



ANNO VICESIMO QUARTO ET VICESIMO QUINTO

VICTORIÆ REGINÆ.

A.D. 1861.

No. 22.

An Act to amend the Real Property Act of 1860.

[Assented to, 3rd December, 1861.]

WHEREAS a certain Act was passed in the twenty-third and twenty-fourth years of the reign of Her present Majesty, and numbered 11, intituled "An Act to consolidate and amend certain Acts relating to the transfer and encumbrance of freehold and other interests in land," and it is expedient to amend certain clauses of the said Act, and to add thereto other provisions, yet so as that such amendments and additional provisions may, for general convenience, be consolidated with the remaining provisions of the said Act; for which purpose—Be it Enacted, by the Governor-in-Chief of the Province of South Australia, by and with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows—

Preamble.

1. From and after the day upon which this Act shall come into operation the said recited Act shall be, and the same is hereby repealed: Provided always, that nothing herein contained shall operate to revive any laws, statutes, rules, or regulations by the said recited Act repealed, whether absolutely or so far as regards their application to the provisions of the said Act, but the same shall continue repealed or suspended in their operation so far as regards their application to land under the provisions of this Act: Provided also, that nothing herein contained shall operate to prevent prosecution or punishment for any offence committed or act done in violation of the provisions of the said recited Act, or of the provisions of

Repeal of Real Property Act of 1860.

Does not revive Acts; previously repealed.

Not to prevent prosecution for offence committed under repealed Act.

Provisions of this Act available in prosecutions, &c.

Lands held under former Acts deemed to be under this Act.

Certificate of title not to be impeached.

Proceedings commenced under previous Act, how to be continued.

Short title.

Interpretation of certain terms.

an Act, No. 15 of 1857, intituled "The Real Property Act," or of an Act, No. 16 of 1858, to amend the Real Property Act, or to interfere with the recovery of any penalty or forfeiture incurred under any of the said Acts; and in any prosecution for the punishment of any such offence, or for the recovery of any such forfeiture or penalty, or in any action or suit at law or in equity for the enforcement, vindication, or recovery of any right, title, covenant, or interest acquired or accruing under the provisions of the said Acts, or any or either of them, the provisions of this Act shall be held to be applicable for the purposes of such prosecution, action, or suit: Provided that nothing herein contained shall affect any action, prosecution, or other proceedings commenced prior to the passing of this Act; and all lands prior to this Act held under and subject to the provisions of the said recited Acts, or any of them, shall, from the date hereof, for all purposes be held to be under and subject to the provisions of this Act; and no certificate of title shall be impeached upon the ground, that the same varies in any manner (not being in matter of substance) from the form authorized to be used by the said Act, or by the last recited Acts, or either of them, or upon the plea that such certificate of title does not show upon the face of it that all instruments of title prior to such certificate of title had been delivered up to the Registrar-General and cancelled, or does not describe any instrument of title prior in date to such certificate of title, or on the plea that any such instrument is outstanding and has not been delivered up and cancelled; or on the plea that the Lands Titles Commissioners were not authorized by the 18th section of the said Act No. 11 of 1860, to direct the Registrar-General to bring the land included in such certificate under the provisions of the said Act; and all proceedings commenced prior to the date upon which this Act shall come into operation, whether for the bringing of land under the provisions of the said Act, or for transferring or otherwise dealing with or affecting land, or any estate or interest in land under the provisions thereof, shall be valid and effectual as if such proceedings had been taken or commenced under the provisions of this Act, and all further steps, if any, necessary for the completion of any proceeding so commenced shall be taken in accordance with the provisions of this Act.

2. This Act may be cited, for all purposes, as the "Real Property Act of 1861."

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—

The word "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

therein, together with all paths, passages, ways, waters, water courses, liberties, easements, and privileges thereunto appertaining, 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 :
- “ Proprietor ” shall mean any person seized or possessed of any freehold or other estate or interest in land, at law or in equity, in possession, in futurity, or expectancy :
- “ Transfer ” shall mean the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise :
- “ 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 :
- “ Mortgage ” shall mean any charge on land created merely for securing a debt :
- “ Mortgagor ” shall mean the proprietor of land or of any estate or interest in land pledged as security for a debt :
- “ Mortgagee ” shall mean the proprietor of a mortgage :
- “ 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 debt :
- “ Encumbrancer ” shall mean the proprietor of any land or of any estate or interest in land charged with any annuity or sum of money other than a debt :
- “ Encumbrancee ” shall mean the proprietor of an encumbrance :
- “ 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 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 land, or evidencing title thereto :
- “ Person ” shall include a female as well as a male, and shall include a body corporate :
- The

The describing any person as proprietor, transferor, transferee, mortgagor, mortgagee, encumbrancer, encumbrancee, lessor, or lessee, or as trustee, or as seized of, having, or taking 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 stamped with his seal, 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.

Persons holding office under previous Acts, to perform duties under this Act.

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 persons holding office as Registrar-General, Lands Titles Commissioner, Solicitor, Deputy Registrar-General, and also all other officers and clerks of the said department at the time of this Act coming into operation, shall perform all the duties of their respective offices under this Act.

Removal and appointment of officers.

5. The Registrar-General, Deputy Registrars-General, Lands Titles Commissioners, and Solicitors may be removed by the Governor of the said Province, by and with the advice of the Executive Council, for negligence, want of skill, untrustworthiness, or inability to perform their duties; and it shall be lawful for the Governor, by and with such advice as aforesaid, to remove any other officer or clerk of the said department at pleasure, and to fill up any vacancy occurring in any of the offices aforesaid.

Functions of Deputy Registrar-General.

6. Whenever, by any law for the time being in force in the said Province anything is appointed or authorized to be done by the Registrar-General, the same may be lawfully done by any Deputy Registrar-General: Provided that nothing herein contained shall be interpreted to authorize any Deputy Registrar-General, as such, to sign grants, or to act as a Lands Titles Commissioner.

Appointment of, and duties of, Acting Registrar.

7. The Governor of the said Province may, by and with the advice of the Executive Council thereof, from time to time as occasion may require, appoint an Acting Registrar-General, and in the event of the absence through illness, or otherwise of the Registrar-General such

Acting

Acting Registrar shall, in his stead, be authorized to sign grants and perform the duties of a Lands Titles Commissioner, and all acts done by such Acting Registrar-General, as Lands Titles Commissioner, and all grants signed by him shall have the same validity and effect as if the same had been done or signed by the Registrar-General: Provided that, unless or until an Acting Registrar-General be appointed, the senior Deputy Registrar-General shall *ex officio* be Acting Registrar-General: Provided also, that the Registrar-General shall not have power to act during such time as the Acting Registrar-General shall be lawfully acting.

8. The Acting Registrar-General shall act from such time as he shall receive from the Registrar-General a certificate under his hand that he is about to absent himself, or that he is unable from illness to perform his duties; and such Acting Registrar-General shall cease to act from such time as he shall receive from the Registrar-General a certificate under his hand to the effect that he resumes his duties: Provided that in the event of illness, incapacitating the Registrar-General from certifying his own inability to perform his duties, his medical attendant may so certify in his stead.

Time from which Acting Registrar shall act or cease to act.

9. The number of Lands Titles Commissioners shall be three, of whom the Registrar-General or Acting Registrar-General shall be one. The Registrar-General shall be remunerated by a salary, the other Lands Titles Commissioners by fees on applications referred to them for bringing land under the provisions of this Act, as specified in the Schedule hereto marked P. At meetings of such Commissioners two shall form a quorum, and the Registrar-General or Acting Registrar-General, if present, shall preside.

Number and remuneration of Lands Titles Commissioners.

10. It shall not be lawful for any person whilst holding the office of Lands Titles Commissioner, or of Solicitor, under this Act, to engage in private practice as a Barrister, Attorney or Solicitor.

Commissioner or Solicitor not to practice.

11. 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, and Acting Registrar-General who 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, or Acting Registrar-General for the Province of South Australia. So HELP ME GOD.

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

Powers of Registrar.

(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

To inspect documents.

any

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 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, he shall forfeit and pay a sum not exceeding Twenty 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 transfer or other dealing, or with the issuing of such registration abstract as the case may be :

To administer oaths.

(3.) He may administer oaths, or may take a statutory declaration in lieu of administering an oath :

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 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 entry made in the register book prior to the actual time of correcting the error or supplying the omitted entry :

To enter caveats.

(5.) He may enter caveat for the protection 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, and also to prohibit the dealing with any land in any case in which it shall appear to him that an error has been made, by misdescription of such land or otherwise, in any certificate of title or other instrument, or for the prevention of any fraud or improper dealing.

Land alienated in fee
from the Crown after

13. All waste lands, and all lands set apart for public purposes,
remaining

remaining unalienated from the Crown on the day appointed for this Act to come into operation shall, when alienated in fee, be subject to the provisions of this Act. this Act to be subject to the provisions thereof.

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

By any person (claiming to be the person) in whom the fee simple is vested in possession, either at law or in equity: Provided, that wherever trustees, seized 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 to the said land, shall consent in such application:

By any person claiming a life estate in possession, not being a lease for a life or lives: Provided that all persons claiming to be beneficially entitled in reversion, or remainder shall join in such application.

Provided always, that no such application shall be received 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 under the provisions of this Act, nor from the mortgagor of any land, 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; nor from a married woman, unless her husband shall consent in such application: Provided also that the father, or if the father be dead, the mother or other guardian of any infant, or the committee or guardian of any lunatic, or person of unsound mind, may make such application in the name of such infant, lunatic, or person of unsound mind; and any agent holding power of attorney, authorizing the sale of a freehold estate in any land of an absent proprietor, may make such application in respect to such land in the name of such proprietor, unless such power shall expressly prohibit his so doing. Undivided shares and mortgaged lands may not be brought under Act except upon conditions.

15. Every such applicant shall, when making his application, surrender to the Registrar-General all instruments in his possession or under his control, constituting or in any way affecting his title, and shall furnish a schedule of such instruments, and also, if required, Applicant to surrender instruments of title and to furnish abstract, if required.

12 A.S. 12156

required, an abstract of his title, and shall, in his application, state the nature of his estate or interest, 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 state the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect to which application is made so far as known to him, and that the schedule so furnished includes all instruments of title to such land in his possession or under his control, and shall make and subscribe a declaration to the truth of such statement; and such applicant may, if he think fit, in his application require the Registrar-General, at the expense of such applicant, to cause personal notice of his application to be served upon any person whose name and address shall for that purpose be therein stated.

