

The Transfer of Land Act, 1893.

(56th Vict., No. 14.)

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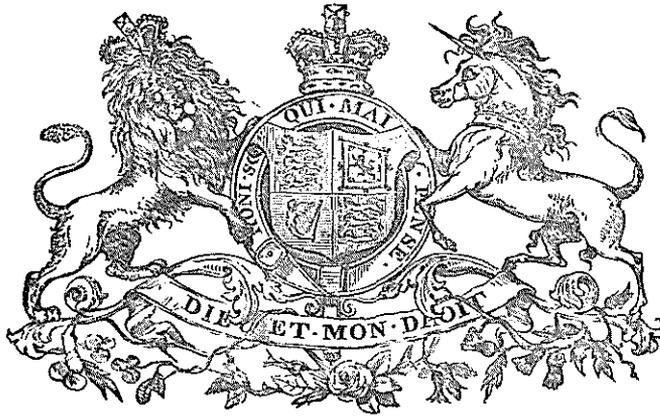
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Western Australia.

ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

No. XIV.

AN ACT to consolidate the Law relating to the Simplification of the Title to and the Dealing with Estates in Land.

[Assented to, 13th January, 1893.]

WHEREAS it is expedient to consolidate and amend the Law relating to the Title to and Dealing with Estates in Land: Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Preamble.

1. THIS Act may be cited as "The Transfer of Land Act 1893" and shall come into operation on the first day of April, one thousand eight hundred and ninety-three and is divided into Parts and Divisions as follows:—

Short title commencement and division.

- PART I.—OFFICERS ss. 5-17;
- PART II.—BRINGING LAND UNDER THE ACT ss. 18-47;
- PART III.—CERTIFICATES OF TITLE AND REGISTRATION ss. 48-81;

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PART IV.—DEALINGS WITH LAND:—

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Division 4.—Miscellaneous ss. 130-136.

PART V.—CAVEATS SS. 137-142 ;

PART VI.—POWERS OF ATTORNEY AND ATTESTATION OF INSTRUMENTS SS. 143-145 ;

PART VII.—SEARCH CERTIFICATES AND STAY ORDERS SS. 146-150 ;

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PART X.—SPECIAL POWERS AND DUTIES OF COMMISSIONER AND REGISTRAR SS. 180-193 ;

PART XI.—ASSURANCE FUND SS. 194-197 ;

PART XII.—ACTIONS AND OTHER REMEDIES SS 198-213 ;

PART XIII.—OFFENCES SS 214-218 ;

PART XIV.—MISCELLANEOUS SS. 219-241.

Repeal.
First Schedule.

2. (1.) THE Acts mentioned in the First Schedule to this Act to the extent to which the same are thereby expressed to be repealed are hereby repealed. Provided that such repeal shall not affect any appointment (including those of specially licensed surveyors) declaration or any certified statement or list made or any application pending or any registration effected or any notice or certificate given or any memorandum entered or any caveat lodged or any seal prepared or any title estate interest claim right of dower or other right or power of attorney existing or duly acquired under the said Acts or any of them before the commencement of this Act.

References to Act of
1874 apply to this
Act.

(2.) In all cases where in any Act Instrument Order Decree Rule Regulation or Document whatsoever reference is made to "The *Transfer of Land Act 1874*" or to any Act or provision hereby repealed such reference shall be construed and have effect as if the same reference was made to the corresponding provisions of this Act.

Laws inconsistent
not to apply to land
under this Act.
Ibid. sect. 1.
55 Vict. No. 20.

3. ALL Laws Statutes Acts Ordinances Rules Regulations and Practise whatsoever so far as inconsistent with this Act shall not apply or be deemed to apply to land whether freehold or leasehold which shall be under the operation of this Act. This Act shall not

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be construed to limit abridge or extend any provisions of "The Married Women's Property Act 1892."

4. (1.) IN the construction of this Act except where the subject or context or the other provisions hereof require a different construction—
- Interpretation.
Act of 1874. Sect. 3.
- "Addition" shall mean the description as to residence profession trade or occupation of any person : "Addition."
- "Annuitant" shall mean the proprietor of an annuity or charge : "Annuitant."
- "Annuity" shall mean a sum of money payable periodically and charged on land under the operation of this Act by an instrument hereunder : "Annuity."
- "Charge" shall mean the instrument creating and charging an annuity : "Charge."
- "Encumbrances" shall include all prior estates interests rights claims and demands which can or may be had made or set up in to upon or in respect of the land : "Encumbrances."
- "Endorsed" shall include anything written upon or in the margin or at the foot of any document : "Endorsed."
- "Examiner of Titles" shall mean any person being a barrister-at-law or an attorney or solicitor who shall hereafter be appointed as such examiner under this Act : "Examiner of Titles."
- "Grant" shall mean the grant by Her Majesty of land in fee or for years : "Grant."
- "Grantor" shall mean the proprietor of land charged with the payment of an annuity : "Grantor."
- "Instrument" shall include a conveyance assignment transfer lease sub-lease mortgage charge and creation of an easement : "Instrument."
- "Judge" shall mean a judge of the Supreme Court of Western Australia : "Judge."
- "Land" shall include messuages tenements and hereditaments corporeal or incorporeal ; and in every certificate of title transfer and lease issued or made under this Act such word shall also include all easements and appurtenances appertaining to the land therein described or reputed to be part thereof or appurtenant thereto : "Land."
- "Minister" shall mean the responsible Minister in charge of the Department. "Minister."
- "Person" shall include a corporation whether aggregate or sole : "Person."

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- “Proprietor.” “Proprietor” shall mean the owner whether in possession remainder reversion or otherwise of land or of a lease mortgage or charge whose name appears or is entered as the proprietor thereof in the register book ; and such word shall also include the donee of a power to appoint or dispose of the same :
- “Settlement.” “Settlement” shall mean any document under or by virtue of which any land shall be so limited as to create partial or limited estates or interests :
- “Sheriff.” “Sheriff” shall include the Sheriff of Western Australia so far as concerns land within his bailiwick and any deputy sheriff or person appointed to execute any writ of *fiery facias* :
- “Transmission.” “Transmission” shall mean the acquirement of the ownership of freehold land under the will of the proprietor or by descent or by executors or administrators as such or under any settlement.
- Scope of this Act. (2.) All land and every estate and interest in land under the operation of “The *Transfer of Land Act 1874*” and all instruments and dealings affecting any such land estate or interest shall from the commencement of this Act be deemed to be under the operation of this Act.

PART I.—OFFICERS.

- Commissioner of Titles.
Ibid. sect. 4.
5. THE Governor in Council may by warrant under his hand and public seal appoint a fit and proper person being a barrister or solicitor of the English Irish or Colonial Courts of seven years standing and practise to be the Commissioner of Titles. The present Commissioner shall continue to hold office under this Act. The Governor in Council may upon any vacancy occurring in such office by death resignation retirement or removal appoint a person to supply such vacancy.
- Power to appoint a deputy in case of illness or absence.
Ibid. sect. 6.
6. IN case of illness or absence the Governor in Council may appoint a person to act as the deputy of any officer during such illness or absence ; and such deputy while acting under such appointment shall have all the powers and perform all the duties of the officer of whom he may be deputy.
- Registrar of Titles.
Ibid. sect. 5.
7. THE Governor in Council may appoint one Registrar of Titles. The present Registrar of Titles shall continue to hold office under this Act.

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8. THE Governor in Council may from time to time appoint one or more Examiner or Examiners of Titles and one or more Assistant Registrar or Registrars of Titles and any other officers necessary for carrying out the provisions of this Act; and may remove any Commissioner Examiner Registrar or any other officer and supply any vacancy thereby or otherwise occurring.

Appointment of other and removal of all officers.
Ibid. sect. 5.

9. ALL courts judges and persons acting judicially shall take judicial notice of the signature of the Commissioner of Titles (hereinafter called the Commissioner) and of the Registrar of Titles (hereinafter called the Registrar) and of any Assistant Registrar of Titles (hereinafter called an Assistant Registrar).

Certain signatures to be judicially noticed.
Ibid. sect. 7.

10. THE Registrar shall cause to be kept a seal bearing the impression of the Royal Arms and having inscribed in the margin thereof the words "Office of Titles Western Australia"; and all certificates of title and other documents purporting to be sealed with such seal and to be signed by the Commissioner or Registrar or by an Assistant Registrar shall be admissible as evidence without further proof.

Seal of office.
Ibid. sect. 8.

11. EVERYTHING by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by any Assistant Registrar; and shall be as valid and effectual as if done or signed by the Registrar himself.

Powers of Assistant Registrar.

12. THE Commissioner shall not nor shall any Examiner of Titles under this Act directly or indirectly practise as a barrister or an attorney or solicitor or participate in the fees of any other person so practising.

Commissioner and Examiner of Titles not to practise.
Ibid. sect. 9.

13. EVERY Registrar and Assistant Registrar to be hereafter appointed shall before executing any of the duties of his office take the following oath before a judge:—

Oaths of office.

I *A.B.* do solemnly swear that I will faithfully and to the best of my ability execute and perform the office and duties of Registrar of Titles [*or* Assistant Registrar of Titles] under "The *Transfer of Land Act* 1893." So help me God.

14. THE Governor in Council may appoint persons to be sworn valuers under this Act and at pleasure annul the appointment of any such person. Every such person shall within fourteen days from his appointment and before making any valuation under this Act take the following oath before a judge:—

Appointment of sworn valuers.
Ibid. sect. 14.

I *A.B.* do solemnly swear that I will faithfully and honestly and to the best of my skill and ability make any valuation

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required of me under the provisions of "The *Transfer of Land Act 1893.*" So help me God.

Surveyors under this Act how licensed.

50 Vict. No. 6.

15. THE Surveyor General may on the recommendation of the Minister license any person to practise as a Surveyor under this Act but no such license shall be granted to any person unless he holds a license under "The *Licensed Surveyors Act 1886*" and no plan or description of land nor any survey or survey work shall be received at the Office of Titles unless drawn made or performed by a person licensed to practise under this Act or "The *Transfer of Land Act 1874.*"

Rules for their governance.

16. THE Minister may from time to time make Rules and Regulations to be observed by Surveyors licensed to practise under this Act and from time to time may amend or revoke the same. All such Rules and Regulations shall be published in the *Government Gazette* and shall have the force of law.

License to be subject to conditions and to be revocable.

17. EVERY license to practise as a surveyor under this Act now or hereafter to be issued shall be subject to the rules and regulations in the last preceding section mentioned and may be revoked by the Minister by notice in writing signed by him and sent through the post office by registered letter addressed to such surveyor at his last known place of residence. A notice of such revocation shall be published in the *Government Gazette.*

PART II.—BRINGING LAND UNDER THE ACT.

Crown lands remaining unalienated to be registered under this Act.

Act of 1874 Sect. 15.

18. THE grants in fee or for years of all Crown lands remaining unalienated at the time of the passing of this Act shall be delivered not to the grantee but to the Registrar who shall on a separate folium of the "Register Book" make out a certificate of title to the land comprised in any grant according to the tenor and effect thereof and shall then endorse on the said grant a memorandum to the effect that such certificate has been so made out and shall specify the folium in the Register Book where such certificate may be found. The Registrar shall then sign his name to such memorandum and the said grant so endorsed shall after payment of the contribution to the assurance fund (in cases wherein such contribution shall be payable) be delivered on demand to the grantee and shall constitute the duplicate certificate required by section forty-eight of this Act.

As to grants for public purposes. *Ibid. sect. 16.*

19. AT the time of the registration of every grant in fee to two or more persons in joint tenancy for any public purpose the Registrar shall endorse thereon and on every subsequent certificate of title the words "no survivorship" and shall sign his name thereto.

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20. LAND alienated in fee by Her Majesty before the first day of July One thousand eight hundred and seventy-five may be brought under the operation of this Act by an application in the form in the Second Schedule hereto; which application may be made by any of the following persons (that is to say):—

- (i.) The person claiming to be the owner of the fee-simple either at law or in equity:
- (ii.) Persons who collectively claim to be the owners of the fee-simple either at law or in equity:
- (iii.) Persons who have the power of appointing or disposing of the fee-simple:
- (iv.) The person claiming to be the owner of the first estate of freehold provided that the owner of any vested estate of inheritance join in applying to bring the land under the operation of the Act:
- (v.) Trustees for sale of the fee-simple but if any previous consent to their selling be requisite the persons required to give such consent to consent to the application:
- (vi.) The guardian of any infant or the committee of the estate of any lunatic or person of unsound mind unable to govern his estate so however that the application be made on behalf of such infant lunatic or person and the certificate of title be directed to issue in his name.

Lands alienated in fee before the commencement of *The Transfer of Land Act 1874* may be brought under this Act.
Ibid. sect. 17.
Second Schedule.

