

Act No. 25, 1900.

REAL PROPERTY.

An Act to consolidate the Acts relating to the declaration of titles to land and the facilitation of its transfer. [22nd September, 1900.]

BE it 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:—

Short title

1. This Act may be cited as the "Real Property Act, 1900," and is divided into Parts, as follows:—

PART I.—OFFICERS.—ss. 4-11.

PART II.—GENERAL POWERS OF REGISTRAR-GENERAL.—s. 12.

PART III.—LANDS SUBJECT TO THE ACT.—s. 13.

PART IV.—APPLICATIONS TO BRING LAND UNDER THE ACT AND PROCEEDINGS THEREON.

DIVISION 1.—*Applications*.—ss. 14-16.

DIVISION 2.—*Applications, how dealt with*.—ss. 17-23.

DIVISION 3.—*Caveats against original applications*.—ss. 24-28.

PART

Real Property.

PART V.—ISSUE OF CERTIFICATES OF TITLE AND GRANTS.—ss. 29-31.

PART VI.—REGISTER BOOK AND REGISTRATION.—ss. 32-45.

PART VII.—DEALINGS.

DIVISION 1.—*Transfers*.—ss. 46-52.

DIVISION 2.—*Leases*.—ss. 53-55.

DIVISION 3.—*Mortgages and encumbrances*.—ss. 56-67.

DIVISION 4.—*Dealings outside New South Wales*.—ss. 68-71.

DIVISION 5.—*Caveats against dealings*.—ss. 72-74.

PART VIII.—IMPLIED COVENANTS AND SHORT FORMS OF COVENANTS.—
ss. 75-81.

PART IX.—TRUSTS.—ss. 82-87.

PART X.—POWERS OF ATTORNEY.—ss. 88, 89.

PART XI.—TRANSMISSIONS.—ss. 90-96.

PART XII.—GENERAL PROVISIONS.—ss. 97-117.

PART XIII.—FEES.—ss. 118-120.

PART XIV.—CIVIL RIGHTS AND REMEDIES.—ss. 121-135.

PART XV.—CANCELLATION AND CORRECTION OF INSTRUMENTS.—ss.
136-138.

PART XVI.—PRACTICE AND PROCEDURE.—ss. 139-140.

PART XVII.—CRIMINAL PROVISIONS.—ss. 141-143.

2. (1) The Acts mentioned in the First Schedule to this Act, to the extent therein expressed, are hereby repealed, and all lands, estates, and interests which at the commencement of this Act are subject to the provisions of the Acts so repealed shall be subject to the provisions of this Act. Repeal of Acts.
First Schedule.
26 Vic. No. 9, s. 1.

(2) All rules, forms, and orders made under the provisions of any Act hereby repealed and in force at the commencement of this Act shall be deemed to have been made under the corresponding provisions of this Act.

(3) All applications duly made, registrations duly effected, proceedings duly commenced or had, and acts or things duly done under the Acts hereby repealed shall be deemed to have been duly made, effected, commenced, had, or done respectively under the corresponding provisions of this Act, but at the date on which the same were in fact made, effected, commenced, had, or done.

(4) All laws, statutes, Acts, ordinances, rules, regulations, and practice whatsoever relating to freehold and other interests in land and operative on the first day of January, one thousand eight hundred and sixty-three, are, so far as inconsistent with the provisions of this Act, 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.

(5)

Real Property.

(5) All persons appointed under or by virtue of any Act hereby repealed and holding office at the commencement of this Act shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed and had taken the requisite oath of office (if any) hereunder, and this Act shall apply to them accordingly.

(6) Nothing in this Act contained shall be deemed to affect or control the provisions of the Married Women's Property Act of 1893.

Interpretation.

26 Vic. No. 9, s. 3.

3. In the construction and for the purposes of this Act, and in all instruments purporting to be made or executed thereunder (if not inconsistent with the context and subject matter)—

(a) the following terms shall bear the respective meanings set against them:—

“Caveator”—The person by whom or on whose behalf a caveat has been lodged under the provisions of this Act, or any enactment hereby repealed.

“Consular officer”—Consul-general, consul, and vice-consul, and any person for the time being discharging the duties of consul-general, consul, or vice-consul.

“Conveyancer”—Any person entitled to practise as a certificated conveyancer under the Legal Practitioners' Act, 1898, or any Act thereby repealed.

“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.

“Grant”—Any Crown grant of land.

“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.

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

“Mortgage”—Any charge on land created merely for securing a debt.

“Mortgagor”

Real Property.

“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.

“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.

(b) The describing any person as a proprietor, transferor, transferee, mortgagor, mortgagee, encumbrancer, encumbrancee, lessor, or lessee, or as a 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.

PART I.

OFFICERS.

4. (1) The department of the Registrar-General shall be the department authorised 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. Existing officers to perform duties under this Act. 26 Vic. No. 9, s. 4.

5. (1) The Governor 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. Appointment of examiners of titles, officers, and clerks. Ibid. ss. 5, 9.

(2) No examiner shall engage in private practice as a barrister or solicitor, or be in partnership with or employed by any solicitor.

6. (1) 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.” Registrar's seal of office. Ibid. s. 7.

(2) Every instrument bearing the imprint of such seal and purporting to be signed or issued by the Registrar-General or by any deputy

Real Property.

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.

Functions of deputy registrar-general.
26 Vic. No. 9, s. 8.

7. Whenever by any law anything is appointed to be done by the Registrar-General, the same may be lawfully done by any deputy registrar-general.

Oaths of office.
Ibid. s. 10.

8. The oath following shall be taken before one of the Judges of the Supreme Court 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.

Sworn valuers.
Ibid. s. 3.

9. (1) The Governor may appoint persons to value land for the purposes of this Act who shall be styled "sworn valuers."

Oath.
Ibid. s. 129.

(2) 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 authorised to administer the same—

I, _____, do solemnly swear that I have 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, 1900.

(3) Every sworn valuator who has been duly appointed under the Acts hereby repealed, and has taken the oath required by the said Acts, shall be deemed to have been appointed under and to have taken the oath required by this Act.

Conveyancers authorised to complete transfers, &c.
56 Vic. No. 16, s. 1.

10. (1) Conveyancers may certify to, accept, attest, and otherwise perform all of the acts necessary for the due completion of any transfer, mortgage, lease, application, caveat, and any other document of whatsoever nature or kind relating to dealings under this Act or the Acts hereby repealed, and to give receipts to the Registrar-General for any such document on the completion thereof.

(2) The Registrar-General is hereby authorised to accept the certificate and acceptance and attestation and other acts of conveyancers relating to any dealing under this Act or the Acts hereby repealed, and to accept the receipt of any conveyancer for any document received by him on behalf of any person, and to accept the acts of such conveyancers in every respect and to the same extent as the Registrar-General is by this Act or otherwise entitled to accept the acts, certificates, attestations, acceptances, and receipts of solicitors.

Real Property.

11. (1) No person shall be permitted to practise as a surveyor under the provisions of this Act unless specially licensed for that purpose by the Chief Surveyor or other officer appointed for the purpose by the Governor. Surveyors to be licensed.
26 Vic. No. 9, s. 100.

(2) Every surveyor who has been duly licensed for the purpose of practising under the provisions of the Acts hereby repealed and whose license is still in force at the passing of this Act shall be deemed to have been licensed for the purposes of this Act.

PART II.

GENERAL POWERS OF REGISTRAR-GENERAL.

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

- (a) 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, 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 inspect documents.
Ibid. s. 11.
- (b) 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 authorised 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 To summon and examine witnesses.

Real Property.

- 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. (c) He may administer oaths or may take a statutory declaration in lieu of administering an oath.
- To correct errors. (d) He may, upon such evidence as appears to him sufficient, correct errors in grants, 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:
- 1897, No. 47, s. 3. 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.
- Every grant or 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. (e) He may enter a caveat on behalf of any person under the disability of infancy, coverture, lunacy, unsoundness of mind, or absence from the colony, or on behalf of Her Majesty to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person as hereinbefore mentioned, and also to prohibit the dealing with any land in any case in which it appears 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 III.

LANDS SUBJECT TO THE ACT.

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

26 Vic. No. 9, s. 12.

13. (1) All waste lands and all lands set apart for public purposes remaining unalienated from the Crown at the passing of this Act shall, when alienated in fee, be subject to the provisions of this Act.

(2) 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 directs, and shall be delivered to the Registrar-General, who shall register the same in manner hereinafter directed.

PART

Real Property.

PART IV.

APPLICATIONS TO BRING LAND UNDER THE ACT AND PROCEEDINGS THEREON.

DIVISION 1.—*Applications.*

14. (1) Land alienated from the Crown in fee prior to the first day of January, one thousand eight hundred and sixty-three (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.

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

26 Vic. No. 9, s. 13.

(2) The Registrar-General shall receive applications for that purpose in the form of the Second Schedule hereto, if made by any of the following persons:—

Second Schedule.

- (a) 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.

- (b) 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; and

the bringing of any leasehold under the provisions of this Act shall not be held to extinguish the reversion expectant thereon.

Ibid. s. 29.

- (c) By persons who have the power of appointing or disposing of the fee-simple of any land absolutely:

Provided that in the event of such land being brought under the provisions of this Act, such application shall be deemed, both at law and in equity, to be an exercise of such power.

- (d) By the attorney, under a power of attorney, of a corporation having the power to hold or dispose of land in fee-simple:

Provided that such power of attorney shall be under the common seal of the corporation and shall authorise such attorney to apply; and

the application shall be made for and on behalf of such corporation; and

the

Act No. 25, 1900.

Real Property.

the requisite declaration shall be made by him to the best of his knowledge, information, and belief; and

the application shall be subscribed in his own name as such attorney; and

the certificate shall be issued in the name of such corporation.

(e) By the attorney of any person absent from New South Wales who would be entitled to apply if resident in New South Wales:

Provided that such attorney shall be constituted such by an instrument under seal authorising him, at his absolute discretion, to sell and convey land for an absolute estate in fee-simple, and to give effectual discharges to purchasers; and

the requisite evidence of non-revocation of the power by the grantor's death or otherwise is furnished.

(f) By the father, or if the father be dead by the mother or other guardian of an infant, in the name of such infant.

(g) By the committee or other person entrusted with the care of the estate of any insane person, or person of unsound mind, or person declared incapable of managing his estate in the name of such insane person, person of unsound mind, or person declared as aforesaid as the case may be.

41 Vic. No. 18, s. 3.

(3) No such application shall be received—

(a) from a person who has contracted to purchase any land unless either the vendor consents to join in the application or the whole of the purchase money has been paid to the vendor or his authorised attorney or agent; nor

(b) from a person claiming to be entitled to an undivided share of any land unless the person who appears to be entitled to the other undivided share joins in the application with the view of bringing the entirety under the provisions of this Act; nor

(c) from the mortgagor of any land unless the mortgagee joins in the application; nor

(d) from the mortgagee of any land except in the exercise of a power of sale contained in the mortgage deed; nor

(e) from any land subject to the lien of any judgment or execution creditor unless such creditor consents to the application.

Ibid. s. 2.

(4) The consent of her husband shall be necessary to the application of any married woman in respect of any land unless—

(a) such land belongs to her as her separate estate; or

(b)

Real Property.

- (b) such land is subject to her general power of appointment by deed for an estate in fee, in which case the application shall be deemed both at law and in equity to be an exercise of such power.

15. Any Judge of the Supreme Court may, on the application of any person seeking to bring land under this Act, order any specified person who has in his possession or under his control any deeds, instruments, or evidences of title relating to or affecting the land, to produce the same at the office of the Registrar-General, on a day to be named in such order, there to be left for the perusal of the examiners, upon such terms and subject to such conditions as to costs or otherwise as to the Judge may seem fit.

Judge may order production of deeds for purpose of application.

41 Vic. No. 18, s. 5.

16. (1) Every such applicant shall, when making his application,—

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

26 Vic. No. 9, s. 14.

- (a) 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 furnish a schedule of such instruments, and also, if required, an abstract of his title; and
- (b) state in his application 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 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
- (c) make and subscribe a declaration to the truth of such statement.

(2) Such applicant may in his application require the Registrar-General, at the expense of such applicant, to cause personal notice of his application to be served upon any person whose name and address shall for that purpose be therein stated.

DIVISION 2.—*Applications how dealt with.*

17. (1) 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 himself take the case into his consideration.

When applicant is original grantee and no transactions registered.

Ibid. s. 15.

(2)

Act No. 25, 1900.

Real Property.

(2) If it appears to the Registrar-General 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 New South Wales, and that such applicant has not required notice of his application to be served personally upon any person, the Registrar-General may 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 be writing under his hand direct a certificate of title for the same as hereinafter described.

When applicant is not original grantee or any transactions registered.

26 Vic. No. 9, s. 16.

18. If it appears to the Registrar-General 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, the Registrar-General shall 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 has in the interval received a caveat forbidding him so to do, proceed to bring such land under the provisions of this Act.

When evidence of title is imperfect.

Ibid. s. 17.

19. If it appears to the Registrar-General 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, the Registrar-General may reject such application altogether or cause notice of such application to be served in accordance with such requirement upon all persons who appear to him to have any interest in the land 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 he may think 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 Registrar-General shall determine 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

Real Property.

from the date of the first of such advertisements in the Gazette, upon or after the expiration of which he may bring such land under the provisions of this Act, unless he has in the interval received a caveat forbidding him to do so.

20. The Registrar-General shall, of his own motion or under any order of the Supreme Court, cause notice to be published in such manner as he may determine or such order may prescribe, that application has been made for bringing the land therein referred to under the provisions of this Act, and shall also cause a 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, a copy of such notice addressed to the person (if any) who he thinks ought 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 has 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 a copy of such notice to be so served upon such person.

Notice of application to be published.
26 Vic. No. 9, s.

21. If within the time limited by the Registrar-General or under any order of the Supreme Court any notice forwarded by registered letter as aforesaid is not returned to him by the Postmaster-General, and if within the time so limited he has not 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 has received proof to his satisfaction that such notice has been served, the Registrar-General shall 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.

Land brought under Act.
Ibid. s. 19.

22. (1) Whenever the Registrar-General is 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 may, by writing under his hand, withdraw such requisition.

On a return of notices or failure of personal service, Registrar-General may proceed or give further directions.
Ibid. s. 20.

(2) Upon the withdrawal of such requisition, or upon the return to the Registrar-General by the Postmaster-General of any letter containing any notice, the Registrar-General may reject the application altogether or bring the land therein described under the provisions of this Act forthwith, or after such further interval, notification, or advertisement as he may deem fit.

Real Property.

Applicant proprietor
may withdraw his
application.
26 Vic. No. 9, s. 24.

23. 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.

DIVISION 3.—*Caveats against original applications.*

Parties interested
may enter caveat.
Ibid. s. 21.
Third Schedule.