Application, how to be dealt with by the Lands Titles Commissioners.

When applicant is original grantee, and no transactions have been registered.

16. Upon the receipt of such application the Registrar-General shall cause the title of the applicant to be examined and reported upon by the solicitors, and shall thereafter refer such application, with the solicitors' report thereon, 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 affecting the title of such land has at any time been registered in the said Province, and that such applicant, has not required notice of his application to be served personally upon any person, then 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 by issuing to the applicant proprietor, or to such person as he, or the person applying on his behalf, may, by writing under his hand direct, a certificate of title for the same, as hereinafter described.

When applicant is not original grantee, or any transactions have been registered.

12 A.S. R 162

17. If it shall appear to the satisfaction of the said Commissioners that the land in respect to which application is made, whether the same may have been alienated from the Crown prior to, or on, or subsequent to the first day of March, one thousand eight hundred and forty-two, is held by the applicant for the estate or interest described in such application free from mortgage, encumbrance, or other beneficial interest affecting the title thereto; or if any such mortgage, encumbrance, or interest remain unsatisfied, that the parties interested therein are also parties to such application, and that the applicant has not required notice of his application to be served personally on any person, 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*

Government Gazette, and three times in at least one paper 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 *South Australian 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.

18. But if it shall appear to the satisfaction of the said Commissioners that any party 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 the applicant is imperfect, or that the applicant has required notice of his application to be served personally upon any person, then and in such case it shall be lawful for such Commissioners to reject such application altogether, or at their direction to direct the Registrar-General to cause notice of such application to be served in accordance with such requirement, upon all persons other than the applicant, who shall appear to them to have any interest in the land which is the subject of such application, and to be advertised three times in at least one newspaper published in the City of Adelaide, and in such newspapers published elsewhere as to such Commissioners may seem fit, and 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, Victoria, Queensland, Tasmania, and New Zealand, or in any one or more of such gazettes; and the said Commissioners shall specify the number of times, and at what intervals such advertisements shall be published in each or any of such gazettes; and shall also limit and appoint a time, not less than two months nor more than twelve months 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.

When evidence of title is imperfect.

19. The Registrar-General shall, under such directions 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 by registered letter marked outside "Lands Titles Office," through the Post Office, copy of such notice addressed to the persons, if any, whom the said Commissioners shall have directed to be served with such notice, and to the persons, if any, stated in the declaration by the applicant proprietor, to be in occupation of such land, or to be occupiers or proprietors of land contiguous thereto, so far as his knowledge of the addresses of such person may enable him; and in

Notice of application to be published.

in case such applicant shall have required any such notice to be personally served upon any person named in his application, then and in such case the Registrar-General shall cause copy of such notice to be so served upon such person.

Land brought under the Act.

20. If within the time limited in such direction, or under any order of the Supreme Court, any notice forwarded by registered letter as aforesaid, shall not be returned to him by the Postmaster-General, and if within the time so limited he shall not have received a caveat, as hereinafter described, forbidding him so to do—and in any case in which personal notice may be required as aforesaid, if he shall have received proof to his satisfaction that such notice has been served, the Registrar-General shall, pursuant to such direction of the Lands Titles Commissioners, bring the land described in such application under the provisions of this Act, by issuing to the applicant proprietor, or to such person as he or the person applying in his behalf may by any writing under his hand direct, a certificate of title for the same, as hereinafter described.

On a return of notices or failures of personal service. Registrar-General to apply to Lands Titles Commissioners.

21. The Registrar-General, whenever any letter containing any notice shall be returned to him by the Postmaster-General, shall refer the case to the Lands Titles Commissioners for their further direction; and whenever he shall be made aware that any notice required by any applicant to be served personally has failed to be, or cannot be so served, he shall notify the same to such applicant, who, if he think fit, may, by writing under his hand, withdraw such requirement, and the Registrar-General shall thereupon report the case to the Lands Titles Commissioners, who, in either such case, may reject the application altogether, or direct the Registrar-General to bring the land therein described under the provisions of this Act forthwith, or after such further interval, notification, or advertisement as they may deem fit.

Parties interested may enter caveat.

22. Any person having or claiming an interest in any land so advertised as aforesaid, or the attorney of any such person, may, within the time, by any direction of the Lands Titles Commissioners for that purpose limited, lodge a caveat with the Registrar-General, in form B of the Schedule hereto, forbidding the bringing of such land under the provisions of this Act, and every such caveat shall particularize the estate, interest, lien, or charge claimed by the person lodging the same.

If caveat be received within time limited, proceedings stayed.

23. The Registrar-General upon receipt of any such caveat, within the time 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.

24. After

24. 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 an order or injunction 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.

25. Any applicant proprietor may 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, or to the person, if any, notified in such application as having a lien upon such instruments the abstract and all instruments of title deposited by such proprietor for the purpose of supporting his application.

Applicant proprietor may withdraw his application.

26. 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 surrendered 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; and no person shall be entitled to the production of such instrument, so stamped, except upon the written order of the applicant proprietor or of some person claiming through or under him, or upon the order of the Supreme Court, or a Judge thereof.

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

27. In case an applicant proprietor, or the person to whom an applicant proprietor may have directed certificate of title to be issued, shall die in the interval between the date of his application and the date appointed for the certificate of title to issue in accordance with the provisions hereinbefore contained, the certificate of title shall be issued in the name of such applicant proprietor, or in the name of the person to whom he may have directed it to be issued as the case may require, and such land shall devolve in like manner as if the certificate of title had been issued prior to the death of such applicant proprietor or person so named by him.

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

28. 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 as hereinbefore provided; and also upon the registration of the title to an estate of freehold in possession in land under the provisions of this Act derived through the will or intestacy of a previous proprietor, or under any settlement, there shall be paid to the Registrar-General the

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

the sum specified in the Schedule hereto marked P ; and in the case of land brought under the provisions of this Act by alienation in 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 valuator, which certificate shall be received as conclusive evidence of such value for the purposes aforesaid.

Assurance fund to be invested in Government securities.

29. All sums of money so received as aforesaid shall be paid to the Treasurer of the said Province ; who 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, to constitute an assurance fund for the purposes hereinafter provided.

Reversion expectant on lease not to be extinguished.

30. The reversion expectant upon any lease shall not be deemed to have been extinguished in consequence of the land whereof such lease has been granted having been brought under the provisions of this Act, or under the provisions of the hereinbefore recited Acts, or any of them, and the person named in any certificate of title as seised of the land therein described shall be held in every court of Law and Equity to be seised of the reversion expectant upon any such lease that may be noted by memorial thereon, and to have all powers, rights, and remedies to which a reversioner is by law entitled, and shall be subject to all covenants and conditions therein expressed, to be performed on the part of the lessor.

Registrar-General to keep register book.

31. 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, dealings, and other matters by this Act required to be registered, or entered on the register book, affecting the land included under each such grant, or certificate of title, distinct and apart.

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

32. The registered proprietor of an estate of freehold in possession in land under the provisions of this Act, not being a lease for a life or lives, shall be entitled to receive a certificate of title for the same, which certificate of title shall be in duplicate in the form C of the Schedule hereto, and shall set forth the nature of the estate of freehold in respect to which it is issued, and the Registrar-General shall note thereon in such manner as to preserve their priority the particulars of all unsatisfied mortgages or other encumbrances, and of any dower, lease, or rent charge to which the land may be subject
and

and if such certificate of title 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 original of each certificate of title to be bound up in the register book, and deliver the other to the proprietor entitled to the land described therein.

If issued to person under disability, such disability to be stated.

33. Every certificate of title duly authenticated under the hand and seal of the Registrar-General shall be received in all Courts of Law and Equity as evidence of the particulars therein set forth and of their being entered in the register book, and shall, except in any of the cases hereinafter otherwise provided, be conclusive evidence that the person named in such certificate of title, or in any entry thereon, as seised of or as taking estate or interest in the land therein described, is seised or possessed of such land for the estate or interest therein specified, and that the property described 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 to be conclusive evidence of the title, and that the land has been duly brought under the Act.

34. 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 folium 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 as hereinafter described shall have been entered in the register book upon the folium constituted by the existing grant or certificate of title of such land; and the person named in any grant, certificate of title, or other instrument so registered as seised 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.

Instruments registered when memorial thereof has been entered in register book.

Definition of registered proprietor

35. Except as hereinafter otherwise provided, every grant or other instrument presented for registration shall be in duplicate, and shall be attested by a witness; and shall be registered in the order of time in which the same is produced for that purpose; and instruments registered in respect to or affecting the same estate or interest, shall, notwithstanding any express, implied, or constructive notice, be entitled in priority, the one over the other, according to the date of registration, and not according to the date of each instrument itself; and the Registrar-General, upon registration thereof, shall file one original in his office, and shall deliver the other to the person entitled thereto; and so soon as registered, 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

Instruments to be in duplicate.

Instruments entitled to priority according to date of registration,

and, when registered, to be deemed to be embodied in register book, and to have the effect of a deed.

provisions

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, and stamped with the seal of the Registrar-General, shall have the effect of a deed duly executed by the parties signing the same.

General covenants to be implied in instruments.

36. In every instrument charging, creating, or transferring any estate or interest in land under the provisions of this Act, there shall be implied the following covenant by the party charging, creating, or transferring such estate or interest, that is to say—That he will do such acts and execute 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, or by this Act declared to be implied against such party in instruments of a like nature.

Memorial defined.

37. Every memorial entered in the register book shall state the nature of the instrument to which it relates, the day and hour of the production of such instrument for registration, and the names of the parties thereto, and shall refer by number or symbol to such instrument, and shall be signed by the Registrar-General.

Memorial to be recorded on duplicate grant or other instrument.

38. Whenever a memorial of any instrument has been entered in the register book, the Registrar-General shall, except in the case of transfer or other dealing endorsed upon a memorandum of lease, or of mortgage, or of incumbrance, as hereinafter provided, 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, as hereinafter provided, dispense with the production of the same; and the Registrar-General shall endorse on every instrument so registered a certificate of the date and hour on which the said memorial was entered in the register book, and shall authenticate each such certificate by signing his name and affixing his seal thereto; and such certificate shall be received in all Courts of Law and Equity as conclusive evidence that such instrument has been duly registered.

Certificate of registration to be evidence.

Instruments not effectual until entry in registry book.

39. No instrument shall be effectual to pass any estate or interest in any land under the provisions of this Act, or to render such land liable as security for the payment of money, but upon the registration of any instrument in manner hereinbefore prescribed, the estate or interest specified in such instrument 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.