Provided always that a mortgagor shall not be entitled to make such application unless the mortgagee shall consent thereto; nor a mortgagee unless in the exercise of his power of sale and unless the certificate of title shall be directed to issue in the purchaser's name; nor a married woman unless her husband shall consent thereto and the application shall be acknowledged by her in the manner herein-after mentioned as to the acknowledgment of instruments (except she shall be entitled to the land for her separate use or has a power to appoint the same). Provided also that the attorney of any corporation howsoever and wheresoever incorporated whether already constituted or hereafter to be constituted by a power of attorney under a seal purporting to be the common seal of the corporation giving the power may make such application for and on behalf of the corporation of which he is the attorney and may make the requisite declaration to the best of his knowledge information and belief and may subscribe the application in his own name.

21. THE Registrar shall refer such application to the Commissioner for his direction or if there be such an officer then to an Examiner of Titles who shall report on the title and submit the same

How application to be dealt with when

no dealing has been registered.

Ibid. sect. 18.

43 V. 17, s. 2.

and the papers to the Commissioner for his direction ; and if it shall appear to the Commissioner that no transaction affecting the land has been registered under any general registration Act concerning the registration of deeds relating to or affecting land and if he shall be satisfied as to the title of the applicant he shall direct the Registrar to bring the land under the operation of this Act either forthwith or after advertisement made as hereinafter directed by registering a certificate of title.

How application to be dealt with when a dealing has been registered.

Act of 1874. Sect. 19.

43 V. 17, sect. 2.

22. IF it shall appear to the Commissioner that any such transaction as aforesaid has been registered and that all encumbrances affecting the land (excepting such as are hereinafter mentioned as not requiring special notification) have been released or that the owners thereof have consented to the application or that any encumbrance (not being a mortgage the owner whereof shall not have consented to the application) may be specified in the certificate of title and continue outstanding and if he shall be satisfied with the evidence submitted in support of the title and of such further evidence as he shall call for by requisition the Commissioner shall direct notice of the application to be advertised once at least in the *Government Gazette* and in one newspaper published in the city of Perth or circulating in the neighbourhood of the land and to be served on any persons named by him ; and shall appoint a time not less than fourteen days nor more than twelve months from such notice or from the advertisement or the first of such advertisements (if more than one) on or after the expiration of which the Registrar shall unless a caveat shall be lodged forbidding the same bring the land under the operation of this Act. The expenses of all advertisements under this or any other section shall in all cases be paid to the Registrar before the publication thereof.

Notice of application to bring land under this Act and rescission of previous directions on undue delay.

Act of 1874.

Sect. 20.

23. THE Registrar shall under such direction as aforesaid cause notice to be published in such manner as by such direction may be prescribed that application has been made for bringing the land under the operation of this Act and shall cause a copy of such notice to be posted in a conspicuous place in the office and shall send through the post office a registered letter marked outside "Office of Titles" containing a copy of such notice addressed to every person whom the Commissioner shall have directed to be served with notice and to the persons stated in the application to be occupiers of the land and (unless the land shall be an entire Crown allotment) to the occupiers and owners of the lands contiguous thereto and to all persons appearing on the Register to have a then subsisting estate or interest in the land. Notwithstanding however any direction heretofore given or which shall hereafter be given by the Commissioner to bring land under the operation either of "*The Transfer of Land Act 1874*" or of this Act he may after

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sending to the applicant or his agent one month's notice in this behalf rescind such direction and reject the title unless the applicant shall adduce satisfactory proof that he is proceeding without unnecessary delay in removing or complying with the requisitions made on the title.

Section 240 hereof.

24. ON any application to bring land under this Act on a title claimed by possession the applicant shall post on the land the subject of the application or at such place as the Commissioner shall direct a notice in the form in the Third Schedule hereto either accurately describing or necessarily including the land claimed by possession and shall keep the same so posted for not less than twenty-one days prior to the day limited for entry of caveat; and the Commissioner may refuse to issue the certificate until it has been proved to his satisfaction that the requirements of this section have been complied with.

Person claiming title by possession to post notice of application on land.
Third Schedule.

25. IF before the registration of the certificate the Registrar shall not have received a caveat forbidding the same he shall bring the land under this Act by registering in the name of the applicant or in the case of a mortgagee applying for the purpose of exercising his power of sale or that of a guardian on behalf of any infant or that of a committee on behalf of a lunatic or person of unsound mind then by registering in the name of such person as may have been directed in that behalf a certificate of title to the land in the form in the Fifth Schedule hereto.

Land to be brought under the Act unless caveat received.
Act of 1874, sect. 21.

Fifth Schedule

26. ON any application to bring land under this Act in which the land actually and *bonâ fide* occupied by the applicant differs in boundaries area or position from the land described in his muniments of title he may apply to bring under this Act the land so occupied; and in any such case the applicant shall state in his application in addition to the other particulars required by this Act that the land as occupied by him and as to which he applies for a certificate is not correctly described in the muniments of title lodged in support of the application and shall specify to the best of his knowledge and belief the reasons for the discrepancy between the land as occupied and the land as described in the muniments of title.

Land occupied may be brought under this Act by a different description from that in the title on special application.

27. ON any application to bring land under this Act by a description different from that in the muniments of title or for the issue of an amended certificate the Commissioner may grant the same as to the land in the occupation of the applicant if the discrepancy between the land as occupied and as described in the muniments or certificate of title shall appear to be due to the inaccuracy of any survey or plan or description on the sale of the land by the Crown or on any subsequent dealing therewith or to any discrepancy

Applications to bring land under Act or to amend certificate may be granted as to land occupied under but not described in the title-deeds or certificate.

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between the actual measurements or bearings at any time made or marked on the ground and those represented or mentioned in any plan or description.

Title may be given to excess of land occupied under Crown grant over land described in Crown grant.

28. IF the land included in any application to bring land under this Act or for an amended certificate consist of a Crown town or suburban allotment or country location and it shall be found by survey or otherwise that by reason of erroneous measurements in the original Crown survey the actual dimensions of such section allotment or portion as marked on the ground exceed or fall short of the dimensions given in the Crown grant of such land the Commissioner may issue a certificate in respect of such land as if the dimensions marked on the ground had been the dimensions given in the Crown grant.

Excess of land may be apportioned between different owners or proprietors.

29. WHERE land has been subdivided by the Crown into allotments or portions of equal area and by reason of erroneous measurements in the original Crown survey the area of the section as marked on the ground exceeds the sum of the areas of all the allotments or portions as shown by any plan or description used at the Crown sale or by any grant or certificate of title of any such allotment or portion the total excess of area of the section shall be deemed originally distributable amongst the allotments or portions equally; and if the area of the land included in any application to bring land under this Act or for an amended certificate is in the applicant's possession and was in such applicant's possession or those through whom he claims for over twelve years previous to the application and does not exceed the area obtained by dividing the area of the section as shown on the ground by the number of original allotments or portions the Commissioner may without ascertaining the dimensions of the other allotments or portions and without the consent of the owner or owners thereof issue a certificate in respect of the land included in such application as if the whole of it had been included by metes and bounds in the original grant or certificate of such allotment or portion.

Parties interested may lodge caveat.

Sixth Schedule.
Ibid. sect. 22.

30. ANY person claiming any estate or interest in the land described in the advertisement may in person or by agent before the registration of the certificate lodge a caveat with the Registrar in the form in the Sixth Schedule hereto forbidding the bringing of such land under this Act. Every such caveat shall be signed by the caveator or by his agent and shall particularise the estate or interest claimed; and the Registrar may by notice require any person lodging such caveat to support the same by a statutory declaration, within seven days after the service of such notice, stating the nature of the title under which the claim is made and also to deliver a perfect abstract of the title to such estate or interest. Unless such declara-

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tion be lodged within the time aforesaid the caveat shall lapse. No such caveat shall be received unless some address or place within the limits of the city of Perth shall be appointed therein as the place at which notices and proceedings relating to such caveat may be served.

31. THE Registrar upon receipt of such caveat shall notify the same to the applicant and shall suspend proceeding in the matter until such caveat shall have been withdrawn or shall have lapsed as in this Act provided or until an order in the matter shall have been obtained from the Supreme Court or a judge. The applicant may if he think fit summon the caveator to attend before the Supreme Court or a judge in chambers to show cause why such caveat should not be removed; and such Court or judge may upon proof that such caveator has been summoned make such order in the premises either *ex parte* or otherwise as to such Court or judge may seem fit.

If caveat be received proceedings suspended.

Ibid. sect. 23.

32. AFTER the expiration of one month from the receipt thereof such caveat shall be deemed to have lapsed unless the person by whom or on whose behalf the same was lodged shall within that time have taken proceedings in a court of competent jurisdiction to establish his title to the estate or interest specified in the caveat and shall have given written notice thereof to the Registrar or shall have obtained and served on him an injunction or order of the Supreme Court or a judge restraining him from bringing the land under this Act. A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest.

Caveat to lapse unless proceedings taken within one month.

Ibid. sect. 24.

33. AFTER an application has been made to have any land brought under the operation of this Act a judge may require all persons having in their possession or custody any deeds instruments or evidences of title relating to or affecting the land the subject of such application to produce the same at the Office of Titles to the Commissioner and in case there be such to any Examiner of Titles for his inspection upon such terms and subject to such conditions and for such charge or fee as the judge making the order may think just and shall fix. All applications to be made to a judge under this section may be made by summons in chambers by the applicant owner or by the person to whom he may have directed a certificate of title to be issued.

A judge may require the production of title deeds in support of an application to bring land under the Act

Ibid. sect. 25.

34. AN applicant may withdraw his application at any time prior to the registration of the certificate; and the Registrar shall in such case return to the applicant or to the person appearing by the application to be entitled thereto all evidences of title lodged in support of the application; but in such case if a caveator shall

Applicant may withdraw his application.

Ibid. sect. 26.

have been put to expense without sufficient cause by reason of such application he shall be entitled to receive from the applicant such compensation as a judge on a summons in chambers shall deem just and order.

Documents of title to be retained.
Ibid. sect. 27.

Documents of title which include other property to be returned.

No action to be brought on covenant to produce documents retained.

35. UPON registering a certificate of title the Registrar shall retain in his custody and possession all grants and instruments evidencing the title of the person registered and shall endorse upon the last of them if there be more than one a memorandum that the land included in the certificate has been brought under this Act and shall sign such memorandum. Provided always that if any of such grants or instruments relate to any property other than the land included in such certificate the Registrar shall return such grant or instrument to the person from whom he received the same. No person shall be entitled to an inspection of any of such instruments except upon the written order of the person who originally deposited the same or of some person claiming through or under him or upon the order of a Judge or of the Commissioner. No action or suit at law or in equity shall be brought or maintained upon any covenant or agreement for the production of the documents which shall be so retained or upon any agreement to give or enter into a covenant for the production thereof; and if any such action or suit shall be commenced it shall be a sufficient answer thereto that such documents have been retained under this Act.

Subsisting lease to be endorsed and returned.

36. WHERE any subsisting lease has been lodged the Registrar shall after he has endorsed the same as above provided in the case of the last material registered document, return such lease to the person lodging the same upon the applicant lodging with the Registrar a certified copy of such lease.

Additional evidence to be scheduled.

37. WHEN any additional evidence is produced in support of any application either to bring land under the operation of this Act or upon a transmission the documents shall be delivered to the Registrar who shall thereupon add them to the schedule of the application noting thereon the time of their production and affixing his initials thereto before submitting such additional evidence to the Commissioner.

Certificate of title to issue in name of deceased applicant or his nominee
Ibid. sect. 28.

38. IN case the applicant or the person in whose name the certificate of title has been directed to issue shall die between the application and the registration of the certificate it shall be registered in the name of such applicant or of such person as the case may be; and such land shall devolve or pass in like manner as if the certificate had been registered prior to the death of such applicant or person.

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39. LAND leased for a term of years of which ten years are unexpired or leased for years determinable with a life or lives may be brought under the operation of this Act as near as may be in a similar manner and subject to the same or similar provisions as are hereinbefore contained with respect to freehold land. The application may be made by persons having such estates and interests in the leasehold land as are similar or correspondent to the estates and interests of the persons entitled to apply to bring freehold land under this Act. Every certificate of title to leasehold land shall always be subject to the rights and powers of the lessor or his representative and of any person entitled to the inheritance in the land immediately expectant on the term as well as to the encumbrances hereinafter mentioned as not requiring special notification. The several provisions of this Act with respect to freehold land shall apply to leasehold land with such variations only as the difference in the nature of such property requires or as may be necessary to render such provisions applicable to leaseholds for years.

Registration of leaseholds.

Ibid. sect. 29.

40. UPON first bringing land under the operation of this Act whether by the alienation thereof in fee from the Crown or consequent upon an application as hereinbefore provided and also upon the registration of the title to an estate of freehold in land under the operation of this Act on a transmission there shall be paid to the Registrar as an assurance fund a sum not exceeding the sum specified in the Last Schedule hereto ; and in the case of land brought under this Act by alienation in fee from the Crown the price paid for such land shall be deemed to be the value thereof for the purpose of ascertaining such sum ; in the case of lands hereafter granted by the Crown in consideration of the construction of any railways or other works under any contract hereafter to be made the value shall be taken as at Ten shillings per acre unless otherwise provided by any such contract ; and in the other cases the value shall be ascertained by the declaration of the applicant or by the statutory declaration of the person deriving such land by transmission. If the Registrar shall not be satisfied of the correctness of the value so declared he may require such applicant or person to produce a certificate of such value under the hand of a sworn valuator which certificate shall be received as conclusive evidence thereof.

