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GEORGI VI REGIS.

A.D. 1945.

No. 39 of 1945.

An Act to amend the Real Property Act, 1886-1939.

[Assented to 17th January, 1946.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the " Real Property Act Amendment Act, 1945 ". Short titles.
- (2) The Real Property Act, 1886-1939, as amended by this Act, may be cited as the " Real Property Act, 1886-1945 ".
- (3) The Real Property Act, 1886-1939, is hereinafter called " the principal Act ".
2. This is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.
3. Paragraph v. of section 69 of the principal Act is amended by adding at the end thereof the words " but without prejudice to the effect of anything done under Part XIXA. of this Act ". Consequential amendment of s. 69 of principal Act.
4. The following heading and sections are enacted and inserted in the principal Act after section 80 thereof :— Enactment of Part VIIA. of principal Act—

PART VIIA.

TITLE BY POSSESSION TO LAND UNDER THIS ACT.

80a. A person who would have obtained a title by possession to any land which is subject to this Act, if that land had not been subject to this Act, may apply to the Registrar-General for the issue to him of a certificate of title to that land. Application for certificate based on possession.

Signature
attestation
and operation
of application.

80b. (1) Every such application shall—

- (a) be in writing in a form fixed by the Registrar-General ;
- (b) be signed by the applicant ;
- (c) contain a declaration by the person signing it, declaring that all the statements in it are true.

(2) The applicant shall, if required by the Registrar-General, furnish him with a plan of survey of the land.

Application,
how dealt
with.

80c. (1) The Registrar-General shall refer each application to the solicitor to his department, who shall examine it and report upon it to the Registrar-General.

(2) The Registrar-General may thereupon in his discretion reject the application as regards the whole or any part of the land to which it relates, or proceed as hereinafter provided.

Requisitions.

80d. The Registrar-General may—

- (a) require an applicant to furnish him with any information or documents relating to his application ;
- (b) notwithstanding any direction previously given by him as to the application, reject it altogether or in part if the applicant fails to comply within a reasonable time with any requisition made under this section.

Notice of
application.

80e. (1) If an application is not wholly rejected by the Registrar-General he shall cause a notice of the application in a form fixed by him—

- (a) to be published once at least in a newspaper circulating in the neighbourhood of the land, and, if he thinks necessary, in any other newspaper ; and
- (b) to be given to any person who in the Registrar-General's opinion has or may have any estate or interest in the land ; and
- (c) to be published in any other way or given to any other persons.

(2) The notice shall fix a time, not less than twenty-one days nor more than twelve months from the first publication of the notice in a newspaper under subsection (1) of this section, at or after the expiration of which the Registrar-General may unless a caveat is lodged, grant the application altogether or in part.

80f. (1) A person claiming an estate or interest in the land to which an application under this Part relates, may at any time before the application is granted, lodge a caveat with the Registrar-General forbidding the granting of the application. Caveats.

(2) A caveat under this section—

(a) shall state the nature of the estate or interest claimed by the person lodging it and shall give an address at which notices and proceedings relating to the caveat may be served ;

(b) need not be in any particular form but shall be accepted by the Registrar-General if it gives reasonable notice of the claim of the caveator.

(3) If the Registrar-General is satisfied that the caveator is the registered proprietor of the land to which the application relates, or has an estate or interest in that land derived under or through the registered proprietor, he shall refuse the application :

Provided that the Registrar-General shall not refuse an application solely on the ground that a person is entitled to an easement in or over the said land, but if a person is so entitled, the Registrar-General may include in any certificate of title issued to the applicant a statement that the land is subject to the easement.

(4) If the Registrar-General is not satisfied that the caveator is the registered proprietor of the land or has an estate or interest therein derived under or through the registered proprietor, he shall give notice to the caveator that the caveator is required to take proceedings in the Court to establish his title to the estate or interest claimed by him, within a time specified in the notice being not less than six months after the giving thereof.