40. [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, the registered proprietor of land, or of any estate or interest in land under the provisions of this Act shall, except in case of fraud, hold the same subject to such encumbrances, liens, estates, or interests, as may be notified on the folium of the register book, constituted by the 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 so far as regards the omission or misdescription of any right of way or other easement, created in or existing upon any land, and except so far as regards any portion of land that may be erroneously included in the grant, certificate of title, lease, or other instrument evidencing the title of such registered proprietor by wrong description of parcels or of boundaries.

Estate of registered proprietor paramount.

41. 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.

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

42. When land under the provisions of this Act is intended to be transferred, or any right of way or other easement is intended to be created or transferred, the registered proprietor shall execute a memorandum of transfer in form D of the Schedule hereto, which memorandum shall, for the description of the land intended to be dealt with, referred to the grant or certificate of title of such land, or shall give such description as may be sufficient to identify the same, and shall contain an accurate statement of the estate, interest, or easement intended to be transferred or created; and a memorandum of all leases, mortgages, and other encumbrances to which the same may be subject.

Transfer.

43. Whenever any easement, or any incorporeal right, other than an annuity or rent charge in or over 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.

44. If the memorandum of transfer purports to transfer an estate of freehold in possession, not being a lease for a life or lives, in the whole

If estate of freehold be transferred, certificate of title to be

or

delivered up and cancelled, so far as regards the portion of land transferred.

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, after registering the transfer, 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.

Fresh certificate to be issued to purchaser.

45. 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 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; and the Registrar-General shall retain every such cancelled or partially cancelled grant or certificate of title, and wherever 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 transferee of such portion or of any part thereof, shall make out to such proprietor, or transferee, a certificate of title for such portion, or for any part thereof, of which he is the proprietor or transferee.

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

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

46. In every instrument transferring an estate or interest in land under the provisions of this Act subject to mortgage or encumbrance, there shall be implied the following covenant by the transferee, that is to say—That such transferee will pay the interest or annuity secured by such mortgage or encumbrance, after the rate and at the times specified in the instrument creating the same, and will indemnify and keep harmless the transferor from and against the principal sum secured by such instrument, 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.

Lands under the provisions of this Act—how leased.

47. 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 memorandum of lease in form E of the Schedule hereto; and every such instrument shall, for description of the land intended to be dealt with, refer to the grant or certificate of title of the land, or shall give such other description as may be necessary to identify such land, and a right for or covenant by the lessee to purchase the land therein described may be stipulated in such instrument, and in case the lessee shall pay the purchase-money stipulated, and otherwise observe his covenants expressed and implied in such instrument, 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, for the purpose of transferring to a purchaser the said land and the fee simple thereof: Provided always, that no lease of mortgaged or encumbered land shall be valid and binding against the

the mortgagee or encumbrancee, unless such mortgagee or encumbrancee shall have consented to such lease prior to the same being registered.

48. 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 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 so 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: Provided that no lease subject to mortgage or encumbrance shall be so surrendered without the consent of the mortgagee or encumbrancee.

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

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

Covenants to be implied in every lease against the lessee.

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

50. In every memorandum of 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

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.

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

51. 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.

Lands under this Act —how mortgaged or encumbered.

52. 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 memorandum 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 for the payment of an annuity, rent-charge, or sum of money, in favor of any encumbrancee, the encumbrancer shall execute a memorandum of encumbrance in form G of the Schedule hereto; and every such instrument shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and shall, for description of the land intended to be dealt with, refer to 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).

Mortgage or encumbrance not to operate as transfer.

Procedure in case of default.

53. Mortgage and encumbrance under this Act shall have effect as security, but shall not operate as a transfer of the land thereby charged, and in case default be made in the payment of the principal sum, interest, annuity, or rent-charge, or any part thereof thereby secured, or in the observance of any covenant expressed in any memorandum of mortgage or of encumbrance registered under this Act, or that is hereinafter declared to be implied in such instrument, and such default be continued for the space of one calendar month, or for such other period of time as may therein for that purpose be expressly limited, the mortgagee or encumbrancee may give to the mortgagor or encumbrancer, notice, in writing, to pay the money then due or owing on such memorandum or mortgage, or of encumbrance, or to observe the covenants therein expressed or implied, as the case may be, and that sale will be effected if such default be continued, or may leave 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.

Power to sell.

54. After such default in payment or in observance of covenants continuing for the further space of one calendar month from the date

date of such notice, or for such other period as may in such instrument be for that purpose limited, such mortgagee or encumbrancee is hereby authorized and empowered to sell the 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 hereby, 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 of 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, or notice 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 or owing to the mortgagee or encumbrancee: Thirdly—In payment of subsequent mortgages or encumbrances, if any, in the order of their priority; and the surplus, if any, shall be paid to the mortgagor or encumbrancer, as the case may be.

Appropriation of proceeds.

55. 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 of freehold in possession the purchaser shall be entitled to receive a certificate of title for the same.

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

56. The mortgagee or encumbrancee, upon default in payment of the principal sum or part thereof, or of any interest, annuity, or rent-charge, secured by any mortgage or encumbrance, may enter into possession of the mortgaged or encumbered land by receiving the rents and profits thereof, or may distrain upon the occupier or tenant of the said land under the power to distrain hereinafter contained; or bring an action of ejectment to recover 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 his memorandum of mortgage or of encumbrance, and any such registered mortgagee shall be entitled to foreclose

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.

foreclose the right of the mortgagor to redeem the said mortgaged or encumbered lands in manner hereinafter provided.

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

57. Besides his remedy against the mortgagor or encumbrancer, every mortgagee or encumbrancee shall be entitled after the principal sum, interest, annuity, or rent-charge shall have become in arrear for twenty-one days, and after seven days have elapsed from the date of application for the payment thereof 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 occupier or tenant occupying such land shall be liable to pay to any mortgagee or encumbrancee a greater sum than the amount of rent, which at the time of making such distress, may be then due from such occupier or tenant to the mortgagor or encumbrancer, or to the person claiming the said land under the mortgagor or encumbrancer, and any amount so paid shall be held to be *pro tanto* in satisfaction of such rent.

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

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

58. 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, after entering into possession of the said land, or the rents and profits thereof, shall, during such possession, and to the extent of any rents and profits which may be received by him, 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.

59. Upon the production of any memorandum of mortgage or of encumbrance, having thereon an endorsement signed by the mortgagee or encumbrancee, and attested by a witness discharging the land, estate, or interest from the whole or part of the principal sum or annuity secured, or discharging any part of the land comprised in such instrument from the whole of such principal sum or annuity, the Registrar-General shall make an entry in the register book, noting that such 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, the estate or interest, or the portion of land mentioned or referred to in such endorsement as aforesaid, shall cease to be subject to or liable for such principal sum or annuity, or as the case may be, for the part thereof noted in such entry as discharged.

Entry of satisfaction of annuity.

60. Upon proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any memorandum of encumbrance, the annuity or sum of money thereby secured shall cease to be payable; and upon proof that all arrears of the said annuity, and interest or money have been paid,

paid, satisfied, or discharged, the Registrar-General shall make an entry in the register book, noting that such annuity or sum of money is satisfied and discharged, and shall cancel such instrument; and upon such entry being made, the land, estate, or interest shall cease to be subject to or liable for such annuity or sum of money; 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.

61. In case the registered mortgagee shall be absent from the said Province, and there be no person authorized 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 thereupon the interest upon such mortgage shall cease to run or accrue, 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 memorandum 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 memorandum 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.

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

62. In every memorandum of mortgage there shall be implied against the mortgagor, a covenant that he 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 memorandum of mortgage.

63. 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 memorandum of mortgage, encumbrance, or lease; 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

Transfer of mortgage, and of encumbrance, and of lease.

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 of lease includes transfer of right to sue thereunder.

64. By virtue of every such transfer as is hereinbefore mentioned, the right to sue upon any memorandum of mortgage, 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 trust 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.

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

65. Such of the covenants hereinafter set forth, as shall be expressed in any memorandum of lease or mortgage, as to be implied shall, if expressed in the form of words hereinafter appointed and prescribed for the case of each such covenant respectively, be so implied as fully and effectually as if such covenants were set forth fully and in words at length in such instrument, that is to say, the words "will insure," shall imply as follows—that the lessee or mortgagor 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 amounts specified in such instrument; 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 the mortgagor or lessee 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 thereof; and also, 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 memorandum of mortgage or lease, or 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 "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 "paint and paper inside every

Insure.

Paint outside.

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 "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 word, "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 or 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, "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, "will not, without leave, assign or sublet," shall imply as follows, viz.—and also that the said 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, "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, "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, ales, beer,

Fence.

Cultivate.

Not use as a shop.

Offensive trades.

Assign or sublet.

Cut timber.

Business of publican
in orderly manner.

Apply for renewal of licence.

Facilitate the transfer of licence.

No notice of trusts to be entered in register book.

Instrument declaring trusts to be deposited but not registered.

Insertion of the words "no survivorship" in instrument of appointment of trustees to operate to prevent a less number of trustees than those registered dealing with the land without order of Court.

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, "will apply for a 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, "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 notice 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.

66. The Registrar-General shall not make any entry in the register book of any notice of trusts, whether expressed, implied, or constructive; but trusts may be declared by any instrument or deed, which instrument or deed may exclude, as well lands under the provisions of this Act, as land which is not under the provisions thereof: Provided that the description of the several parcels of land contained in such 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 thereof; and a duplicate or an attested copy of such instrument may be deposited with the Registrar-General for safe custody and reference; but shall not be registered.

67. Upon the transfer of any land, estate, or interest under the provisions of this Act, to two or more persons, as joint proprietors, to be held by them as trustees, it shall be lawful for the transferor to insert in the memorandum of transfer, or other instrument, the words "no survivorship;" and the Registrar-General shall in such case include such words in the memorial of such instrument to be entered by him in the register book as hereinbefore directed; and shall also enter the said words upon any certificate of title issued to such joint proprietors,

proprietors, pursuant to such memorandum of transfer. And any two or more persons registered as joint proprietors of any land, estate, or interest under the provisions of this Act, held by them as trustees, may, by writing under their hand, authorize the Registrar-General to enter the words "no survivorship" upon the grant, certificate of title, or other instrument evidencing their title to such estate or interest, and also upon the duplicate of such instrument in the register book or filed in his office, and after such entry has been made and signed by the Registrar-General in either such case as aforesaid, it shall not be lawful for any less number of joint proprietors than the number then registered to transfer or otherwise deal with the said land, estate, or interest, without obtaining the sanction of the Supreme Court or a Judge thereof, by an order on motion or petition.

