

No. IX.

An Act for the Declaration of Titles to Land and ^{REAL PROPERTY.} to facilitate its Transfer. [7th November, 1862.]

WHEREAS it is expedient to provide for the declaration ^{Preamble.} of titles to land and to facilitate the transfer of land Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Preliminary.

1. All laws statutes Acts ordinances rules regulations and practice whatsoever relating to freehold and other interests in land so far as inconsistent with the provisions of this Act are hereby repealed so far as regards their application to land under the provisions of this Act or the bringing of land under the operation of this Act.

2. This Act may be cited for all purposes as the "Real Property ^{Short title.} Act."

3. In the construction and for the purposes of this Act and in ^{Interpretation.} all instruments purporting to be made or executed thereunder (if not inconsistent with the context and subject matter) the following terms in inverted commas shall bear the respective meanings set against them:—

"Land"—Land messuages tenements and hereditaments corporeal and incorporeal of every kind and description or any estate or interest therein together with all paths passages ways watercourses liberties privileges easements plantations

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plantations gardens mines minerals and quarries and all trees and timber thereon or thereunder lying or being unless any such are specially excepted.

- “Grant”—Any Crown grant of land.
- “Proprietor”—Any person seised or possessed of any freehold or other estate or interest in land at law or in equity in possession in futurity or expectancy.
- “Transfer”—The passing of any estate or interest in land under this Act whether for valuable consideration or otherwise.
- “Transmission”—The acquirement of title to or interest in land consequent on the death will intestacy bankruptcy insolvency or marriage of a proprietor.
- “Mortgage”—Any charge on land created merely for securing a debt.
- “Mortgagor”—The proprietor of land or of any estate or interest in land pledged as security for a debt.
- “Mortgagee”—The proprietor of a mortgage.
- “Encumbrance”—Any charge on land created for the purpose of securing the payment of an annuity or sum of money other than a debt.
- “Encumbrancer”—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”—The proprietor of an encumbrance.
- “Lunatic”—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”—Any person not an infant who not having been found to be a lunatic shall be found upon like inquiry to be incapable from infirmity of mind to manage his own affairs.
- “Consular Officer”—Consul General Consul and Vice Consul and any person for the time discharging the duties of Consul General Consul or Vice Consul.
- “Instrument”—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.
- “Sworn valuator”—Any person appointed by the Governor with the advice of the Executive Council to value land under this Act.

The describing any person as a proprietor transferror transferree mortgagor mortgagee encumbrancer encumbrancee lessor or lessee or as trustee or as seised 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 whenever a form in any 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 any such form not being in matter of substance shall not affect its validity or regularity but it may be used with such alterations as the character of the parties or the circumstances of the case may render necessary.

*Real Property.***PART I.—Appointment Powers and Functions of Employés.**

4. The department of the Registrar General shall be the department authorized to carry into execution the provisions of this Act and the Registrar General and 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.

5. The Governor with the advice of the Executive Council may appoint to the said department such Deputy Registrars General and other officers and clerks as may be necessary for carrying out the provisions of this Act and may likewise appoint two or more persons being barristers or solicitors to be "Examiners of Titles" hereinafter styled "Examiners" to advise and assist in carrying out the said provisions.

6. The Governor with the advice aforesaid may appoint three or more persons of whom the Registrar General shall be one *ex officio* to be Commissioners for investigating and dealing with applications for bringing land under the provisions of this Act and for other purposes hereinafter appointed. The style of such Commissioners shall be "The Land Titles Commissioners" hereinafter styled "Commissioners". The unofficial members shall be remunerated by fees specified in the Schedule hereunto marked P and at all meetings two shall form a quorum.

7. 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 New South Wales" and every instrument bearing the imprint of such seal and purporting to be signed or issued by the Registrar General or by any Deputy Registrar General 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.

8. Whenever by any law for the time being in force in the Colony anything is appointed to be done by the Registrar General the same may be lawfully done by any Deputy Registrar General.

9. It shall not be lawful for any person whilst holding the office of Examiner of Titles or of Land Titles Commissioner under this Act to engage in private practice as a barrister or as an attorney or solicitor or be in partnership with or employed by any attorney or solicitor.

10. The oath following shall be taken before one of the Judges of the Supreme Court by the persons at present holding the offices of Registrar General or Deputy Registrar General respectively and by every Registrar General and Deputy Registrar General hereafter appointed before entering upon the execution of his office under this Act—

I A. B. do solemnly swear that I will faithfully and to the best of my ability execute and perform the office and duties of Registrar General or Deputy Registrar General for the Colony of New South Wales. So help me God.

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

(1.) He may require the proprietor or other person making application to have any land brought under the provisions of this Act or the proprietor or mortgagee or other person interested in any land under the provisions of this Act in respect of which any transfer lease mortgage encumbrance or other dealing or any release from any mortgage or encumbrance is about to be transacted or in respect of which any transmission is about to be registered or registration abstract granted under this Act to produce any grant

Existing officers to perform duties under this Act.

Appointment of Examiners of Titles officers and clerks.

Appointment of Commissioners.

Functions of Deputy Registrar General.

Examiners and Commissioners not to practice.

Oaths of office.

Powers of Registrar.

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grant certificate of title conveyance deed mortgage lease will or other instrument in his possession or within his control affecting such land or the title thereto.

To summon and examine witnesses.