24. 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 limited by the Registrar-General for that purpose, lodge a caveat with the Registrar-General in the form of the Third Schedule hereto, forbidding the bringing of such land under the provisions of this Act, and every such caveat shall particularise the estate, interest, lien, or charge claimed by the caveator, and the caveator shall if required deliver a full and complete abstract of his title.

If caveat be received
within time limited
proceedings stayed.
Ibid. s. 22.

25. 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 has been withdrawn or has lapsed from any of the causes hereinafter provided, or until a decision has been obtained from the Court having jurisdiction in the matter.

Caveats lapse unless
proceedings taken
within three months.
Ibid. s. 23.

26. After the expiration of three months from the receipt thereof every such caveat shall be deemed to have elapsed unless the caveator has, within that time—

- (a) taken proceedings in any court of competent jurisdiction to establish his title to the estate, interest, lien, or charge therein specified, and given written notice thereof to the Registrar-General; or
- (b) 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, either absolutely or until the further order of the Court.

Special case.
21 Vic. No. 1^F, s. 4.

27. (1) Where a caveat against an application to bring land under the provisions of this Act has been lodged by a caveator claiming such land or a portion thereof or an interest therein adversely to the applicant, the applicant may state a case for the opinion and direction of the Supreme Court upon the matter, and the caveator may under the last

Real Property.

last preceding section apply for an injunction until the further order of the Court, and the Court may direct the caveator to lodge in the Court, on or before a certain day, a case on his own behalf, stating whether he claims, in his own right or under another person, together with such other particulars (if any) as the Court thinks fit to order.

(2) The Court shall thereupon direct issues to be tried by a jury as to any facts, or should no fact be in contest, may decide the matter upon the case stated, and, for the purposes aforesaid, may make all such orders as the Court thinks fit.

(3) The decision of the Court finally upon the matter shall be conclusive on the parties and on the Registrar-General.

(4) The costs of every proceeding under this section shall be borne by the party finally unsuccessful.

28. Where a caveator has given the before-mentioned notice to the Registrar-General of his having taken proceedings to establish his title, but such proceedings have not, within six months after the date of writ or commencement of such proceedings, been continued to such a stage as to have resulted in a decision, judgment, or order by the Court in which such proceedings are pending, the Registrar-General, on giving one month's notice to the caveator or to the solicitor whose name appears on the caveat of his intention to proceed, or if neither of such courses be practicable, then on posting or exhibiting on the said land such notice for a period of thirty days, may proceed with the application, notwithstanding the provisions of the twenty-fifth section of this Act, and may bring the land, the subject of the said application and of the said caveat, under this Act, unless in the meantime an order or injunction restraining the Registrar-General from further proceeding with the said application has been served on him.

Where caveator fails to prosecute proceedings.
41 Vic. No. 18, s. 9.

PART V.

ISSUE OF CERTIFICATES AND GRANTS.

29. (1) 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

Instruments of title how to be dealt with.
26 Vic. No. 9, s. 25.

Real Property.

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.

(2) If any such instrument relates to or includes 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.

(3) The Registrar-General shall retain in his office all instruments so stamped, except such as he is hereby directed to return to the proprietor, 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.

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

26 Vic. No. 9, s. 26.

30. Where any applicant proprietor or the person to whom an applicant proprietor may have directed a certificate of title to be issued dies 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.

Crown grants.

36 Vic. No. 7, s. 3.

31. Where any person entitled to a Crown grant dies before the same has been made, the grant may be made to and issue in the name of such person, and the land, the subject of the grant, shall devolve in like manner as if the grant had been made prior to the death of such person.

PART VI.

REGISTER-BOOK AND REGISTRATION.

Registrar-General to keep register-book.

26 Vic. No. 9, s. 30.

32. (1) The Registrar-General shall keep a book, to be called the "register-book," and shall bind up therein the duplicates of all grants and certificates of title.

(2) 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

Real Property.

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.

33. (1) Every certificate of title shall be in duplicate in the form of the Fourth Schedule hereto, and shall set forth the nature of the estate of freehold or leasehold in respect to which it is issued.

Certificate of title to be in duplicate and bound up in register. 26 Vic. No. 9, s. 31.

(2) 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 an infant or to a person otherwise under disability he shall state the age of such infant 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.

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

34. 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.

Registration where certificate of leasehold issued. *Ibid.* s. 32.

35. Every grant and certificate of title shall be deemed to be registered under the provisions and for the purposes of this Act so soon as the same has 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, has 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.

Instruments, when deemed to be registered. *Ibid.* s. 34.

Definition of registered proprietor.

36. (1) Except as is hereinafter otherwise provided, every grant or other instrument presented for registration shall be in duplicate, and shall, except in the case of a grant, be attested by a witness, and shall be registered in the order of time in which the same is produced for that purpose.

Instruments entitled to priority according to date of registration. *Ibid.* s. 35.

36 Vic. No. 7, s. 2.

(2)

Real Property.

(2) A transferee of land shall not be required in any case to present in duplicate a memorandum of transfer for the purpose of registration.

(3) 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 or the one original in his office, and shall deliver the other (if any) to the person entitled thereto.

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

(4) Upon registration, every instrument drawn in any of the several forms in the Schedules hereto, or in any form which, for the same purpose may be authorised in conformity with the provisions of this Act shall, for the purposes of this Act, be deemed 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.

Form of memorial.
26 Vic. No. 9, s. 37.

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.

Memorial to be recorded on duplicate grant or other instrument unless dispensed with.
Ibid. s. 38, 91.
36 Vic. No. 7, s. 2.

38. (1) Whenever a memorial of any instrument has been entered in the register-book, the Registrar-General shall, except in the case of a transfer or other dealing indorsed upon any grant, certificate, or other instrument as hereinafter provided, record the like memorial on any duplicate grant, certificate, or other instrument evidencing title to the estate or interest intended to be dealt with or in any way affected, unless the Registrar-General, as hereinafter provided, dispenses with the production of the same.

(2) The Registrar-General may dispense with the production of any instrument for the purpose of recording such memorial thereon, and shall in such case notify in the memorial in the register-book that no entry of such memorial has been made on the duplicate instrument, and thereupon the dealing shall be as valid and effectual as if such entry had been made.

(3) Before dispensing with production as aforesaid the Registrar-General shall require the party dealing to make a statutory declaration that such instrument has not been deposited as security for any loan, and shall give fourteen days' notice of his intention to register such dealing in the Gazette and at least one daily newspaper published in Sydney.

(4)

Real Property.

(4) The Registrar-General shall endorse on every instrument so registered a certificate of the date and hour on which the said memorial was entered in the register-book, and shall authenticate each such certificate by signing his name and affixing his seal thereto.

(5) 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. 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. 26 Vic. No. 9, s. 41.

40. (1) 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 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. Certificate to be conclusive evidence of title, and that the land has been duly brought under the Act. *Ibid.* s. 33.

(2) 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 Registrar-General.

(3) The person named in any certificate of title as entitled to the land therein described shall be held in every Court of law or 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. *Ibid.* s. 29.

41. (1) 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. Instruments not effectual until entry in register-book. *Ibid.* s. 39.

(2)

Real Property.

(2) 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 endorse that instrument under which the person claims property, who shall present to him the grant or certificate of title of such land for that purpose.

Estate of registered proprietor paramount.
26 Vic. No. 9, s. 40.

42. 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—

- (a) 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
- (b) in the case of the omission or misdescription of any right-of-way or other easement created in or existing upon any land; and
- (c) as to 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.

Purchaser from registered proprietor not to be affected by notice.
Ibid. s. 111.

43. 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 any part thereof, or shall be affected by notice direct or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

Registered proprietor suing for specific performance.
Ibid. s. 112.

44. 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

Real Property.

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.

45. No title to land adverse to or in derogation of the title of the registered proprietor shall be acquired by any length of possession by virtue of any statute of limitations relating to real estate, nor shall the title of any such registered proprietor be extinguished by the operation of any such statute.

Statute of limitation not to run against land under the Act. 41 Vic. No. 18, s. 11.

PART VII.

DEALINGS.

DIVISION 1.—*Transfers.*

46. 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 the form of the Fifth, Sixth, or Seventh 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.

Transfers. 26 Vic. No. 9, s. 42.

Fifth, Sixth, and Seventh Schedules.

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

Easements and incorporeal rights to be registered.

Ibid. s. 43.

48. (1) If the memorandum of transfer purports to transfer an estate of freehold in possession in part of the land mentioned in any grant or certificate of title, the transferor shall deliver up the grant or certificate of title of the said land, and the Registrar-General shall after registering the transfer enter on such grant or certificate of title a memorandum cancelling the same partially and setting forth the particulars of the transfer.

If estate of freehold be transferred, certificate of title to be delivered up and cancelled unless the whole land in the certificate is transferred.

Ibid. s. 44.

Real Property.

Where whole land in certificate transferred, transferee has option as to transfer by endorsement.

26 Vic. No. 9, s. 44.

36 Vic. No. 7, s. 1.

(2) (i) If the memorandum of transfer purports to transfer an estate of freehold in the whole of the land mentioned in any grant or certificate of title, the transferee may at his option either—

- (a) take out a certificate of title in his own name, in which case the Registrar-General shall, after registering the transfer, enter on such grant or certificate of title of the transferor a memorandum cancelling the same; or
- (b) receive the grant or certificate of title of the transferor, or in the case of a sale by a mortgagee, the grant or certificate of the mortgagor, with a memorial of the transfer in each case indorsed thereon.

(ii) Each successive transferee (if any) of the whole of such land may in like manner, at his option, take out a certificate of title in his own name, or may receive the same grant or certificate of title upon which the memorials of any previous transfers have been indorsed as aforesaid.

(iii) Provided that the Registrar-General, whenever in his opinion any grant or certificate of title is incapable of conveniently containing any further indorsement, may compel the person applying to be registered to receive a certificate of title in his own name.

Indorsement on grant or certificate of title of land which has become Crown lands.
1897, No. 47, s. 2
Twentieth Schedule.

49. Upon any land under the provisions of this Act, or the Acts hereby repealed, becoming Crown lands within the meaning of the Crown Lands Acts, the Registrar-General shall cause a notification in the form or to the effect of the Twentieth Schedule hereto to be made or indorsed on the duplicate in the register-book of the grant or certificate of title of the land, and (except where the production of the grant or certificate of title is dispensed with under the provisions of this Act) shall also make the said endorsement on the grant or certificate of title.

Fresh certificate to be issued to purchaser.
26 Vic. No. 9, s. 45.

50. (1) 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.

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

(2) 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.

Interest and rights of transferor pass to transferee.

Ibid. s. 47.

51. Upon the registration of any transfer, the estate or interest of the transferor as set forth in such instrument, with all rights, powers and

Real Property.

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.

52. (1) 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.

Transfer of mortgage or lease transfers right to sue.
26 Vic. No. 9, s. 48.

(2) Nothing herein contained shall prevent a Court of Equity from giving effect to any trusts affecting the said debt, sum of money, annuity, or damages, in case the transferee shall hold the same as a trustee for any other person.

Saving to Courts of Equity as to trusts.

DIVISION 2.—*Leases.*

53. (1) 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 the form of the English Schedule hereto.

Lands under the provisions of this Act—how leased.
Ibid. s. 49.
Eighth Schedule.

(2) 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.

(3) 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.

(4) 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.

Mortgagor cannot lease without consent of mortgagee.

54. (1) 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 relating to bankrupt or insolvent estates, there shall

Lease may be surrendered by endorsement by lessee with concurrence of lessor.
Ibid. s. 50.

Real Property.

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.

Entry of memorandum of surrender.

(2) 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.

Revesting of estate in lessor.

(3) Upon such entry having been so made in the register-book, the estate or interest of the lessee in such land shall revert in the lessor, or in the person in whom having regard to intervening circumstances (if any) the said land would have vested if no such lease had ever been executed.

(4) Production of such lease or counterpart bearing such indorsement and memorandum shall be sufficient evidence that such lease has been so surrendered.

(5) No lease subject to mortgage or encumbrance shall be so surrendered without the consent of the mortgagee or encumbrancee.

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

26 Vic. No. 9, s. 53.

55. In any case under section seventy-nine of this Act 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.

DIVISION 3.—*Mortgages and encumbrances.*

Lands under this Act how mortgaged or encumbered.

Ibid. s. 54.

56. (1) Whenever any land or estate or interest in land under the provisions of this Act is intended to be charged or made security in favour of any mortgagee the mortgagor shall execute a memorandum of mortgage in the form of the Ninth Schedule hereto.

(2) 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 favour of any encumbrance, the encumbrancer shall execute a memorandum of encumbrance in the form of the Tenth Schedule hereto.

Ninth and Tenth Schedules.

(3) 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).

Real Property.

57. Any mortgage or encumbrance under this Act shall have effect as a security but shall not operate as a transfer of the land thereby charged. If default is made in the payment of the principal sum, interest, annuity, or rent-charge, or any part thereof thereby secured, or in the observance of any covenant expressed in any memorandum of mortgage or of encumbrance registered under this Act, or that is hereinafter declared to be implied in such instrument, and such default is continued for the space of one month or for such other period of time as may therein for that purpose be expressly limited, the mortgagee or encumbrancee may—

- (a) 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
- (b) leave such notice on the mortgaged or encumbered land or at the usual or last known place of abode in New South Wales of the mortgagor or encumbrancer or other person claiming to be then entitled to the said land or with his known agent.

58. (1) After such default in payment or in observance of covenants continuing for the further space of one 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 authorised and empowered to sell the land so mortgaged or encumbered, or any part thereof, and all the estate and interest therein of the mortgagor or encumbrancer, and either altogether or in lots by public auction or by private contract, or both such modes of sale, and subject to such conditions as he may think fit, and to buy in and resell the same without being liable for any loss occasioned 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 authorised 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.

(2) 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.

(3) The purchase money to arise from the sale of any such land, estate, or interest, shall be applied, first, in payment of the expenses occasioned

Mortgage or encumbrance not to operate as transfer.
26 Vic. No. 9, s. 55.
Procedure in case of default.
Ibid.

Power to sell.
Ibid. s. 56.

Protection for purchaser from mortgagee.

Appropriation of proceeds.

Real Property.

occasioned by such sale; secondly, in payment of the moneys which may then be due or owing to the mortgagee or encumbrancee; thirdly, in payment of subsequent mortgages or encumbrances (if any) in the order of their priority; and the surplus (if any) shall be paid to the mortgagor or encumbrancer, as the case may be.

Eleventh Schedule.

(4) The transfer by the mortgagee or encumbrancee may be in the form of the Eleventh Schedule hereto.

Registrar-General
to give effect to
sale by mortgagee
or encumbrancee.
26 Vic. No. 9, s. 57.

59. Upon proof to his satisfaction by statutory declaration 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.

In case of default,
entry and possession,
distress ejection,
Ibid. s. 58.