68. Before making any such order as aforesaid, the Court or Judge shall, if it seem requisite, cause notice of intention so to do to be advertised once in the *Government Gazette*, and three times in at least one newspaper published in the City of Adelaide, and shall appoint a period of time within which it shall be lawful for any person interested to show cause why such order should not be issued; and thereupon it shall be lawful for the said Court or Judge in such order to give directions for the transfer of such land, estate, or interest to any new proprietor or proprietors, solely or jointly, with or in the place of any existing proprietor or proprietors, or to make such order in the premises as the Court thinks just for the protection of the persons beneficially interested in such land, estate, or interest, or in the proceeds thereof: And upon such order being deposited with the Registrar-General, he shall make such entries and perform such acts as in accordance with the provisions of this Act may be necessary for the purpose of giving effect to such order.

Notice to be published before effect is given to order.

69. The registered proprietor of any land, estate, or interest, under the provisions of this Act, may authorize and appoint any person to act for him, or on his behalf, in respect to the transfer or other dealing 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 I of the Schedule hereto, and a duplicate or an attested copy thereof shall be deposited with the Registrar-General, who, after comparing the same shall enter in the register book a memorandum of the particulars therein contained, and of the date and hour of its deposit with him.

Power of attorney.

70. 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 K of the Schedule hereto, enabling him to transfer 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

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

on

on the grant, certificate of title, or other instrument evidencing the title of such applicant proprietor a like memorandum, and from and after the issuing of any such registration abstract, no transfer or other dealing 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.

Mode of procedure
under registration
abstract.

71. Whenever any transfer or other dealing is intended to be transferred under any such registration abstract, a memorandum of transfer, or such other instrument 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 authorized person as aforesaid, in manner hereinbefore directed for the entry of memorials in the register book, such instruments shall be held to be registered, and such transfer or other dealing shall be as valid and binding to all intents, as if the same had been entered in the register book by the Registrar-General, and whenever a memorial of any instrument which has not been endorsed upon the instrument evidencing title to the estate or interest intended to be dealt with has been entered upon the registration abstract, such authorized person as aforesaid shall record the like memorial on the duplicate grant, certificate of title, lease, or other instrument evidencing title as aforesaid, and the certificate of registration endorsed on the instrument of which the memorial has been so entered and signed by such authorized person, and sealed with his seal, shall be received in all Courts of Law and Equity, as conclusive evidence that such instrument has been duly registered.

Proceeding upon de-
livery of registration
abstract to the
Registrar-General.

72. Upon the delivery of any registration abstract to the Registrar-General, he shall record in the register book, in such manner as to preserve their priority, the particulars of every transfer or other dealing recorded thereon, and shall file in his office the duplicates of every memorandum of transfer or other instrument executed thereunder, which may for that purpose be delivered to him, and shall cancel such abstract, and note the fact of such cancellation in the register book; and if a freehold estate in such land, or in any part thereof, be transferred, the grant or certificate of title shall be delivered up to the Registrar-General, who shall thereupon proceed as is hereinbefore directed for the case of a transfer of an estate of freehold.

Procedure when re-
gistration abstract is
lost.

73. Upon proof at any time, to the satisfaction of the Registrar-General, that any 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,
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it shall be lawful for the Registrar-General, as circumstances may require, either to issue a new 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.

74. The registered proprietor 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 L of the Schedule hereto; and the Registrar-General shall, except in any 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 proprietor 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.

Revocation of power of attorney.

75. Upon the bankruptcy or insolvency of the registered proprietor of any land, estate, or interest under the provisions of this Act, the assignees of such bankrupt or insolvent shall be entitled to be registered as proprietors in respect of the same; and the Registrar-General, upon the receipt of an office copy of the appointment of such assignees, accompanied by an application, in writing, under their hand to be so registered, in respect to any land, estate, or interest of such bankrupt or insolvent therein specified and described, shall enter in the register book, upon the folium constituted by the grant or certificate of title of such land, a memorandum notifying the appointment of such assignees, and upon such entry being made, such assignees shall be deemed and taken to be registered proprietors of the estate or interest of such bankrupt or insolvent in such land, and shall hold the same subject to the equities upon and subject to which the bankrupt or insolvent held the same; but for the purpose of any dealings with such land, estate, or interest under the provisions of this Act, such assignees shall be deemed to be absolute proprietors thereof.

Transmission by bankruptcy or insolvency.

Upon entry of appointment, assignees to be deemed registered proprietors.

But to hold subject to equities.

76. Upon the bankruptcy or insolvency of the registered proprietor of any lease subject to mortgage under the provisions of this Act, the Registrar-General, upon the application, in writing, of the mortgagee, accompanied by a statement, in writing, signed by the assignees of such bankrupt or insolvent certifying their refusal to accept such lease, shall enter in the register book the particulars of such refusal; and such entry shall operate as a foreclosure, and the interest of the insolvent in such lease shall thereupon vest in such

Mortgagee of the leasehold interest of an insolvent lessee may apply to be entered as transferee of the lease.

such mortgagee ; and if such mortgagee shall neglect or decline to make such application as aforesaid, the Registrar-General, upon application by the lessor, and proof of such neglect or refusal, and of the matters aforesaid, shall enter in the register book notice of the refusal of such assignees to accept such lease ; and such entry shall operate as a surrender of such lease.

Marriage of female proprietor to be certified to the Registrar-General.

Particulars to be entered in register book, and on the instrument evidencing title.

77. The Registrar-General, upon the production of the register or other sufficient proof of the marriage of a female registered proprietor of any land, estate, or interest, under the provisions of this Act, accompanied by a statement, in writing, signed by such female proprietor to that effect, shall enter on the register book and also upon the certificate of title, or other instrument evidencing the title of such female proprietor, when produced to him for that purpose, the name and description of her husband, the date of the marriage and where solemnized, the date and hour of the production to him of the register or other sufficient evidence of such marriage ; and the husband of such female proprietor shall, unless such land be held for her separate use, be entitled to be registered as co-proprietor of such land in right of his wife ; and the Registrar-General, upon application to that effect, and surrender of the existing certificate of title, shall comply with such application.

Transmission of personal estate of deceased proprietor.

Will or probate, or letters of administration or order of Court to be produced.

78. 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, or the order of the Supreme Court authorizing the Curator of Intestate Estates to administer the personal estate of the deceased proprietor of such estate or interest, as the case may be, accompanied by an application, in writing, from the executor, administrator, or curator claiming to be registered as proprietor in respect of such estate or interest, shall be produced to the Registrar-General, who shall thereupon enter in the register book, and on the lease or other instrument evidencing title of the estate or interest transmitted, the date of the will and of the probate, or of the letters of administration, or order of the Supreme Court as aforesaid, the date and hour of the production of the same to him, the date of the death of such proprietor, when the same can be ascertained, with such other particulars as he may deem necessary ; and upon such entry being made, the executors or administrators, or the Curator of Intestate Estates, as the case may be, shall be deemed to be registered proprietors, or proprietor of such mortgage, encumbrance, or lease ; and the Registrar-General shall note the fact of such registration by memorandum under his hand on the letters of administration, probate, or other instrument as aforesaid.

Heir-at-law or devisee may apply to Registrar-General to be registered as proprietor.

79. The heir-at-law, devisee, tenant by the curtesy, or other person claiming any estate of freehold in the land of a deceased proprietor, may make application in writing to the Registrar-General to be registered as proprietor of such estate ; and shall deposit with him the

the certificate of the death, the will, or an office copy or probate of the will of the deceased proprietor, or any settlement under which such applicant claims; or, in the case of intestacy, such evidence of heirship as he may be enabled to produce; and such application shall state the nature of every estate or interest held by other persons at law or in equity in such land within the applicant's knowledge, and that he verily believes himself to be entitled to the estate in such land, in respect to which he applies to be registered; and the statements made in such application shall be verified by the oath or statutory declaration of such applicant: Provided always that the heir-at-law, devisee, or other person making such application, shall surrender the existing grant or certificate of title of the land, in respect of which he claims to be registered as proprietor, prior to his being entered in the register book as hereinafter mentioned.

80. The Registrar-General shall refer such application to the solicitors for examination and report, and thereafter shall submit the same for the consideration of the Lands Titles Commissioners, who may either reject such application altogether, or direct the Registrar-General to cause notice thereof to be published once in the *South Australian Government Gazette*, and three times in at least one newspaper published in the City of Adelaide, and to give such further publicity to such application as they may direct, whether by advertisement or the serving or posting of notices, and shall limit and appoint a time not less than six calendar months from the date of the advertisement in such *Gazette*, upon or after which the Registrar-General may, unless he shall in the interval have received a caveat forbidding him so to do, register such applicant as proprietor of such land by entering in the register book the particulars of the transmission through which such applicant claims, and by issuing to such applicant a certificate of title for the land so transmitted; and the Lands Titles Commissioners may direct any caveat to be entered by the Registrar-General for the protection of the interests of such other persons (if any) as may be interested in such land: Provided always, that the person registered, consequent on such direction of the Lands Titles Commissioners, or any executor or administrator, or the Curator of Intestate Estates, 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 purpose of any dealing with such land, estate, or interest under the provisions of this Act, he shall be deemed to be absolute proprietor thereof.

Application to be referred to Lands Titles Commissioners.

Notice thereof to be published in *Gazette*.

Upon the expiration of the time limited by Commissioners, applicant to be entered in register book;

but to hold subject to the trusts to which the land is liable by law.

81. Any settler of land under the provisions of this Act, transferring such land, to be held by the transferee as trustee, or any beneficiary or other person, claiming estate or interest in any such land under any unregistered instrument, or by devolution in law or otherwise may, by caveat, in the form M of the Schedule hereto, or as near thereto as circumstances will permit, forbid the registration of any instrument affecting such land, estate, or interest, either absolutely or until

Caveat may be lodged.

until after notice of the intended dealing given to the caveator as may be required and enjoined in such caveat; and every such caveat shall state the name and address of the person by whom or on whose behalf the same is lodged, and shall contain a sufficient description to identify the land and the estate or interest therein, claimed by the caveator, or by the person on whose behalf the caveat is lodged; and, except in case of caveats lodged by order of the Supreme Court, or by the Registrar-General as hereinbefore provided, shall be signed by the caveator or by his solicitor, known agent, or attorney; and every notice relating to such caveat, or to any proceedings in respect thereof, if served at the address mentioned in such caveat, or at the office of the solicitor, known agent, or attorney who may have signed the same, shall be deemed to be duly served; and every such caveat may be withdrawn by the caveator.