(2.) He may summon any such proprietor mortgagee or other person as aforesaid to appear and give any explanation respecting such land or the instruments affecting the title thereto and if upon requisition in writing made by the Registrar General such proprietor mortgagee or other person refuses or neglects to produce any such instrument or to allow the same to be inspected or refuses or neglects to give any explanation which he is hereinbefore required to give or knowingly misleads or deceives any person hereinbefore authorized to demand any such explanation he shall for each such offence incur a penalty not exceeding one hundred pounds and the Registrar General if the instrument or information so withheld appears to him material shall not be bound to proceed with the bringing of such land under the provisions of this Act or with the registration of such 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 on behalf of any person who shall be under the disability of infancy coverture lunacy unsoundness of mind or absence from the Colony 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.

PART II.—Procedure in bringing Land under the provisions of this Act.

Land alienated in fee from the Crown after this Act to be subject to its provisions.

12. All waste lands and all lands set apart for public purposes remaining unalienated from the Crown on the day on which this Act shall come into operation shall when alienated in fee be subject to the provisions of this Act The grants of such land shall be in duplicate and every such grant in addition to proper words of description shall contain a diagram of the land thereby granted on such scale as the Governor with the advice aforesaid may from time to time direct and shall be delivered to the Registrar General who shall register the same in manner hereinafter directed.

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13. Land alienated from the Crown in fee prior to the day on which this Act shall come into operation (whether such land shall constitute the whole 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 if made by any of the following persons :—

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 seised in fee simple have no express power to sell the land which they may seek to bring under the operation of this Act the person claiming to be beneficially entitled for the first life estate or other greater estate than a life estate in the said land shall join in such application.

By any person claiming a life estate in possession or a leasehold for a life or lives or having a term of not less than twenty-five years then current Provided that except in the case of an application by a lessee as regards the concurrence of his lessor 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 person who shall appear to be entitled to the other undivided share 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 join 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 for any land subject to the lien of any judgment or execution creditor unless such creditor shall consent to such application nor from a married woman unless her husband shall join 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.

14. Every such applicant shall when making his application deposit with the Registrar General all instruments in his possession or under his control constituting or in any way affecting his title and in the case of a leasehold a duplicate or certified copy of the lease and of any other instrument under which the applicant claims title and shall furnish a schedule of such instruments and also if 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

Lands granted prior to this Act may be brought under its operation.

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

Applicant to surrender instruments of title and to furnish abstract if required.

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any person whose name and address shall for that purpose be therein stated.

Application how to be dealt with.

When applicant is original grantee and no transactions registered.

When applicant is not original grantee or any transactions registered.

When evidence of title is imperfect.

15. Upon the receipt of such application the Registrar General shall cause the title of the applicant to be examined and reported upon by the Examiners and shall thereafter refer the case 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 no sale mortgage or other encumbrance or transaction affecting the title of such land has at any time been registered in the Colony 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 the 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 in his behalf may by writing under his hand direct a certificate of title for the same as hereinafter described.

16. If it shall appear to the satisfaction of the Commissioners that the land in respect to which application has been made 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 Commissioners shall direct the Registrar General to cause notice of such application to be advertised once in the *Gazette* and three times in at least one daily newspaper published in Sydney 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 *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.

17. If it shall appear to the satisfaction of the Commissioners that any parties interested in any unsatisfied mortgage or encumbrance affecting the title to such land or beneficially interested therein 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 the Commissioners to reject such application altogether or at their discretion to direct the Registrar General to cause notice of such application to be served in accordance with such requirement upon all persons 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 daily newspaper published in Sydney and in such newspapers published elsewhere as to such Commissioners may seem fit and to be published in the *Government Gazette* and in the *London Gazette* and in the official Gazettes of each of the Colonies of Victoria South Australia Queensland Tasmania and New Zealand or in any one or more of such Gazettes and the 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 two years from the date of the first of such advertisements in the *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 to do so.

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18. The Registrar General shall under such direction as aforesaid or under any order of the Supreme Court cause notice to be published in such manner as by such direction or order may be prescribed that application has 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 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 persons may enable him and 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.

19. 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 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.

20. The Registrar General whenever any letter containing any notice shall be returned to him by the Postmaster General shall refer the case to the 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 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.

21. 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 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 and the person lodging such caveat shall if required deliver a full and complete abstract of his title.

22. 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.

Notice of application
to be published.

Land brought under
Act.

On a return of notices
or failure of personal
service Registrar
General to apply to
Commissioners.

Parties interested
may enter caveat.

If caveat be received
within time limited
proceedings stayed.

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Caveats lapse unless
proceedings taken
within three months.

Applicant proprietor
may withdraw his
application.

Instruments of title
how to be dealt with.

How certificate of
title to issue in case
of previous death of
applicant.

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

23. After the expiration of three 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 shall have given written notice thereof 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.

24. 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.

25. Upon issuing a certificate of title bringing land under the provisions of this Act the Registrar General shall stamp as cancelled every instrument of title deposited by the proprietor when making his application and in the case of a leasehold shall indorse upon the lease so deposited a memorandum stating that such lease has been brought under the provisions of this Act and shall certify such memorandum under his hand and seal and shall return such lease to the applicant annexing thereto the certificate of title as aforesaid and shall file in his office the duplicate or certificate copy of such lease hereinbefore directed to be furnished by such applicant. 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 indorse 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 a Judge of the Supreme Court.

26. 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.

27. 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 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

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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 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 purpose aforesaid.

28. All sums of money so received shall be paid to the Colonial Treasurer who shall from time to time invest such sums together with all interest and profits which may have accrued thereon in New South Wales Government securities to constitute an Assurance Fund for the purposes hereinafter provided.

29. The bringing of land under the provisions of this Act shall not be held to extinguish the reversion expectant on any lease and the person named in any certificate of title as entitled to the land therein described shall be held in every Court of Law and Equity to be seised of the reversion expectant upon any 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.