60. The mortgagee or encumbrancee upon default in payment of the principal sum or any part thereof, or of any interest, annuity, or rent-charge secured by any mortgage or encumbrance may—

- (a) enter into possession of the mortgaged or encumbered land by receiving the rents and profits therefor; or
- (b) distrain upon the occupier or tenant of the said land under the power to distrain hereinafter contained for the rent then due; or
- (c) bring an action of ejection 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 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.

For foreclosure.
Ibid. s. 113.

61. (1) 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.

(2) Such application shall state that such default has been made as aforesaid, and that the land, estate, or interest mortgaged has
been

Real Property.

been offered for sale at public auction by a licensed auctioneer, after notice given to the mortgagor, as in this 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.

(3) 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.

(4) 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.

62. (1) The Registrar-General may 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 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 realised by the sale of such land to satisfy the principal and interest moneys due, and all expenses occasioned by such sale and proceedings.

Application how made effective.

² Vic. No. 9, s. 114.

(2) 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.

63. (1) Whenever a mortgagee or encumbrancee gives 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 shall be satisfied, and a discharge thereof duly registered.

Notice by mortgagee to tenant to pay rent to him to suspend mortgagor's right as landlord.

Ibid. s. 59.

(2) 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

Mortgagees' receipts to be absolute discharges.

Real Property.

stance affecting the right of the person giving such notice beyond the fact of his being duly registered as mortgagee or encumbrancee of the land.

(3) 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.

26 Vic. No. 9, s. 60.

64. 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.

Ibid. s. 61.

65. (1) 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.

(2) 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.

Ibid. s. 62.

66. (1) 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 ceases to be payable, and upon proof that all arrears of the said annuity and interest or moneys 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 or discharged, and shall cancel such instrument.

(2) 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.

(3)

Real Property.

(3) 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.

67. (1) In case the registered mortgagee shall be absent from New South Wales and there be no person authorised to give a receipt to the mortgagor for the mortgage money at or after the date appointed for the redemption of any mortgage, the Colonial Treasurer may receive such mortgage money with all arrears of interest then due thereon in trust for the mortgagee or other person entitled thereto, and thereupon the interest upon such mortgage shall cease to run or accrue.

Mortgage money may be paid to Colonial Treasurer if mortgagee be absent from the Colony and mortgage discharged.
26 Vic. No. 9, s. 63.

(2) 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.

(3) Such entry shall be a valid discharge for such mortgagee, 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.

The Registrar-General shall endorse on the grant, certificate of title, or other instrument as aforesaid, and also on the memorandum of mortgage, whenever those instruments shall be brought to him for that purpose, the several particulars hereinbefore directed to be indorsed upon each of such instruments respectively.

DIVISION 4.—Dealings outside New South Wales.

68. (1) 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 of the Fifteenth Schedule hereto, enabling him to transfer or otherwise deal with his estate or interest in such land at any place without the limits of New South Wales, and shall at the same time enter in the register-book a memorandum recording the issue of such registration abstract, and shall endorse on the grant, certificate of title, or other instrument evidencing the title of such applicant proprietor a like memorandum.

Registration abstract for registering dealings outside New South Wales.
Ibid. s. 70.
Fifteenth Schedule.

(2) 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 has been surrendered to the Registrar-General to be cancelled, or the loss or destruction of such abstract proved to his satisfaction.

69.

Real Property.

Mode of procedure
under registration
abstract.
26 Vic. No. 9, s. 71.
36 Vic. No. 7, s. 2.

69. (1) 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 and (except in the case of a memorandum of transfer) 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 New South Wales may be proved.

(2) Upon a memorial of such instrument being entered upon, the registration abstract and authenticated by the signature of such authorised person as aforesaid in manner hereinbefore directed for the entry of memorials 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.

(3) 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 authorised person as aforesaid shall record the like memorial on the duplicate grant, certificate of title, lease, or other instrument evidencing title (if any) as aforesaid.

(4) The certificate of registration endorsed on the instrument of which the memorial has been so entered, and signed by such authorised 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.
26 Vic. No. 9, s. 72.

70. (1) 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 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.

(2) 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.

Procedure when
registration abstrac
is lost.
Ibid. s. 73.

71. 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, he may, as circumstances may require, either issue a new registration abstract, as the case may be, or 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.

DIVISION

*Real Property.*DIVISION 5.—*Caveats against dealings.*

72. (1) Any settlor of land under the provisions of this Act transferring the same to be held by the transferee as trustee, or any person claiming any estate or interest in such land or under any unregistered instrument, or by devolution in law or otherwise, may by caveat in the form of the Sixteenth 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.

Caveat may be lodged.
26 Vic. No. 9, s. 81.

Sixteenth Schedule.

(2) Every such caveat shall state the name and address of the caveator, and shall contain a sufficient description to identify the land and the estate or interest therein claimed by the caveator, and except in case of caveats lodged by order of the Supreme Court or by the Registrar-General as in this Act provided shall be signed by the caveator or by his solicitor, known agent, or attorney.

Form of caveat.

(3) 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.

(4) Every such caveat may be withdrawn by the caveator.

73. Except in the case of a caveat lodged by a settlor, or by or on behalf of a beneficiary claiming under any will or settlement, or by the Registrar-General as is in this Act prescribed, every such caveat lodged against a registered proprietor shall, unless an order to the contrary be made by the Supreme Court or a Judge thereof, be deemed to have lapsed upon the expiration of fourteen days after notice given to the caveator that such registered proprietor has applied for the registration of any transfer or other dealing with such land, estate, or interest.

When caveat to lapse.
Ibid. s. 82.

74. So long as any caveat remains 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 is lodged.

No dealing to be registered while caveat in force.
Ibid. s. 83.

PART VIII.

IMPLIED COVENANTS AND SHORT FORMS OF COVENANTS.

75. In every instrument creating or transferring any estate or interest in land under the provisions of this Act, there shall be implied a covenant by the party creating or transferring such estate or interest 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

General covenants to be implied in instruments.
Ibid. s. 36.

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Real Property.

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.

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

26 Vic. No. 9, s. 46.

76. In every instrument transferring an estate or interest in land under the provisions of this Act, subject to mortgage or encumbrance, there shall be implied the following covenant by the transferee, that is to say, that such transferee will pay the interest, or annuity, 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 transferor from and against the principal sum secured by such instrument, and from and against all liability in respect of any of the covenants therein contained, or by this Act implied on the part of the transferor.

Covenants to be implied in every memorandum of mortgage.

Ibid. s. 64.

77. 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.

Covenants to be implied in every lease against the lessee.

Ibid. s. 51.

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

- (a) That he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect to the demised property during the continuance of the lease.
- (b) 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.

Powers to be implied in lessor.

Ibid. s. 52.

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

- (a) 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 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.
- (b) That in case the rent or any part thereof shall be in arrear for the space of six 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

Real Property.

continued for the space of six 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.

80. (1) 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.

Implied covenants may be modified or negatived.

26 Vic. No. 9, s. 89.

(2) 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.

(3) 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.

(4) 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.

81. 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:—

Abbreviated forms of words for covenants.

Ibid. s. 65.

(a) The words "will insure" shall imply as follows—that the mortgagor or lessee 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 and receipts for the annual or other premiums payable on account thereof, and also that all moneys to be received under or

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Real Property.

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.

Paint outside.

(b) The words " paint outside every alternate year " shall imply as follows—and also will, in every alternate year during the currency of such lease, paint all the outside woodwork and iron-work belonging to the hereditaments and premises mentioned in such lease with two coats of proper oil-colours in a workmanlike manner.

Paint and paper inside.

(c) The words " paint and paper inside every third year " shall imply as follows—and will, in every third year, during the currency of such lease, paint the inside, wood, iron, and other works now or usually painted with two coats of proper oil-colours in a workmanlike manner, and also repaper 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.

Fence.

(d) The words " will fence " shall imply as follows—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.

Cultivate.

(e) The word " cultivate " shall imply as follows—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.

Not use as a shop.

(f) The words " that the lessee will not use the said premises as a shop " shall imply as follows—and also that the said lessee will not convert, use, or occupy the said hereditaments and premises mentioned in such lease or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or permit or suffer the said hereditaments and premises or any part thereof to be used for any such purpose or otherwise than as a private dwelling-house without the consent in writing of the said lessor.

(g)

Real Property.

- (g) The words “ will not carry on offensive trades ” shall imply as **Offensive trades.** 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.
- (h) The words “ will not without leave assign or sublet ” shall **Assign or sublet.** imply as follows— 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.
- (i) The words “ will not cut timber ” shall imply as follows—and **Cut timber.** 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.
- (k) The words “ will carry on the business of a publican and conduct **Business of publican in orderly manner.** the same in an orderly manner ” shall imply as follows—and also that the said lessee will at all times during the currency of such lease use, exercise, and carry on, in and upon the premises therein mentioned, the trade or business of a licensed victualler or publican and retailer of spirits, wines, ale, beer, and porter, and keep open and use the messuage, tenement, or inn and buildings standing and being upon the said land as and for an inn or public-house for the reception, accommodation, 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.
- (l) The words “ will apply for renewal of license ” shall imply as **Apply for renewal of license.** follows—and also shall and will from time to time during the continuance of the said term, at the proper times for that purpose,

Real Property.

purpose, apply for and endeavour to obtain at his 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.

Facilitate the transfer of license.

- (m) The words "will facilitate the transfer of license" shall imply as follows—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 authorised by him to obtain the renewal of any license or any new license, or the transfer of any license then existing and in force.

PART IX.

TRUSTS.

No notice of trusts to be entered in register-book.
26 Vic. No. 9, s. 66.

Instrument declaring trusts may be deposited but not registered.

41 Vic. No. 18, s. 12.

82. (1) The Registrar-General shall not make any entry in the register-book of any notice of trusts, whether expressed, implied, or constructive.

(2) Trusts may be declared by any instrument, which instrument 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 lands contained in such instrument 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.

(3) When any such instrument or duplicate or attested copy thereof is so lodged, the Registrar-General shall forthwith enter a caveat forbidding the registration of any instrument not in accordance with the trusts and provisions therein declared and contained so far as concerns the land affected by such instrument, and thereupon the words "caveat number" (the proper number being filled in) shall be stamped or written upon the folium of the register comprising the land referred to in such instrument.

(4)

Real Property.

(4) Such caveat may be removed on the application of the same person and in the same manner as is provided in section ninety-seven of this Act.

83. Nothing in this Act shall be deemed to prevent the registration of any Crown grant by reason of the fact that a trust is declared in such grant.

Grants may be registered although trusts declared.
41 Vic. No. 18, s. 14.

84. (1) 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, the transferor may 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.

How survivorship among trustees may be barred except on Judge's order.
26 Vic. No. 9, s. 67.

(2) 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 authorise 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.

85. (1) 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 any person interested may show cause why such order should not be issued, and thereupon the said Court or Judge in such order may 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.
Ibid. s. 68.

(2) 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.

86. (1) Whenever any person interested in land under the provisions of this Act appears to the Supreme Court to be a trustee of such land within the intent and meaning of any Trustee Act then in force in

Registrar-General carry out order of Supreme Court vesting trust estate.
Ibid. s. 109.

New

Real Property.

New South Wales, and any order is 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 purports to vest the said land, and such person shall thereupon be deemed to be the registered proprietor of such land.

(2) Unless and until such entry is 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 beneficial interest in name of trustee.
26 Vic. No. 9, s. 110.

87. (1) Whenever a person entitled to or interested in land as a trustee would be entitled 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.

Trustee to be indemnified.

(2) 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 the Act twenty-sixth Victoria number nine have been entitled to be indemnified in a similar case of his name being used in any such action or proceeding by his cestui que trust.

PART X.

POWERS OF ATTORNEY.

Powers of attorney
Ibid. s. 69.

Twelfth and Thirteenth Schedules.

88. The registered proprietor of any land, estate, or interest under the provisions of this Act may authorise 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 the form of the Twelfth or Thirteenth Schedules 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.

Revocation of power of attorney.
Ibid. s. 74.

Fourteenth Schedule.

89. The registered proprietor of any land in respect of which any power of attorney has been executed may, for the purpose of revoking such power, execute an instrument in the form of the Fourteenth 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

Real Property.

abstract, as hereinafter mentioned, 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 XI.

TRANSMISSIONS.

90. (1) Upon the bankruptcy or insolvency of the registered proprietor of any land, estate, or interest under the provisions of this Act, the assignee of such bankrupt or insolvent shall be entitled to be registered as proprietor in respect of the same. Transmission by bankruptcy or insolvency. 26 Vic. No. 9, s. 75.

(2) The Registrar-General, upon the receipt of an office copy of the appointment of such assignee, accompanied by an application in writing under his 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 the land affected a memorandum notifying the appointment of such assignee.

(3) Upon such entry being made such assignee shall be deemed and taken to be the registered proprietor 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 assignee shall be deemed to be the absolute proprietor thereof. Upon entry of appointment assignee to be deemed proprietors. But subject to equities.

91. (1) 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 assignee of such bankrupt certifying his 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 bankrupt in such lease shall thereupon vest in such mortgagee. Mortgagee of the leasehold interest of a bankrupt may be entered as transferee of lease. Ibid. s. 76.

(2) 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.

Real Property.

Marriage of female proprietor to be certified to the Registrar-General. Particulars to be entered in register-book and on the instrument evidencing title. 26 Vic. No. 9, s. 77.

92. The Registrar-General, upon the production of the register or other sufficient proof of the marriage of a female registered proprietor of any land, estate, or interest under the provisions of this Act, accompanied by 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.

Transmission of mortgage or lease on death of proprietor. *Ibid.* s. 78.

93. (1) Whenever any mortgage, encumbrance, or lease affecting land under the provisions of this Act is transmitted in consequence of the will or intestacy of the registered proprietor thereof, the probate or an office copy of the will of the deceased proprietor, or the letters of administration, or the order of the Supreme Court authorising the curator of intestate estates to collect the 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.

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

(2) Upon such entry being made, the executor or administrator, or the curator, as the case may be, shall be deemed to be registered 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.

Registration of executors, administrators, &c., by transmission. *Ibid.* ss. 79, 91. 41 Vic. No. 18, ss. 6, 7. Seventeenth Schedule.

94. (1) Executors or administrators, or other person claiming any estate of freehold in the land of a deceased proprietor, or any person having a power of disposition over the fee-simple of any such land, may apply in writing to the Registrar-General in the form of the Seventeenth Schedule hereto, to be registered as proprietor of such estate.

(2)

Real Property.

(2) Such applicant shall deposit with the Registrar-General the certificate of the death together with the will, or an office copy, or the probate of the will of the deceased proprietor, or the letters of administration, or the order of the Court authorising the curator of intestate estates to collect the estate of the deceased proprietor, or any settlement under which such applicant claims, or such evidence of his title as the applicant is able to produce.

Evidence to be deposited.

(3) The Registrar-General may, if he thinks fit, and is so advised by the examiners, dispense with the said certificate of death on production of such other evidence of the death as appears to the examiners sufficient.