Notice of caveat to be given.

Caveator may be summoned to show cause.

Except in certain cases, caveat to lapse after twenty one days notice given to caveator.

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

Compensation for lodging caveat without reasonable cause.

82. Upon the receipt of any caveat, the Registrar-General shall notify the same to the person against whose application to bring land under the provisions of this Act, or to be registered as proprietor, or, as the case may be, to the registered proprietor against whose title to deal with land under the provisions of this Act, such caveat has been lodged; and such applicant proprietor or registered proprietor may, if he think fit, summon the caveator, or the person on whose behalf such caveat has been lodged, to attend before the Supreme Court or Judge thereof, to show cause why such caveat should not be removed; and it shall be lawful for such Court, or Judge, upon proof that such person has been summoned, to make such order in the premises, either *ex parte* or otherwise, as to such Court or Judge may seem fit. And except in the case of a caveat lodged by a settlor, or by or on behalf of a beneficiary claiming under any will or settlement, or by the Registrar-General for the protection of incapable persons, or for the prevention of fraud as hereinbefore prescribed, every such caveat lodged against a registered proprietor shall, unless an order to the contrary be made by the Supreme Court, or a Judge thereof, be deemed to have lapsed upon the expiration of fourteen days after notice given to the caveator that such registered proprietor has applied for the registration of any transfer or other dealing with such land, estate, or interest.

83. 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.

84. 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.

85. The

85. The registered proprietor of any land, or of any estate or interest in land under the provisions of this Act, whether of the nature of real or personal property, may, by any of the forms of instruments of transfer provided by this Act, modified as may be necessary, 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, or to create or execute any powers of appointment, or to limit any estates whether by remainder or otherwise, without limiting any use, or executing any re-assignment; but upon the registration of such transfer, the said land, estate, or interest, shall vest in such registered proprietor jointly with any other person or persons, or in the person taking under such limitation, or in whose favor any power may have been executed, or otherwise, according to the intent and meaning appearing in such instrument, and thereby expressed.

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

86. 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.

Persons registered as joint proprietors to be joint tenants.

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

87. When any person is registered as joint proprietor with his wife of an estate in fee simple in right of his wife, if such person die in the lifetime of his wife, and before any transfer of such estate, or if such wife die in the lifetime of her husband, and the said husband is entitled as tenant by the curtesy, or upon the death of any person registered together with any other person as joint proprietor of the same estate or interest in any land, or when the life estate, in respect to which any certificate of title has been issued, has determined, and the estate next registered in remainder or reversion has become vested in possession, or the person to whom such certificate of title has been issued has become entitled to the said land for an estate in fee simple in possession, the Registrar-General may, upon the application of the person entitled, and proof to his satisfaction of any such occurrence as aforesaid, register such person as proprietor of such estate or interest, in manner hereinbefore prescribed for the registration of a like estate or interest upon a transfer or transmission.

Registration of survivor of joint proprietors.

88. Whenever a certificate of title has been issued in respect of a life estate in any land, any person entitled, in reversion or remainder, to such land may apply to be registered as so entitled; and the Registrar-General shall cause the title of such applicant to be investigated by the Solicitors, and shall thereafter submit the same for consideration by the Lands Titles Commissioners, who may either reject such application altogether, or direct the applicant to be registered in accordance therewith either immediately, or unless
caveat

Remainderman or reversioner may apply to be registered as such on the certificate of title of tenant for life. Application to be referred to Lands Titles Commissioners,

caveat be lodged after such notice or advertisement, and within such period as they may appoint; and the Registrar-General shall obey such direction, or any order of the Supreme Court in the premises.

Implied covenants may be modified or negatived.

Implied covenants to be several and not joint.

89. Every covenant and power to be implied in any instrument by virtue of this Act may be negatived or modified by express declaration in the instrument, or endorsed thereon; and in any declaration in an action for a supposed breach of any such covenant, 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 transfer or other instrument, any law or practice to the contrary notwithstanding; and every such implied covenant shall have the same force and effect and be enforced in the same manner as if it had been set out at length in such instrument; and where any memorandum of transfer or other instrument in accordance with the provisions of this Act, is executed by more parties than one, such covenants as are by this Act declared to be implied in instruments of the like nature, shall be construed to be several and not to bind the parties jointly.

Seal of office to be received in evidence.

90. 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 every instrument bearing the imprint of such seal, and purporting to be signed or issued by the Registrar-General, or by one of his deputies, shall be received in evidence, and shall be deemed to be signed or issued by or under the direction of the Registrar-General without further proof, unless the contrary be shown.

Registrar-General, with sanction of Governor, to alter forms of instrument, &c.

91. The Registrar-General may, with the consent of the Governor with the advice and consent of the Executive Council, 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 cause every such form to be stamped with his seal, 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 as aforesaid, shall be taken to be made in the legally authorized form, unless the contrary is proved.

Registrar-General may dispense with the duplicates of certificates of title and other instruments in certain cases.

92. The Registrar-General, with the consent of the other Lands Titles Commissioners, in case they shall see reasonable cause for so doing, may dispense with the production of any grant, certificate of title, lease, or other instrument, for the purpose of entering the memorial by this Act required to be entered upon the transfer or other dealing with land under the provisions of this Act; and upon the registration of such transfer or other dealing the Registrar-General shall notify in the memorial in the register book that no entry

entry of such memorial has been made on the duplicate grant, or other instrument; and such transfer or other dealing shall thereupon be as valid and effectual as if such memorial had been so entered: Provided always, that, before registering such transfer or other dealing, the Registrar-General shall, in such case, require the transferor or other party dealing to make an affidavit that such grant or instrument has not been deposited as security for any loan, and shall give at least fourteen days' notice of his intention to register such dealing in the *South Australian Government Gazette*, and in at least one newspaper published in the City of Adelaide.

But notice to be given before registering any dealing.

93. Whenever 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, or whenever any order of such Court shall be made authorizing the Curator of Intestate Estates to take the charge of the real estate of a deceased proprietor, 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, if produced for that purpose, the date of the said writ, direction, decree, or order, and the date and hour of the production thereof; 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 or otherwise to deal with 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.

94. 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.

95. 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

Attestation of instruments.

Execution of instruments before whom to be proved.

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.

Mode of proving instruments.

96. The execution of any such instrument, may be proved before any such person as aforesaid by the oath or statutory declaration 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 N of the Schedule hereto; and if the person executing such instrument, be personally known to the Registrar-General, Justice, or other person, as aforesaid, he may attend and appear before such Registrar-General, Justice, or other person, and acknowledge that he did freely and voluntarily sign such instrument; and, upon such acknowledgment, the Registrar-General, Justice, or other person, shall endorse on such instrument a certificate in form O of the Schedule hereto: Provided, that such questions as aforesaid may be varied as circumstances may require in case any person shall sign such instrument by his mark.

Acknowledgment of married women to be taken before Registrar-General or person legally authorized.

97. The Registrar-General shall not register any instrument signed by any married woman, purporting to transfer or otherwise to deal with any land under the provisions of this Act in respect to which she may be registered as proprietor, either solely or jointly with her husband in her right, until such married woman shall have been examined apart from her husband by the Registrar-General, or other person legally authorized to take the acknowledgments of married women, and has assented to such proposed dealing after full explanation of her rights in the land, and of the effect of the proposed dealing; and the Registrar-General, or other person, taking such acknowledgment, shall endorse on the instrument of transfer, or other dealing, a certificate of such acknowledgment and examination, and the date and hour thereof.

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

98. 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

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; 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, and referring to the certificate of title so issued.

92. 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, 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, 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 fourteen days' notice of his intention so to do in the *Government Gazette*, and in at least one newspaper published in the City of Adelaide.

Provision in case of lost grant.

100. Upon the production of the receipt of the Treasurer of the said Province, in full, for the purchase-money of any lands, alienated in fee from the Crown, together with a memorandum of transfer, mortgage, or lease, duly executed by the purchaser from the Crown of such land, the Registrar-General shall endorse upon such receipt, such memorial as he is hereinbefore required to enter in the register book upon the registration of any dealing of a like nature with land in respect to which a grant or certificate of title has been registered, and shall sign such endorsement, and stamp the same with his seal, and such instrument shall thereupon be held to be duly registered, in accordance with the provisions of this Act; and the Registrar-General shall file such receipt and such instrument in his office; and, upon the registration of the grant of such land,

Dealings may be registered prior to the issue of grant from the Crown.

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the Registrar-General shall enter thereon a memorial of such dealing, and shall endorse such instrument with the certificate of registration, as hereinbefore prescribed for the registration of instruments generally.

Duplicates of future
public maps to be
deposited

101. 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, 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.

Proprietor may depo-
sit map.

102. 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 licenced surveyor before the Registrar-General or a Justice of the Peace: Provided that no person shall be permitted to practice as a surveyor under the provisions of this Act, unless specially licensed for that purpose by the Surveyor-General.

Registrar-General
may require map to be
deposited.

103. 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 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

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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.

104. The Registrar-General, upon payment of the fee specified in the Schedule P hereto, shall furnish to any person applying 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.

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

105. Any person may, upon payment of a fee specified in Schedule P hereto, have access to the register book for the purpose of inspection, during the hours and upon the days appointed for search.

Search allowed.

106. It shall be lawful for the Registrar-General with the sanction of the Governor to license 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 Q; 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.

107. 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,

Authority to register.

Penalty for registering incorrect instruments.

solicitor, or by a licensed land broker employed by him; and any 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.

Fees to be charged.

108. It shall be lawful for the Registrar-General to 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 P.

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

109. 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.

Proprietor may summons Registrar-General to show cause, if dissatisfied.