PART III.—Register Book—Mode of Registering and effect of Registration.

30. 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.

31. Every 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 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.

32. Before bringing under the provisions of this Act an estate in fee simple or in fee tail in any land in respect to which a certificate of title has been issued for any leasehold estate or interest the Registrar General shall close the folium of the Register Book constituted by the certificate of title of such leasehold and shall carry forward upon the certificate of title issued in respect to such estate in fee memorials of such leasehold estate or interest and of all mortgages or other interests affecting the same then registered and still current and the memorials of all future dealings with such leasehold estate or interest hereinafter directed to be registered shall be entered upon the folium of the Register Book constituted by the certificate of title representing the fee.

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 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 therin

Moneys levied to form assurance fund.

Reversion expectant on lease not to be extinguished.

Registrar General to keep Register Book.

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

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

Registration where certificate of leasehold issued.

Certificate to be conclusive evidence of title and that the land has been duly brought under the Act.

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therein described is seised or possessed of or entitled to such land for the estate or interest therein specified and that the property comprised in such certificate of title has been duly brought under the provisions of this Act and no certificate of title shall be impeached or defeasible on the ground of want of notice or of insufficient notice of the application to bring the land therein described under the provisions of this Act or on account of any error omission or informality in such application or in the proceedings pursuant thereto by the Commissioners or by the Registrar General.

Grants and certificates of title registered when embodied in Register Book.

Instruments registered when memorial entered in Register Book.

Definition of registered proprietor.

Instruments to be in duplicate.

Instruments entitled to priority according to date of registration.

And when registered to be deemed embodied in Register Book and to have the effect of a deed.

General covenants to be implied in instruments.

Memorial defined.

Memorial to be recorded on duplicate grant or other instrument.

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.

35. Except as in hereinafter otherwise provided every grant or other instrument presented for registration shall be in duplicate and shall unless a Crown grant 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 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.

36. In every instrument 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 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.

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 the names of the parties thereto and shall refer by number or symbol to such instrument and shall be signed by the Registrar General.

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 indorsed upon any grant certificate or other instrument as hereinafter provided record the like memorial on the duplicate grant certificate or other instrument evidencing title to the estate or interest intended to be dealt with or in any way

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way affected unless the Registrar General shall as hereinafter provided dispense with the production of the same and the Registrar General shall indorse 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.

39. No instrument until registered in manner hereinbefore prescribed 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 indorsement he shall register and indorse that instrument under which the person claims property who shall present to him the grant or certificate of title of such land for that purpose.

Instruments not effectual until entry in Register Book.

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 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 by wrong description of parcels or of boundaries be included in the grant certificate of title lease or other instrument evidencing the title of such registered proprietor not being a purchaser or mortgagee thereof for value or deriving from or through a purchaser or mortgagee thereof for value.

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.

PART IV.—Dealing.

42. When land under the provisions of this Act or any estate or interest in such land is intended to be transferred or any right of way or other easement is intended to be created or transferred the registered proprietor may execute a memorandum of transfer in form D or E of the Schedule hereto which memorandum shall for description of the land intended to be dealt with refer 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 and such memorandum of transfer if it purports

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purports to deal with an estate in respect to which a certificate of title is by this Act authorized to be issued or if it be indorsed on the instrument evidencing the title of the transferror need not be in duplicate.

Easements and incorporeal rights to be registered.

If estate of freehold be transferred certificate of title to be delivered up and cancelled so far as regards the land transferred.

Fresh certificate to be issued to purchaser.

A certificate for any untransferred portion to be issued to proprietor or to registered transferee.

Transfereree of land subject to mortgage or encumbrance to indemnify transferror.

Transfer of mortgage and of encumbrance and of lease.

Transfer of mortgage or lease transfers right to sue.

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.

44. If the memorandum of transfer purports to transfer an estate of freehold in possession in the whole or in part of the land mentioned in any grant or certificate of title the transferror 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.

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 memorandum of transfer and cancelled or partially cancelled grant or certificate of title and whenever required thereto by the proprietor of an unsold portion or balance of land included in any such partially cancelled grant or certificate of title or by a registered 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.

46. In every instrument transferring an estate or interest in land under the provisions of this Act subject to mortgage or incumbrance there shall be implied the following covenant by the transferee that is to say that such transferee will pay the interest or annuity or rent charge 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 transferror 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 transferror.

47. Upon the registration of any transfer the estate or interest of the transferror as set forth in such instrument with all rights powers and privileges thereto belonging or appertaining shall pass to the transferee and such transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in such instrument originally as mortgagee encumbrancee or lessee of such land estate or interest.

48. By virtue of every such transfer 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

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herein contained shall prevent a Court of Equity from giving effect to any trusts affecting the said debt sum of money annuity or damages in case the transferee shall hold the same as a trustee for any other person.

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

50. Whenever any lease or demise which is required to be registered by the provisions of this Act is intended to be surrendered and the surrender thereof is effected otherwise than through the operation of a surrender in law or than under the provisions of any law at the time being in force in the Colony relating to insolvent estates there shall be indorsed upon such lease or on the counterpart thereof the word "Surrendered" with the date of such surrender and such indorsement 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 indorse upon the lease a memorandum recording the fact of such entry having been made in the Register Book and upon such entry having been so made in the Register Book the estate or interest of the lessee in such land shall revest 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 indorsement 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.

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

- (1.) That he will pay the rent thereby reserved at the times therein mentioned 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 at all times during the continuance of the said lease keep and at the determination thereof yield up the demised property in good and tenantable repair accidents and damage from fire storm and tempest and reasonable wear and tear excepted.