41 Vic. No. 18, s. 7.

(4) 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, except such estates or interests as arise or are supposed to arise out of matters anterior to the date of the instrument in respect of which he applies to be registered, unless such estates or interests have been disclosed by or referred to in some instrument or declaration of trust deposited under this Act, or have been protected by caveat entered pursuant to the provisions of this Act.

Statements to be contained in the application.
Ibid.

(5) The Registrar-General and the examiners shall not be concerned in nor take notice of any such prior estates or interests unless they have disclosed or referred to or protected as herein mentioned.

(6) Such application shall state that the applicant verily believes himself to be entitled to the estate in such land in respect to which he applies to be registered.

(7) Such application may be made by, and the statements in such application shall be verified upon the oath or statutory declaration of the applicant, or, in case of his absence from New South Wales, his agent, duly constituted by general power of attorney.

(8) The applicant shall surrender the existing grant or certificate of title of the land in respect of which he claims to be registered as proprietor prior to his being entered in the register-book as herein-after mentioned, unless the Registrar-General sees fit to dispense with such surrender.

Surrender of existing certificate.

(9) Before dispensing with such surrender the Registrar-General shall require the person deriving to make a statutory declaration that such grant or certificate of title has not been deposited as security for any loan, and shall give fourteen days' notice of his intention to register such transmission in the Gazette and at least one daily newspaper published in Sydney.

Unless dispensed with.

95. (1) The Registrar-General shall refer such application to the examiners for examination and report, and upon receipt of their report shall take the matter into consideration, and thereafter he may—

Applications to be referred to examiners.
26 Vic. No. 9, s. 80.
41 Vic. No. 18, ss. 6, 8.

(a) reject such application altogether; or

(b)

Real Property.

Notices to

(b) cause notice thereof to be published once in the Gazette and three times in at least one daily newspaper published in Sydney, and give such further publicity to such application as he thinks fit, whether by advertisement or the serving or posting of notices; or

Unless dispensed with.

(c) if so advised by the examiners dispense with the publication of all or any of such notices.

(2) Where any notice is published the Registrar-General shall therein limit and appoint a time, not less than one month from the date of the advertisement in the Gazette, upon or after which he may, unless he has in the interval received a caveat forbidding him so to do, register such applicant as proprietor of such land.

(3) Where notices are dispensed with the Registrar-General shall, unless he has received a caveat forbidding him so to do, register the applicant as proprietor at the expiration of such time, not being more than one month, as he thinks fit.

Registration of transmission how effected

(4) Registration of the applicant as proprietor shall be effected by entering in the register-book the particulars of the transmission through which the applicant claims and by issuing to the applicant a certificate of title, unless the transmission is of the whole land in the grant or certificate of title surrendered and for the whole estate of the deceased proprietor, in which case the applicant may at his option take out a certificate of title in his own name or receive the grant or certificate of title of the deceased proprietor with a memorial of the transmission indorsed thereon.

(5) Whenever the Registrar-General is of opinion that the grant or certificate of title is incapable of containing with convenience any further indorsements he may compel the person applying for registration to receive a certificate of title in his own name.

Caveats.

(6) The Registrar-General shall enter a caveat for the protection of the interests of such other persons (if any) as appear to him or the examiners to be interested in such land.

Trusts protected.

26 Vic. No. 9, s. 80.

96. The person so registered in respect of any such mortgage, encumbrance, or lease, or of any such estate of freehold, shall hold such land, estate, or interest in trust for the persons and purposes to which it is applicable by law, but for the purpose of any dealing with such land, estate, or interest, under the provisions of this Act, he shall be deemed to be absolute proprietor thereof.

Real Property.

PART XII.

GENERAL PROVISIONS.

97. (1) Upon the receipt of any caveat, the Registrar-General shall notify the same to the person against whose application to bring land under 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.

Notice of caveat.
26 Vic. No. 9, s. 82.

(2) Such applicant or registered proprietor may, if he think fit, summon the caveator to attend before the Supreme Court or a Judge thereof to show cause why such caveat should not be removed.

Caveator to show cause.

(3) Such Court or Judge, upon proof that the caveator has been summoned, may make such order in the premises, either *ex parte* or otherwise, as to such Court or Judge may seem fit.

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

Compensation for lodging caveat without reasonable cause.
Ibid. s. 84.

99. 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, she may make such transfer to her husband, or such registered proprietor may make such transfer to himself jointly with any other person, or create or execute any powers of appointment, or limit any estates whether by remainder or otherwise, without limiting any use or without any re-assignment being executed; 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 in the person taking under such limitation, or in whose favour any power has been executed, or otherwise according to the intent and meaning appearing in such instrument and thereby expressed.

Proprietor may vest estate jointly in himself and others without limiting any use or without re-assignment.
Ibid. s. 85.

100. (1) 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 title in respect of such joint estate marked respectively with the name of the owner to whom the same shall be delivered.

Registered joint proprietors to be joint tenants.
Tenants in common to receive distinct certificates.
Ibid. s. 86.

Real Property.

(2) 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.
26 Vic. No. 9, s. 87.

101. In any of the following cases, that is to say,—

- (a) when any person is registered as joint proprietor with his wife of an estate in fee-simple in right of his wife, and such person dies in the lifetime of his wife and before any transfer of such estate; or
- (b) when a person is registered as joint proprietor with his wife of an estate in fee-simple in right of his wife, and such wife dies in the lifetime of her husband, and the said husband is entitled as tenant by the courtesy; or
- (c) 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
- (d) 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.
Ibid. s. 88.

102. 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 examiners, and thereafter upon consideration of the case may either reject such application altogether or direct that the applicant be registered forthwith or be so registered unless a caveat be lodged after such notice or advertisement and within such period as he thinks fit, unless otherwise directed by the Supreme Court.

Prescribed forms to be used.
Ibid. s. 3.

103. (1) Unless the contrary appears from the context, whenever a form in a Schedule to this Act 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 authorised in conformity with the provisions of this Act.

(2) Any variation from a prescribed 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. (3)

Real Property.

(3) The several forms lawfully in use at the passing of this Act, under the provisions of the Acts hereby repealed, may be used in place of the several forms corresponding thereto in the Schedules to this Act.

104. (1) The Registrar-General may, subject to the approval of the Governor, make such alterations in the several forms in the Schedules 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.

Alteration of forms.
26 Vic. No. 9, s. 90.

(2) The Registrar-General may, of his own motion, add to any form to be issued or supplied under the provisions of this Act such notes and directions as he may think fit for the guidance of persons using such forms, and in particular for directing attention to such provisions of this Act as affect the subject matter of such forms respectively.

105. (1) No writ of *feri facias* or other writ of execution 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 is seized or sold by the sheriff or the registrar or bailiff of any District Court under any writ, or is sold under any direction, decree, or order of the Supreme Court or District Court, the Registrar-General, on being served with an office copy of the writ, direction, decree, or order as the case may be, shall enter in the register-book and also upon the instrument evidencing title to the said estate or interest, if produced for that purpose, the date of the said writ, direction, decree, or order, and the date and hour of the production thereof.

Sales by sheriff or
under order of
Supreme Court or
District Court.
Ibid. s. 92.

(2) After such entry as aforesaid the sheriff or person authorised 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.

(3) 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.

(4) 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.

(5)

Real Property.

141 Vic. No. 18, s. 3.

(5) No writ of execution shall bind any land under the provisions of this Act, nor shall any transfer on a sale of such land under such writ be registered unless a true copy of such writ is served on the Registrar-General within six months from the teste date of such writ, or date of any renewal thereof, for the purpose of making the entries described in this section.

(6) Every such writ shall be deemed to have lapsed unless the same is 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.

26 Vic. No. 9, s. 93.

106. 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.

Instruments how attested and before whom proved.

Ibid. s. 94.

107. (1) Instruments executed pursuant to the provisions of this Act shall be held to be duly attested if attested by one witness.

(2) The execution of such instrument may be proved—

- (a) if the parties executing the same are resident within New South Wales, before the Registrar-General, or before a notary public, justice of the peace, or a commissioner for taking affidavits;
- (b) if the said parties are resident in the United Kingdom, then before the mayor or other chief officer of any corporation or before a notary public;
- (c) if the said parties are resident in any other British Possession, 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;
- (d) if the said parties are resident at any foreign place, before the British consular officer resident at such place.

Mode of proving execution.

Ibid. s. 95.

108. (1) The execution of any such instrument may be proved in the following manner, that is to say,—

- (a) If the person executing such instrument is personally known to the Registrar-General, justice, or other person as aforesaid, and in New South Wales, 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 attest the same by his signature.
- (b) In all other cases the witness attesting the signing may appear before one of the persons named in the last preceding section,
and

Real Property.

and if he answers 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, 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 name?

then the Registrar-General, justice, mayor, or other such person as aforesaid shall indorse upon such instrument a certificate in the form of the Eighteenth Schedule hereto.

Eighteenth Schedule

(2) Such questions as aforesaid may be varied as circumstances may require in case any person shall sign such instrument by his mark.

109. (1) 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 has been examined apart from her husband by the Registrar-General or other person legally authorised to take the acknowledgments of married women, and has assented to such proposed dealing after full explanation of her rights in the land and of the effect of the proposed dealing.

How acknowledgment of married women to be taken. 26 Vic. No. 9, s. 96.

(2) 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.

110. (1) 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, the Registrar-General may 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.

Upon surrender of existing grants or certificates proprietor may obtain a single certificate or vice versa. *Ibid.* s. 97.

(2) 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.

111. (1) 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

Provision in case of lost grant. *Ibid.* s. 98.

Real Property.

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 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 thereon, and shall also contain a statement of the circumstances under which such provisional certificate is issued, and the Registrar-General shall at the same time enter in the register-book notice of the issuing of such provisional certificate and the date thereof, and the circumstances under which it was issued.

(2) 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.

(3) 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.

26 Vic. No. 9, s. 99:

112. 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.

Ibid. s. 100.

113. (1) 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.

(2)

Real Property.

(2) 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 is divided, marked with distinct numbers or symbols.

(3) Every such map shall be certified as accurate by declaration of a licensed surveyor before the Registrar-General or a justice of the peace.

(4) Such map shall, if required by the Registrar-General, be in duplicate. 36 Vic. No. 7, s. 5.

114. (1) 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. Registrar-General may require map to be deposited. 26 Vic. No. 9, s. 1

(2) If the said land or the portion thereof proposed to be transferred or dealt with is of less area than one acre then such map or plan shall be on a scale not less than one inch to two chains.

(3) If such land or the portion thereof about to be transferred or dealt with is of greater area than one acre, but not exceeding five acres, then such map shall be upon a scale not less than one inch to five chains.

(4) If such land or the portion thereof as aforesaid is of greater area than five acres, but not exceeding eighty acres, then such map or plan shall be upon a scale of not less than one inch to ten chains.

(5) If such land or the portion thereof as aforesaid is of greater area than eighty acres, then such map or plan shall be upon a scale of one inch to twenty chains.

(6) If such proprietor neglects or refuses 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 nor with the registration of such transfer or lease.

(7) Subsequent subdivisions of the same land may be delineated on the map or plan of the same so deposited, if such map or plan be upon a sufficient scale in accordance with the provisions herein contained, and the correctness of the delineation of each such subdivision shall be acknowledged in manner prescribed for the case of the deposit of an original map or plan.

(8) Such maps or plans shall, if required by the Registrar-General, be in duplicate. 36 Vic. No. 7, s. 5.

115. (1) The Registrar-General, upon payment of the fee specified in the Nineteenth Schedule 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. Certified copies to be furnished by Registrar-General and to be evidence. Nineteenth Schedule.

(2)

Real Property.

26 Vic. No. 9, s. 102.

(2) 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.

Searches.
Ibid. s. 103.
Nineteenth Schedule.

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

Authority to register.
Ibid. s. 104.

117. (1) 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 is 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, or by the conveyancer employed by the applicant or party.

(2) Any person who falsely or negligently certifies to the correctness of any such application or other instrument shall incur therefor a penalty not exceeding fifty pounds.

Penalty for certifying incorrect instruments.

(3) 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 has certified the same.

PART XIII.

FEES.

Fees.
Ibid. s. 105.
Nineteenth Schedule.

118. The Registrar-General may recover such fees as are appointed by the Governor not in any case exceeding the several fees specified in the Nineteenth Schedule hereto.

Percentage to be levied for assurance of title.
Ibid. s. 27.

119. (1) 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 Nineteenth Schedule.

Nineteenth Schedule.

(2) 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

Real Property.

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.

(3) If the Registrar-General is not satisfied as to the correctness of the value so declared or sworn to, he may 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.

(4) Money collected under this section shall constitute an assurance fund for the purposes hereinafter provided. 26 Vic. No. 9, s. 28.

120. (1) The Registrar-General shall keep a correct account of all such sums of money as are 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. Registrar-General to pay moneys into Treasury and to render accounts. *Ibid.* ss. 28, 106.

(2) 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 New South Wales, 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. Parties entitled to be paid by Treasurer upon proper warrant. *Ibid.* s. 28.

(3) All fines and fees received under the provisions of this Act shall be carried by the said Treasurer to account of the Consolidated Revenue Fund, except moneys received under section one hundred and nineteen of this Act, and constituting the assurance fund, which last-mentioned moneys shall, together with all interest and profits accruing thereon, be invested by the said Treasurer in Government securities.

PART XIV.

CIVIL RIGHTS AND REMEDIES.

121. 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 Proprietor may summon Registrar-General to show cause if dissatisfied. *Ibid.* s. 107.

Real Property.

prescribed to be done or performed by the Registrar-General, the Registrar-General refuses so to do, or if such proprietor is dissatisfied with the direction upon his application given by the Registrar-General as hereinbefore provided, such proprietor may 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 thinks 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.

(2) Such summons shall 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.

(3) 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.

Special case when applicant dissatisfied with objection of examiners.
41 Vic. No. 18, s. 10.

122. (1) If any objection to the title of land sought to be brought under the provisions of this Act is made by the examiners, which the applicant deems not well founded, he may state a case for the decision of the Supreme Court.

(2) Such decision shall be binding upon the examiners and Registrar-General, but shall not affect the claim of any person against the assurance fund under this Act, or the right of the applicant to proceed under the last preceding section of this Act.

(3) To every such case there shall be annexed such observations as the examiners may think proper to make.

(4) The cost of obtaining such decision shall in each case be borne by the applicant.

Registrar-General may state a case for Supreme Court.
26 Vic. No. 9, s. 108.

123. The Registrar-General, whenever any question arises with regard to the performance of any duties or the exercise of any of the functions by this Act conferred or imposed upon him, may state a case for the opinion of the Supreme Court, and thereupon the said Court may give its judgment thereon, and such judgment shall be binding upon the Registrar-General.

Registered proprietor protected against ejectment except in certain cases.
Ibid. s. 115.

124. 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:—

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

(b)

Real Property.

- (b) The case of an encumbrancee as against an encumbrancer in default.
- (c) The case of a lessor as against a lessee in default.
- (d) The case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud.
- (e) 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 bona fide for value.
- (f) 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 a 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.