110. If, upon the application of any proprietor to have land of which he is seised brought under the provisions of this Act, or to have any dealing or transmission registered or recorded, or to have any certificate of title, registration abstract, foreclosure, order, or other instrument issued, or to have any act or duty done or performed which by this Act is prescribed to be done or performed by the Registrar-General, the Registrar-General shall refuse so to do, or, if such 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 proprietor to require the Registrar-General to set forth in writing under his hand, the grounds of his refusal, or the grounds upon which such direction was given, and such proprietor may, if he think fit, at his own costs, summon the Registrar-General to appear before the Supreme Court to substantiate
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and uphold the grounds of his refusal or of such direction as aforesaid, such summons to be issued under the hand of a Judge of the said Court, and served upon the Registrar-General six clear days at least before the day appointed for hearing the plaint of such proprietor, such objection shall be heard by the said Court upon motion; and upon such hearing, the Registrar-General, or his Counsel, shall have the right of reply, and the said Court, shall, if any question of fact be involved, direct an issue to be tried to decide such fact, and the said Court shall thereupon make such order in the premises as in their judgment the circumstances of the case may require, and the Registrar-General shall obey such order; and all expenses attending on any such proceedings shall be borne and paid by the applicant or other person preferring such plaint, unless the Judge or Court shall certify that there were no probable grounds for such refusal or direction as aforesaid.

Expense to be borne by applicant.

111. It shall be lawful for the Registrar-General, by direction of the Lands Titles Commissioners, whenever any question shall arise with regard to the performance of any of the duties or the exercise of any of the functions by this Act conferred or imposed upon him or them, to state a case for the opinion of the Supreme Court, and thereupon it shall be lawful for the said Court to give its judgment thereon, and such judgment shall be binding upon the Registrar-General and Lands Titles Commissioners respectively.

Power to Registrar-General to state case for Supreme Court or direct issue to be tried.

112. 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 and on the grant or other instrument evidencing title to the said land, 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 such person shall thereupon be deemed to be the registered proprietor of such land; and unless and until such entry shall be made, the said order shall have no effect or operation in transferring or otherwise vesting the said land.

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

113. Whenever a person entitled to, or interested in, land as a trustee 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 case be entitled to be indemnified in like manner as a trustee would before the passing of this Act had been entitled to

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

Trustee to be indemnified.

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be indemnified in a similar case of his name being used in any such action or proceeding by his cestuique trust.

Purchaser from registered proprietor not to be affected by notice.

114. Except in the case of fraud, no person contracting or dealing with, or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest, shall be required, or in any manner concerned to inquire or ascertain the circumstances in, or the consideration for which such registered owner or any previous registered owner of the estate or interest in question is, or was registered, or to see to the application of the purchase-money, or of any part thereof, or shall be affected by notice direct or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

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

115. 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, not having notice of any fraud or other circumstances which, according to the provisions of this Act, would affect the right of the vendor, 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.

Right of mortgagee of lease not to be barred.

116. Nothing herein contained shall extend to bar the right of any mortgagee or encumbrancee of any lease or any part thereof, who shall not be in possession, so as such mortgagee or encumbrancee shall and do, within six months after the execution of such warrant, pay all rent in arrear, and all costs and damages sustained by such lessor or person entitled to the remainder or reversion expectant on such lease, and perform all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

Mortgagee, encumbrancee, or landlord, may obtain possession in certain cases.

117. It shall be lawful for a mortgagee or against a mortgagor either before or after obtaining an order for foreclosure as hereinafter provided, or for an encumbrancee, as against an encumbrancer, or for a landlord, as against a lessee or tenant, whenever the term shall have expired or default shall have been made in payment of the interest or the rent, or annual or principal sum secured by any memorandum or mortgage, encumbrance, or lease for the time specified by this Act, or that may be otherwise provided in any such instrument, and without any formal demand or re-entry, to enter a plaint in the Local Court nearest to which the land is situated, or in the Local Court of Adelaide, for the recovery or obtaining possession of the land; but if the value of the land shall exceed One Hundred Pounds, then to apply to a Judge of the Supreme Court for the recovery or obtaining possession

possession thereof; and thereupon a summons, returnable not less than fourteen days after the service thereof, shall issue to the mortgagor, encumbrancer, or lessee, or to the person claiming through or under him, the service of which shall in the case of a landlord against a lessee or tenant stand in lieu of a demand and re-entry: and in the case of a mortgagee or encumbrancee against a mortgagor or encumbrancer, shall stand in lieu of the notice by this Act required to be given in such case; and if the person entitled to redeem the said land, or liable to the payment of such rent or annual sum shall, five clear days at the least prior to the return day of such summons, pay all the rent, interest, or annual sum in arrear, or principal sum due and the costs, the said action shall cease; but if he shall not make such payment, and shall not at the time named in such summons show good cause why the premises should not be recovered, then on proof of the service of the summons, if the defendant shall not appear thereto, and of default having been made in payment of the rent, interest, or annual or principal sum for the time specified by this Act or otherwise provided as aforesaid before the plaint was entered, or application made as aforesaid, and in the case of a landlord against a lessee or tenant that no sufficient distress was then found to be on the premises to counteract such arrear, and of the plaintiff's power to enter, and of the rent, interest, or annual sum being still in arrear, or principal money due, the Court or Judge may order that possession of the premises mentioned in such summons be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the Court or Judge shall think fit to name, unless within that period all the rent, interest, or annual sum in arrear, or principal money due and costs be paid; and if such order be not obeyed, and such rent, interest, or annual or principal sum and costs be not so paid, the Clerk of the Court or Judge shall, at the instance of the plaintiff, upon proof of the service of such order, or that after diligent search made the party named therein cannot be found, issue a warrant authorizing and requiring the Bailiff of the Court or Sheriff, as the case may be, to give possession of the premises to the plaintiff, every such warrant to bear date on the day next after the last day named by the Court or Judge in the order for the delivery of the possession of the premises, and to continue in force for three months from such date, and no longer; and in the case of a landlord against a lessee or tenant, the plaintiff shall from the time of the execution of such warrant, except as hereinafter provided, hold the premises discharged of the tenancy: Provided that in all cases there shall be an appeal from the Local Court to the Supreme Court, to be conducted in manner by law appointed for appeals from Local Courts, and that every order of a Judge shall be subject to the revision of the Supreme Court: Provided also, that the decision of any Local Court, as regards the value of any land sought to be recovered therein, shall be final.

118. If the person having right to redeem any mortgaged or encumbered Mortgagor or encumbrancer tendering the

principal, interest, and costs, in Court, and paying the same to the Treasurer, shall be deemed a full satisfaction.

encumbered land shall, within the time hereinbefore mentioned before the return day of such summons, pay to such mortgagee, or encumbrancee, or, in case of his refusal, shall tender in the open Court, or before the Judge, and shall pay to the Treasurer of the said Province all the principal money and interest due on such mortgage or encumbrance, and costs; the moneys so paid to such mortgagee or encumbrancee, or to the Treasurer as aforesaid, shall be deemed and taken to be in full satisfaction and discharge of such mortgage or encumbrance; and the Registrar-General, upon the receipt of the said Treasurer, accompanied by a certificate of the Court or Judge, that such sum has been tendered and refused, shall proceed to discharge such mortgage or encumbrance in the manner hereinbefore provided for the case of a registered mortgagee being absent from the Province.

Where term has expired, or been determined by notice, Court may order possession to be given forthwith.

119. When the term and interest of any lessee or tenant shall have expired, or shall have been determined either by the landlord or the tenant by a legal notice to quit, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, it shall be lawful for the landlord to enter a plaint in the Local Court nearest to the land, or may apply to the Local Court of Adelaide, or to a Judge of the Supreme Court in cases in which it would not be competent for a Local Court to entertain an action of ejectment in manner aforesaid, and thereupon a summons shall issue; and upon the hearing of such summons the Court or Judge may order that possession of the premises mentioned in such summons be given by the defendant to the plaintiff forthwith, and to issue a warrant accordingly; and, if the costs shall not have been sooner paid, the Clerk shall likewise issue execution for such costs: Provided, that there shall be such appeal to the Supreme Court from the decisions of the Local Court or Judge as is provided in the case of a mortgagee applying to obtain possession of land against a mortgagor, as aforesaid.

How summons to be served.

120. Any such summons as aforesaid may be served by delivering the same at the house or place of business of the defendant with some person there of the apparent age of fourteen years; and, if the defendant cannot be found, and his place of dwelling shall either not be known, or admission thereto cannot be obtained for the purpose of serving such summons, a copy of such summons shall be posted on some conspicuous part of the premises sought to be recovered; and such posting shall be deemed to be a good service on the defendant.

Mortgagee may apply to Registrar-General for an order for foreclosure.

121. When default has been made in the payment of the interest or principal sum secured by memorandum of mortgage, for six calendar months, a registered mortgagee may make application, in writing, to the Registrar-General for an order for foreclosure; and such application shall state that such default has been made as aforesaid, and that the land, estate, or interest mortgaged has been offered for sale at public auction by a licensed auctioneer, after notice given to the

the mortgagor, as in this Act provided ; and that the amount of the highest bid at such sale was not sufficient to satisfy the money secured by such mortgage ; together with the expenses occasioned by such sale ; and that notice in writing of the intention of such mortgagee to make such application has been given to the mortgagor, by leaving the same at his usual or last known place of abode, if such place be within thirty miles of the residence of such mortgagee, or by forwarding the same by registered letter through the post-office, if such place be beyond that distance ; and such application shall be accompanied by a certificate of the licensed auctioneer by whom such land was put up for sale, and such other proof of the matters stated by the applicant as the Registrar-General may require ; and the statements made in such application shall be verified by the oath or statutory declaration of the applicant.

122. The Registrar-General shall refer such application to the Lands Titles Commissioners, who may direct the Registrar-General to cause notice to be published once in the *South Australian Government Gazette*, and once in each of three successive weeks in at least one newspaper published in the City of Adelaide, offering such land for sale ; and shall in such case limit and appoint a time, not less than one month from the date of the advertisement in such *Gazette*, upon or after which the Registrar-General may issue to such applicant an order for foreclosure, unless in the interval a sufficient amount has been realized by the sale of such land to satisfy the principal and interest moneys due, and all expenses occasioned by such sale and proceedings ; and every such order for foreclosure under the hand of the Registrar-General, and entered in the register book, shall have the effect of vesting in the mortgagee all the estate and interest of the mortgagor in the land mentioned in such order, free from all right and equity of redemption on the part of the mortgagor, or of any person claiming through or under him.

Application to be referred to Lands Titles Commissioners.