(5) If a caveator who has received such a notice from the Registrar-General does not within the time mentioned in the notice bring an action in the Court to obtain a declaration that he is entitled to the estate or interest claimed by him and give written notice thereof to the Registrar-General, or obtain from the Court an order or injunction restraining the Registrar-General from issuing a certificate to the applicant under this Part, the caveat shall lapse.

(6) A lapsed caveat shall not except by leave of the Court be renewed by or on behalf of the same person in respect of the same estate or interest.

(7) In any proceedings to establish the title of the caveator the issue for the Court to decide shall be whether

the caveator is the registered proprietor of the land or is entitled to an estate or interest derived under or through the registered proprietor.

Power to
issue
certificates.

80g. Upon or after the expiration of the time fixed by the notice under section 80e of this Act, if the Registrar-General is satisfied that the possession on which the applicant relies would, if the land had not been subject to this Act, have conferred on the applicant a title by possession, he may issue to the applicant a certificate for an estate in fee simple or for any other estate acquired by the applicant, free from all encumbrances appearing by the register book to affect the existing title: Provided that where a caveat has been lodged against the granting of an application the Registrar-General shall not grant that application unless—

- (a) the caveat has lapsed ; or
- (b) proceedings taken by the caveator to establish his title have been finally disposed of, and in those proceedings the caveator has failed to establish his title, or to obtain from the Court an injunction restraining the Registrar-General from issuing a certificate to the applicant.

Cancellation
of instruments

80h. (1) Where a certificate for any land is issued under this Part the Registrar-General—

- (a) shall cancel the existing certificate for that land and any instrument entry or memorial in the register book altogether or to such extent as is necessary to give effect to the certificate issued ;
- (b) shall endorse on every certificate and instrument so cancelled a memorandum stating the circumstances and authority under which the cancellation is made.

(2) Upon the cancellation of a certificate, instrument, entry or memorial pursuant to this section, the estate and interest evidenced thereby shall cease and determine.

Fees.

80i. The fees payable upon an application under this Part and in respect of the issue of a certificate under this Part shall be the same as if the application were an application to bring land under the provisions of this Act.

Enactment of
s. 148a. of
principal Act—

5. The following section is enacted and inserted in the principal Act after section 148 thereof :—

Entry in
Register Book
where rights of
mortgagee
barred by
Statute.

148a. (1) If the Registrar-General is satisfied that the mortgagor of any land is in possession thereof and that the rights of the mortgagee to bring an action for the money secured by the mortgage are barred by the Limita-

tion of Actions Act, 1936, the Registrar-General, with the concurrence of the Solicitor of his Department, may make an entry in the Register Book and on the mortgage noting that the rights of the mortgagee are barred by Statute, and shall make a similar entry on the duplicate certificate or other instrument of title and on the duplicate mortgage if produced to him for any purpose.

(2) Upon the making of an entry in the Register Book pursuant to this section the mortgage shall be deemed to be discharged.

(3) If the duplicate certificate or instrument of title is not produced to the Registrar-General at or before the time when he makes an entry pursuant to this section, that certificate or instrument shall be deemed to be lost within the meaning of section 79 of this Act.

6. Subsection (4) of section 220 of the principal Act is amended by deleting all words therein after the word "omitted" in the twelfth line. Consequential amendment of s. 220 of principal Act.

7. The following heading and sections are enacted and inserted in the principal Act after section 223 thereof:— Enactment of Part XIXa. of principal Act.

PART XIXA.

Rectification of Certificates.

223a. (1) A registered proprietor may apply to have his certificate amended if— Applications for amendment.

- (a) the boundaries, area, or position of the land described in the certificate differ from the boundaries, area, or position of the land actually and *bona fide* occupied by him as being the land included in the certificate; or
- (b) the description of land in the certificate is erroneous or imperfect on the face of it.

(2) A registered proprietor may apply to have the certificate of any other registered proprietor amended if any of the land described in the applicant's certificate, and actually and *bona fide* occupied by him as being the land included in his certificate, is, by reason of any error in survey or any misdescription, included in the certificate of the other registered proprietor.