Percentage in the pound to be paid for assurance of title.

Ibid. sect. 30.

Last Schedule.

41. ON any application to bring leasehold property under this Act the amount to be paid into the assurance fund under the last preceding section of this Act shall be based on the value of such leasehold to be ascertained or certified to in manner authorised by the said section.

On bringing leaseholds under Act fees to be paid on the value of leasehold.

42. ON any application to bring land under this Act the Commissioner may dispense with the production of any lease and may

Production of lease may be dispensed

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with on bringing
land under Act.

accept the memorial of the registration thereof as sufficient evidence of its contents; and if the memorial does not disclose any right of renewal or purchase no such right shall be assumed to have existed and the lease shall be deemed to have expired at the time at which it would have expired according to the date and term appearing in the memorial.

Certain memorials to
be sufficient evidence
of conveyances in
fee.

Ibid. sect. 31.

43. A MEMORIAL of any release conveyance or re-conveyance registered under any Ordinance or Act concerning the registration of deeds relating to or affecting land may for the purpose of bringing land under this Act be deemed by the Commissioner sufficient evidence of the deed referred to being a conveyance in fee simple of the lands described in such memorial unless the contrary can reasonably be inferred from the prior or subsequent title or from something appearing on the face of such memorial. For every memorial which shall be acted on as the evidence of a conveyance in fee there shall be paid to the assurance fund in augmentation thereof an additional sum of One pound.

No fee payable for
use of memorial in
case of possession
for twenty years.

44. WHERE for the purpose of bringing land under this Act a memorial shall be acted on as evidence of a conveyance in fee under the provisions of the last preceding section of this Act no payment to the assurance fund shall be required for acting on such memorial where it shall appear to the Commissioner that the applicant has or the applicant together with those under whom he claims have been in continuous possession of the land included in such memorial for a period of not less than twenty years.

Additional indemnity
fund for imperfect
title.

Ibid. sect. 32.

45. NOTWITHSTANDING anything hereinbefore contained the Commissioner may after the publication of such advertisements as he may deem fit direct the Registrar to bring any land under the operation of this Act upon the applicant contributing to the assurance fund in augmentation thereof such an additional sum of money as the Commissioner shall certify under his hand to be in his judgment a sufficient indemnity by reason of the non-production of any document affecting the title or of the imperfect nature of the evidence of title or against any uncertain or doubtful claim or demand arising upon the title.

The title to land
sold under an order
or decree may be
deemed sufficient.

Ibid. sect. 33.

46. AN office copy of any order heretofore made or which shall hereafter be made by the Supreme Court (whether such order shall hereafter be in the form of an order confirming the report of the Master or in any other form) confirming a person as the purchaser of any land sold in fee simple under or in pursuance of any decree or order of such court together with an office copy of such decree or order and such certificate of payment as is hereinafter mentioned may for the purpose of bringing land under this Act be

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deemed by the Commissioner sufficient evidence of the title of the purchaser to such land subject to any estate or interest appearing by the decree or order or order of confirmation or subsequently created, and registered.

47. EVERY order of confirmation of a purchase which shall hereafter be made shall be drawn up so as to refer to a schedule thereto containing the name and addition of the purchaser and a description of the land purchased by him; and the Master of the Supreme Court is hereby required after payment and acceptance of all the money payable in respect of any particular purchase to give upon any such office copy order of confirmation a written certificate that the purchase money and all interest in respect thereof payable by any purchaser named in such certificate for any land therein referred to has been wholly paid.

Formalities of Order.

PART III.—CERTIFICATES OF TITLE AND REGISTRATION.

48. CERTIFICATES of title shall be in duplicate in the form in the Fifth Schedule hereto; and the Registrar shall keep a book to be called the "Register Book" and shall register or enter by binding up therein one of the certificates of title and shall deliver the other original (hereinafter called the duplicate) to the proprietor. Each certificate shall constitute a separate folium of such book; and the Registrar shall endorse thereon in such manner as to preserve their priorities the particulars of all dealings and matters affecting the land by this Act required to be registered or entered.

Certificates of title to be in duplicate.

Ibid. sect. 34.

Fifth Schedule.

Register book and entries therein.

49. EVERY duplicate or special certificate of title hereafter to be issued shall be on parchment. One certificate of title may be issued for several parcels of land though the same are not contiguous if in the opinion of the Registrar their relative positions can be sufficiently and conveniently shown upon the plan on the certificate; and in any case in which it is inconvenient to draw the plan in the margin of a certificate it may be drawn upon the back thereof.

Certificates to be on parchment.

One certificate may be issued for lands not contiguous.

50. IT shall not be necessary to mention the area of any parcel of land included in a certificate where the area of such parcel is less than one acre and the omission to refer to the area of the land comprised in a certificate shall not in any case invalidate the certificate. And where the consideration for a transfer shall not consist of money the words "the sum of" in the forms of transfer contained in the Seventh Schedule to this Act shall not be used to describe the consideration but the true consideration shall be concisely stated.

Area of land need not be mentioned in certificate.

Transfer to state true consideration and not fictitious money consideration.

Seventh Schedule.

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Receipts may be required for duplicates.
Ibid. sect. 35.

51. BEFORE the delivery of any duplicate certificate of title a receipt for it in the handwriting of the proprietor may be required to be signed by him when practicable so as to prevent as far as may be personation.

Certificates of title registered when entered in register book.
Ibid. sect. 36.

52. EVERY certificate of title shall be deemed and taken to be registered under this Act when the Registrar has marked thereon the volume and folium of the register book in which the same is entered; and every instrument purporting to affect land under the operation of this Act shall be deemed and taken to be registered when a memorandum thereof as hereinafter described has been entered in the register book upon the folium constituted by the existing certificate of title; and the person named in any certificate of title or instrument so registered as the proprietor of or having any estate or interest or power shall be deemed and taken to be the duly registered proprietor thereof.

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

Instruments may be in duplicate.
Instruments entitled to priority according to date of registration.
Ibid. sect. 37.

53. EVERY instrument presented for registration may be in duplicate (excepting a transfer whereon a new certificate of title is required) and shall be registered in the order of and as from the time at which the same is produced for that purpose; and instruments purporting to affect the same estate or interest shall notwithstanding any actual or constructive notice be entitled to priority as between themselves according to the date of registration and not according to the date of the instrument. Upon the registration of any instrument in duplicate the Registrar shall bind up one original in the register book and shall deliver the other (hereinafter called the duplicate) to the person entitled.

Leases and mortgages may be in triplicate.

54. ANY lease or mortgage presented for registration may be in triplicate and upon the registration thereof as provided by the last preceding section of this Act the parts not retained shall be delivered to the person presenting the lease or mortgage for registration; but in every case of registration in triplicate the word triplicate shall be perforated through each instrument and the words "lessor's part" shall be perforated through one lease and the words "lessee's part" through the other of the two leases returned and the words "mortgagor's part" shall be perforated through one mortgage and the words "mortgagee's part" through the other of the two mortgages returned.

No notice of trusts to be entered in register book.
Document declaring trusts may be deposited but not registered.

55. THE Registrar shall not enter in the register book notice of any trusts unless they are set out in the body of the original Crown grant; but trusts may be declared by any document and a duplicate or an attested copy thereof may be deposited with the Registrar for safe custody and reference; and the Commissioner should it appear to him expedient so to do may protect in any way

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he may deem advisable the rights of the persons for the time being beneficially interested thereunder or thereby required to give any consent; but the rights incident to any proprietorship or any instrument dealing or matter registered under this Act shall not be in any manner affected by the deposit of such duplicate or copy nor shall the same be registered.

Ibid. sect. 38.

56. EVERY memorandum entered in the register book shall state the nature of the instrument to which it relates the time 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.

Memorandum defined.

Ibid. sect. 39.

57. WHENEVER a memorandum of any instrument has been entered in the register book the Registrar shall (except in cases wherein the entire land contained in any certificate is transferred) enter the like memorandum on the duplicate certificate and on the duplicate instrument (if any) unless the production of the same shall be dispensed with as hereinafter provided; and he shall endorse on every instrument registered a certificate of the time at which the memorandum was entered in the register book, and shall authenticate such certificate by signing his name thereto; and such certificate shall be received in all courts of law as conclusive evidence that such instrument has been duly registered.

Memorandum to be entered on duplicate instrument.

Ibid. sect. 40.

Certificate of registration to be evidence.

58. NO instrument until registered in manner herein provided shall be effectual to pass any estate or interest in any land under the operation of this Act or to render such land liable to any mortgage or charge; but upon such registration the estate or interest comprised in the instrument shall pass or as the case may be the land shall become liable in manner and subject to the covenants and conditions set forth and specified in the instrument or by this Act declared to be implied in instruments of a like nature; and should two or more instruments signed by the same proprietor and purporting to affect the same estate or interest be at the same time presented to the Registrar for registration he shall register and endorse that instrument which shall be presented by the person producing the duplicate grant or certificate of title.

Instruments not effectual until registered.

Ibid. sect. 41.

59. THE proprietor of land under the operation of this Act shall be entitled to receive a certificate of title to the same; and if any certificate be issued to a minor or to a person under any other disability the Registrar shall state the age of such minor or the nature of the disability so far as known to him.

Proprietor of land entitled to certificate of title.

Ibid. sect. 42.

Disabilities.

60. TWO or more persons who may be registered as joint proprietors of land shall be deemed to be entitled to the same as

Joint tenants and tenants in common

Ibid. sect. 43.

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joint tenants; and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land such persons may receive one certificate for the entirety or separate certificates for the undivided shares.

Effect of insertion of the words "no survivorship."
Ibid sect. 44.

61. UPON the transfer of any land and upon the lease of any freehold land to two or more persons as joint proprietors with the words "no survivorship" endorsed thereon the Registrar shall enter such words in the memorandum of such transfer or lease and also upon any certificate of title issued to such joint proprietors pursuant to such transfer and sign his name thereto. Two or more joint proprietors of any land or of any such lease or of any charge may by writing under their hands direct the Registrar to enter the words "no survivorship" upon the certificate of title or instrument relating to the property. In every case after such words shall have been signed by the Registrar whether under this or any preceding section it shall not be lawful for any persons other than the proprietors registered to transfer or otherwise deal with the property without the order of the Supreme Court or a Judge thereof obtained on motion or petition or the order of the Commissioner.

Notice to be published before effect is given to order.
Ibid sect. 45.

62. BEFORE making any such order the Court or Judge or Commissioner shall cause notice of the intention so to do to be advertised once at least in one newspaper published in the city of Perth or circulating in the neighborhood of the land and shall appoint a time within which it shall be lawful for any person interested to show cause against such order being made; after the expiration of which time it shall be lawful for the said Court or Judge or Commissioner to give directions for the transfer of such land or lease or charge to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor or proprietors, or to make such order in the premises as shall be just for the protection of any persons beneficially interested in such property or in the proceeds thereof; and on such order being deposited with the Registrar he shall make such entries and perform such acts for giving effect thereto as the provisions of this Act may render necessary. The Commissioner in any case within the last preceding section in which members of any Friendly Society are interested may before making an order thereunder dispense with the aforesaid advertisement.

Certificate to be conclusive evidence of the title.
Ibid sect. 46.

63. NO certificate of title issued upon an application to bring land under this Act or upon an application to be registered as proprietor on a transmission shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein

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contained shall be received in all courts of law as evidence of the particulars therein set forth and of the entry thereof in the register book, and shall be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.

64. WHENEVER any certificate of title or any duplicate thereof either already registered or issued or hereafter to be registered or issued under any of the provisions or otherwise under the operation of this Act shall contain any statement to the effect that the person named in the certificate is entitled to any easement therein specified such statement shall be received in all courts of law and equity as conclusive evidence that he is so entitled.

Certificate conclusive evidence as to title to easements.

65. WHENEVER any transfer lease or certificate of title shall contain the words "Together with a right of carriage-way over" (specifying or describing the road or roads over which the easement is created and referring to a map endorsed whereon such road or roads is or are colored brown) such words shall have the same effect and shall be construed as if there had been inserted in such transfer lease or certificate of title the words contained in the Ninth Schedule to this Act. A memorandum of any transfer or lease creating any easement affecting any land under the operation of this Act shall be entered on the folium of the register book constituted by the existing certificate of title of such land in addition to any other entry concerning such instrument required by this Act.

Effect in certificate of words relating to easements.
Ibid sect. 63.

Ninth Schedule.

66. THE Fifth Schedule to this Act shall be deemed to extend to the setting forth of the easements mentioned in the last two preceding sections.

Extension of Fifth Schedule to easements.

67. IN any action for specific performance or for damages brought by a proprietor of any land under the operation 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 the said Act or of this Act would affect the right of the vendor the certificate of title of such proprietor shall be held to be conclusive evidence that such proprietor has a good and valid title to the land for the estate or interest therein mentioned or described and shall in any such action entitle such proprietor to a decree for the specific performance of such contract.

Certificate to be conclusive evidence in suit for specific performance or action for damages.
Ibid sect. 47.