123. Before signing any certificate of title or foreclosure order, pursuant to any direction of the Lands Titles Commissioners, requiring advertisement to be made of intention to bring land under the provisions of this Act, or to register any person as devisee or heir-at-law, or to issue a foreclosure order, the Registrar-General shall cause notice to be posted in a conspicuous place in his office, appointing a date, not less than seven days from the date of such notice, on which he will attend in the public room of the Registry Office to sign such certificate of title or foreclosure order ; and it shall be lawful for any person interested in the land referred to in such notice to attend personally, or by his solicitor, broker, or attorney, and by caveat in writing under his hand, to prohibit the signing of such certificate of title or foreclosure order ; and any caveat so lodged shall continue in force for the space of fourteen days from the date of the presentation thereof to the Registrar-General, unless withdrawn by the caveator or by order of the Supreme Court, and upon such withdrawal or order, or upon the expiration of such period, it shall be lawful for the Registrar-General to sign such certificate of title or foreclosure order

Notice to be given of intention to sign certificate or foreclosure order.

Persons interested may attend and prohibit such signature.

order, unless he shall have received an injunction from the Supreme Court forbidding him so to do.

Registered proprietor protected against ejectment except in certain cases.

124. No action of ejectment or other action for the recovery of any land shall lie or be sustained against the registered proprietor under the provisions of this Act, for the estate or interest in respect to which he is so registered, except in any of the following cases ; that is to say:—

- i. The case of a mortgagee as against a mortgagor in default:
- ii. The case of an encumbrancee as against an encumbrancer in default :
- iii. The case of a lessor as against a lessee in default :
- iv. The case of a person deprived of any land by fraud, as against the person registered as proprietor of such land through fraud, or as against a person deriving, otherwise than as a transferee *bona fide* for value, from or through a person so registered through fraud :
- v. The case of a person deprived of, or claiming any land included in any grant or certificate of title of other land, by misdescription of such other land, or of its boundaries, as against the registered proprietor of such other land, not being a transferee of such other land, or deriving from or through a transferee thereof *bona fide* for value :
- vi. The case of a registered proprietor claiming under the instrument of title prior in date of registration under the provisions of this Act, in any case in which two or more grants or two or more certificates of title, or a grant and a certificate of title may be registered under provisions of this Act in respect to the same land :

And in any case other than aforesaid, the production of the registered grant, certificate of title, or lease, 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 instrument as seised of, or as registered proprietor, or lessor of the land therein described, any rule of law or equity to the contrary notwithstanding.

Compensation of party deprived of land.

125. Any person deprived of land, or of any estate or interest in land, in consequence of fraud or through the bringing of such land under the provisions of this Act, or by the registration of any other person as proprietor of such land, estate, or interest, or in consequence of any error, omission, or misdescription in any certificate of title, or in any entry or memorial in the register book, may, in any case in which such land has been included in two or more grants from the Crown, bring and prosecute an action at law for the recovery of damages against such person as the Governor may appoint as nominal defendant, and in any other case, against the person upon whose application such land was brought under the provisions of this Act,

or

12. Act 12 154-5

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12 Act 12 154-5

or such erroneous registration was made, or who acquired title to the estate or interest in question through such fraud, error, omission, or misdescription: Provided always, that except in the case of fraud, or of error occasioned by any omission, misrepresentation, or misdescription in the application of such person to bring such land under the provisions of this Act, or to be registered as proprietor of such land, estate, or interest, or in any instrument executed by him, such person shall, upon a transfer of such land *bona fide* for value, cease to be liable for the payment of any damages which but for such transfer might have been recovered from him under the provisions hereinbefore contained; and such damages, with costs of action, may in such last-mentioned case be recovered out of the assurance fund by action against the Registrar-General as nominal defendant.

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126. Nothing in this Act contained shall be so interpreted as to leave, subject to action for recovery of damages as aforesaid, or to action of ejectment, or to deprivation of the estate or interest, in respect to which he is registered as proprietor, any purchaser or mortgagee *bona fide* for valuable consideration of land under the provisions of this Act, on the plea that 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, and this, whether such fraud or error shall consist in wrong description of the boundaries, or of the parcels of any land, or otherwise howsoever.

Purchasers and mortgagees protected.

127. 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 cannot be found within 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, if final judgment be recovered, and also in any case in which damages may be awarded in any action 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 Court, before which such action was tried, 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 charge the same to the account of the assurance fund.

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

128. Any person sustaining loss or damage through 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, and any person deprived of any land, or of any estate or interest in land through the bringing of the same under the provisions of this Act, or by the regulation of any other person as proprietor of such land, or by any error, omission, or misdescription in any certificate of title or in any entry or memorial in the

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

the register book, and who by the provisions of this Act is barred from bringing action of ejectment or other action for the recovery of such land, estate or interest, may in any case in which the remedy by action for recovery of damages as hereinbefore provided is barred, bring an action against the Registrar-General, as nominal defendant for recovery of damages, and in case the plaintiff, recover final judgment against such nominal defendant, then the Court or Judge before whom such action may be tried shall certify to the Treasurer of the said Province the fact of such judgment, and the amount of damages and costs recovered, and the said Treasurer thereupon, and 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, and shall charge the same to the account of the assurance fund: 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.

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

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

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

129. If in any such action judgment being 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.

Limitation of actions.

12 A C K 158

S. 125

160

Persons having notice, or cognizant, neglecting to caveat, barred.

130. No action for recovery of damages sustained through deprivation of land, or of any estate or interest in land, as hereinbefore described, shall lie or be sustained against the Registrar-General, or against the assurance fund, or against the person upon whose application such land was brought under the provisions of this Act, or against the person who applied to be registered as proprietor in respect to such land, or against the person executing any instrument as aforesaid, unless such action shall be commenced within the period of six years from the date of such deprivation: Provided, nevertheless, that any person being under the disability of coverture, infancy, unsoundness of mind, or absence from the said Province, may bring such action within six years from the date on which such disability shall have ceased; and the plaintiff in any such action, at whatever time it may be brought, or the plaintiff in action for the recovery of land, shall be nonsuited in any case in which the deprivation complained of may have been occasioned through the bringing of land under the provisions of this Act, if it shall be made to appear to the satisfaction of the Court before which such action shall be tried that such plaintiff, or the person through or under whom he claims title, had notice by personal service or otherwise, or was aware that application had been made to bring such land under the provisions of this Act, and had, wilfully or collusively, omitted to lodge caveat forbidding the same, or had allowed such caveat to lapse.

12 Q B D 124

Moneys paid out of the assurance fund may be recovered.

131. Whenever any amount has been paid out of the assurance fund on account of any person who may be dead, such amount may be

be recovered from the estate of such person by action against his personal representatives, in the name of the Registrar-General; and whenever such amount has been paid on account of a person who shall have been adjudged insolvent, the amount so paid shall be considered to be a debt due from the estate of such insolvent; and a certificate, signed by the Treasurer of the said Province, certifying the fact of such payment out of the assurance fund, and delivered to the Official Assignee, shall be sufficient proof of such debt; and whenever any amount has been paid out of the assurance fund on account of any person who may have absconded, or who cannot be found within the jurisdiction of the Supreme Court, and may have left any real or personal estate within the said Province, it shall be lawful for the said Court, or a Judge thereof, upon the application of the Registrar-General, and upon the production of a certificate, signed by the Treasurer of the said Province, certifying that the amount has been paid in satisfaction of a judgment against the Registrar-General, as nominal defendant, to allow the Registrar-General to sign judgment against such person forthwith for the amount so paid out of the assurance fund, together with the costs of the application; and such judgment shall be final, and signed in like manner as a final judgment by confession or default in an adverse suit, and execution may issue immediately; and if such person shall not have left real or personal estate within the said Province, sufficient to satisfy the amount for which execution may have been issued as aforesaid, it shall be lawful for the Registrar-General to recover such amount, or the unrecovered balance thereof, by action against such person at any time thereafter he may be found within the jurisdiction of the Supreme Court.

132. The assurance fund shall not, under any circumstances, be liable for compensation for any loss, damage, or deprivation, occasioned by the breach by a registered proprietor of any trust, whether express, implied, or constructive; nor in any case in which the same land may have been included in two or more grants from the Crown; nor shall the assurance fund be liable in any case in which such loss or deprivation has been occasioned by any land being included in the same certificate of title with other land through misdescription of the boundaries or parcels of any land, unless in the case last aforesaid, it shall be proved that the person liable for compensation and damages is dead, or has absconded, or has been adjudged insolvent, or the Sheriff shall certify that such person is unable to pay the full amount and costs awarded in any action for recovery of such compensation; and the said fund shall be liable for such amounts only as the Sheriff shall fail to recover from the person liable as aforesaid.

Assurance fund not liable in certain cases.

133. The Registrar-General shall not individually, nor shall any person acting under his authority, be liable to any action, suit, or proceeding for, or in respect of any act or matter *bonâ fide* done, or omitted to be done in the exercise or supposed exercise of the powers of this Act.

Registrar-General not to be liable for acts done *bonâ fide*.

134. Any certificate of title issued upon the first bringing of land under

Certificate of title to be void, if any person

is in possession, and rightfully entitled adversely to the applicant proprietor.

under the provisions of this Act, and every certificate of title issued in respect of the same land, or any part thereof, to any person claiming or deriving title under or through the applicant proprietor, shall be void, as against the title of any person adversely in actual occupation of, and rightfully entitled to, such land, or any part thereof, at the time when such land was so brought under the provisions of this Act, and continuing in such occupation at the time of any subsequent certificate of title being issued in respect of the said land; but every such certificate shall be valid and effectual as against the title of any other person whomsoever.

12 Adfr 155, 159
Acte 5-15

Person to whom certificate or other instrument of title has been issued in error, or who wrongfully retains such instrument may be summoned.

135. In case it shall appear to the satisfaction of the Registrar-General, that any certificate of title or other instrument has been issued in error, or contains any misdescription of land or of boundaries, or that any entry or endorsement has been made in error, on any grant, certificate of title, or other instrument, or that any such grant, certificate, instrument, entry, or endorsement, has been fraudulently or wrongfully obtained, or that any such grant, certificate, or instrument is fraudulently, or wrongfully retained, he may summon the person to whom such grant has been so issued, or by whom it has been so obtained or is retained, to deliver up such certificate or instrument for the purpose of being cancelled or corrected, as the case may require; and in case such person shall refuse or neglect to comply with such summons, or cannot be found, the Registrar-General may apply to a Judge of the Supreme Court to issue a summons for such person to appear before such Court or Judge, and show cause why such grant, certificate, or other instrument, should not be delivered up to be cancelled or corrected, as aforesaid, and if such person, when served with such summons, shall neglect or refuse to attend before such Judge or Court, at the time therein appointed, it shall be lawful for such Judge to issue a warrant authorizing and directing the person so summoned to be apprehended and brought before a Judge of the Supreme Court for examination.