125. (1) Whenever an action is brought against a registered proprietor or person holding a grant or certificate of title in either of the last two cases excepted in the last preceding section, if the defendant or any person through whom he claims has 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.

In case of ejectment of defendant who has made improvements their value may be assessed.
26 Vic. No. 9, s. 116.

(2) If a verdict is found for the plaintiff or his title is 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.

(3) No writ of possession shall issue in such case unless the plaintiff first pays into court for the use of the defendant the value of the improvements so assessed, deducting only the costs (if any) to which he is entitled in the action.

And plaintiff shall either pay for improvements or be restricted to damages for the loss of the unimproved land.

(4) If the plaintiff fails to make such payment within three months after the 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.

(5)

Real Property.

(5) 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 is held by the party whose right to the land has determined.

(6) In every case in which the defendant is 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.

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

(7) In no case shall the assurance fund be liable to the principal defendant for any greater damages than he actually sustains as the result of such action after using all reasonable diligence in the defence thereof.

Compensation for party deprived of land.

26 Vic. No. 9, s. 117.

126. (1) Any person deprived of land or of any estate, or interest in land—

- (a) in consequence of fraud; or
- (b) through the bringing of such land under the provisions of this Act; or
- (c) by the registration of any other person as proprietor of such land, estate, or interest; or
- (d) in consequence of any error, omission, or misdescription in any certificate of title, or in any entry or memorial in the register-book,

may bring and prosecute an action at law for the recovery of damages.

Persons liable for damages.

(2) (i) Such action shall in any case, in which such land has been included in two or more grants, be brought and prosecuted against such person as the Governor may appoint as nominal defendant.

(ii) Such action shall in any other case, but subject to the provisions of subsections three, four, and five of this section, be brought and prosecuted against the person—

- (a) upon whose application such land was brought under the provisions of this Act; or
- (b) upon whose application such erroneous registration was made; or
- (c) who acquired title to the estate or interest in question through such fraud, error, omission, or misdescription.

(3) In every case in which the fraud, error, omission, or misdescription occurs upon a transfer for value, the transferor receiving the value shall be regarded as the person upon whose application the certificate of title was issued to the transferee.

(4) Except in the case of fraud or of error occasioned by any omission, misrepresentation, or misdescription in his application, or in any instrument executed by him, the person upon whose application such land was brought under the provisions of this Act, or such erroneous

Real Property.

erroneous registration was made, shall, upon a transfer of such land bona fide for value cease to be liable for the payment of any damages which might have been recovered from him under this section.

(5) In any of the following cases, that is to say—

- (a) where such person ceases to be liable for the payment of damages as aforesaid; or
- (b) when the person liable for damages under this section is dead, bankrupt, or insolvent, or cannot be found within the jurisdiction,

Damage: in certain cases against assurance fund.

such damages with costs of action may be recovered out of the assurance fund by action against the Registrar-General as nominal defendant.

127. Any person sustaining loss or damages through any omission, mistake, or misfeasance of the Registrar-General or any of his officers or clerks in the execution of their respective duties under the provisions of this Act, 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 an 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.

When actions may lie against the Registrar-General as nominal defendant.

26 Vic. No. 9, s, 119.

128. (1) In any case in which an action for recovery of damages is 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.

Notice of action
Ibid. s. 120.

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

Unsuccessful plaintiff liable for costs.

129. (1) If in any such action the plaintiff recovers final judgment against such nominal defendant, then the Court or Judge before whom such action is 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.

Deficiency of assurance fund supplied temporarily out of public fund.
Ibid. s. 121.

(2) If the balance to the credit of the assurance fund is 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.

Real Property.

Limitation of actions.
26 Vic. No 9, s. 122.

130. (1) 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 is commenced within the period of six years from the date of such deprivation.

(2) Any person being under the disability of coverture, infancy, unsoundness of mind, or absence from New South Wales, may bring such action within six years from the date on which such disability ceases.

(3) The plaintiff in any such action, at whatever time it may be brought, or to 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 is proved to the Court before which such action is 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 a caveat forbidding the same, or had allowed such caveat to lapse.

Moneys paid out of assurance fund may be recovered against estate of deceased or bankrupt person.
Ibid. s. 123.

131. (1) Whenever any amount has been paid out of the assurance fund, on account of any person who is 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.

(2) Whenever such amount has been paid on account of a person who is insolvent or bankrupt, the amount so paid shall be considered to be a debt due from the estate of such insolvent or bankrupt, 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.

Where person liable is out of New South Wales.
Ibid. s. 123.

132. (1) Whenever any amount has been paid out of the assurance fund, on account of any person who has absconded or who cannot be found within the jurisdiction and has left any real or personal estate within New South Wales, the said Court or a Judge thereof, upon the application of the Registrar-General and upon the production of a certificate signed by the Colonial Treasurer certifying that the amount has been paid in satisfaction of a judgment against the Registrar-General as nominal defendant, may 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.

(2)

Real Property.

(2) 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.

(3) If such person has not left real or personal estate within New South Wales sufficient to satisfy the amount for which execution has been issued as aforesaid, the Registrar-General may recover such amount or the unrecovered balance thereof by action against such person at any time thereafter when he is within the jurisdiction.

133. The assurance fund shall not, under any circumstances, be liable for compensation for any loss, damage or deprivation occasioned—

Assurance fund only liable in certain cases.

(a) by the breach by a registered proprietor of any trust whether express, implied, or constructive; or

26 Vic. No. 9, s. 124.

(b) by the inclusion of the same land in two or more grants; or

(c) by any land being included in the same certificate of title with other land through misdescription of boundaries or parcels of any land, unless it is proved that the person liable for compensation and damages is dead or has absconded or is insolvent or bankrupt, 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.

134. 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 bona fide done or omitted to be done under this Act.

Registrar-General not to be liable for acts done bona fide. *Ibid.* s. 125.

135. Nothing in this Act contained shall be so interpreted as to leave subject to action for recovery of damages as aforesaid, or to action of ejectment, or to deprivation of the estate or interest in respect to which he is registered as proprietor, any purchaser or mortgagee bona fide for valuable consideration of land under the provisions of this Act on the plea that his vendor or mortgagor may have been registered as proprietor, 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.

Purchasers and mortgagees protected. *Ibid.* s. 118.

Real Property.

PART XV.

CANCELLATION AND CORRECTION OF INSTRUMENTS.

Holder of certificate or other instrument of title issued in error or wrongfully retained to show cause to court against cancellation or correction.
26 Vic. No. 9, s. 126.

136. (1) In case it appears to the satisfaction of the Registrar-General that—

- (a) any certificate of title or other instrument has been issued in error or contains any misdescription of land or of boundaries; or
- (b) any entry or indorsement has been made in error on any grant, certificate of title, or other instrument; or
- (c) any such grant, certificate, instrument, entry, or indorsement has been fraudulently or wrongfully obtained; or
- (d) 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.

(2) If such person refuses or neglects 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.

(3) If such person when served with such summons neglects or refuses to attend before such Judge or Court at the time therein appointed, such Judge may issue a warrant authorising and directing the person so summoned to be apprehended and brought before a Judge of the Supreme Court for examination.

Court may order the delivery of the instrument to the Registrar-General.
Ibid. s. 127.

137. (1) Upon the appearance before the Court or Judge of any person summoned or brought up by virtue of a warrant as aforesaid, the Court or Judge may examine such person upon oath, and may order such person to deliver up such grant, certificate of title, or other instrument as aforesaid.

(2) Upon refusal or neglect by such person to deliver up the same pursuant to such order such Court or Judge may commit such person to prison.

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

(3) Upon such refusal or neglect, or in case such person has absconded so that summons cannot be served upon him as hereinbefore directed, the Registrar-General shall, if the circumstances of the case require it, issue to the proprietor of the said land such certificate of title or other instrument as is herein provided to be issued in the case of any grant or certificate of title being lost, mislaid, or destroyed, and shall enter in the register-book notice of the issuing of the said certificate

Real Property.

certificate of title or other instrument and the circumstances under which the same was issued, and such other particulars as he may deem necessary.

138. Upon the recovery of any land, estate, or interest by any proceeding at law or in equity from the person registered as proprietor thereof, the Court or Judge, in any case in which such proceeding is not hereinbefore expressly barred, may 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.

Court may direct cancellation of certificate or entry. 26 Vic. No. 9, s. 128.

PART XVI.

PRACTICE AND PROCEDURE.

139. In the conduct of proceedings 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 to ordinary proceedings in the court in which such proceedings may be instituted.

Rules of Supreme Court to apply and same right of appeal. *Ibid.* s. 134.

140. The Judges of the Supreme Court, or any three of them, shall have power from time to time to make rules and orders for regulating proceedings in the Supreme Court under this Act in like manner as at present.

Supreme Court may make rules, &c. *Ibid.* s. 134.

PART XVII.

CRIMINAL PROVISIONS.

- 141.** (1) If any person—
- (a) fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procuring 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
 - (b) 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
 - (c) knowingly misleads or deceives any person hereinbefore authorised to demand explanation or information in respect to any land or the title to any land which is the subject of any application

Certain fraudulent acts to be deemed misdemeanours. *Ibid.* s. 130.

Real Property.

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; he shall be guilty of a misdemeanour, 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.

(2) 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.

Conviction not to affect civil remedy. 26 Vic. No. 9, s. 131.

142. No proceeding or conviction of any act, hereby declared to be a misdemeanour 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.

Presecutions and recovery of penalties. *Ibid.* s. 135.

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

SCHEDULES.

FIRST SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
26 Vic. No. 9 ...	Real Property Act	The whole.
36 Vic. No. 7 ...	Real Property Act Amendment Act of 1873 ...	The whole.
41 Vic. No. 18 ...	Real Property Act Further Amendment Act of 1877.	The whole.
56 Vic. No. 16 ...	Conveyancer's Enabling Act of 1893	The whole.
57 Vic. No. 7 ...	Real Property Act Further Amendment Act of 1893.	The whole.
No. 47, 1897 ...	Real Property (Crown Lands) Act, 1897 ...	Sections 2 and 3.

SECOND SCHEDULE.

No. . NEW SOUTH WALES.
Application to bring lands under the provisions of the Real Property Act, 1900.
 Fee-simple.

I, [name, residence, occupation, or other designation in full] do solemnly and sincerely declare that [I am or C.D. of is, as the case may be] seized for an estate in fee-simple of [here give description of the property in full], which land (including

Real Property.

(including all improvements) is of the value of _____ and no more, and is [state whether "the whole" or "part"] of [insert allotment, with reference to number and section on plan, if any, or if not, number of acres granted] originally granted to [name of grantee] by Crown grant, under the hand of _____, Governor of the Colony, dated the _____ day of _____, 19____; And I further declare that I verily believe there does not exist any lease, or agreement for lease, of the said land for any term exceeding a tenancy for one year, or from year to year, except as follows—[if there be any lease, here state particulars; if none, strike out the words "except as follows."]

Also, that there does not exist any mortgage, lien, writ of execution, charge or encumbrance, will or settlement, or any deed or writing, contract, or dealing (other than such lease or tenancy as aforesaid), giving any right, claim, or interest in or to the said land, or any part thereof, to any other person than myself, except as follows—[if any exception, here state particulars; if none, strike out the words "except as follows."]

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 [insert "unoccupied," or "in the occupation of," adding names and addresses of tenants in full; state also nature of tenancy, if not under some lease before mentioned], and that the owners and occupiers of adjacent lands are as follows: On the north, &c., [here insert names and residences of adjacent owners and occupiers on every side.]

And I further declare that I [here insert "am unmarried," or "was married to my present wife on the _____ day of _____, 18____," as the fact may be].

And I further declare that the annexed schedule, to which my signature is affixed, and which is to be taken as part of this declaration, contains a full and correct list of all settlements, deeds, documents, or instruments, maps, plans, and papers relating to the land comprised in this application, so far as I have any means of ascertaining the same, distinguishing such as, being in my possession or under my control, are herewith lodged, and indicating where or with whom, so far as known to me, any others thereof are deposited: Also, that there does not exist any fact or circumstance whatever material to the title, which is not hereby fully and fairly disclosed to the utmost extent of my knowledge, information, and belief; and that there is not, to my knowledge and belief, any action or suit pending affecting the said land, nor any person who has or claims any estate, right, title, or interest therein, or in any part thereof, otherwise than by virtue and to the extent of some lease or tenancy hereby fully disclosed, except as follows—[if any exception, state particulars; if none, strike out the words "except as follows"].

And I make this solemn declaration, conscientiously believing the same to be true.

Dated at _____, this _____ day of _____, 19____.

Made and subscribed by the abovenamed
 this _____ day of _____, 19____, in the presence
 of [the declaration must be attested by the
 Registrar-General or deputy, or by a notary
 public, or by a justice of the peace]. } (Signature of applicant.)

[If the signature be by mark, the attestation must state that it was read over to the declarant, that he appeared fully to understand the contents. This applies also to the subjoined direction, particularly if a different person be nominated to receive certificate.]

To the Registrar-General,—

I, _____, the above declarant, do hereby apply to have the land described in the above declaration brought under the provisions of the Real Property Act, 1900, and request you to issue the certificate of title in the name of [if to applicant, say "myself"; if to other person write name at full length, with address and occupation; if
 to

Act No. 25, 1900.

Real Property.

to two or more, state whether as joint tenants or tenants in common; if to an infant, the age should be stated, and verified by certificate of birth, or by statutory declaration; if to a married woman, the name of the husband, together with his residence and occupation, should be stated].

Dated at _____, this _____ day of _____, 19 _____.

Witness to signature—

(Signature of applicant.)

N.B.—The annexed schedule, and the certificate indorsed, should both be also signed.

SCHEDULE REFERRED TO.

(To be signed by applicant.)

[For the particulars which this schedule must comprise, see concluding part of declaration, to which particular attention is directed, as any omission or misstatement will render applicant liable to the penalties of false declaration.

Such of the deeds and documents as are in applicant's possession or control must be deposited with the application. Counterpart leases must be included, but these will be returned, if required.

If any deposited deeds relate also to property not brought under the Act, they may be returned after partial cancellation; but of all these, abstracts or copies for retention should be furnished, and the desire for the return of the originals noted.

If the only object be to comply with covenant to produce, parties are reminded that by specially depositing them under the one hundred and eighteenth section of the Act number seventeen of one thousand eight hundred and ninety-eight, such covenant will be finally satisfied.

N.B.—Section one hundred and seventeen requires that the following certificate be signed by applicant or his solicitor or conveyancer, and renders liable any person falsely or negligently certifying to a penalty of fifty pounds; also, to damages recoverable by parties injured:—]

I certify that the within application is correct for the purposes of the Real Property Act, 1900 [if by solicitor, insert "and that I am the solicitor of the within-named applicant," and add his own address to his signature; if by conveyancer, insert "and that I am the conveyancer employed by the within-named applicant," and add his own address to his signature].

FEEs.

Payment of these must accompany the application.