52. In every memorandum of lease there shall also be implied the following powers in the lessor that is to say—

- (1.) That he may by himself or his agents twice in every year during the term at a reasonable time of the day upon giving to the lessee two days previous notice enter upon the demised property and view the state of repair thereof and

Saving to Courts of
Equity as to trusts.

Lands under the
provisions of this
Act—how leased.

Lease may be sur-
rendered by indorse-
ment by lessee with
concurrence of lessor.

Covenants to be
implied in every lease
against the lessee.

Powers to be implied
in lessor.

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and may serve upon the lessee or leave at his last or usual place of abode in this Colony or upon the demised property a notice in writing of any defect requiring him within a reasonable time to be therein prescribed to repair the same.

(2.) That in case the rent or any part thereof shall be in arrear for the space of six calendar months or in case default shall be made in the fulfilment of any covenant whether expressed or implied in such lease on the part of the lessee and shall be continued for the space of six calendar months or in case the repairs required by such notice as aforesaid shall not have been completed within the time therein specified it shall be lawful for such lessor to re-enter upon and take possession of such demised premises.

Registrar General to note particulars of re-entry in Register Book.

53. In any such case the Registrar General upon proof to his satisfaction of lawful re-entry and recovery of possession by a lessor 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.

54. 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 G of the Schedule hereto and whenever any such land estate or interest 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 H 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.

55. Mortgage and encumbrance under this Act shall have effect as security but shall not operate as a transfer of the land 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 of mortgage or of encumbrance or to observe the covenants therein expressed or implied as the case may be and that sale will be effected unless such default be remedied or may leave such notice on the mortgaged or encumbered land or at the usual or last known place of abode in the Colony of the mortgagor or encumbrancer or other person claiming to be then entitled to the said land or with his known agent.

Power to sell.

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

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the mortgagor or encumbrancer and either altogether or in lots by public auction or by private contract or both such modes of sale and subject to such conditions as he may think fit and to buy in and resell the same without being liable for any loss occasioned thereby and to make and execute all such instruments as shall be necessary for effecting the sale thereof all which sales contracts matters and things hereby authorized shall be as valid and effectual as if the mortgagor or encumbrancer had made done or executed the same and the receipt or receipts in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of such land estate or interest or 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 Appropriation of proceeds.

57. Upon proof to his satisfaction by statutory declaration Registrar General to give effect to sale by mortgagee or encumbrancee. that such default has been made and continues as aforesaid the Registrar General shall register any memorandum or instrument of transfer executed by a mortgagee or encumbrancee for the purpose of such sale as aforesaid and upon such registration the estate or interest of the mortgagor or encumbrancer as therein described 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 not being a life leasehold the purchaser shall be entitled to receive a certificate of title for the same.

58. The mortgagee or encumbrancee upon default in payment In case of default entry and possession or distress ejection or foreclosure. of the principal sum or any 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 for the rent then due or may 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 in the same manner in which he might have made such entry or distress or brought such action if the principal sum or annuity were secured to him by a conveyance of the legal estate in the land so mortgaged or encumbered and any such registered mortgagee shall be entitled to foreclose the right of the mortgagor to redeem the said mortgaged or encumbered lands in manner hereinafter provided.

59. Whenever a mortgagee or encumbrancee shall give notice of his demanding to enter into receipt of the rents and profits of the mortgaged or encumbered land to the tenant or occupier or other person liable to pay or account for the rents and profits thereof all the powers and remedies of the mortgagor or encumbrancer in regard to receipt and recovery of and giving discharges for such rents and profits shall be suspended and transferred to the said mortgagee or encumbrancee until such notice be withdrawn or the mortgage or encumbrance Notice by mortgagee to tenant to pay rent to him to suspend mortgagor's right as landlord. Mortgagees receipts to be absolute discharges.

Real Property.

brance shall be satisfied and a discharge thereof duly registered and in every such case the receipt in writing of the mortgagee or encumbrancee shall be a sufficient discharge for any rents and profits therein expressed to be received and no person paying the same shall be bound to inquire concerning any default or other circumstance affecting the right of the person giving such notice beyond the fact of his being duly registered as mortgagee or encumbrancee of the land. Provided that nothing herein contained shall interfere with the effect of any rule order or judgment of the Supreme Court in regard to the payment of rent under the special circumstances of any case nor shall prejudice any remedy of the mortgagor or encumbrancer against the mortgagee or encumbrancee for wrongful entry or for an account.

Mortgagee of leasehold entering into possession liable to lessor.

60. 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.

61. Upon the production of any memorandum of mortgage or of encumbrance having thereon an indorsement 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 indorsement 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.

62. 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 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 indorse 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.

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

63. In case the registered mortgagee shall be absent from the Colony 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 Colonial Treasurer to receive such mortgage money with all arrears of interest

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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 indorse 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 indorsed upon each of such instruments respectively.

64. 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 the 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.

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 principal money and interest secured by mortgage shall remain unpaid or the term expressed in the said mortgage or lease shall not have expired will keep insured in the name of such mortgagee or lessor 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 recoverable in like manner as rent or interest in arrear 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-colours in a workmanlike manner The words "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

Covenants to be implied in every memorandum of mortgage.

Abbreviated forms of words for covenants.

Paint outside.

Paint and paper inside.