(3) Every such application shall be made to the Registrar-General in writing in such of the forms in the twenty-third schedule as is applicable or a form to the like effect.

223b. (1) The Registrar-General shall cause notice of any application made under the last preceding section to Notices to be given.

be given to such persons as he thinks proper and shall by the notice appoint a time not less than fourteen days from the giving of that notice or from the publication of any advertisement mentioned in paragraph (b) of subsection (2) of this section, whichever is later, after which the application may be granted unless a caveat is lodged forbidding the granting thereof.

(2) If the granting of an application to amend any certificate would affect land comprised in any other certificate, the Registrar-General shall—

(a) in addition to any other notices mentioned in this section cause notice such as mentioned in subsection (1) of this section to be given to every person appearing by the register book to have any interest in the land comprised in that other certificate, and such notice shall be accompanied by a plan showing accurately the extent to which the said land will be affected if the application is granted ; and

(b) publish a notice such as mentioned in subsection (1) of this section in the *Government Gazette*.

Power of Registrar-General to reject.

223c. Notwithstanding any direction given or action taken by the Registrar-General, in relation to any application made under this Part the Registrar-General may reject the application if the applicant fails to comply to his satisfaction, within such time as to him seems reasonable, with any requisition which he has made in regard to such application.

Caveats.

223d. (1) Any person claiming any estate or interest in any land in respect of which any application under this Part is made may, at any time before the application is granted, lodge a caveat with the Registrar-General forbidding the granting of the application.

(2) Every such caveat shall in all other respects be in the same form, shall be subject to the same provisions, and shall have the same effect with respect to the application against which it is lodged, as a caveat against bringing land under the provisions of this Act.

Grant of application.

223e. If the applicant satisfies the Registrar-General that proper grounds, as set out in section 223a, exist for altering the applicant's certificate, or the certificate of any other person, or both such certificates, he shall grant the application : Provided that—

(a) where an alteration of the applicant's certificate would affect land included in the certificate of

any other person, the alteration shall not be made unless that land was included in that other person's certificate by reason of error in survey or misdescription ; and

- (b) where the title to the land affected by the alteration has been determined in a contested proceeding in a court of competent jurisdiction, the Registrar-General shall not make any alteration inconsistent with the determination of the court.

223f. On bringing any land under this Act, the Registrar-General, without any specific application for the purpose, may amend the certificate relating to any other land, if by reason of error in survey or misdescription any land is included in that certificate which the Registrar-General is satisfied should be included in the certificate issued for the land so brought under this Act.

Alterations of certificate in bringing land under this Act.

223g. (1) Every amendment made pursuant to this Part shall be made by making the requisite alterations in the original of any certificate.

Amendments of title.

(2) The Registrar-General shall also make the requisite alterations in the duplicate certificate when it is produced to him for that purpose, or when it is lodged in or brought to the Lands Titles Office for the purpose of any dealing with the land included therein, and he may detain the duplicate until the amendment thereof has been completed ; and the Registrar-General may refuse to register any dealing with the land or any estate or interest therein until the duplicate has been produced for amendment.

223h. Upon amending the original of any certificate pursuant to this Part, the Registrar-General shall give notice in writing to the registered proprietor of, and to all persons appearing by the register book to have an interest in, the land included in that certificate informing him of the amendment. On the duplicate of the certificate being produced, the Registrar-General may, in his discretion, issue a new certificate with an amended description.

Notice of amendment of title.

223j. Where in the opinion of the Registrar-General it is expedient and desirable so to do, he may, with the consent of every person appearing by the Register Book to have any interest, make any correction or amendment to any certificate of title for the purpose of reconciling the boundaries shown in the certificate with the boundaries of the land occupied.

Rectification by consent.

Saving of
other powers.

