, declared that she fully understood the nature and effect thereof, and that the same was freely and voluntarily executed by her.

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ (Signed)

P

*Certificate of Registrar-General, Justice of the Peace, &c., taking declaration of attesting witness.*

Appeared before me at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, C.D., of \_\_\_\_\_, attesting witness to this instrument, and acknowledged his signature to the same; and did further declare that A.B., the party executing the same, was personally known to him, the said C.D., and that the signature of this said instrument is in the handwriting of the said A.B.

(Signed) \_\_\_\_\_ Registrar-General or J.P.

## Q

*Certificate of Registrar-General or Justice of the Peace before whom instrument may have been executed by the parties thereto.*

Appeared before me at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A.B., of  
the party executing the within instrument, and did freely and voluntarily sign the same  
(Signed) \_\_\_\_\_ Registrar-General or J.P.

## R

*Fees payable for the performance of the several acts, matters, and things herein specified.*

For the bringing land under the provisions of this Act, to be paid to the Lands Titles Commissioners, over and above the cost of all advertisements herein prescribed to be in such case published:—

	£	s.	d.
When the title consists of a Land Grant only .. .. .	0	1	0
When the title is of any other description, and the value exceeds £300 .. .. .	1	0	0
Ditto ditto ditto exceeds £200, and does not exceed £300 .. .. .	0	15	0
Ditto ditto ditto exceeds £100, and does not exceed £200 .. .. .	0	10	0
Ditto ditto ditto when the value does not exceed £100 .. .. .	0	5	0
Contribution to assurance fund upon first bringing land under this Act— And upon transmission by will or intestacy—in the pound sterling .. .. .	0	0	0½
<b>Other fees—</b>			
For every certificate of title issued on first bringing land under operation of this Act .. .. .	1	0	0
For every certificate of title issued to proprietor for balance of land left upon a transfer of portion of the land included under a former grant, or certificate of title .. .. .	0	10	0
For certificates of title issued under other circumstances .. .. .	1	0	0
Registering memorandum of sale, bill of mortgage, bill of encumbrance, lease, or nomination of trustees .. .. .	0	10	0
For registering transfer of mortgage or of encumbrance, or release of mortgage or encumbrance, or the transfer or surrender of a lease .. .. .	0	5	0
Registering a declaration of ownership taken by transmission .. .. .	0	10	0
For every power of attorney .. .. .	0	10	0
For every registration abstract .. .. .	1	0	0
For cancelling power or registration abstract .. .. .	0	5	0
For every revocation order .. .. .	0	10	0
Receipt and noting of caveat .. .. .	0	10	0
For every search .. .. .	0	2	0
For every general search .. .. .	0	5	0
For every map or plan deposited .. .. .	0	5	0
For every deed or other instrument declaratory of trusts deposited .. .. .	0	10	0
On deposit of any will or other instrument, for safe custody only .. .. .	1	0	0
For the exhibition or return of any instrument so deposited, or for exhibiting any application or deed surrendered .. .. .	0	10	0
For certified copy, first five folios, per folio of seventy-two words .. .. .	0	5	0
For every folio or part folio after first five .. .. .	0	0	8
For every instrument drawn on parchment .. .. .	0	2	6

## S

*Scale of charges for Land Brokers under the Real Property Act of 1860.*

	£	s.	d.
For application to bring land under the Real Property Act, where the land remains in the original grantee, although it may have been, or still remains, subject to lease or mortgage—*			
Where the value does not exceed £400 .. .. .	0	10	0
Where the value does not exceed £800 .. .. .	½	th	ct.
Where the value exceeds £800 .. .. .	1	0	0
For filling up and entering caveats, exclusive of any professional charges incident to litigation pending .. .. .	0	10	0
Memorandum of transfer, nomination of trustees, lease, mortgage, or encumbrance—†			
Where the value does not exceed £400 .. .. .	0	10	0
Where it exceeds £400 .. .. .	½	th	ct.
Where it exceeds £800 .. .. .	1	0	0
Transfer of mortgage or lease, or surrender of lease .. .. .	0	5	0
Power of Attorney without registration abstract .. .. .	0	10	0
Power of Attorney with registration abstract .. .. .	1	0	0

\* These charges include filling up application, procuring declaration and signatures, procuring diagram from Land Office, and attendance and delivery at Registry Office. Where the title has not remained in the original grantee, an extra charge may be made proportioned to the trouble, such cases being more in the nature of conveyancing.

† In the case of lease, and of annuity secured by encumbrance, ten years' rent, or ten years of such annuity, to be assumed as the value, for the purpose of calculating the per centage.