68. 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

Estate of registered proprietor paramount.
Ibid sect. 48.

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or to have priority the proprietor of land or of any estate or interest in land under the operation of this Act shall except in case of fraud hold the same subject to such encumbrances as may be notified on the folium of the register book constituted by the certificate of title; but absolutely free from all other encumbrances whatsoever except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser. Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations exceptions conditions and powers (if any) contained in the grant thereof and to any rights subsisting under any adverse possession of such land and to any public rights of way and to any easements acquired by enjoyment or user or subsisting over or upon or affecting such land and to any unpaid rates and to any mining lease or license issued under the provisions of any statute and also where the possession is not adverse to the interest of any tenant of the land notwithstanding the same respectively may not be specially notified as encumbrances on such certificate or instrument.

Certain rights and interests need not be specially mentioned as encumbrances.

69. NOTWITHSTANDING the reservation in the last preceding section of any easements subsisting over or upon or affecting any land comprised in any certificate of title the Registrar shall specify upon any future certificate of such land and the duplicate thereof as an encumbrance affecting the same any subsisting easement over or upon or affecting the same which shall appear to have been created by any deed or writing. And notwithstanding the proviso to the said last preceding section the Registrar shall endorse as an encumbrance upon all future certificates of title and the duplicates thereof any special building condition or condition against free alienation or other condition (not being a power of resumption by the Crown for any public purpose) contained in any grant conveyance or other document of title of the land described in such certificate and duplicate and such endorsement may be in the words following or to the like effect (that is to say):—

Easements existing under deed or writing to be noticed as encumbrances.

Also building condition and other condition.

“Special building condition contained in _____ to [A.B.] registered vol. _____ fol. _____,” or as the case may be.

“Condition against (free alienation or other condition) contained in _____ to [A.B.] registered vol. _____ fol. _____,” or as the case may be.

70. THE person named in any certificate of title as the proprietor of an estate of freehold in possession in the land therein de-

As to reversions expectant on leases.

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scribed shall be held in every court of law to be seised of the reversion and inheritance in the land immediately expectant upon the term of any lease that may be mentioned as an encumbrance in such certificate and to have all powers rights and remedies to which such a reversioner is by law entitled and shall be subject to all the covenants and conditions in such lease to be performed and observed by or on the part of the lessor.

Ibid. sect. 50.

71. ON the application of any proprietor or of any person entitled to become a proprietor of land under separate certificates of title and on his delivering up the duplicates thereof the Registrar may issue to him a single certificate of title for the whole of such land or several certificates as to portions thereof in accordance with such application so far as the same may be done consistently with any regulations for the time being in force respecting the parcels of land that may be included in one certificate of title; and upon registering any certificate under this section the Registrar shall cancel the previous certificate and shall endorse thereupon a memorandum setting forth the occasion of such cancellation and referring to the new certificate.

Upon surrender of existing certificates a single certificate may be obtained.
Ibid. sect. 54.

72. SUCH references shall be noted in the register book and on instruments filed hereunder as will allow the title to be traced either downwards from or upwards to the original certificate; but it shall not be necessary in any certified copy of any certificate or instrument to insert such references; and every such copy shall be deemed complete notwithstanding the omission of such references.

A history of the various dealings to be preserved.
Ibid. sect. 55.

73. UPON production of a permit to occupy duly signed by the officer appointed in that behalf by the regulations in force for the time being respecting the sale and disposal of the Waste Lands of the Crown in Western Australia certifying that the person therein named is entitled to an estate in fee simple in land therein described together with an instrument following as far as circumstances will permit the form prescribed by this Act in the case of land already under its operation or together with an ordinary or statutory conveyance or other instrument at common law dealing with such land signed by such person or by the person lawfully entitled thereto, the Registrar shall endorse upon such permit such memorandum as he is by this Act required to enter in the Register Book upon the registration of any dealing of a like nature with land under the operation of this Act and shall sign such endorsement and shall endorse such instrument with the certificate of registration by this Act required on the registration of a like instrument after a grant relating to land under the operation of the said Act has been registered and so on from time to time with respect to any other dealings that may take place before the receipt by the Regis-

Dealings may be registered before receipt of Crown Grant.
42 Vict. No. 15
sect. 4.

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trar of the Crown Grant of the land comprised in the said permit; and every such instrument shall thereupon be held to be duly registered under this Act. The Registrar shall file such permit and instrument in the office and on receipt of the Crown Grant of the said land the Registrar shall in addition to making out a certificate of title to such land and endorsing the grant as required by section eighteen of this Act endorse upon the certificate of title to such land made out in accordance with the said section, and on the grant a memorandum of every dealing endorsed on the permit to occupy in pursuance of this section and the Registrar shall sign such endorsement and the said grant so endorsed shall be issued to the person who shall appear to be entitled to the same.

Duplicate may be dispensed with in certain cases.
Act of 1874 sect. 115.

74. THE Registrar with the consent of the Commissioner may dispense with the production of any duplicate certificate of title or duplicate instrument (if any) for the purpose of entering thereon the memorandum by this Act required. In every such case upon the registration of the dealing the Registrar shall notify in the memorandum in the register book that no entry of such memorandum has been made on the duplicate and such dealing shall thereupon be as valid and effectual as if such memorandum had been entered. The Registrar may with the like consent dispense with the production of the duplicate certificate of title required to be delivered up prior to the registration of any person as proprietor on the transmission of an estate of freehold. Provided always that before registering such dealing or transmission the Registrar shall require proof by statutory declaration that the duplicate is not deposited or held as a security or lien and shall give at least fourteen days' notice of his intention to register such dealing in at least one newspaper published in the city of Perth or circulating in the neighborhood of the land.

But notice to be given before registering any dealing.

Provision in case of lost certificate.
Ibid. sect. 116.

75. IN the event of the duplicate certificate of title being lost or destroyed or becoming so obliterated as to be useless the persons having knowledge of the circumstances may make a statutory declaration stating the facts and the particulars of all encumbrances affecting the land or the title thereto to the best of declarant's knowledge information and belief; and the Commissioner if satisfied as to the truth of such declaration and the *bona fides* of the transaction and that there is sufficient evidence of the loss destruction or obliteration may direct the Registrar to issue to the proprietor a special certificate of title to such land, which special certificate shall contain an exact copy of the certificate in the register book and of every memorandum and endorsement thereon and shall state why such special certificate is issued; and the Registrar shall at the same time enter in the register book notice of the issuing of such special certificate and the date thereof and why

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it was issued, and such special certificate shall be available for all purposes and uses for which the duplicate certificate so lost or destroyed or obliterated would have been available and such last-mentioned duplicate certificate shall be deemed for all purposes to be null and void. Provided always that the Registrar before issuing such special certificate shall give at least fourteen days' notice of his intention so to do in at least one newspaper published in the city of Perth or circulating in the neighbourhood of the land. In the event of a special certificate being issued under this section and the duplicate certificate being at any time thereafter found or recovered such duplicate certificate shall be forthwith lodged with the Registrar who shall cancel the same. Any person who shall wilfully neglect to lodge any such duplicate certificate shall be guilty of a misdemeanor and be liable on conviction to the like penalty and imprisonment as is provided by section two hundred and fourteen of this Act.

76. IN case it shall appear to the satisfaction of the Commissioner that any certificate of title or instrument has been issued in error or contains any misdescription of land or of boundaries or that any entry or endorsement has been made in error on any certificate of title or instrument or that any certificate instrument entry or endorsement has been fraudulently or wrongfully obtained or that any certificate or instrument is fraudulently or wrongfully retained he may by writing require the person to whom such document 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 or given to the proper party as the case may require; and in case such person shall refuse or neglect to comply with such requisition the Registrar on the direction of the Commissioner may apply to a Judge to issue a summons for such person to appear before the Supreme Court or a Judge and show cause why such certificate or instrument should not be delivered up for the purpose aforesaid; and if such person when served with such summons shall neglect or refuse to attend before such court or a Judge thereof at the time therein appointed it shall be lawful for a Judge to issue a warrant authorising and directing the person so summoned to be apprehended and brought before the Supreme Court or a Judge for examination.

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

Ibid. sect. 117.

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

77. UPON the appearance before the Court or a Judge of any person summoned or brought up by virtue of a warrant as aforesaid it shall be lawful for the Court or Judge to examine such person upon oath and (in case the same shall seem proper) to order such person to deliver up such certificate of title or instrument as aforesaid; and upon refusal or neglect by such person to deliver up the same pursuant to such order to commit such person to gaol until such certificate or instrument shall be delivered up; and in such

Party appearing may be examined on oath.

Ibid. sect. 118.

Court may order the delivery of the instrument to the Registrar.

In case of neglect or refusal a fresh certificate may issue.

case or in case such person cannot be found so that a requisition and summons may be served upon him as hereinbefore directed the Registrar shall (if the circumstances of the case require it) issue on the direction of the Commissioner to the proprietor of the land such certificate of title as is herein provided to be issued in the case of any duplicate certificate of title being lost or destroyed and shall enter in the register book notice of the issuing of such certificate and the circumstances under which the same was issued and thereupon the duplicate certificate so refused or neglected to be delivered up as aforesaid shall be deemed for all purposes null and void.

Registrar may call in certificate, &c.

78. ON any transfer by a sheriff or mortgagee to a purchaser of any land estate or interest under this Act or for the purpose of rectifying or cancelling any certificate under the provisions of this Act or for the purpose of inspection in case of loss destruction or obliteration of any original certificate of title the Registrar shall by writing under his hand require the judgment debtor mortgagor or mortgagee or proprietor of the land comprised in any duplicate or triplicate certificate mortgage lease or other instrument or the person having the possession custody or control of any such duplicate or triplicate to bring the same into the Office of Titles within a period named in such requisition not less than seven days from the date thereof to be endorsed cancelled rectified or otherwise dealt with as the case may require.

Person refusing to bring in certificate &c. may be brought before Court or Judge.

79. IF any person shall refuse or neglect to comply with any such requisition as aforesaid the Registrar or any person interested may apply to a Judge to issue a summons for such person to appear before the Supreme Court or a Judge and show cause why the document mentioned in such requisition should not be delivered up or produced for the purpose mentioned in such requisition; and upon appearance before the court or a Judge of any person so summoned it shall be lawful for the court or Judge to examine such person upon oath and to receive other evidence or if he do not appear after being duly served with such summons then to receive evidence in his absence and (in case the same shall seem proper) to order such person to deliver up such document upon such terms or conditions as to such court or Judge shall seem fit and the cost of the summons and proceedings thereon shall be in the discretion of the Court or Judge.

Lists of certificates called in for cancellation to be exhibited.

80. LISTS of certificates of title called in for cancellation or rectification and not brought in shall be exhibited in the Office of Titles and shall be advertised in the *Government Gazette* and in such newspapers and at such time or times as the Commissioner shall think fit.

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81. EVERY certificate of any person or corporation sole or aggregate being the proprietor of an estate in fee simple whether in possession remainder or reversion and every instrument transferring or creating such an estate to or in favor of any person or corporation shall imply and be deemed to include the heirs of such person or the successors of such corporation.

Words of inheritance or succession to be implied.
Ibid sect. 64.

PART IV.—DEALINGS WITH LAND.

DIVISION I.—TRANSFERS.

82. THE proprietor of land or of a lease mortgage or charge or of any estate right or interest therein respectively may transfer the same by a transfer in one of the forms in the Seventh Schedule hereto; and a woman entitled to any right or contingent right to dower in or out of any freehold land shall be deemed a proprietor within the meaning hereof. Upon the registration of the transfer the estate and interest of the proprietor as set forth in such instrument or which he shall be entitled or able to transfer or dispose of under any power with all rights powers and privileges thereto belonging or appertaining shall pass to the transferee; and such transferee shall thereupon become the proprietor thereof and whilst continuing such shall be subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if he had been the former proprietor or the original lessee mortgagee or annuitant.

Transfers.

Seventh Schedule.
Ibid sect. 57.

83. BY virtue of every such transfer as is herein mentioned the right to sue upon any mortgage or other instrument and to recover any debt sum of money annuity or damages thereunder (notwithstanding the same may be deemed or held to constitute a chose in action) and all interest in any such debt sum of money annuity or damages shall be transferred so as to vest the same at law as well as in equity in the transferee thereof. Provided always that nothing herein contained shall prevent a court in its equitable jurisdiction from giving effect to any trusts affecting such debt sum of money annuity or damages in case the transferee shall as between himself and any other person hold the same as a trustee.

Transfer to include right to sue thereunder.
Ibid sect. 58.

Saving powers of courts to give effect to trusts.

84. THE proprietor of land or of any estate or interest in land under the operation of this Act whether of the nature of real or personal property may transfer such land estate or interest to his wife; or if such proprietor be a married woman it shall be lawful for her to make such transfer to her husband; or it shall be lawful for such proprietor to make such transfer directly to himself and another person or jointly with any other person to himself alone or to create or execute any power of appointment or disposition or to

Proprietor may vest estate jointly in himself and others without limiting any use &c.
Ibid sect. 59.