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Fence.

coats of proper oil-colours 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 colour such parts of the said premises as are now whitened or coloured 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

Cultivate.

said lessee will not convert use or occupy the said hereditaments and premises mentioned in such lease or any part thereof into or as a shop warehouse or other place for carrying on any trade or business whatsoever or permit or suffer the said hereditaments and premises or any part thereof to be used for any such purpose or otherwise than as a private dwelling-house without the consent in writing of the said lessor

Not use as a shop.

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

Offensive trades.

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

Assign or sublet.

said lessee will at all times during the currency of such lease use exercise and carry on in and upon the premises therein mentioned the trade or business of a licensed victualler or publican and retailer of spirits wines ale beer and porter and keep open and use the messuage tenement or inn and buildings standing and being upon the said land as and for an inn or public-house for the reception accommodation and 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 license 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 renewal of license" 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 endeavour to obtain at his

Cut timber.

own

Business of publican in orderly manner.

Apply for renewal of license.

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own expense all such licenses 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 license" shall imply as follows viz.—and also shall and will at the expiration or other sooner determination of the said lease sign and give such notice or notices and allow such notice or notices of a renewal or transfer of any license 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 license or any new license or the transfer of any license then existing and in force.

Facilitate the transfer of license.

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 include 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.

No notice of trusts to be entered in Register Book.

Instrument declaring trusts may be deposited but not 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 transferee 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 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.

How survivorship among trustees may be barred except on Judge's order.

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 *Gazette* and three times in at least one newspaper published in Sydney and shall appoint a period of time within which it shall be lawful for any person interested to shew 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 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.

Notice to be published before order.

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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.

Powers of Attorney.

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 such power of attorney or a duplicate or certified copy thereof shall be filed in the Office of the Registrar General who shall enter in the Register Book a memorandum of the particulars therein contained and the date and hour when it was so filed.

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

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 Colony and shall at the same time enter in the Register Book a memorandum recording the issue of such registration abstract and shall indorse 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 proved to his satisfaction.

Mode of procedure under registration abstract.

71. Whenever any transfer or other dealing is intended to be transacted 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 Colony may be proved 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 instrument 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 indorsed 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 indorsed 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 or Equity as conclusive evidence that such instrument has been duly registered.

Proceeding upon delivery 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

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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 the transfer of an estate of freehold.

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 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 make such entries in the Register Book or do such acts 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 executed may for the purpose of revoking such power execute an instrument in the form L of the Schedule hereto or in any form heretofore in use for the like purpose and the Registrar General shall except in any case where a registration abstract is outstanding enter the particulars thereof in the Register Book and record thereon the date and hour in which such entry was made and shall file the same in his office 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.

PART 5.—Transmissions.

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.

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 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 such neglect or refusal of such assignee to accept such lease and such entry shall operate as a surrender of such lease.

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

Procedure when registration abstract is lost.

Revocation of power of attorney.

Transmission by bankruptcy or insolvency.

Upon entry of appointment assignees to be deemed proprietors.

But subject to equities.

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

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

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Particulars to be entered in Register Book and on the instrument evidencing title.

Transmission of mortgage or lease on death of proprietor.

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

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

Application to be referred to Examiners and the Commissioners.

Notice thereof published after.

accompanied by an application 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 day 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.

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 to 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.

79. The heir-at-law devisee tenant by the courtesy 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 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 to 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 Examiners for examination and report and thereafter shall submit the same for the consideration of the Commissioners who may either reject such application altogether or direct the Registrar General to cause notice thereof to be published once in the *Gazette* and three times in at least one daily newspaper published in Sydney and to give such further publicity to such application as they

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they may direct whether by advertisement or the serving or posting of notices and shall 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 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 Applicant may be registered. 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 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 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 purposes of any dealing with such land estate or interest under the provisions of this Act he shall be deemed to be absolute proprietor thereof. But to hold subject to any trusts.

PART VI.—*General Provisions.*

81. Any settlor of land under the provisions of this Act Caveat may be lodged. transferring such land to be held by the transferee as trustee or any beneficiary or other persons claiming estate or interest in such land under any unregistered instrument or by devolution in law or otherwise may by caveat in the form M of Schedule hereto forbid the registration of any instrument affecting such land estate or interest either absolutely or 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. And may be withdrawn.

82. Upon the receipt of such 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 a 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 Caveator to show cause. 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 When caveat to lapse. notice

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notice given to the caveat that such registered proprietor has applied for the registration of any transfer or other dealing with such land estate or interest.

No registry affecting lands while caveat in force.

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.

Compensation for lodging caveat without reasonable cause.

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.

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

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.

Registered joint proprietors to be joint tenants.

Tenants in common to receive distinct certificates.

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 shall each receive a separate and distinct certificate of such joint estate marked respectively with the name of the owner to whom the same shall be delivered 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 also receive separate and distinct certificates of title or other instrument evidencing title to such undivided shares.

Registration of survivor of joint proprietors.

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 courtesy 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.

Remainderman or reversioner may be registered as such.

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

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the Examiners and thereafter submit the same for consideration by the Commissioners who may either reject such application altogether or direct that the applicant be registered forthwith or be so registered unless 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.

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 indorsed 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.

90. The Registrar General may subject to the approval of the Governor with the advice aforesaid 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.

91. The Registrar General with the consent of the 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 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 and the Registrar General may with the like consent dispense with the production of the grant or certificate of title hereinbefore required to be surrendered prior to the registration of a devisee or heir-at-law upon the transmission of an estate of freehold Provided always that before registering such transfer transmission or other dealing the Registrar General shall in such case require the transferee or other party dealing or deriving 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 *Gazette* and in at least one daily newspaper published in Sydney.