223k. The powers conferred by this Part are in addition to, and shall not be deemed to be substituted for, any powers of correction or amendment conferred by any other provision of this Act.

Operation of
corrections.

223l. Any correction or amendment made under this Part shall be deemed to have been made prior to the registration of any instrument registered on any certificate so corrected or amended and extant at the time of such correction or amendment.

Amendment of
s. 251 of
principal Act—
Consequential
amendment.

8. Section 251 of the principal Act is amended by inserting at the commencement thereof the words " Except as provided in Part VIIA. of this Act ".

Enactment of
23rd schedule.

9. The following schedule is enacted and inserted at the end of the principal Act :—

THE TWENTY-THIRD SCHEDULE.

Form I.

Application to Amend Certificate.

Section 223a.

To the Registrar-General of Deeds.

I, _____, hereby apply to have the Certificate of Title Register Book Volume Folio _____ amended in the following particulars :— (State the nature of proposed amendment, and, in a case in which the description in the certificate is erroneous or imperfect on the face of it, add the words—on the ground that the certificate is erroneous or imperfect on the face of it.) : And I declare :—

1. That the land which would be described by the certificate when amended in accordance with this application is now in my occupation, and has been actually and *bona fide* occupied by me or persons holding under me since _____ as being land included in that certificate.

2. The nature of such occupation was as follows :— (State generally how and by whom the land has been occupied, as, for instance—by myself as a farm and dwelling ; by my tenants, A.B. and C.D., as shops ; or partly by me as a dwelling, and partly by my tenant, A.B., as a shop).

3. That the names and addresses so far as known to me of the occupants of all lands contiguous to the land so occupied by me are as follows :—

4. That the names and addresses so far as known to me of the owners of all lands contiguous to the land so occupied by me are as follows :—

5. That no part of the said land has been the subject of any proceedings under the Real Property Act, 1886-1945, or any corresponding previous enactment or in any court of competent jurisdiction—(If there have been any such proceedings add “except that” and go on to give particulars of such proceedings and their result.).

6. That to the best of my knowledge and belief the reasons why the description of the land in the said certificate does not accord with the description of the land so occupied by me are the following :—
(Set out reasons).

7. That the name of the post office nearest to the land is (here state name).

8. That the land is situate in the (here state District Council or Municipality).

Declared and subscribed at }
by the said }
this day }
of 19 before me }

Form 2.

Application to Amend Certificate.

To the Registrar-General of Deeds.

Section 223a.

I, _____, the registered proprietor of the land which is described as follows in the Certificate of Title Register Book Volume _____ Folio _____ (set out full particulars as in certificate) hereby apply to have the register book amended in the following particulars :—(State the nature of the proposed amendment, and mention the volume and folio of every certificate and the name of every registered proprietor whose certificate of title would be affected by the proposed amendment.): And I declare :—

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1. That to the best of my knowledge and belief the discrepancy between the description in my certificate of title and that in the other certificates above mentioned is due to error in survey or misdescription, and has arisen (give the supposed cause of discrepancy or state that the applicant is unable to assign any specific cause for the discrepancy).

2. That the title to the land affected by the proposed amendment has never been in contest between me or as I believe any one from whom I claim and any other person in any proceeding under the Real Property Act, 1886-1945, or any corresponding previous enactment or in any court of competent jurisdiction. (If there have been any such proceedings add "except that" and go on to give particulars of such proceedings and their result.)

3. That the land as described in my certificate has been actually and *bona fide* occupied by me and persons holding under me since as being land included in that certificate.

4. That the nature of such occupation was as follows:—(State generally how and by whom the land has been occupied, as, for instance, by myself as a farm and dwelling; by my tenants A.B. and C.D., as shops; or partly by me as a dwelling, and partly by my tenant, A.B., as a shop.)

5. That the name of the post office nearest to the land is (here state name).

6. That the land is situate in the (here state District Council or Municipality).

Declared and subscribed at }
by the said }
this day }
of 19 before me }

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. W. M. NORRIE., Governor.