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create or limit estates in remainder or otherwise as legal estates of or concerning land the subject thereof without the intervention of any precedent or particular estate and also like estates as legal estates without the employment or intervention of any form of use; and upon the registration of such transfer the land estate or interest shall vest in the transferee solely or jointly as the case may be or in the person in whose favour any such power may have been executed or who may have taken under any such limitation or otherwise according to the intent and meaning of such instrument; and she he or they shall become and be deemed the proprietor or proprietors thereof.

Instruments when signed and registered to have the same efficacy as a deed acknowledged, but married women to acknowledge instruments signed by them.
Ibid sect. 60.

Tenth Schedule.

85. EVERY transfer or other instrument shall be deemed of the same efficacy as if under seal; and when signed by the proprietor and registered shall be as valid and effectual to all intents and purposes for conveying passing or conferring the estates interests or rights expressed to be thereby transferred leased or created respectively as a deed duly executed and acknowledged by the same person would have been under any law heretofore or now in force in Western Australia or as any other form of document would have been either at law or in equity; and every instrument acknowledged within Western Australia by any woman appearing by the register book to be married (whether a sole proprietor or not) and certified under the hand of the Registrar or of some Assistant Registrar or Commissioner for taking affidavits in the Supreme Court of Western Australia in the form in the Tenth Schedule hereto and every instrument acknowledged out of Western Australia by any woman appearing by the register book to be married (whether a sole proprietor or not) and certified under the hand of a Commissioner for taking affidavits in the Supreme Court of Western Australia in the form in the said schedule shall when such instrument has been registered be as valid and effectual to all intents and purposes as a deed duly executed and acknowledged or an instrument duly signed and acknowledged by her would have been under any law heretofore or now in force in Western Australia or as any other form of document would have been either at law or in equity; and such certificate shall be deemed and received as sufficient evidence of the due signature and acknowledgment by her of the instrument therein referred to. Provided always that a married woman entitled to her separate use and not restrained from anticipation or having a power of appointment shall for the purposes of this Act be deemed a *feme sole*.

Duplicate to be brought up on Transfer. Procedure.
Ibid sect. 61.

86. IF the transfer purports to transfer the whole or part of the land mentioned in any certificate of title the transferrer shall deliver up the duplicate certificate; and the Registrar shall after registering the transfer endorse on the certificate a memorandum cancelling the

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same either wholly or partially according as the transfer purports to transfer the whole or part of the land; and the duplicate of any wholly cancelled certificate shall be retained by him; and the duplicate of any partially cancelled certificate shall be returned endorsed as aforesaid to the transferrer; and the Registrar shall make out to the transferee a certificate of title to the land mentioned in such transfer and (whenever required by the proprietor of the untransferred portion) shall make out to such proprietor a certificate of title to such portion. Provided always that if the land be leasehold the lease and duplicate shall not be cancelled; and the latter document instead of being retained shall be delivered to the transferee.

87. IF a transfer purports to transfer the whole of the land mentioned in any certificate of title the Registrar may except when a tenancy in common is thereby created or cancelled instead of cancelling such certificate as provided in the last preceding section of this Act enter in the register book and on the duplicate certificate a memorandum of such transfer and deliver the duplicate to the transferee; and every certificate with such memorandum shall be as effectual for the purpose of evidencing title and for all other purposes of this Act as if the old certificate had been cancelled and a new certificate had been issued to the transferee in his own name and such process in lieu of cancellation may be repeated upon every transfer of the whole of the land; but when in the opinion of the Registrar any certificate or duplicate cannot for want of space or other cause conveniently bear any further endorsement he may require cancellation and the issue of a new certificate.

Total Transfer by
endorsement.
42 Vict. No. 15 sect. 2.

88. IN every transfer of land under the operation of "*The Transfer of Land Act 1874*" or of this Act subject to a mortgage or charge there shall be implied a covenant with the transferrer by the transferee binding the latter and his heirs executors administrators and transferees that he or they will pay the interest secured by such mortgage after the rate and at the times and in the manner therein specified and will pay the annuity at the times and in the manner specified in the charge and will indemnify and keep harmless the transferrer and his representatives from and against the principal sum secured by the mortgage and from and against all liability in respect of any of the covenants therein contained or by this Act declared to be implied therein on the part of the transferrer.

Transferee of land
subject to encum-
brance to indemnify
transferor.
Act of 1874 sect. 62.

89. A TRANSFER or other instrument dealing with any land whether freehold or leasehold held by registered proprietors being trustees for any society established under "*The Friendly Societies Ordinance 1863*" and holding the land as such trustees signed by

Transfers by trustees
of Friendly Societies
to be as efficacious
as if made by

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registered
proprietors.
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the persons for the time being the trustees of the society shall be as effectual to all intents and purposes as if the transfer or other instrument had been signed by the registered proprietors for the time being of the land notwithstanding anything to the contrary hereof contained in this Act.

Copy of *fi. fa.* must
be registered before
transfer from sheriff
produced for
registration.
Act of 1874 sect. 96
and section 133
hereof.

90. ON a transfer from a sheriff being presented for registration it shall not be registered nor deemed produced for registration within the meaning of section fifty-three of this Act unless previously and within three months preceding the transfer being so presented a copy of the writ of *fi. fa.* in pursuance of which such transfer purports to have been made shall have been duly served upon the Registrar for entry by him in the register book in accordance with section one hundred and thirty-three of this Act.

DIVISION II.—LEASES AND SUB-LEASES.

Leases of Land.
Eleventh Schedule.
Act of 1874 sect. 65.

91. THE proprietor of any freehold land under the operation of this Act may lease the same for any term exceeding three years by signing a lease thereof in the form in the Eleventh Schedule hereto; but no lease or extension of lease as hereinafter provided subject to a mortgage or charge shall be valid or binding against the mortgagee or annuitant unless he shall have consented in writing to such lease prior to the same being registered.

Covenants to be
implied in every
lease against the
lessee.
Ibid. sect. 66.

92. IN every lease made under the provisions of this Act there shall be implied the following covenants with the lessor and his transferees by the lessee binding the latter and his heirs executors administrators and transferees (that is to say):—

- (I.) That he or they will pay the rent reserved by the lease at the times therein mentioned and all rates and taxes which may be payable in respect of the leased property during the continuance of the lease unless otherwise provided by law.
- (II.) That he or they will keep and yield up the leased property in good and tenantable repair accidents and damage from storm and tempest and reasonable wear and tear excepted.

Powers to be implied
in lessor.
Ibid. sect. 67.

93. IN every lease made under this Act there shall also be implied in the lessor and his transferees the following powers (that is to say):—

- (I.) That he or they may with or without surveyors workmen or others once in every year during the term at a

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reasonable time of the day enter upon the leased property and view the state of repair thereof.

- (ii.) That in case the rent or any part thereof shall be in arrear for the space of one month although no legal or formal demand shall have been made for payment thereof, or in case of any breach or non-observance of any of the covenants expressed in the lease or by this Act declared to be implied therein on the part of the lessee or his transferees and such breach or non-observance continuing for the space of one month it shall be lawful for the lessor or his transferees to re-enter upon and take possession of the leased property.

94. WHENEVER in any lease made under this Act the lessee shall employ any of the forms of words contained in column one of the Twelfth Schedule hereto and distinguished by any number therein such lease shall be taken to have the same effect and be construed as if he had inserted therein the form of words contained in column two of the same schedule and distinguished by the corresponding number; and every such form shall be deemed a covenant with the lessor and his transferees by the lessee binding the latter and his heirs executors administrators and transferees; but it shall not be necessary in any such lease to insert any such number. There may be introduced into or annexed to any of the forms in the first column any express exceptions from or express qualifications thereof respectively; and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

Short forms of covenants by lessees. Twelfth Schedule. *Ibid.* sect. 68.

95. IN every transfer of lease made under "*The Transfer of Land Act 1874*" or this Act and in every transfer of a grant for years there shall be implied a covenant with the transferrer by the transferee binding him his heirs executors administrators and transferees that he or they will thenceforth pay the rent by the lease or grant reserved and perform and observe all the covenants contained in the lease or grant or by the said Act or this Act declared to be implied in the lease and on the part of the lessee or his transferees to be performed and observed and will indemnify and keep harmless the transferrer and his representatives against all actions claims and expenses in respect of the non-payment of such rent or the breach or non-observance of such covenants or any of them.

Covenant to be implied on transfer of lease. *Ibid.* sect. 69.

96. THE Commissioner upon proof to his satisfaction of recovery of possession by a lessor or his transferees by any legal proceeding may direct the Registrar to make an entry of the same in the register book; and the term for which the land was leased shall

Recovery of possession by lessors to be entered in register book. *Ibid.* sect. 70.

upon such entry being made determine but without prejudice to any action or cause of action which shall previously have been commenced or have accrued in respect of any breach or non-observance of any covenant expressed in the lease or by this Act declared to be implied therein.

Mortgagee of interest of bankrupt lessee may apply to be entered as transferee of the lease and on default lessor may apply.
Ibid. sect. 71.

97. UPON the bankruptcy of the proprietor of any lease made under this Act subject to one mortgage only or to several mortgages if owned by the same person the Registrar on the application in writing of the mortgagee or his transferees accompanied by a statement signed by the trustee or official assignee of such bankrupt refusing to accept such lease shall enter in the register book a note of such refusal; and such entry shall operate as a foreclosure and as a transfer of the interest of the bankrupt in such lease to the mortgagee or his transferees; and if he or they shall neglect or refuse to make such application as aforesaid within twenty-one days after notice in writing in that behalf from the lessor or his transferees shall have been served on the mortgagee or his transferees by being given to him or them or by being sent through the post office by a registered letter directed to him or them at his or their address as stated in the mortgage or transfer thereof the Registrar on the application in writing of the lessor or his transferees to be registered as surrenderee or surrenderees of the lease accompanied by such a statement as aforesaid and proof of such neglect or refusal shall enter in the register book notice of such statement and of such neglect or refusal; and such entry shall operate as a surrender of such lease discharged from the mortgage or several mortgages aforesaid but without prejudice to any action or cause of action which shall previously have been commenced or have accrued in respect of any breach or non-observance of any covenant expressed in the lease or by this Act or by any Act hereby repealed declared to be implied therein.

Lease may be surrendered by endorsement by lessee with concurrence of lessor.
Ibid. sect. 72.

98. A LEASE made under this Act may be surrendered and determined as well by operation of law or under any Ordinance or Statute now or hereafter to be in force relating to bankrupts and their estates as by the word "Surrendered" with the date being endorsed upon such lease or on the duplicate thereof (if any) and signed by the lessee or his transferee and by the lessor or his transferee and attested by a witness. The Registrar shall enter in the register book a memorandum recording the date of such surrender and shall likewise endorse upon the duplicate (if any) a memorandum recording the fact of such entry having been made. Upon such entry in the register book the estate and interest of the lessee or his transferee shall vest in the lessor or in the proprietor for the time being of the reversion and inheritance in the land immediately expectant on the term; and production of such lease or duplicate (if

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any) bearing such endorsement and memorandum shall be sufficient evidence that such lease has been legally surrendered. Provided that no lease subject to a mortgage or charge shall be so surrendered without the consent in writing of the proprietor thereof.

99. THE proprietor of any lease under this Act may subject to any provisions in his lease affecting his right so to do sub-let for a term not less than three years by signing a sub-lease in the form in the Thirteenth Schedule hereto; but no sub-lease of any land subject to a mortgage or charge upon the lease of the land comprised in the sub-lease shall be valid or binding against the mortgagee or annuitant of the lease unless he shall have consented in writing to such sub-lease previously to the same being registered.

Lessee may sub-let.
Thirteenth Schedule.

100. A SUB-LEASE shall be deemed and taken to be registered when a memorandum thereof as described in section fifty-six of this Act has been endorsed on the original lease in the register book and the person named in any sub-lease registered as the sub-lessee shall be deemed and taken to be the proprietor thereof. The Registrar shall endorse on the sub-lease a certificate of the time at which the memorandum was endorsed on the original lease and shall authenticate such certificate by signing his name thereto; and such certificate shall be received in all courts as conclusive evidence that such sub-lease has been duly registered.

Mode of registering
sub-lease.

101. NOTWITHSTANDING the provisions of section fifty-three of this Act a sub-lease shall not be bound up in the register book but upon registration one original shall be lodged and retained in the Office of Titles; and a book to be called the "Sub-lease Register" shall be kept in the office wherein entry shall be made of the date parties term and distinguishing memorandum number or symbol of such sub-lease and such book shall be open to inspection by the public during the hours and days of business on payment of the fee provided in that behalf.

Separate register for
sub-leases.

102. THE provisions of this Act affecting leases lessors and lessees shall apply to sub-leases sub-lessors and sub-lessees with such modifications and exceptions as the difference between a lease and sub-lease and in the mode of registration thereof shall require; and the entries of recovery of possession and of surrender provided for by sections ninety-six and ninety-eight of this Act shall in the case of a sub-lease be made on the sub-lease and not in the register book; and the memorandum directed by the latter section to be endorsed on the duplicate shall be written across the entry of such sub-lease in the sub-lease register; and in case of a surrender evidenced by a separate document such document shall be annexed to the original sub-lease.