1st.—Where the applicant is the original grantee from the Crown.

New certificate	£1 0 0
Add assurance, ½d. in the £ on declared value.	

2nd.—Where the applicant is not the grantee from the Crown, or being the grantee the property has been dealt with by any registered instrument.

Fees—Advertisement	£1 10 0
New certificate	1 0 0

Total	£2 10 0
-----------------	---------

In addition to the assurance fee of ½d. in the £ on the value.

☞ State to whom all correspondence relating to this application should be sent, with address, as under, namely:—

(Name)
(Occupation)
(Post town)

THIRD

Real Property.

THIRD SCHEDULE.

Case No. _____
Application of _____ NEW SOUTH WALES.

Caveat forbidding lands to be brought under the Real Property Act, 1900.

Take notice that I [name of caveator in full], of [address and description in full] claiming estate or interest [here state the nature of the estate or interest claimed, and the facts on which the claim is founded] in lands described as [here state particulars of description from declaration of applicant or advertisement] in notice dated the [insert date of notice in Gazette] day of 19 , 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, 1900, do hereby forbid the bringing of the said land under the provisions of the said Act; and I do appoint [state distinctly an address in Sydney at which notices relating hereto may be served] the place at which notices relating hereto may be served.

Dated this _____ day of _____ 19 .
(Signature of caveator or his attorney.)

Signed in my presence, this _____ day of _____, 19 .

To the Registrar-General of the Colony of New South Wales.

N.B.—Section one hundred and seventeen requires that the following certificate be signed by caveator or his solicitor or conveyancer, and renders liable any person falsely or negligently certifying to a penalty of fifty pounds; also, to damages recoverable by parties injured.

I certify that the within caveat is correct for the purposes of the Real Property Act, 1900 [if by solicitor, insert "and that I am the solicitor of the within-named caveator," and add his own address to his signature; if by conveyancer, insert "and that I am the conveyancer employed by the within-named caveator," and add his own address to his signature].

FEES.

For noting caveat	10s.
For withdrawing or cancelling caveat	5s.

FOURTH SCHEDULE.

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 seized 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) the [country, section, or town allotment] marked _____ delineated in the public map of the said [county or township] deposited in the Department of Lands, 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 the presence of _____ the } Registrar-General (L.S.)
day of _____

Real Property.

FIRST SCHEDULE.

NEW SOUTH WALES.

Memorandum of transfer (*Real Property Act, 1900.*)

Fee-simple.

I [*name, residence, occupation, or other designation in full*], being registered as the proprietor of an estate in fee-simple [*if a less estate, strike out "in fee-simple," and insert the required alteration*] in the land hereinafter described, subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon [*all subsisting encumbrances must be noted hereon*], in consideration of [*if the consideration be not pecuniary, alter accordingly*] pounds, paid to me by [*name, residence, occupation, or other designation of transferee; if a minor, state of what age, and forward certificate or declaration as to date of birth; if a married woman, state name, residence, and occupation of husband*], the receipt whereof I hereby acknowledge, do hereby transfer to the said [*if to two or more, state whether as joint tenants or tenants in common*] all my estate and interest, as such registered proprietor, in all that piece of land containing [*area in acres, roods, or perches*], situate in [*parish or town, county*], being [*"the whole" or "part," as the case may be*] of the land comprised in [*"Crown grant," or "certificate of title"*] dated , registered volume No. , folio [*repeat if more than one*].

[*These references will suffice, if the whole land in the grant or certificate be transferred.*]

But if a part only (unless a plan has been deposited, in which case a reference to the number of allotment and number of plan will be sufficient), a description and plan will be required, and may be inserted or annexed with this prefix—"as delineated in the plan hereon (or annexed hereto), and described as follows, viz:—"

Here also should be set forth any right-of-way or easement, or exception, if there be any such not fully disclosed, either in the principal description or memorandum of encumbrances.

Any provision in addition to, or modification of, the covenants implied by the Act may also be inserted.]

In witness whereof, I have hereunto subscribed my name, at , the
day of , in the year of our Lord one thousand nine hundred and
Transferor.

[*If signed by virtue of any power of attorney, the original must be produced, and an attested copy deposited, accompanied by the usual declaration that no notice of revocation has been received.*]

Signed in my presence by the said , }
who is personally known to me }

(Signed)

[*If this instrument be signed or acknowledged before the Registrar-General or Deputy Registrar-General, or a notary public, a J.P., or Commissioner for Affidavits, to whom the transferor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.*]

This applies only to instruments signed within the Colony. If the parties be resident without the Colony, but in any British possession, the instrument must be signed or acknowledged before the Registrar-General or Recorder of Titles of such possession, or before any Judge, notary public, Governor, Government Resident, or Chief Secretary of such possession. If resident in the United Kingdom, then before the mayor or chief officer of any corporation, or a notary public. And if resident at any foreign place, then before the British Consular Officer at such place.

If the transferor signs by a mark, the attestation must state "that the instrument was read over or explained to him, and that he appeared fully to understand the same."

Accepted,

Real Property.

Accepted, and I hereby certify this transfer to be correct for the purposes of the Real Property Act, 1900.

Transferee.

[The above may be signed by the solicitor or conveyancer when the signature of transferee cannot be procured.]

N.B.—Section one hundred and seventeen requires that the above certificate be signed by transferee, or his solicitor or conveyancer, and renders liable any person falsely or negligently certifying to a penalty of fifty pounds; also, to damages recoverable by parties injured.]

Signed in my presence by the said }
 who is personally known to me. }

[For the signature of the transferee hereto an ordinary attestation is sufficient. Unless the instrument contains some special covenant by the transferee, his signature will be dispensed with in cases where it is established that it cannot be procured without difficulty. It is, however, always desirable to afford a clue for detecting forgery or personation, and for this reason it is essential that the signature should, if possible, be obtained.]

MEMORANDUM OF ENCUMBRANCES, &C., REFERRED TO.

[A very short note of the particulars will suffice.]

Transferor.

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me at _____, the _____ day of _____, one thousand nine hundred and _____ [name of witness and residence], the attesting witness to this instrument, and declared that he personally knew [name of transferor], the person signing the same, and whose signature thereto he has attested; and that the name purporting to be such signature of the said [name of transferor] is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [Registrar-General, Deputy Registrar-General, notary public, J.P., or Commissioner for Affidavits].

ENDORSEMENT.

No. _____ Memorandum of transfer of _____
 Lodged by _____
 Vendor.
 Purchaser.
 Particulars entered in the register-book, vol. _____, folio _____
 Registrar-General (L.S.)

SIXTH SCHEDULE.

NEW SOUTH WALES.

Memorandum of transfer of lease (Real Property Act, 1900.)

I [name, residence, occupation, or other designation in full], being the registered proprietor as lessee under the memorandum of lease hereunder mentioned, subject, however, to such encumbrances, lien, and interests as are notified by memorandum underwritten or endorsed hereon [all subsisting encumbrances must be noted hereon], in consideration

Act No. 25, 1900.

Real Property.

consideration of _____ pounds, paid to me by [*name, residence, occupation, or other designation of transferee; if a married woman, state name, residence, and occupation of husband*], the receipt whereof I hereby acknowledge, do hereby transfer to the said [*name of transferee in full*] all the estate and interest of which I am [*or "we are," as case may be*] registered proprietor, together with all [*"my" or "our," as case may be*] rights and powers in respect thereof, as comprised and set forth in memorandum of lease, dated _____ 19____, from [*name of lessor*], registered number _____, of all the piece of land containing [*area in acres, roods, and perches*], situate in [*parish or town, county*], being [*"the whole" or "part," as the case may be*] of the land comprised in [*"Crown grant" or "certificate of title"*], registered volume _____ folio [*if more than one lease is to be transferred repeat description*].

In witness whereof, I have hereunto subscribed my name, at _____, the
day of _____, in the year one thousand nine hundred and _____

Transferor.

[*If signed by virtue of any power of attorney, the original must be produced, and an attested copy deposited, accompanied by the usual declaration that no notice of revocation has been received.*]

Signed in my presence by the said _____, }
who is personally known to me }

(Signed)

[*If this instrument be signed or acknowledged before the Registrar-General or Deputy Registrar-General, or a notary public, a J.P., or Commissioner for Affidavits, to whom the transferor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.*]

This applies to instruments signed within the Colony. As to those signed elsewhere, see the Act, section one hundred and seven.

If the transferor signs by a mark, the attestation must state "that the instrument was read over or explained to him, and that he appeared fully to understand the same."

Accepted, and I hereby certify this transfer to be correct for the purposes of the Real Property Act, 1900.

Transferee.

[*The above may be signed by the solicitor or conveyancer when the signature of transferee cannot be procured.*]

N.B.—Section one hundred and seventeen requires that the above certificate be signed by transferee, or his solicitor or conveyancer, and renders liable any person falsely or negligently certifying to a penalty of fifty pounds; also, to damages recoverable by parties injured.]

Signed in my presence by the said _____, }
who is personally known to me }

[*For the signature of the transferee hereto an ordinary attestation is sufficient. Unless the instrument contains some special covenant by the transferee, his signature will be dispensed with in cases where it is established that it cannot be procured without difficulty. It is, however, always desirable to afford a clue for detecting forgery or personation, and for this reason it is essential that the signature should, if possible, be obtained.*]

MEMORANDUM OF ENCUMBRANCES, &C., REFERRED TO.

[*A very short note of the particulars will suffice.*]

Transferor.

[*If the lease intended to be hereby transferred contains a covenant to the effect that the lessee (the transferor herein) shall not assign without consent of the lessor,*

Real Property.

it will be necessary to obtain his consent hereon, which may be done in the following words, viz.: "I, the lessor described in the lease hereinbefore mentioned, hereby consent to this transfer," and his signature attested in a similar manner to that of the transferor.

If land comprised in the lease is subject to mortgage, the mortgagee must consent hereto. This may be done in a similar manner to the "consent of lessor."

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me at _____, the _____ day of _____, one thousand nine hundred and _____ [name of witness and residence], the attesting witness to this instrument, and declared that he personally knew [name of transferor], the person signing the same, and whose signature thereto he has attested; and that the name purporting to be such signature of the said [name of transferor] is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [Registrar-General, Deputy Registrar-General, notary public, J.P., or Commissioner for Affidavits].

ENDORSEMENT.

No. _____

Transfer of lease.

Lodged by _____

Transferor. _____

Transferee. _____

Particulars entered on lease, registered No. _____

Registrar-General (L.S.)

SEVENTH SCHEDULE.

NEW SOUTH WALES.

Memorandum of transfer of mortgage (Real Property Act, 1900.)

I, [name, residence, occupation, or other designation in full], being the registered proprietor as mortgagee under the memorandum of mortgage herewith mentioned, subject, however, to such encumbrances, liens, and interests as are noted by memorandum underwritten or endorsed hereon [all prior encumbrances must be noted hereon], in consideration of _____, paid to me by [name, residence, occupation, or other designation of transferee; if a married woman, state name, residence, and occupation of husband], the receipt whereof I hereby acknowledge, do hereby transfer to the said [name of transferee in full] all the estate and interest of which I am [or "we," as case may be] registered proprietor, together with all ["my" or "our," as case may be] rights and powers in respect thereof, as comprised and set forth in memorandum of mortgage, dated _____, 19____, from [name of mortgagor], registered number _____, of all that piece of land containing [area in acres, roods, and perches], situate in [parish or town, county], being [the "whole" or "part," as the case may be] of the land comprised in ["Crown grant" or "certificate of title"], registered volume _____, folio [repeat if more than one mortgage is to be transferred].

In witness whereof, I have hereunto subscribed my name, at _____, the _____ day of _____, in the year one thousand nine hundred and _____

Transferor.

[If signed by virtue of any power of attorney, the original must be produced, and an attested copy deposited, accompanied by the usual declaration that no notice of revocation has been received.]

Signed in my presence by the said _____, }
 who is personally known to me _____ }

(Signed)

Act No. 25, 1900.

Real Property.

[If this instrument be signed or acknowledged before the Registrar-General or Deputy Registrar-General, or a notary public, a J.P., or Commissioner for Affidavits, to whom the transferor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.

This applies to instruments signed within the Colony. As to those signed elsewhere, see the Act, section one hundred and seven.

If the transferor signs by a mark, the attestation must state "that the instrument was read over or explained to him, and that he appeared fully to understand the same."

Accepted, and I hereby certify this transfer to be correct for the purposes of the Real Property Act, 1900.

Transferee.

[The above may be signed by the solicitor or conveyancer when the signature of transferee cannot be procured.

N.B.—Section one hundred and seventeen requires that the above certificate be signed by transferee, or his solicitor or conveyancer, and renders liable any person falsely or negligently certifying to a penalty of fifty pounds; also to damages recoverable by parties injured.]

Signed in my presence by the said _____, }
 who is personally known to me }

[For the signature of the transferee hereto, an ordinary attestation is sufficient. Unless the instrument contains some special covenant by the transferee, his signature will be dispensed with in cases where it is established that it cannot be procured without difficulty. It is, however, always desirable to afford a clue for detecting forgery or personation, and for this reason it is essential that the signature should, if possible, be obtained.]

MEMORANDUM OF ENCUMBRANCES, &C., REFERRED TO.

[A very short note of the particulars will suffice.]

Transferor.

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me at _____, the _____ day of _____, one thousand nine hundred and _____ [name of witness and residence], the attesting witness to this instrument, and declared that he personally knew [name of transferor], the person signing the same, and whose signature thereto he has attested; and that the name purporting to be such signature of the said [name of transferor] is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [Registrar-General, Deputy Registrar-General, notary public, J.P., or Commissioner for Affidavits].

ENDORSEMENT.

Transfer of mortgage.

No.

Lodged by

Transferor.
 Transferee.

Particulars entered in the register-book, vol. _____, folio _____
 Registrar-General (L.S.)

EIGHTH

Real Property.

EIGHTH SCHEDULE.

NEW SOUTH WALES.

Memorandum of lease (Real Property Act, 1900.)

(In duplicate.)