92. No writ of *fieri facias* or other writ of execution issued prior to the date on which this Act shall come into operation or thereafter shall bind charge or affect any land estate or interest under the provisions of this Act but whenever any land or any estate or interest in land under the provisions of this Act shall be seized or sold by the Sheriff or the Registrar or Bailiff of any District Court under any writ or shall be sold under any direction decree or order of the Supreme Court or District Court or whenever any order of such Court shall be

Implied covenants
may be modified or
negatived.

Forms of instru-
ments may be
altered.

Duplicates of certi-
ficates &c. may be
dispensed with after
notice in certain
cases.

Sales by Sheriff or
under order of
Supreme Court.

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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 or the Registrar or Bailiff of any District 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 Registrar or Bailiff be valid as against a purchaser or mortgagee notwithstanding such writ may have been actually in the hands of the Sheriff Registrar or Bailiff 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 and upon production to the Registrar General of sufficient evidence of the satisfaction of any writ so entered as aforesaid he shall enter in the Register Book a memorandum to that effect and such writ shall be deemed to be satisfied accordingly and every such writ shall be deemed to have lapsed unless the same shall be executed and put in force within three months from the day on which it was entered in the Register Book as aforesaid.

Seal of Corporation substituted for signature.

Instruments how attested and before whom proved.

Mode of proving instruments.

93. 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.

94. 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 Colony 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 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 Registrar General or Recorder of Titles of such Possession or before any Judge or Notary Public or before the Governor Government Resident or Chief Secretary thereof and if the said parties be resident at any foreign place then before the British Consular Officer resident at such place.

95. 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 [or did] 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 [or was he when he so executed] of sound mind—and did he freely and voluntarily sign the same?

Then

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Then the Registrar General Justice or other person before whom such witness shall prove such signature as aforesaid shall indorse 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 and alive and in the Colony 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 indorse 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.

96. 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 shall have 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 persons taking such acknowledgment shall indorse on the instrument of transfer or other dealing a certificate of such acknowledgment and examination and the date and hour thereof.

How acknowledgment of married women to be taken.

97. Upon the application of any registered proprietor of land held under separate grants or certificates of title or under one grant or certificate and the delivering up of such grant or grants certificate or certificates of title it shall be lawful for the Registrar General to issue to such proprietor a single certificate of title for the whole of such land or several certificates each containing portion of such land in accordance with such application and as far as the same may be done consistently with any regulations at the time 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 indorse thereupon a memorandum setting forth the occasion of such cancellation and referring to the certificate of title so issued.

Upon surrender of existing grants or certificates proprietor may obtain a single certificate or vice versa.

98. 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 descriptions 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 *bona fides* of the transaction may with the consent of the 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 indorsement theron 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

Provision in case of lost grant.

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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 *Gazette* and in at least one daily newspaper published in Sydney.

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

99. Upon the production of the receipt of the Colonial Treasurer 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 indorse 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 indorsement 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 the Registrar General shall enter thereon a memorial of such dealing and shall indorse such instrument with the certificate of registration as hereinbefore prescribed for the registration of instruments generally.

Map of subdivided land.

100. Any proprietor subdividing any land under the provisions of this Act for the purpose of selling the same in allotments as a township shall deposit with the Registrar General a map of such township provided that such map shall exhibit distinctly delineated all roads streets passages thoroughfares squares or reserves appropriated or set apart for public use and also all allotments into which the said land may be divided marked with distinct numbers or symbols and every such map shall be certified as accurate by declaration of a licensed surveyor before the Registrar General or a Justice of the Peace. Provided that no person shall be permitted to practise as a surveyor under the provisions of this Act unless specially licensed for that purpose by the Surveyor General.

Surveyors to be licensed.

Registrar General may require map to be deposited.

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

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the delineation of each such subdivision shall be acknowledged in manner prescribed for the case of the deposit of an original map.

102. 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 indorsed on the original instrument.

103. 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.

104. 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 indorsed 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 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.

105. It shall be lawful for the Registrar General to recover fees such fees as shall be appointed by the Governor with the advice aforesaid not in any case exceeding the several fees specified in the Schedule hereto marked P.

106. 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 to the Colonial Treasurer 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 with the advice aforesaid 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 Colony 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 Commissioners for the bringing of land under the operation of this Act shall be carried by the said Treasurer to account of the Consolidated Revenue Fund.

PART VII.—*Rights Remedies and Procedure.*

107. If upon the application of any proprietor to have land 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

Certified copies
to be furnished by
Registrar General
and to be evidence.

Authority to register.
Penalty for certifying incorrect instruments.

Parties entitled to be paid by Treasurer upon proper warrant.

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given by the 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 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 complaint of such proprietor 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 attendant upon any such proceedings shall be borne and paid by the applicant or other person preferring such complaint unless the Judge or Court shall certify that there were no probable grounds for such refusal or direction as aforesaid.

Registrar General
may state a case for
Supreme Court.

108. It shall be lawful for the Registrar General by direction of the Commissioners whenever any question shall arise with regard to the performance of any 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 Commissioners respectively.

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

109. 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 any Trustee Act then in force in the Colony and any order shall be made in the premises by the 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.

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

Trustee to be indem-
nified.

Purchaser from re-
gistered proprietor
not to be affected
by notice.

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

111. 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

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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.

112. 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.

113. When default has been made in the payment of the interest or principal sum secured by memorandum of mortgage for six months a registered mortgagee or his solicitor attorney or agent 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 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 three 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 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 or other person applying on his behalf.

114. The Registrar General shall refer such application to the Commissioners who may direct the Registrar General to cause notice to be published once in the *Gazette* and once in each of three successive weeks in at least one daily newspaper published in Sydney offering such land for sale and shall further limit and appoint a time not less than one month from the date of the publication in the *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.