Provisions as to
leases applicable to
sub-leases.

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If the lease be determined by forfeiture or operation of law or by surrender under any Act relating to bankrupts and their estates such determination or surrender shall determine the sub-lease.

Covenants to be implied in sub-lease.

103. IN addition to the covenants specified in section ninety-two of this Act to be implied in every lease there shall be implied in every sub-lease the following covenant with the sub-lessee and his transferees by the sub-lessor binding the latter and his executors administrators and transferees (that is to say):—

That he or they will during the term thereby granted pay the rent reserved by and perform and observe the covenants and agreements contained in the original lease and on his or their parts to be paid performed and observed.

Determination of lease or sub-lease by re-entry to be entered in register book.

104. IN the case of a lease or sub-lease of land under this Act if it be proved to the satisfaction of the Commissioner that the lessor or sub-lessor his assign or transferee has re-entered upon the premises in strict conformity with the provisions for re-entry contained in the lease or sub-lease or under the power of the second sub-section of section ninety-three of this Act where the lease or sub-lease is under this Act or that the lessee or sub-lessee has abandoned the leased premises and the lease and that the lessor or sub-lessor his assign or transferee has thereupon re-entered upon and occupied the said premises by himself or tenants undisturbed by the lessee or sub-lessee the Commissioner may direct the Registrar to make an entry of such re-entry in the register book or in the sub-lease register (as the case may be) and the term for which the land was leased or sub-leased shall upon such entry being made determine and may be removed as an encumbrance from a certificate but without prejudice to any action or cause of action which shall previously have been commenced or have accrued in respect of any breach or non-observance of any covenant expressed in the lease or sub-lease or by this Act or any amendment thereof declared to be implied therein.

DIVISION III.—MORTGAGES AND ANNUITIES.

Mortgages and charges.
Ibid. sect. 73.
Fourteenth Schedule.
Fifteenth Schedule.

105. THE proprietor of any land under the operation of this Act may mortgage the same by signing a mortgage thereof in the form in the Fourteenth Schedule hereto and may charge the same with the payment of an annuity by signing a charge thereof in the form in the Fifteenth Schedule hereto. Any mortgage charge or lease may be extended at any time by endorsing thereon the word "extended" which endorsement shall be signed by the respective parties to such mortgage charge or lease or their transferees and

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attested in like manner as other instruments under this Act. Such endorsement when registered shall have the effect of an extension for one year of the term limited by the mortgage charge or lease or by any previous extension subject to the same terms and conditions but words may be added extending the term for any other period and varying or altering the said terms and conditions and every such extension shall have the same effect as if expressed in the original instrument and the Registrar shall upon production thereof to him enter a memorandum of such extension on the certificate of title and on the original instrument filed in the Office of Titles. Provided that no extension of any mortgage of land subject to subsequent mortgage or mortgages shall bind the other mortgagee or mortgagees unless such other mortgagee or mortgagees shall have consented thereto in writing.

Extension of leases mortgages and charges.

106. A MORTGAGE and a charge under this Act shall when registered as hereinbefore provided have effect as a security but shall not operate as a transfer of the land thereby mortgaged or charged; and in case default be made in payment of the principal sum interest or annuity secured or any part thereof respectively or in the performance or observance of any covenant expressed in any mortgage or charge or hereby declared to be implied in any mortgage and such default be continued for one month or for such other period of time as may therein for that purpose be expressly fixed the mortgagee or annuitant or his transferees may serve on the mortgagor or grantor or his transferees notice in writing to pay the money owing on such mortgage or charge or to perform and observe the aforesaid covenants (as the case may be) by giving such notice to him or them or by leaving the same on some conspicuous place on the mortgaged or charged land or by sending the same through the post office by a registered letter directed to the then proprietor of the land at his address appearing in the register book.

Ibid. sect. 74.
Mortgage or charge not to operate as transfer.
Procedure in case of default.

107. WHERE money secured by a mortgage under this Act is made payable on demand a demand in writing pursuant to the mortgage shall be equivalent to the notice in writing to pay the money owing provided for by the last preceding section of this Act; and no other notice shall be required to create the default in payment mentioned in the next following section of this Act.

Written demand equivalent to written notice.

108. IF such default in payment or in performance or observance of covenants shall continue for one month after the service of such notice or for such other period as may in such mortgage or charge be for that purpose fixed the mortgagee or annuitant or his transferees may sell the land mortgaged or charged or any part thereof either altogether or in lots by public auction or by private contract and either at one or at several times and subject to such

Power to sell.
Ibid. sect. 75.

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terms and conditions as may be deemed fit; and may buy in or vary or rescind any contract for sale and resell in manner aforesaid without being liable for any loss occasioned thereby; and may make and sign such transfers and do such acts and things as shall be necessary for effectuating any such sale; and no purchaser shall be bound to see or inquire whether such default as aforesaid shall have been made or have happened or have continued or whether such notice as aforesaid shall have been served or otherwise into the propriety or regularity of any such sale.

Application of
purchase money.
Ibid sect. 76.

109. THE purchase money arising from the sale of the mortgaged or charged land shall be applied as follows:—

If the sale be by the mortgagee or his transferees—

First in payment of the expenses of and incidental to such sale and consequent on such default; secondly in payment of the moneys which may be due or owing on the mortgage; thirdly in payment of subsequent mortgages and of any money which may be due or owing in respect of any subsequent charge in the order of their respective priorities; and the surplus (if any) shall be paid to the mortgagor. Provided always that if the sale be made by a mortgagee or his transferees and there is a subsequent charge the purchase moneys after there shall have been made thereout all proper prior payments shall be deposited by him or them in the manner and names and for purposes corresponding with those after mentioned.

If the sale be by the annuitant or his transferees—

First in payment of the expenses of and incidental to such sale and consequent on such default; then in payment of the moneys which may be due or owing to the annuitant or his transferees; and the residue shall be deposited by him or them at interest in the Post Office Savings Bank or in some other bank in Perth in the joint names of the annuitant or his transferees and of the Registrar to satisfy the accruing payments of the charge and subject thereto for the benefit of the parties who may be or become entitled to the residue of the deposited money.

Registrar to give
effect to sale by
mortgagee or
annuitant.
Ibid sect. 77.

110. UPON the registration of any transfer signed by a mortgagee or annuitant or his transferees for the purpose of such sale as aforesaid the estate and interest of the mortgagor or grantor in the land therein described at the time of the registration of the mort-

gage or charge or which he was then entitled or able to transfer or dispose of under any power of appointment or disposition or under any power herein contained shall pass to and vest in the purchaser freed and discharged from all liability on account of such mortgage or charge and of any mortgage charge or encumbrance registered subsequent thereto excepting a lease to which the mortgagee or annuitant or his transferees shall have consented in writing and the purchaser when registered as the proprietor shall be deemed a transferee of such land and shall be entitled to receive a certificate of title to the same.

111. THE mortgagee or annuitant or his transferees upon default in payment of the principal sum or interest or annuity or any part thereof respectively at the time mentioned in the mortgage or charge may enter into possession of the mortgaged or charged land by receiving the rents and profits thereof and may distrain upon the occupier or tenant of the land under the power to distrain hereinafter contained or may bring an action of ejectment to recover the land either before or after entering into the receipt of the rents and profits thereof or making any distress and either before or after any sale of such land shall be effected under the power of sale aforesaid in the same manner in which he or they might have brought such action if the mortgage money or annuity had been secured to him or them by an assurance of the legal estate in the land mortgaged or charged; and any mortgagee or his transferees shall be entitled to foreclose the right of the mortgagor or his transferees to redeem the mortgaged land in manner hereinafter provided.

Remedies by mortgagee or annuitant.
Ibid sect. 78.

112. BESIDES his other remedies every mortgagee or annuitant for the time being and every transferee of a mortgage or charge for the time being shall be entitled as often as it shall happen that the interest or annuity or any part thereof respectively shall be in arrear for twenty-one days and after seven days shall have elapsed from an application to the occupier or tenant for the payment thereof to enter upon the mortgaged or charged land and distrain the goods and chattels of such occupier or tenant for the arrears of the said interest or annuity and the distress and distresses then and there found to dispose of in like manner as landlords may do in respect of distresses for rent reserved upon common demises and out of the sale moneys to retain the moneys which shall be so in arrear and all costs and expenses occasioned by such distress and sale. Provided that no occupier or tenant shall be liable to pay to any such mortgagee or annuitant or transferee a greater sum than the amount of rent which at the time of making such application for payment shall be due from such occupier or tenant; and any amount so paid as well as any amount which shall be paid by him

Further remedies by mortgagee or annuitant.
Ibid sect. 79.

Proviso.

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to any such mortgagee or annuitant or transferee during the time he may be in the receipt of the rents and profits shall be held to be *pro tanto* satisfaction of the rent; and provided also that if there be more than one mortgage or charge on any land the mortgagees or annuitants shall be entitled to exercise the remedy given by this section according to their priorities.

Covenants to be implied in every mortgage.
Ibid sect. 80.

113. IN every mortgage made under the provisions of this Act there shall be implied covenants with the mortgagee and his transferees by the mortgagor binding the latter and his heirs executors administrators and transferees that he or they will pay the principal money therein mentioned on the day therein appointed and will so long as the principal money or any part thereof shall remain unpaid pay interest thereon or on so much thereof as shall for the time being remain unpaid at the rate and on the days and in manner therein specified; also that he or they will repair and keep in repair all buildings or other improvements which shall have been or shall be erected or made upon the mortgaged land; and that the mortgagee and his transferees may at all reasonable times until such mortgage be redeemed enter into and upon such land with or without surveyors or others to view and inspect the state of repair of such buildings or improvements.

Mortgagee or annuitant of leasehold entering into possession to become liable to lessor.
Ibid. sect. 81.

114. A MORTGAGEE of or annuitant upon land leased under this Act and his transferees after entering into possession of the land or the receipt of the rents and profits thereof shall during such possession or receipt and to the extent of any benefit rents and profits which may be received become and be subject and liable to the lessor of the said land or his transferees or the person for the time being entitled to the reversion and inheritance expectant on the term of the lease for the payment of the rent reserved by the lease and for the performance and observance of the covenants therein contained or by this Act declared to be implied therein on the part of the lessee or his transferees.

Short form of covenant by mortgagor to insure.
Ibid. sect. 82.

Sixteenth Schedule.

115. WHENEVER in any mortgage made under this Act the mortgagor shall employ the form of words contained in column one of the Sixteenth Schedule hereto such mortgage shall be taken to have the same effect and be construed as if he had inserted therein the form of words contained in column two of the same schedule; and every such form shall be deemed a covenant with the mortgagee and his transferees by the mortgagor binding the latter and his heirs executors administrators and transferees. There may be introduced into or annexed to the said form in the first column any express exception from or express qualification thereof; and the like exception or qualification shall be taken to be made from or in the form in the second column.

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116. IN addition to and concurrently with the rights and powers conferred on a mortgagee and on a transferee of a mortgage by this Act every present and future mortgagee for the time being of land under this Act and every transferee of a mortgage for the time being upon any such land shall until a discharge from the whole of the money secured or until a transfer upon a sale or an order for foreclosure (as the case may be) shall have been registered have the same rights and remedies at law and in equity (including proceedings before justices of the peace) as he would have had or been entitled to if the legal estate in the land or term mortgaged had been actually vested in him with a right in the mortgagor of quiet enjoyment of the mortgaged land until default in payment of the principal and interest money secured or some part thereof respectively or until a breach in the performance or observance of some covenant expressed in the mortgage or to be implied therein by the provisions of this Act. Nothing contained in this section shall affect or prejudice the rights or liabilities of any such mortgagee or transferee after an order for foreclosure shall have been entered in the register book; or shall until the entry of such an order render a mortgagee of land leased under this Act or the transferee of his mortgage liable to or for the payment of the rent reserved by the lease or for the performance or observance of the covenants expressed or to be implied therein.

Certain qualities of the legal estate annexed to a mortgage.
Ibid. sect. 83.

117. A MORTGAGOR or his transferee shall not either before or after such default or breach as aforesaid commence in his own name any action at law for or in respect of any cause of action for which a mortgagee or his transferee may sue under the last preceding section without obtaining the previous consent in writing of such mortgagee or transferee or his agent to the commencement of such action after giving which consent such mortgagee or transferee shall not be entitled to bring in his name any action at law in respect of the cause of action specified in such consent. Provided however that if a mortgagor or his transferee shall bring any such action in his own name and the defendant shall prove the existence of a mortgage the plaintiff shall not be nonsuited nor shall there be a verdict against him if he prove in reply that the action was brought with the written consent of the mortgagee or of the transferee of his mortgage or his agent.

Mortgagor not to sue at law for the same cause of action without a written consent.
Ibid. sect. 84.

118. ANY sum of money which shall become payable to the mortgagor or his transferee under any decree or order in any action by him in the Supreme Court for or on account of any waste or damage of or to the land mortgaged shall be paid to the mortgagee or his transferee in reduction or satisfaction of the money secured; and if he shall not be willing to receive the same or shall thereby be fully paid off the same or the balance shall be paid to

Application of moneys obtained from actions by the mortgagor for waste of or damage to the mortgaged lands.
Ibid. sect. 85.

any subsequent mortgagee or his transferee according to priority in like reduction or satisfaction; and if no mortgagee or his transferee shall be willing or be entitled to receive the same then to the mortgagor or his transferee for his own benefit.