Person refusing to deliver up certificate for cancellation or correction, may be arrested and brought before a Judge of the Supreme Court

Party appearing may be examined on oath.

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.

136. Upon the appearance before the Court or Judge, of any person summoned or brought up by virtue of a warrant as aforesaid, it shall be lawful for the 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 pursuant to such order, to commit such person to the common gaol of the Province, and in such case, or in case such person shall have absconded, so that summons cannot be served upon him as hereinbefore directed, the Registrar-General shall, if the circumstances of the case require it, 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 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 he may deem necessary.

137. Upon

137. Upon the recovery of any land, estate, or interest, by any proceeding at law or in equity, from the person registered as proprietor thereof, it shall be lawful for the Court or Judge in any case in which such proceeding is not hereinbefore expressly barred, to direct the Registrar-General to cancel any certificate of title or other instrument, or any entry or memorial, in the register book relating to such land, and to substitute such certificate of title or entry as the circumstances of the case may require, and the Registrar-General shall give effect to such order.

Powers of Court to direct cancellation of certificate or entry in certain cases.

138. If any person fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or other instrument or of any entry in the register book, or of any erasure or alteration in any entry in the registry book, or in any instrument or form issued by the Registrar-General, or fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar-General, or knowingly misleads or deceives any person hereinbefore authorized to demand explanation or information in respect to any land or the title to any land which is the subject of any application to bring the same under the provisions of this Act, or in respect to which any dealing or transmission is proposed to be registered or recorded, such person shall be guilty of a misdemeanor, and shall incur a penalty not exceeding Five Hundred Pounds, or may, at the discretion of the Court before whom the case may be tried, be imprisoned with or without hard labor, for any period not exceeding three years; and any certificate of title, entry, erasure or alteration, so procured or made by fraud, shall be void as between all parties or privies to such fraud.

Certain fraudulent acts to be deemed misdemeanors.

139. If any person is guilty of the following offences, or any of them (that is to say):—

Forgery to be a felony.

- (I.) Forges, or procures to be forged, or assists in forging the Seal of the Registrar-General, or the name, signature, or handwriting of any officer of the Registry Office in cases where such officer is by this Act expressly or impliedly authorized to affix his signature :
- (II.) Stamps, or procures to be stamped, or assists in stamping, any document, with any forged seal of the Registrar-General:
- (III.) Forges, or procures to be forged, or assists in forging, the name, signature, or handwriting of any person whomsoever, to any instrument which is by this Act, or in pursuance of any power contained in this Act, expressly or impliedly authorized to be signed by such person :
- (IV.) Uses, with an intention to defraud any person whomsoever, any document upon which any impression or part of the impression of any seal of the Registrar-General has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged : such

such person shall be guilty of felony; and if any person is guilty of making a false oath or declaration concerning any matter or procedure made or done in pursuance of this Act, such person shall be deemed guilty of perjury.

Punishment of felony.

140. Any person convicted of felony or perjury under this Act, shall be liable to imprisonment for any term not exceeding four years, and to be kept to hard labor or solitary confinement for any part of the period aforesaid.

Conviction not to affect civil remedy.

141. No proceeding or conviction for any act hereby declared to be a misdemeanor or a felony shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law or in equity against the person who has committed such act, or against his estate.

Rules of Supreme Court to apply, and same right of appeal as in ordinary actions.

142. In the conduct of actions under this Act, the same rules of procedure and practice shall apply, and there shall be the same rights of appeal as are in force or exist for the time being in respect of ordinary actions in the Court in which such action may be tried: Provided that the Judges in the Supreme Court shall have power from time to time to make rules and orders for regulating proceedings in the Supreme Court under this Act, and from time to time to rescind, alter, or add to such rules and orders.

Supreme Court may make rules, &c.

Jurisdiction.

143. 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.

Local Courts to have jurisdiction in actions of ejectment, in certain cases.

144. Local Courts of full jurisdiction shall have jurisdiction to try all actions of ejectment in respect of all land under the provisions of this Act, and all other actions in respect of such land in the same manner as though the words, Real Property Act of 1861, were substituted for the words, Real Property Act, 1860, in the Local Court Act, 1861.

Commencement of Act.

145. This Act shall commence and take effect from and after the thirtieth day of November, one thousand eight hundred and sixty-one.

In the name and on behalf of the Queen I hereby assent to this Act.

RICHARD GRAVES MACDONNELL,

Governor.

Government House, Adelaide,
3rd December, 1861.

SCHEDULES

SCHEDULES REFERRED TO.

A

Application to bring land under the provisions of the Real Property Act of 1861.

I, A.B., of _____, do declare (*that I am*) or (*on behalf of*
of _____ *that he is*) seized of an estate of freehold (*here state whether of*
inheritance or of a life estate, and whether held in trust) 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 and in equity, in possession or
in expectancy, other than is set forth and stated as follows, that is to say—(*here state*
particulars of mortgages, encumbrances, dower, or other interest to which the land
may be subject). 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 names and description of occupier, or that the land is*
unoccupied), and that (*here state the name and addresses of owners and occupiers of*
lands contiguous thereto) and that there are no deeds or instruments of title affecting
such land in my possession or under my control, other than those enumerated in the
Schedule hereto, or at foot hereof, 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, Justice of the Peace, or
Notary Public.

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, 1860.

Take notice that I _____, of _____, 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 1861, 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.

And appoint _____, as the place at which notices relating hereto may be served.

C

C

SOUTH [Royal Arms] AUSTRALIA.

Certificate of Title.

S. 32
 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 or for life), subject nevertheless to such encumbrances, liens, and interests as are notified by memorial underwritten or endorsed hereon, in that piece of land situated in the (County, Hundred, or Township) of (here insert sufficient description to identify the land, referring to map or diagram), which said piece of land is (or is part of) the (County, 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.

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

Registrar-General (L.S.)

Signed 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) subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or 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, are deposited in the Registry Office), 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 as 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

Memorandum of Lease.

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 memorandum underwritten or 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 be dealt with contains all that is included in an existing grant or certificate of title, or lease, 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 Office), 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).

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 the presence of X.Y.

(Signed)

A.B., Lessor.

E.F., Lessee.

F

Memorandum of Mortgage.

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 memoranda underwritten or 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, or lease, 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).

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*) 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

Memorandum 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 memoranda underwritten or 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).

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 encumbrance by the Real Property Act of 1861*): And subject as aforesaid the said C.D. shall be entitled to all powers and remedies given to an encumbrance by the Real Property Act of 1861.

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

H

H

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

Signed by the above-mentioned, in the presence of E.F., the _____ day of _____

Accepted, X.Y., Transferee.

I

Power of Attorney.

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 memorandum underwritten or 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, or lease 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, 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.

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

K

Registration Abstract.

SOUTH [Royal Arms.] AUSTRALIA.
[Copy of grant or certificate of title.]

Pursuant to Act of the Legislature of the said Province, intituled "The Real Property Act of 1861," sections 71 and 72, this registration abstract is issued for the purpose of enabling the registered proprietor to deal with the above described land at places without the limits of the said Province, and shall continue in force from the date hereof until the _____ day of _____, or until the same be surrendered to me for cancellation.

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

Registrar-General.

Signed and sealed, the _____ day of _____, in the presence of X.Y.

L

Revocation Order.

I, A.B., of _____, being seised of an estate (*here state the nature of the estate*), all that piece of land (*here describe land, referring to the existing grant, certificate, or other instrument of title*), hereby revoke the power of attorney given by me to _____ dated the _____ day of _____

In witness whereof I have hereunto subscribed my name this _____ day of _____, in the presence of _____

A.B., of _____

M

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 transfer, 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, or until after the lapse of twenty-one days from the date of the service of notice of such intended registration at the following address)

Dated this _____ day of _____ 18
 Witness _____

N

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

Appeared before me at _____, the _____ day of _____, C.D., of _____, a person known to me and of good repute, 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, J.P., or Notary Public.

O

Certificate of Registrar-General, Justice of the Peace, &c., 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, J.P., or Notary Public.

P

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 grant, dated on or subsequent to the 1st March, 1842, and none of the land included therein has been dealt with	0	2	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

Contributions to assurance fund upon first bringing land under this Act, and upon the registration of an estate of freehold in possession, derived by settlement, will, or intestacy—

In the pound sterling 0 0 0½

Other fees—

For every application to bring land under the Act	0	5	0
For every certificate of title	1	0	0
Registering memorandum of transfer, mortgage, encumbrance, or lease	0	10	0
Registering transfer or discharge of mortgage or of encumbrance, or the transfer or surrender of a lease	0	5	0
Registering proprietor of any estate or interest derived by settlement or transmission	0	10	0
For every power of attorney	0	10	0
For every registration abstract	1	0	0
For cancelling registration abstract	0	5	0
For every revocation order	0	10	0
Noting caveat	0	10	0
Cancelling or withdrawal of caveat, and service of notice to caveator or caveatee ..	0	5	0
Issuing order for foreclosure	1	0	0

For

	£	s.	d.
For every search	0	2	0
For every general search	0	5	0
For every map or plan deposited	0	5	0
For every instrument declaratory of trusts, and for every will or other instrument deposited	0	10	0
For registering recovery, by proceeding in law or equity, or re-entry by lessee ..	0	10	0
For registering vesting of lease in mortgagee, consequent on refusal of assignees to accept the same	0	10	0
For entering notice of marriage or death	0	10	0
For entering notice of writ or order of Supreme Court	0	10	0
Taking acknowledgment of married woman	0	5	0
Taking declaration in case of lost grant, or other instrument, or where production of duplicate is dispensed with	0	10	0
Taking affidavit or statutory declaration	0	5	0
For the exhibition or return of any deposited instrument, or for exhibiting or returning deeds surrendered by applicant proprietor	0	5	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
When any instrument purports to deal with land included in more than one grant or certificate, for each registration memorial after the first	0	2	0

Q

Scale of charges for Land Brokers.

	£	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—*	0	11	0
Where the value does not exceed £400	0	10	0
Where the value does not exceed £800	$\frac{1}{8}$ th	d	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, lease, mortgage, or encumbrance—†			
Where the value does not exceed £400	0	10	0
Where it exceeds £400	$\frac{1}{8}$ th	d	ct.
Where it exceeds £800	1	0	0
Whenever any implied covenant is modified, or any covenant not being of those for which abbreviated forms of words are hereinbefore prescribed, is introduced in any instrument, extra	0	5	0
Whenever any original section, or allotment, or parcel of land included in an existing grant or other instrument, is broken in any dealing, extra	0	10	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.