115. No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act except in any of the following cases that is to say—

(1.) The case of a mortgagee as against a mortgagor in default.

(2.)

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- (2.) The case of an encumbrancee as against an encumbrancer in default.
- (3.) The case of a lessor as against a lessee in default.
- (4.) 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 *bonâ fide* for value from or through a person so registered through fraud.
- (5.) 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 thereof *bonâ fide* for value.
- (6.) 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 as 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 lessee of the land therein described any rule of law or equity to the contrary notwithstanding.

In case of ejectment of defendant who has made improvements their value may be assessed.

116. Whenever an action shall be brought against a registered proprietor or person holding a grant or certificate of title in either of the last two cases excepted in the next preceding section if the defendant or any person through whom he claims shall have made improvements on the land since obtaining a certificate of title thereto then whether he admit or deny the plaintiff's title he may plead the fact of such improvements being made and may set a value thereon and also on the land as distinct therefrom and give evidence thereof at the trial and if a verdict be found for the plaintiff or his title be admitted the jury shall assess the value of the alleged improvements and shall also separately assess the value which the land would have possessed if the said improvements had not been made And no writ of possession shall issue in such case unless the plaintiff shall first pay into Court for the use of the defendant the value of the improvements so assessed deducting only the costs (if any) to which he shall be entitled in the action

And if the plaintiff shall fail to make such payment within three months after verdict the judgment to which he is entitled shall thereafter be limited to the sum separately assessed as the value of the land together with costs of suit And the defendant shall upon satisfaction thereof be entitled to retain the land and improvements and in either case the Registrar General shall be entitled under the power hereinafter conferred of cancelling erroneous certificates to require to be delivered up any certificate of title which shall be held by the party whose right to the land shall have determined Provided that in every case in which the defendant shall be entitled to indemnity from the assurance fund the Registrar General shall be made a co-defendant as trustee of such fund and may defend the action either severally or jointly or may leave the defence wholly to his co-defendant as he shall see fit And in no case shall the assurance fund be liable to the principal defendant for any greater damages than he shall actually sustain as the result of such action after using all reasonable diligence in the defence thereof.

Registrar General to be made co-defendant.

Assurance fund to be liable only for actual loss sustained by defendant.

Compensation of party deprived of land.

117. 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

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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 with the advice aforesaid 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 such erroneous registration was made or who acquired title to the estate or interest in question through such fraud error or misdescription Provided always that in every case in which the fraud error or misdescription shall occur upon a transfer made for value the person making the transfer and receiving the value shall be regarded as the person upon whose application the certificate of title was issued to the transferee And provided further 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 *bonâ 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 in such last mentioned case and also 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 then and in any such case such damages with costs of action may be recovered out of the assurance fund by action against the Registrar General as nominal defendant.

118. Nothing in this Act contained shall be so interpreted as Purchasers and mort
gagees protected. 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 *bonâ 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 or procured the registration of the transfer to such purchaser or mortgagee 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.

119. Any person sustaining loss or damages through any When actions may
lie against the
Registrar General
as nominal defendant. 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 or by the registration of any other person as proprietor of such land or by any error omission or misdescription in any certificate of title or any entry or memorial in 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 inapplicable bring an action against the Registrar General as nominal defendant for recovery of damages.

120. In any case in which action for recovery of damages is Notice of action. permitted to be brought against the Registrar General as nominal defendant as hereinbefore provided notice in writing of such action and of the cause thereof shall be served upon such nominal defendant one month at least before the commencement of such action and if in any such action judgment be given in favor of the nominal defendant

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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.

Deficiency of
assurance fund
supplied temporarily
out of public fund.

121. If in any such action the plaintiff recover final judgment against such nominal defendant then the Court or Judge before whom such action may be tried shall certify the fact of such judgment and the amount of damages and costs recovered and the amount of such damages and costs shall be paid to the person recovering the same and shall be charged to the account of the assurance fund and in case the balance to the credit of the assurance fund shall be inadequate to defray the amount specified such sum as may be necessary for that purpose shall be paid out of the Consolidated Revenue Fund and the amount so advanced shall be repaid from the assurance fund as the same may thereafter accrue.

Limitation of actions.

122. 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 certifying 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 Colony 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 persons 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.

Moneys paid out of
assurance fund
may be recovered.

123. Whenever any amount has been paid out of the assurance fund on account of any person who may be dead such amount may 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 Colonial Treasurer 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 Colony 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 said Treasurer 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

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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 Colony 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 when he may be found within the jurisdiction of the Supreme Court.

124. 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 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 awarded in any action for recovery of such compensation and damages.

125. 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 *bond fide* done or omitted to be done under this Act.

126. 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 or any grant certificate of title or other instrument or that any such grant certificate or 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 certificate or instrument has been so issued or by whom it has been so obtained or is retained to deliver up the same 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.

127. 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 Colony 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

Assurance fund only
liable in certain
cases.

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

Holder of certificate
or other instrument
of title issued in
error or wrongfully
retained to shew
cause to Court
against cancellation
or correction.

Court may order the
delivery of the in-
strument to the
Registrar General.

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

Court may direct cancellation of certificate or entry.

Oath of sworn valuator.

Certain fraudulent acts to be deemed misdemeanors.

Conviction not to affect civil remedy.

Forgery to be a felony.

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.

128. 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.