Application of moneys obtained from actions by the mortgagor in other cases.
Ibid. sect. 86.

119. ANY mortgagee or his transferee may either before or after judgment or execution obtained in any action at law brought by the mortgagor or his transferee apply to a judge for a summons in such action calling on the plaintiff and defendant or their attorneys or agents to attend before a judge and show cause why any sum beyond Twenty-five pounds which shall have been or shall be recovered for damages in such action or which shall become payable on the settlement thereof should not be paid to such persons and for such purposes as are hereinbefore mentioned with respect to money payable under any decree or order in any action by the mortgagor or his transferee; and the judge hearing the summons shall determine the matter thereof in a summary manner, and shall make such order therein as to costs and all other matters as may appear to be just and reasonable; and the decision of such judge shall be final and conclusive against all parties. Provided always that every order made in pursuance of this section shall be liable to be rescinded or altered by the court in like manner as other orders made by a single judge. The sheriff or other officer who shall have the execution of any writ of *feri facias* issued in such action shall on being served with a copy of such order obey the same.

Application of moneys obtained in proceedings by a mortgagee.
Ibid. s. 87.

120. ANY money received by a mortgagee or his transferee under any proceeding commenced in his name at law or in equity shall after payment thereof of his costs be applied in reduction or satisfaction of the moneys secured and subject thereto shall be disposed of according to the equities of the parties interested.

Mortgagee may apply for an order for foreclosure.
Ibid. s. 88.

121. WHENEVER default has been made in payment of the principal or interest moneys secured by a mortgage and such default shall be continued for six months after the time for payment mentioned in the mortgage, the mortgagee or his transferee may make application in writing to the Commissioner for an order for foreclosure; and such application shall state that such default has been made and has continued for the period aforesaid and that the land mortgaged has been offered for sale at public auction by a licensed auctioneer after notice of sale served as hereinbefore provided and that the amount of the highest bidding at such sale (which amount shall also be stated) was not sufficient to satisfy the moneys secured by such mortgage together with the expenses occasioned by such sale or that there was no bid and that notice in writing of the intention of the mortgagee or his transferee to make an application for foreclosure has been served on the mortgagor or his transferees

by being given to him or them or by being left on the mortgaged land or by the same being sent through the post office by a registered letter direct to him or them at his or their address appearing in the register book and also that a like notice of such intention has been served on every person appearing by the register book to have any right estate or interest to or in the mortgaged land subsequently to such mortgage by being given to him or sent through the post office by a registered letter directed to him at his address appearing in the register book. Such application shall be accompanied by a certificate of the auctioneer by whom such land was put up for sale and by such further evidence in the premises as the Commissioner may require; and the statements made in such application shall be verified by statutory declaration.

122. UPON such application the Commissioner may direct the Registrar to cause notice to be published once in each of the three successive weeks in at least one newspaper published in the city of Perth offering such land for private sale and shall appoint a time not less than one month from the date of the first of such advertisements upon or after which the Registrar shall issue to such applicant an order for foreclosure, unless in the interval a sufficient amount has been obtained by the sale of such land to satisfy the principal and interest moneys secured and all expenses occasioned by such sale and proceedings; and every such order for foreclosure under the hand of the Registrar when entered in the register book shall have the effect of vesting in the mortgagee or his transferee 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 subsequently to the mortgage; and such mortgagee or his transferee shall upon such entry being made be deemed a transferee of the mortgaged land and become the proprietor thereof and be entitled to receive a certificate of title to the same.

Application to be
advertised.
Ibid. s. 89.

123. UPON production of a memorandum signed by the mortgagee or annuitant or his transferees and attested by a witness to the satisfaction of the Commissioner discharging the land from the whole or part of the moneys or annuity secured or discharging any part of the land from the whole of such moneys or annuity the Registrar shall make an entry in the register book stating the time at which it was made that such mortgage or charge is discharged wholly or partially or that part of the land is discharged as aforesaid (as the case may be); and upon such entry being made the land or the portion of land described in such memorandum shall cease to be subject to or liable for such moneys or annuity or for the part thereof mentioned in such entry as discharged; and the Registrar shall make a corresponding entry on the duplicate grant or certificate of title when produced to him for that purpose.

Discharge of
mortgages and
annuities.
Ibid. s. 90.

Satisfaction of mortgages executed prior to land being registered and remedies of mortgages. *47 Vict. No. 22 sec. 3.*

124. WHEN land shall have been brought under the operation of "*The Transfer of Land Act 1874*" or of this Act and a certificate shall have issued subject to a mortgage or other encumbrance made or given before the issuing of such certificate such mortgage or other encumbrance may be discharged in like manner as if it were a mortgage or other encumbrance prescribed by and registered under the said Acts or either of them and the mortgagee or other the person claiming under such mortgage or encumbrance may exercise the same rights and remedies as if the mortgage or other encumbrance had been made and registered in the form and manner prescribed by the said Acts or either of them.

Entry of satisfaction of annuity. *Act of 1874, s. 91.*

125. UPON proof to the satisfaction of the Commissioner of the death of the annuitant or of the occurrence of the event or circumstance upon which in accordance with the provisions of any charge the annuity thereby secured shall cease to be payable and upon proof to the like satisfaction that all arrears of the annuity and all costs occasioned by non-payment thereof have been paid or satisfied he shall direct the Registrar to make an entry in the register book that such annuity is satisfied; and upon such entry being made the land shall cease to be subject to or liable for such annuity; and the Registrar shall make the like entry on the duplicate as is mentioned in the last preceding section.

Mortgage money may be paid to Treasurer if mortgagee be absent from Western Australia and mortgage discharged. *Ibid. s. 92.*

126. IN case a mortgagee or his transferee shall be absent from Western Australia and there be no person authorised to give a receipt for the mortgage money at or after the date appointed for payment thereof it shall be lawful for the Colonial Treasurer to receive such mortgage money with all arrears of interest due thereon in trust for the mortgagee or other person entitled thereto; and thereupon the interest upon such mortgage shall cease to run or accrue; and the Registrar shall upon production of the receipt of the Treasurer for the amount of the mortgage money and interest make an entry in the register book discharging the land from such mortgage stating the time at which such entry was made; and such entry shall be a valid discharge from such mortgage; and the Registrar shall make a corresponding entry on the duplicate grant or certificate of title when produced to him for that purpose. The Treasurer shall from time to time invest all mortgage moneys and interest which shall be received by him under this section together with all dividends and interest which shall accrue thereon in Western Australian Government securities for the benefit of the persons who shall for the time being be entitled thereto; but nothing herein contained shall render any Treasurer in any manner liable for not investing the same respectively. The Registrar shall address to the Treasurer requisitions countersigned by the Commissioner to pay to such persons the moneys to which they may be entitled hereunder; and

Moneys received under this section to be invested.

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such moneys shall be issued in like manner as moneys are now issued from the Consolidated Revenue Fund.

127. WHEN any instrument subsequent to a first mortgage is made by the proprietor of any land and such proprietor or the person entitled to the benefit of such subsequent instrument desires the registration of such subsequent instrument the first mortgagee should he hold the duplicate certificate of title which comprises the land in such subsequent instrument shall upon being requested so to do by the proprietor of the land or the person entitled to the benefit of such subsequent instrument but at the cost of the person making such request produce such duplicate certificate of title to the Registrar so that such subsequent instrument may be registered.

First mortgagee to produce title for registration of subsequent instrument.

128. WHEN any land has been brought under or shall be brought under this Act subject to any mortgage and the mortgagee or any person claiming under him shall apply for a certificate of title to the land foreclosed or purchased the mortgage shall be deemed to have conferred upon the mortgagee or the purchaser under the power of sale contained in the mortgage the right to be registered as proprietor at law as well as in equity of the same estate in the land as that for which the mortgagor was registered and the only inquiry into title shall be as to the validity of the foreclosure or sale and of any subsequent transfers or transmissions of title to the applicant and no caveat which might have been or which was lodged against the original application shall be lodged or renewed in respect of the same estate or interest against the application of the mortgagee or any person claiming under him.

Title to land brought under this Act subject to mortgage to be held good in favor of mortgagee or his purchaser.

129. THE proprietor of any land under the operation of this Act may mortgage the same to the trustees or trustee of any benefit building society by signing a mortgage thereof in the form in the eighth Schedule to this Act.

Proprietor may mortgage to building societies 44 Vict. No. 23 section 1.

DIVISION IV.—MISCELLANEOUS.

130. A CORPORATION for the purpose of transferring or otherwise dealing with any land under the operation of this Act or any lease mortgage or charge may in lieu of signing and obtaining the attestation of the instrument for such purpose required affix thereto its common seal. The seal of the attorney of any corporation whose chief or head office of business shall be out of Western Australia whether such attorney shall have been already constituted or shall hereafter be constituted by a power of attorney under a seal purporting to be the common seal of the corporation giving the power shall be deemed to be the common seal of such corporation within the meaning and for the purposes of this section.

Seal of corporation substitute for signature.

The Transfer of Land Act 1874 s. 93.

Seal of attorney of corporation to be deemed seal of corporation.

Implied covenants and powers may be modified or negatived.

Ibid. sect. 94.

Implied covenants to be several as well as joint.

Succession to personal estate of deceased proprietor.

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

Ibid. sect. 95.

Sale under writ of *fi. fa.* or decree or order of Supreme Court.

Ibid. sect. 96.

131. EVERY covenant and power to be implied in any instrument by virtue of this Act may be negatived or modified by express declaration in the instrument or endorsed thereon; and in the declaration in any action for a breach of any such covenant it shall be lawful to allege that the party against whom or against whose real or personal representatives such action is brought did so covenant precisely in the same manner as if such covenant had been expressed in words at length in such instrument any law or practice to the contrary notwithstanding; and every such implied covenant shall have the same force and effect as if it had been set out at length in such instrument; and where in any instrument there shall be more than one covenantor such covenants as are by this Act declared to be implied in instruments of the like nature shall be construed to be several as well as joint.

132. WHENEVER any leasehold land brought under the operation of this Act or any lease mortgage or charge shall devolve in consequence of the will or intestacy of the proprietor thereof probate of his will or letters of administration with his will annexed or letters of administration of his goods or the order of the Supreme Court authorising the curator to administer the personal estate of the deceased proprietor (as the case may be) or an office copy of such document accompanied by an application in writing from the executor administrator or curator claiming to be registered as proprietor in respect thereof shall be produced to the Registrar; who shall thereupon enter in the register book and on the duplicate instrument (if any) when produced for that purpose the date of such probate or letters or order the time of the production of the same to him and the day of the death of such proprietor when the same can be ascertained; and upon such entry being made the executor or administrator or curator (as the case may be) shall become the transferee and be deemed to be the proprietor of such land lease mortgage or charge and shall hold the same for the purposes for which it may be applicable by law; but for the purpose of any dealings therewith under the provisions of this Act he shall be deemed to be the absolute proprietor thereof. The title of every executor administrator or curator becoming a transferee under this section shall upon such entry being made relate back to and be deemed to have arisen upon the death of the proprietor of the land lease mortgage or charge as if there had been no interval of time between such death and entry.

133. NO execution issued prior to or after the commencement of this Act shall bind charge or affect any land or any lease mortgage or charge; but the Registrar on being served with a copy of any writ of *fi. facias* issued out of the Supreme Court or of any decree

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or order of such court accompanied by a statement signed by any party interested or his attorney solicitor or agent specifying the land lease mortgage or charge sought to be affected thereby shall after marking upon such copy the time of such service enter the same in the register book; and after any land lease mortgage or charge so specified shall have been sold under any such writ decree or order the Registrar shall on receiving a transfer thereof in such one of the forms in the Seventeenth Schedule hereto as the case requires (which transfer shall have the same effect as if made by the proprietor) enter such transfer in the register book; and on such entry being made the purchaser shall become the transferee and be deemed the proprietor of such land lease mortgage or charge. Provided always that until such service as aforesaid no sale or transfer under any such writ shall be valid as against a purchaser for valuable consideration notwithstanding such writ was actually lodged for execution at the time of the purchase and notwithstanding the purchaser had actual or constructive notice of the lodgment of such writ. After the commencement of this Act no unregistered instrument document or writing and no equitable mortgage or charge by deposit or otherwise without writing affecting any land lease sub-lease mortgage annuity or other charge shall prevail against a sale by the sheriff under a writ of *feri facias* unless a caveat in respect of such unregistered instrument document or writing or equitable mortgage or charge shall have been lodged with the Registrar in pursuance of the provisions of Section 137 of this Act or the similar provisions of "The *Transfer of Land Act 1874*" before the service of the copy of the said writ of *feri facias* on the Registrar as aforesaid but in the absence of a caveat all the estate and interest in the land lease mortgage or charge as well of the judgment debtor as of his unregistered purchaser transferee mortgagee or other person claiming through or under him shall be extinguished and shall pass to the purchaser by virtue of a transfer under this section. Upon production to the Commissioner of sufficient evidence of the satisfaction of any writ a copy whereof shall have been served as aforesaid he shall direct an entry to be made in the register book of a memorandum to that effect; and on such entry having been made such writ shall be deemed to be satisfied.