I [name, residence, occupation, or other designation of lessor], being registered as the proprietor of an estate in fee-simple [if a less estate, strike out "in fee-simple," and interline required alteration] in the land hereinafter described, subject, however, to such encumbrances, liens, and interest as are notified by memorandum underwritten or endorsed hereon, do hereby lease unto [name, &c., of lessee], all that piece of land containing [acres, roods, and perches], situated in , being [the "whole" or "part," as the case may be] of the land comprised in ["Crown grant" or "certificate of title"], dated , registered volume , folio . [These references will suffice alone if the whole land in the grant or certificate be leased; but if the lease be of a part, a surveyor's description and plan will be required, which will then follow here with this prefix—"as delineated in the plan hereon (or hereunto annexed), and described as follows:—" Add also, if intended, any rights-of-way or other easements, and any exceptions, if intended, of mines or minerals, timber, &c. If the plan or description be annexed, the annexure should be identified as part of this instrument by a memorandum thereon referring hereto, and signed by the same parties and witnesses.] To be held by , the said , as tenant for the term of years, computed from the day of , at the yearly rent of [state both in words and figures] pounds, payable as follows [here insert times of payment], subject to the following covenants, conditions, and restrictions, viz.:—1. To the covenants and powers implied in every memorandum of lease by virtue of the Real Property Act, 1900, section seventy-eight [these relate on the part of the tenant to payment of rent and repair; on the part of the lessor to right of entry to inspect repairs and of re-entry and forfeiture of lease after six months default in payment of rent or fulfilment of covenants], or such of them, or so far, as not hereby expressly negatived or modified. 2. To the full effect of the covenants next hereinafter shortly noted, as the same are set forth in words at length in section eighty-one of the said Act. [Here insert any of the following suited to the case. To understand the full effect of each refer to the Act:—"That the lessee will insure"; "that he will paint outside every alternate year"; "that he will paint and paper every third year"; "that he will fence"; "that he will cultivate"; "that he will not use the premises as a shop"; "that he will not carry on offensive trades"; "that he will not, without leave, assign or sublet"; "that he will not cut timber"; "that he will carry on the business of a publican, and conduct the same in an orderly manner"; "that he will apply for a renewal of license"; "that he will facilitate the transfer of license."] 3. To the following special additional provisions [here add any other terms of the intended lease], viz.:—

I, [name of lessee], the within-named lessee, do hereby accept this lease as tenant, subject to the conditions, restriction, and covenants above set forth.

Dated this day of , one thousand nine hundred and .

Signed by the said , who is personally }
 known to me, in my presence, . } Lessor.

Unless the signature of the lessor be made or acknowledged before the Registrar-General, or his deputy, or a notary public, J.P., or Commissioner for Affidavits, the witness must appear before one of the above functionaries to make a declaration in the annexed form A.

This applies to instruments signed within the Colony. As to those signed elsewhere, see the Act, section one hundred and seven. If a signature be by a mark, the attestation must state that the instrument was read over or fully explained to the party, and that he appeared fully to understand the same.

Accepted,

Act No. 25, 1900.

Real Property.

Accepted, and I hereby certify this lease to be correct for the purposes of the Real Property Act, 1900.

Signed by the said _____, who is personally }
known to me, in my presence . } Lessee.
(Signed)

[CAUTION.—Section one hundred and seventeen, which requires the above to be signed by the lessee, or his solicitor or conveyancer, renders persons certifying falsely or negligently subject to a penalty of fifty pounds, besides damages to any parties injured.]

A.

DECLARATION BY ATTESTING WITNESS.

Appeared before me at _____, the _____ day of _____, one thousand nine hundred and _____ [name of witness and residence], the attesting witness to this instrument, and declared that he personally knew [name of lessor], the person signing the same, and whose signature thereto he has attested; and that the name purporting to be such signature of the said [name of lessor] is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

ENDORSEMENT.

No. _____ Memorandum of lease of _____
Lodged by _____
Lessor. _____
Lessee. _____
Particulars entered in the register-book, vol. _____, folio _____, the
day of _____, 19____. _____
Registrar-General (L.S.)

FORM OF SURRENDER.

I, _____, registered proprietor of the lease created by the within instrument, do hereby, in consideration of _____, hereby surrender all my estate or interest therein to the lessor or other the present owner of the reversion thereon expectant.

In witness whereof, I have hereto subscribd my name this _____ day of _____.
(Signed)

Accepted,— _____

NINTH SCHEDULE.

NEW SOUTH WALES.

Memorandum of mortgage (Real Property Act, 1900.)

[Must be in duplicate, one copy to be filed and the other retained by the mortgagee.]
(The Crown grant or certificate of title must be presented herewith, in order that this mortgage may be noted thereon.)

I, [name, residence, occupation, or other description in full; if more than one, insert "we," and make the other alterations required throughout], being registered as the proprietor of an estate in fee-simple [if a less estate, strike out "in fee-simple," and interline the required alteration] in the land hereinafter described, subject, however, to such encumbrances, liens, and interests as are notified by memoranda underwritten or endorsed hereon [all prior subsisting encumbrances must be thus noted] in consideration of _____ pounds, lent to _____ by [name, residence, &c., of mortgagee], the receipt whereof _____ hereby acknowledge, do, for the purpose of securing to _____ the payment in manner hereinafter mentioned of the said principal sum and interest thereon, hereby mortgage to the said _____ all my estate and interest, as such registered proprietor as aforesaid, in all that piece of land containing [area in acres, rods,

or

Real Property.

or perches], situated in [parish, town, county], being the whole of the land comprised in ["Crown grant" or "certificate of title"], dated , registered volume , folio ; also all that piece of land [when there are a number of grants or certificates of title to be dealt with, it is suggested that all the deeds, after the first, be scheduled in the annexed form, and reference made to them thus, "also all those pieces of land comprised and described in the schedule annexed hereto"; no description beyond these references is required, unless the land be subdivided, in which case a surveyor's description and plan are necessary]; and for the consideration aforesaid ["I" or "we," and name] do hereby covenant with the said : Firstly—That [if two or more interline (if intended), jointly and severally] will pay to the above sum of pounds on the day of : Secondly—That will pay interest on the said sum at the rate of pounds, by the one hundred pounds in the year as follows:— : Thirdly [the mere words "I will insure," with a statement of the amount, are sufficient to imply all the usual provisions contained in covenants for insurance, except that which follows, and which is usual in mortgages; if no insurance be intended, strike the pen through this covenant]. That will insure in the sum of pounds, and that, in the event of loss, the sum recoverable on account of such insurance shall be applicable either in or towards repair or rebuilding, or in or towards repayment of the mortgage debt, at the option of the mortgagee: Fourthly—[here add, if intended, any special covenants or modifications of covenants or powers implied by the Real Property Act, 1900, in every mortgage].

In witness whereof have hereunto subscribed name at the day of , in the year of our Lord one thousand nine hundred and

Signed in my presence by the said , }
 who is personally known to me } Mortgagor.
 (Signed)

If this instrument be signed or acknowledged before the Registrar-General or Deputy Registrar-General, or a notary public, a J.P., or Commissioner for Affidavits, to whom the mortgagor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.

This applies to instruments signed within the Colony. As to those signed elsewhere, see the Act, section one hundred and seven.

If the mortgagor signs by a mark, the attestation must state "that the instrument was read over or explained to him, and that he appeared fully to understand the same."

Accepted, and I hereby certify this mortgage to be correct for the purposes of the Real Property Act, 1900.

Mortgagee.

[Who will also sign endorsement.]

The above may be signed by a solicitor or conveyancer when signature of mortgagee cannot be procured.

N.B.—Section one hundred and seventeen requires that the above certificate be signed by mortgagee, or his solicitor or conveyancer, and renders liable any person falsely or negligently certifying to a penalty of fifty pounds; also, to damages recoverable by parties injured.

Signed in my presence by the said , }
 who is personally known to me }

For the signature of the mortgagee hereto, an ordinary attestation is sufficient; unless the instrument contain some special covenant by the mortgagee, his signature will be dispensed with in cases where it is established that it cannot be procured without difficulty. It is, however, always desirable to afford a clue for detecting forgery or personation, and for this reason it is essential that the signature should, if possible, be obtained.

MEMORANDUM

Act No. 25, 1900.

Real Property.

MEMORANDUM OF PRIOR ENCUMBRANCES, &C., REFERRED TO.

[A very concise note of the particulars will suffice.]

Mortgagor.

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me at _____, the _____ day of _____, one thousand nine hundred and _____ [name of witness and residence], the attesting witness to this instrument, and declared that he personally knew [name of mortgagor], the person signing the same, and whose signature thereto he has attested; and that the name purporting to be such signature of the said [name of mortgagor] is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [Registrar-General, Deputy, notary, J.P.,
or Commissioner for Affidavits.]

ENDORSEMENT.

No.

Mortgage of _____

Lodged by _____

Mortgagor.

Mortgagee.

Particulars entered in the register-book, vol. _____, folio _____
Registrar-General (L.S.)

FORM OF DISCHARGE.

Received from _____, this _____ day of _____, one thousand nine hundred and _____, the sum of _____ pounds, being in full satisfaction and discharge of the within obligation.

Signed in my presence by the said _____, }
who is personally known to me } Mortgagee.

[The same requirement of attestation and authentication applies to a transfer or discharge by the mortgagee as to the creation of the mortgage by the mortgagor.]

TENTH SCHEDULE.

NEW SOUTH WALES.

Memorandum of Encumbrance (Real Property Act, 1900).

(In duplicate.)

[This form, as printed, comprises the whole land in any grant or certificate, or the whole lands in several grants or certificates; for encumbrance of a part it may be adapted. Generally, however, it will be found more convenient, before encumbering a part, to obtain a separate certificate (under section one hundred and ten) for that portion, and another for the portion remaining unencumbered.]

I, [name, residence, occupation, or other description in full; if more than one, insert "we," and make the other alterations required throughout], being registered as the proprietor of an estate in fee simple [if a less estate, strike out "in fee simple," and interline the required alteration] in the land hereinafter described, subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon [all prior subsisting encumbrances must be thus noted], in all that piece of land containing [area in acres, roods, or perches], situated in [parish, town, county], being the whole of the land comprised in ["Crown grant" or certificate of title"], dated _____ registered volume _____, folio _____; also all that piece of land [no description beyond these references is required, unless the land be subdivided,

Real Property.

subdivided, in which case a surveyor's description and plan are necessary, but if there-upon a separate certificate be obtained as above recommended, reference thereto will be sufficient, otherwise this form must be altered by striking out "the whole," and interlining "a part," followed by the full description and plan, or annexing them if requisite; but every annexure should be identified with the original instrument, by memorandum referring thereto, signed by the same contracting and attesting parties.] And desiring to render the said land available for the purpose of securing to and for the benefit of [name, residence, and occupation, or other designation of encumbrancee], the [annuity or other designation of intended encumbrance] hereinafter mentioned, do hereby encumber the said land for the benefit of the said , with the [annuity or other designation of intended incumbrance] of pounds to be raised and paid at the times and in the manner following, that is to say—[set forth times and mode of payment]. To the intent that the said may be entitled to the benefit of all the powers and remedies implied or given in favour of an encumbrancee by the Real Property Act, 1900, with the qualifications or additions following, viz.:—[insert any such, if intended; in the mortgage form there are covenants to pay, and to insure—but as these are not matters of course in encumbrances of other kinds, their insertion is left discretionary].

In witness whereof, I have hereunto subscribed my name, at , the day of , in the year one thousand nine hundred and

Signed in my presence by the said , }
 who is personally known to me } Encumbrancer.
 (Signed)

If this instrument be signed or acknowledged before the Registrar-General or Deputy Registrar-General, a notary public, a J.P., or Commissioner for Affidavits, no further authentication is required; otherwise the witness must appear before one of the above functionaries to make a declaration in the annexed form.

This applies to instruments signed within the Colony. As to those signed elsewhere, see the Act, section one hundred and seven.

If the encumbrancer signs by a mark, the attestation must state that the instrument was read over or explained to him, and that he appeared fully to under the same.
 Accepted by me,—

Signed in my presence by the said , }
 who is personally known to me } Encumbrancee.
 [Who will also sign endorsement.]

For the signature of the encumbrancee hereto, an ordinary attestation is sufficient, but any release or transfer by him will require the authentication above-mentioned, as required for encumbrancers.

MEMORANDUM OF PRIOR ENCUMBRANCES, &c., REFERRED TO.

[A very concise note of the particulars will suffice.]
 Encumbrancer.

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me at , the day of , one thousand nine hundred and [name of witness and residence], the attesting witness to this instrument and declared that he personally knew [name of encumbrancer], the person signing the same, and whose signature thereto he has attested; and that the name, purporting to be such signature of the said [name of encumbrancer], is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [Registrar-General, Deputy Registrar-General, notary, J.P., or Commissioner for Affidavits.]
 [Certificate]

Act No. 25, 1900.

Real Property.

[Certificate required by section one hundred and seventeen, which must be signed by the encumbrancee, or the next form by his solicitor or conveyancer.]

I [or we], the within-mentioned and undersigned , do hereby certify that the within memorandum of encumbrance is correct for the purposes of the Real Property Act, 1900.

or

I hereby certify that I am the solicitor of [or conveyancer employed by] the within-named , and that the within instrument is correct for the purposes of the Real Property Act, 1900.

(Signature)

(Address)

(Date)

[Any person falsely or negligently certifying is liable to a penalty of fifty pounds, besides damages to parties injured.]

ENDORSEMENT.

No.

Encumbrancer

Encumbrancer.

Encumbrancee.

Particulars entered in the register-book, vol. , folio , the day of .

Registrar-General (L.S.)

DISCHARGE.

If the satisfaction be by a money payment in full, the same discharge which is indorsed on the mortgage form will apply. In other cases proof of death of annuitant and of payment to date thereof to his representatives will be necessary.

Encumbrancee.

ELEVENTH SCHEDULE.

NEW SOUTH WALES.

Memorandum of transfer by mortgagee under power of sale (Real Property Act, 1900, section fifty-eight.)

Fee-simple.

I, [name, residence, occupation, or other designation in full of mortgagee], being the mortgagee under memorandum of mortgage number , dated , one thousand nine hundred and , from [name of registered proprietor , the registered proprietor of an estate in fee-simple [if a less estate, strike out "in fee-simple," and interline the required alteration] in the land hereinafter described, subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon [all subsisting encumbrances must be noted hereon], in consideration of [if the consideration be not pecuniary alter accordingly] pounds, paid to me by [name, residence, occupation, or other designation of transferee; if a minor, state of what age, and forward certificate or declaration as to date of birth; if a married woman, state name, residence, and occupation of husband], the receipt whereof I hereby acknowledge, do hereby, in exercise of my power of sale as such mortgagee, transfer to the said [if to two or more, state whether as joint tenants or tenants in common] all the estate and interest of the said [repeat name of registered proprietor], as such registered proprietor, in all that piece of land, containing [area, in acres, roods, or perches], situate in [parish or town, county], being ["the whole" or "part," as the case may be] of the land comprised in ["Crown grant" or "certificate of title"], dated , registered volume number , folio [repeat if more than one].

These references will suffice if the whole land in the grant or certificate be transferred. But

Real Property.

But if a part only (unless a plan has been deposited, in which case a reference to the number of allotment and number of plan will be sufficient), a description and plan will be required, and may be inserted or annexed with this prefix—" as delineated in the plan hereon (or annexed hereto), and described as follows, viz.":—

Here also should be set forth any right-of-way or easement, or exception, if there be any such not fully disclosed, either in the principal description or memorandum of encumbrances.

Any provision in addition to, or modification of, the covenants implied by the Act may also be inserted.

In witness whereof, I have hereunto subscribed my name, at _____, the
day of _____, in the year of our Lord, one thousand nine hundred and _____
Transferor.