129. Every sworn valuator shall within fourteen days of the date of his appointment and before performing any duties under this Act take the following oath before the Registrar General who is hereby authorized to administer the same—

I do solemnly swear that I will faithfully and honestly and to the best of my skill and ability make any valuation required of me under the provisions of the "Real Property Act."

130. 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 Register 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 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.

131. No proceeding or conviction of 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.

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

- (1.) 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.
- (2.) Stamps or procures to be stamped or assists in stamping any document with any forged seal purporting to be of the Registry Office.

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- (3.) 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.
- (4.) 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 Registry Office 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 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.

133. Any person convicted of felony or perjury under this Act Punishment of felony. 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.

134. 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 of 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 in like manner as at present. Rules of Supreme Court to apply and same right of appeal as in ordinary actions. Supreme Court may make rules &c.

135. Unless in any case herein otherwise expressly provided Jurisdiction. 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 or Solicitor General before any Court in the Colony having jurisdiction for punishment of offences of the like nature or for the recovery of penalties or sums of money of the like amount.

136. This Act shall commence and take effect from and after Commencement of Act. the first day of January one thousand eight hundred and sixty-three.

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SCHEDULES REFERRED TO.

A.

Application to bring Land under the provisions of the Real Property Act.

I A. B. of _____ do declare (that I am) or (on behalf of _____ of _____ that he is) seised of an estate of (here state whether of inheritance or of a life estate or leasehold for a life or lives or term of years 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 of the Colony _____ Dated the day of _____ numbered _____ in the plan of the (district township or county) of _____ as delineated on the public maps of the Colony deposited in the Survey Office Sydney. And I do further declare that I am not aware of any mortgage encumbrance or claim affecting the said land or that any person hath any claim estate or interest in the said land at law or in equity in possession or in expectancy other than is set forth and stated as follows that is to say (here state particulars of 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 name and description of occupier or that the land is unoccupied) and that (here state the names 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 or Justice of the Peace.
 I A. B. the above declarant do hereby apply to have the piece of land described in the above declaration brought under the provisions of the Real Property Act.

Dated at _____ this _____ day of _____ 18
 Witness to signature—C. D.

B.

Caveat forbidding Lands to be brought under the Real Property Act.

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 do hereby forbid the bringing of the said land under the provisions of the said Act.

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

Dated this _____ day of _____ 18

A. B.

Signed in my presence this _____ day of _____
 To the Registrar General of the Colony of New South Wales.

C.

*Real Property.***C.**

NEW SOUTH WALES.

[*Royal Arms.*]*Certificate of Title.*

A. B. of (*here insert description and if certificate be issued pursuant to any transfer reference to memorandum of transfer*) is now seised of an estate (*here state whether in fee simple or leasehold for a life or lives or for a term of years*) subject nevertheless to such encumbrances liens and interests as are notified by memorial underwritten or indorsed hereon in that piece of land situated in the (*county 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 (*country section or town allotment*) marked delineated in the public map of the said (*county or township*) deposited in the office of the Surveyor General originally granted the day of under hand and seal of Governor of the said Colony to C. D.

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

Signed in presence of }
the day of }

Registrar General. (L.S.)

D.*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 indorsed hereon in all that piece of land situated in the (*county or township*) of containing (*here state area*) be the same a little more or less (*exclusive of roads intersecting the same if any [here state rights of way privileges or easements if any intended to be conveyed] and if the land to be dealt with contain all that is included in an existing grant or certificate refer thereto for description of parcels and diagrams otherwise set forth the boundaries in chains links or feet and refer to plan delineated on the margin or annexed to the instrument or deposited in the Registry Office*) in consideration of the sum of £ paid to me by E. F. the receipt of which sum I hereby acknowledge do hereby transfer to the said E. F. (*all my estate or interest or a lesser estate or interest describing such lesser estate*) in the said piece of land.

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

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

A. B. Transferror.
E. F. Transferree.

E.*Transfer to be indorsed on Original Instrument.*

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 instrument together with all my rights powers estate and interest therein.

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

Signed by the above mentioned C. D. as transferror }
and X. Y. as transferree in the presence of }
E. F. the day of }

Accepted X. Y. Transferree.

F.*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 indorsed hereon in that piece of land situated in the (*county or township*) of containing (*here state area*) be the same a little more or less (*exclusive of roads intersecting the same if any [here state rights of way privileges or easements if any intended to be conveyed] if the land to be dealt with contains all that is included in*

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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 presence of X.Y.
 (Signed) A. B. Lessor.
 E. F. Lessee.

G.*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 indorsed hereon in that piece of land situated in the (county 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.

H.*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 indorsed hereon in that piece of land situated in (the county 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 encumbrancee by the Real Property Act) And subject as aforesaid the said C. D. shall be entitled to all powers and remedies given to an encumbrancee by the Real Property Act.

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

*Real Property.***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 indorsed hereon in (*here refer to schedule for description and contents 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 my name this day of
 Signed by the above-named A. B. this day of in the presence of X. Y.
 Schedule referred to.

K.

NEW SOUTH WALES.

Registration Abstract.[*Royal Arms.*][*Copy of grant or certificate.*]

Pursuant to Act of the Legislature of the said Colony intituled "The Real Property Act" sections 70 and 71 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 Colony 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

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 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 186^o
 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 or J.P.

O.

Real Property.

0.

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

Appeared before me at the day of A. B. of
the party executing the within instrument and did freely and voluntarily sign the same.

(Signed)

Registrar General or J.P.

P.₁

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

For hearing application to bring land under the provisions of this Act or to be registered in respect to an estate of freehold of a deceased proprietor to be paid to the Land Titles Commissioners over and above the cost of all advertisements herein prescribed to be in such case published:—