[If signed by virtue of any power of attorney, the original must be produced, and an attested copy deposited, accompanied by the usual declaration that no notice of revocation has been received.]

Signed in my presence by the said _____, }
who is personally known to me, _____ }

(Signed)

If this instrument be signed or acknowledged before the Registrar-General or Deputy Registrar-General, or a notary public, a J.P., or Commissioner for Affidavits, to whom the transferor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.

This applies to instruments signed within the Colony. As to those signed elsewhere, see the Act, section one hundred and seven.

If the transferor signs by a mark, the attestation must state "that the instrument was read over or explained to him, and that he appeared fully to understand the same."

Accepted, and I hereby certify this transfer to be correct for the purposes of the Real Property Act, 1900.

Transferee.

The above may be signed by the solicitor or conveyancer when the signature of transferee cannot be procured.

N.B.—Section one hundred and seventeen requires that the above certificate be signed by transferee, or his solicitor or conveyancer, and renders liable any person falsely or negligently certifying to a penalty of fifty pounds; also to damages recoverable by parties injured.

Signed in my presence by the said _____, }
who is personally known to me, _____ }

For the signature of the transferee hereto, an ordinary attestation is sufficient. Unless the instrument contains some special covenant by the transferee, his signature will be dispensed with in cases where it is established that it cannot be procured without difficulty. It is, however, always desirable to afford a clue for detecting forgery or personation, and for this reason it is essential that the signature should, if possible, be obtained.

NOTE.—A declaration of default (by mortgage) up to date of transfer must be furnished.

MEMORANDUM OF ENCUMBRANCES, &c., REFERRED TO.

[A very short note of the particulars will suffice.]

Transferor.

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me at _____, the _____ day of _____, one thousand nine hundred and _____ [name of witness and residence], the attesting witness to this instrument, and declared that he personally knew [name of transferor], the person signing

Real Property.

signing the same, and whose signature thereto he has attested; and that the name purporting to be such signature of the said [name of transferor] is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [Registrar-General, deputy, notary public, J.P.,
or Commissioner for Affidavits].

ENDORSEMENT.

No. Memorandum of transfer of
Lodged by
Vendor.
Purchaser.
Particulars entered in the register-book, vol. , folio
Registrar-General (I.S.)

TWELFTH SCHEDULE.

NEW SOUTH WALES.

Power of Attorney (Real Property Act, 1900.)

Limited to specific property.

I, , do hereby appoint [if more than one is intended, add after names and additions, "jointly and each of them severally, my attorneys, and"] attorney to sell to any person all or any of the lands [add "leases," "mortgages," or otherwise, if in accordance with the fact] belonging to me, under or by virtue of the Real Property Act, 1900, which are described or referred to in the Schedule hereunder written. Also, to mortgage or otherwise encumber the same respectively, for securing any sum at any rate of interest, or for any other purpose. Also, to lease all or any such lands as shall be of freehold tenure, or sublet such as shall be of leasehold tenure for any term for which I could myself lease or sublet the same, not exceeding twenty-one years in possession, at such rent, or for such other valuable consideration as my said [insert "attorneys or" if more than one] attorney shall deem fit [here insert anything required in addition or modification]. And for me and in my name or otherwise to sign all such transfers and other instruments, and do all such acts, matters, and things as may be necessary or expedient for carrying out the powers hereby given, and for recovering all sums of money that are now or may become due or owing to me in respect of the premises, and for enforcing or varying my contracts, covenants, or conditions binding upon any purchaser, lessee, tenant, or occupier of the said lands, or upon any other person in respect of the same, and for recovering and maintaining possession of the said lands, and for protecting the same from waste, damage, or trespass. And I hereby declare that this power shall continue in force until notice of my death or of the revocation of these presents shall have been received by my said attorney [or attorneys].

In witness whereof, I have hereunto subscribed my name, day
of , one thousand nine hundred and

Signed in my presence by the said , }
who is personally known to me, . }

If this instrument be signed and acknowledged before the Registrar-General or Deputy Registrar-General, or a notary public, a J.P., or Commissioner for Affidavits, to whom the donor of the power is known, no further authentication is required. Otherwise the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.

This applies to instruments signed within the Colony. As to those signed elsewhere, see the Act, section one hundred and seven.

If the donor of the power signs by a mark, the attestation must state "that the instrument was read over or explained to him, and that he appeared fully to understand the same."

SCHEDULE

Real Property.

SCHEDULE REFERRED TO.

[Shortly describe each property or interest, with reference to the volume and folio of registration.]

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me, at , the day of , one thousand nine hundred and , the attesting witness to this instrument, and declared that he personally knew , the person signing the same, and whose signature thereto he has attested; and that the name purporting to be such signature of the said is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [Registrar-General, Deputy Registrar-General, a notary, J.P., or Commissioner for Affidavits].

I, the within-mentioned and undersigned , do hereby certify that the within power of attorney is correct for the purposes of the Real Property Act, 1900.

ENDORSEMENT.

No. Power of attorney from to , folio . Particulars entered in the register-book, vol. Registrar-General (L.S.)

THIRTEENTH SCHEDULE.

NEW SOUTH WALES.

Power of Attorney (Real Property Act, 1900.)

General power.

I, , do hereby appoint [if more than one is intended, add after names and additions, "jointly, and each of them severally, my attorneys, and "] attorney, to sell to any person all or any lands, leases, mortgages, or other encumbrances or registered estates, or interests in land, whether now belonging to me, or which shall hereafter belong to me under or by virtue of the Real Property Act, 1900, or of which I am now or shall hereafter be the registered owner under the said Act: Also, to mortgage or otherwise encumber the same respectively for securing any sum at any rate of interest, or for any other purpose: Also, to lease all or any such lands as shall be of freehold tenure, or sublet such as shall be of leasehold tenure for any term for which I could myself lease or sublet the same, not exceeding twenty-one years in possession, at such rent, or for such other valuable consideration as my said [insert "attorneys or" if more than one] attorney shall deem fit [here insert anything required in addition or modification]: And for me and in my name or otherwise to sign all such transfers and other instruments, and do all such acts, matters, and things as may be necessary or expedient for carrying out the powers hereby given, and for recovering all sums of money that are now or may become due or owing to me in respect of the premises, and for enforcing or varying my contracts, covenants, or conditions binding upon any purchaser, lessee, tenant, or occupier of the said lands, or upon any other person in respect of the same, and for recovering and maintaining possession of the said lands, and for protecting the same from waste, damage, or trespass. And I hereby declare that this power shall continue in force until notice of my death or of the revocation of these presents shall have been received by my said attorney [or attorneys].

In witness whereof, I have hereunto subscribed my name this day of , one thousand nine hundred and

Signed in my presence by the said , } who is personally known to me, . } If

Act No. 25, 1900.

Real Property.

If this instrument be signed or acknowledged before the Registrar-General or Deputy Registrar-General, or a notary public, a J.P., or Commissioner for Affidavits, to whom the donor of the power is known, no further authentication is required. Otherwise the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.

This applies to instruments signed within the Colony. As to those signed elsewhere, see the Act, section one hundred and seven.

If the donor of the power signs by a mark, the attestation must state, "that the instrument was read over or explained to him, and that he appeared fully to understand the same."

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me at _____, the _____ day of _____, one thousand nine hundred and _____, the attesting witness to this instrument, and declared that he personally knew _____, the person signing the same, and whose signature thereto he has attested; and that the name purporting to be such signature of the said _____ is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [*Registrar-General, Deputy Registrar-General, a notary, J.P., or Commissioner for Affidavits*].

I, the within-mentioned and undersigned, _____, do hereby certify that the within power of attorney is correct for the purposes of the Real Property Act, 1900.

ENDORSEMENT.

No. _____ *Power of attorney from* _____ *to* _____
Particulars entered in the register-book, vol. _____, folio _____
Registrar-General (L.S.)

FOURTEENTH SCHEDULE.

Revocation order.

I, _____, 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 _____

(Signed)

FIFTEENTH SCHEDULE.

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, 1900, sections sixty-eight and sixty-nine, 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 _____

Signed and sealed the _____ day of _____, in the presence of _____ Registrar-General (L.S.)

SIXTEENTH

Real Property.

SIXTEENTH SCHEDULE.

Certificate No. Vol. Folio .

NEW SOUTH WALES.

Caveat forbidding registration of dealing with estate or interest (Real Property Act, 1900.)

Take notice, that I [*name of caveator in full*], of [*address and description in full*], claiming estate or interest [*here state the nature of the estate or interest claimed, and the facts on which the claim is founded*] in lands described as [*here state particulars of description from certificate; a reference to the area, parish, city, or county, with volume and folio will suffice*], forbid the registration of any memorandum of transfer or instrument affecting the said land until this caveat be by me or by order of the Supreme Court or some Judge thereof withdrawn, or until after the lapse of fourteen days from the date of the service of notice of such intended registration at the following address:—[*state distinctly an address in Sydney at which notices relating hereto may be served.*].

Dated this day of , one thousand eight hundred and ninety-

(*Signature of caveator or his attorney,
solicitor, or conveyancer.*)

Signed in my presence, this day of one thousand nine
hundred and

To the Registrar-General of the Colony of New South Wales.

N.B.—Section one hundred and seventeen requires that the following certificate be signed by caveator or his solicitor or conveyancer, and renders liable any person falsely or negligently certifying to a penalty of fifty pounds; also, to damages recoverable by parties injured.

I certify that the within caveat is correct for the purposes of the Real Property Act, 1900.

If by solicitor or conveyancer, insert "and that I am the solicitor of (or conveyancer employed by) the within-named caveator," and add his own address to his signature.

ENDORSEMENT.

No. *Caveat*

Land

Caveator.

Caveatee.

Particulars entered in the register-book, vol. , folio .
Registrar-General (L.S.)

SEVENTEENTH SCHEDULE.

NEW SOUTH WALES.

No.

Application to be registered under the Real Property Act, 1900 (section ninety-four), as proprietor by transmission.

I, [*Christian name and surname in full, with residence and occupation*], do solemnly and sincerely declare that I verily believe myself to be entitled for an estate (in fee-simple) [*if a less estate, alter to accord with the fact*] to the land described in the certificate of title held by , deceased (vol. , folio), herewith deposited and surrendered,—I having become so entitled as [*executor or administrator, or as the case may be, with any required explanation of particulars*]. In further verification whereof, I have deposited the documents enumerated in the schedule hereto:

L

I

Act No. 25, 1900.

Real Property.

I also declare that the said land is now of the value of [*present value, inclusive of all improvements*] pounds sterling; also that no other person is, within my knowledge, entitled to any estate or interest in the said land (except as follows)—[*state particulars of any mortgage, lease, &c.; if none, strike out the words "except as follows"*]: And I make this solemn declaration, conscientiously believing the same to be true.

Dated at _____, the _____ day of _____, one thousand nine hundred and _____.

Made and subscribed by the abovenamed _____, }
 the _____ day of _____, one thousand nine } (*Signature of applicant.*)
 hundred and _____, in the presence of _____ }

By section one hundred and twenty-six, any applicant procuring a certificate through any fraud, error, omission, misrepresentation, or misdescription, will, notwithstanding the issue of such certificate, remain liable for damages to any person thereby prejudiced. And any person who fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, is declared guilty of a misdemeanour, and liable to a penalty not exceeding five hundred pounds, or imprisonment not exceeding three years; and any certificate thereby procured is rendered void as between all parties or privies to the fraud.

SCHEDULE OF DOCUMENTS DEPOSITED.

[*The following is required under section ninety-four:—Certificate of death of deceased proprietor, and statutory declaration or other evidence negating dower of any widow; if he died intestate, letters of administration; if the claim be by devisee or executor, original office copy or probate of the will; if made under settlement, the original should be deposited.*]

This schedule must be signed by the applicant.

I, the within-named and undersigned, _____, do hereby certify that the within application is correct for the purposes of the Real Property Act, 1900.

(*Signature of applicant, or his solicitor or conveyancer.*)

ENDORSEMENT.

No. _____ Application by transmission.

Deceased.

Applicant.

Particulars entered in register-book, vol. _____, fol. _____, the _____ day of _____, 19____, at _____ o'clock in the _____ noon.

Deputy Registrar-General (L.S.)

EIGHTEENTH SCHEDULE.

Certificate of Registrar-General, justice of the peace, &c., taking declaration of attesting witness.

Appeared before me, at _____, the _____ day of _____, the attesting witness to this instrument, and declared that he personally knew _____, the person signing the same, and whose signature thereto he has attested, and that the name purporting to be such signature of the said _____ is his own handwriting, and that he was of sound mind, and freely and voluntarily signed the same.

Signed [*Registrar-General or J.P.*]

NINETEENTH

Real Property.

NINETEENTH SCHEDULE.

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

	£	s.	d.
Contribution to assurance fund upon first bringing land under this Act, and upon the registration of an estate of freehold in possession derived by settlement, will, or intestacy—In the pound sterling	0	0	0½
Other fees—			
For every certificate of title	1	0	0
For every folio of seventy-two words, or part of a folio, in a certificate of title after the first six folios, in addition to the above fee	0	2	0
For every diagram after the first in a certificate of title	0	1	0
Registering memorandum of transfer, lease, mortgage, encumbrance, or the transfer or discharge of a mortgage, or the transfer or surrender of a lease	0	10	0
Registering proprietor of any estate or interest derived by settlement or transmission	1	0	0
For every power of attorney	0	10	0
For every registration abstract	1	0	0
For cancelling registration abstract	0	5	0
For every revocation order	0	10	0
Noting caveat	0	10	0
Cancelling or withdrawing of caveat and service of notice to caveator or caveatee	0	5	0
Issuing order for foreclosure	1	0	0
For every search	0	2	0
For every general search	0	5	0
For every map or plan deposited	0	5	0
For every instrument declaratory of trusts, and for every will or other instrument deposited	0	10	0
For registering recovery by proceeding in law or equity, or re-entry by lessee	0	10	0
For registering vesting of lease in mortgagee consequent on refusal of assignees to accept the same	0	10	0
For entering notice of marriage or death	0	10	0
For entering notice of writ or order of Supreme Court	0	10	0
Taking acknowledgment of married woman	0	5	0
Taking declaration in case of lost grant or other instrument, or where production of duplicate is dispensed with	0	10	0
For the exhibition or return of any deposited instrument, or for exhibiting or returning deeds surrendered by applicant proprietor	0	5	0
For certified copy, first five folios, per folio of seventy-two words	0	5	0
For every folio, or part folio, after first five	0	0	8
For every instrument drawn on parchment	0	2	6
Taking affidavit or statutory declaration	0	5	0
When any instrument purports to deal with land included in more than one grant or certificate, for each registration memorial after the first	0	2	0

TWENTIETH SCHEDULE.

By virtue of [*here state the transfer, proclamation, or other document by virtue of which the land has become Crown land*], the land described in this grant [*or certificate of title*], has become vested in Her Majesty as Crown lands within the meaning of the Crown Lands Acts.