Seventeenth
Schedule, but see
sections 78, 90
hereof.

134. EXCEPT in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any registered land lease mortgage or charge shall be required or in any manner concerned to enquire or ascertain the circumstances under or the consideration for which such proprietor or any previous proprietor thereof was registered or to see to the application of any purchase or consideration money or shall be affected by notice actual or constructive of any trust or unregistered interest any rule of law or equity to the contrary notwithstanding;

Purchaser from
registered proprietor
not to be affected by
notice.

Act of 1874 sect. 49.

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and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

Transferee of tenant in tail may be registered for the larger estate which a tenant in tail can confer.

135. A TRANSFER or mortgage in the ordinary form by a tenant in tail under this Act having power to create an estate in fee simple shall create such estate in favor of a transferee mortgagee or transferee under the power of sale in the mortgage and a transferee from a tenant in tail or under a mortgage from a tenant in tail or a mortgagee after foreclosure shall be entitled to be registered and receive a certificate for the larger estate which the tenant in tail is empowered to confer but a mortgage under this Act if discharged shall not bar the entail.

Registrar to furnish plan showing land dealt with where the memorandum on certificate does not describe such land.

136. WHERE part only of the land comprised in a certificate has been dealt with by a registered dealing but the memorandum of such dealing endorsed on the certificate does not specify such part the Registrar shall furnish to any person applying for the same on payment of the fee payable in that behalf a skeleton diagram of the land originally comprised in the certificate showing by metes and bounds and a distinguishing colour the position and dimensions of the part included in such dealing; and such diagram shall either be endorsed on or be annexed to such certificate and the same shall be stamped with the seal of the Office of Titles. Provided always that if there be different registered dealings affecting different parts of the land comprised in the certificate and a plan be required showing such different parts a separate fee shall be paid in respect of each such part. Provided also that where different parcels of land not contiguous are included in the certificate the skeleton diagram hereinbefore mentioned need only be of the parcel or parcels which includes or include the part or parts so dealt with.

PART V.—CAVEATS.

Caveat may be lodged where land already under Act.

Ibid sect. 106.

Eighteenth Schedule.

137. ANY beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease mortgage or charge under any unregistered instrument document or writing or under any equitable mortgage or charge by deposit without writing or by devolution in law or otherwise may lodge a caveat with the Registrar in the form in the Eighteenth Schedule hereto or as near thereto as circumstances will permit forbidding the registration of any person as transferee or proprietor of and of any instrument affecting such estate or interest either absolutely or until after notice of the intended registration or dealing be given to the caveator or unless such instrument be expressed to be subject to the claim of the caveator as may be required in such caveat. Every such caveat shall state the name and addition of the person by whom or on whose

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behalf the same is lodged and (except in case of a caveat lodged by order of the Supreme Court or by the Registrar pursuant to the direction of the Commissioner as hereinafter provided) shall be signed by the caveator or by his agent. The person lodging such caveat shall if required by the Registrar support the same by a statutory declaration stating the nature of the estate or interest claimed and the title thereto and may withdraw any such caveat. If such declaration when required by the Registrar be not lodged with him within seven days from the date of such registration the caveat shall be absolutely null and void. No such caveat shall be received unless some address or place within the limits of the city of Perth shall be appointed therein as the place at which notices and proceedings relating to such caveat may be served. A caveator may however give an additional address elsewhere within the colony at the foot of such caveat in which case any notice relating to such caveat shall be sent through the post office by registered letter to such address on the same day as that on which the notice is served in Perth. Every notice relating to such caveat and any proceedings in respect thereof if served at the address or place appointed as aforesaid shall be deemed to be duly served.

Caveat may be withdrawn.

Address for service of notices.

138. UPON the receipt of such caveat the Registrar shall notify the same to the person against whose application to be registered as proprietor or (as the case may be) to the proprietor against whose title to deal with the estate or interest such caveat has been lodged; and such applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may if he think fit summon the caveator to attend before the Supreme Court or a judge in chambers to show cause why such caveat should not be removed; and such court or judge may upon proof that such caveator has been summoned make such order in the premises either *ex parte* or otherwise as to such court or judge may seem fit. Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement or by the Registrar pursuant to the direction of the Commissioner every caveat lodged against a proprietor shall be deemed to have lapsed upon the expiration of fourteen days after notice served on the caveator that such proprietor has applied for the registration of a transfer or other dealing. A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest; but if before the expiration of the said period of fourteen days or such further period as shall be specified in any order made under this section the caveator or his agent appears before a judge and gives such undertaking or security or lodges such sum in court as such judge may consider sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed then and in such case such judge may direct

Notice of caveat to be given.
Ibid sect. 107.

Caveator may be summoned to show cause.

Except in certain cases caveat to lapse after fourteen days' notice given to caveator.

Power to a judge to extend the operation of a caveat.

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the Registrar to delay registering any dealing with the land lease mortgage or charge for a further period to be specified in such order or may make such other order as may be just.

Ibid. sect. 109.
No entry to be made in registry book affecting land in respect to which caveat continues in force.

139. EXCEPT in the cases provided by section one hundred and forty-two so long as any caveat shall remain in force prohibiting any registration or dealing the Registrar shall not enter in the register book any change in the proprietorship of or any transfer or other instrument purporting to transfer or otherwise deal with or affect the estate or interest in respect to which such caveat may be lodged. The consent of a caveator shall in no case operate as a withdrawal of his caveat.

Compensation for lodging caveat without reasonable cause.

Ibid. sect. 110.

140. ANY person lodging any caveat with the Registrar either against bringing land under this Act or otherwise without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as a judge on a summons in chambers shall deem just and order.

Memos. of caveats to be affixed to certificates and copies sent to persons affected.

141. A MEMORANDUM of every caveat lodged under the provisions of section one hundred and thirty-seven of this Act shall be endorsed on the certificate of the land to which it relates and a copy of the caveat or of so much thereof as the Registrar shall deem material to the person notified shall be sent with the notification required by section one hundred and thirty-eight of this Act.

A caveat on behalf of a beneficiary under a will or settlement does not bar registration in certain cases.

142. WHERE a caveat has been lodged by or on behalf of a beneficiary claiming under a will or settlement and a change in the proprietorship of or a transfer or other dealing with or affecting the land estate or interest in respect of which the caveat was lodged is presented for registration the same may notwithstanding section one hundred and thirty-nine of this Act be registered without the caveat being withdrawn and without determining the operation of the caveat provided the Commissioner is of opinion that such change of proprietorship or such transfer or other dealing is authorised by the will or settlement and the caveator either consents to the registration or does not lodge a written protest against such registration within fourteen days after being served with notice as such caveator.

PART VI.—POWERS OF ATTORNEY AND ATTESTATION OF INSTRUMENTS.

Powers of attorney and revocation thereof.

Ibid. sect. 103.

Nineteenth Schedule.

143. THE proprietor of any land under the operation of this Act or of any lease mortgage or charge may appoint any person to act for him in transferring the same or otherwise dealing therewith by signing a power of attorney in the form in the Nineteenth Schedule hereto or to the effect thereof. Every such power or a duplicate or attested copy thereof shall be filed with the Registrar

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who shall note the effect of the same in a book to be kept for that purpose and such power shall be in force from the time of noting until revocation or extinguishment thereof. *47 Vict. 22 sect. 4.*

144. A POWER of attorney given by a person before as well as after becoming a proprietor of any land or of any lease mortgage or charge shall be deemed to be within the meaning of the last preceding section; and every power of attorney heretofore given or which shall hereafter be given when filed and noted as aforesaid or the same or a duplicate or attested copy shall have been filed and noted shall while continuing in force be valid and available within the scope to the extent of the powers and authorities given or to be given by such power concerning the lands tenements and chattels real generally of the principal for similar or corresponding dealings under this Act with any land under the operation hereof or with any lease mortgage or charge. *Existing and future powers of attorney when filed available. Act of 1874 sect. 104.*

145. INSTRUMENTS and powers of attorney under this Act signed by any person and attested by one witness shall be held to be duly executed and such witness may be— *Attestation of instruments and powers of attorney.*

Within the limits of Western Australia—

The Registrar or an Assistant Registrar or a justice of the peace notary public solicitor of the Supreme Court commissioner for taking affidavits postmaster postmistress minister of religion authorised to celebrate marriages within Western Australia or any other person authorised in that behalf by the Governor in Council: *Ibid. sect. 105.*

And without the limits of Western Australia—

Either a notary public or commissioner for taking affidavits in the Supreme Court of Western Australia or the mayor or other chief officer of any city or municipal corporation or the officer administering the government of or the judge of any court of record in any British possession or the British consular officer (which expression shall include consul-general consul and vice-consul and any person for the time being discharging the duties of consul-general consul or vice-consul) at any foreign place or the Agent General for Western Australia in the United Kingdom or his secretary.

Such witness whether within or without the limits of Western Australia may also be any other person; but in such case he shall appear before one of the officers or persons aforesaid who after making due inquiries of such witness shall endorse upon the instrument or power a certificate in the form in the Twentieth Schedule hereto; and such certificate shall be deemed sufficient proof of the due execution of such instrument or power. No fee shall be *Proof of Signature. Twentieth Schedule.*

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No fees to be taken by Registrar or justice.

demanded or taken by any Registrar Assistant Registrar or justice of the peace for attesting within Western Australia any instrument or power of attorney under this Act; and any Registrar Assistant Registrar or justice of the peace who shall demand or take any such fee shall forfeit a sum of not less than Five pounds nor more than Twenty pounds.

Lands vested in the Crown.

In the case of Her Majesty the Queen Her heirs and successors being the registered proprietor of any land under the operation of this Act all instruments relating thereto shall be deemed to be properly executed within the meaning of this section when the Commissioner of Crown Lands shall have signed the same and affixed his seal of office and no attestation shall be necessary in such case.

PART VII.—SEARCH CERTIFICATES AND STAY ORDERS.

Persons desiring information as to whether proprietor is free to deal may obtain such certificate.

146. ANY person desiring information as to whether a proprietor is able to deal with the land comprised in his certificate free from obstruction caused by any caveat instrument lodged for registration order injunction or other cause known to the Registrar but not appearing upon the certificate may sign an application for search certificate in the form in the Twenty-first Schedule hereto; and on payment of the fee in that behalf provided the Registrar shall cause the necessary searches and inquiries to be made for the purpose of affording the information required; and the result thereof shall be certified in the form in the said schedule contained by affixing the seal of the office with the initials of the officer attaching the same and the day hour and minute at which the seal is affixed.

Twenty-first Schedule.

Person applying for search certificate entitled to inspect certificate of title.

147. SUCH search-certificate shall refer to the dealing or encumbrance last noted on the certificate of title for the purpose of showing the state of the register at the time of issuing the search certificate but not of informing the person applying for the search certificate as to what is upon the certificate of title; and such person shall be entitled to inspect the certificate of title and shall be deemed to know all of which an inspection of the certificate of title would have informed him.

Person proposing to deal with proprietor may obtain stay of registration for forty-eight hours if title be clear.

Twenty-second Schedule.

148. ANY person proposing to deal for value with a proprietor may with the consent in writing of such proprietor or his agent authorised in writing in that behalf and on stating the particulars of the proposed dealing lodge with the application for search certificate an application for stay of registration in the form in the Twenty-second Schedule hereto; and if the result of the search shows that the proprietor is free to deal the Registrar shall on payment of the fee in that behalf provided sign an order in the form in the said schedule staying registration of any instrument affecting the land to be com-

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prised in the proposed dealing for forty-eight hours from the time mentioned in the search certificate; and the said order shall be affixed to the certificate and a copy thereof given to the applicant.

149. IF within the said period of forty-eight hours a properly perfected instrument effecting the proposed dealing be duly lodged for registration such instrument shall have priority over any other instrument which may be lodged for registration after the time mentioned in the search certificate and the same shall be registered notwithstanding any caveat copy of writ or application by assignee in bankruptcy which may have been lodged in the office after the time mentioned in such search certificate.

Instrument effecting proposed dealing entitled to priority if lodged within forty-eight hours.

150. SUBJECT to the lodging of such duly perfected instrument within such period any other instrument and any caveat copy writ or application received in the office during such period shall be dealt with in the same manner shall have the same priority as between themselves and shall be as effectual as if no stay of registration had been obtained.

Instrument to be received and to have priority according to the ordinary course if proposed dealing be not lodged for registration.

PART VIII.—SURVEYS PLANS PARCELS AND BOUNDARIES.

151. THE survey boundaries of any Crown section location allotment or other parcel of land marked on the ground at the time of the Crown Survey thereof and shown by survey posts pegs trenches or other survey marks shall as to any such parcel of land heretofore or hereafter granted or demised by the Crown be and be deemed to have been the true boundaries of such parcel of land whether such boundaries upon admeasurement are or are not found to be of the same dimensions or to include the same area as the boundaries or description of such parcel given in the Crown grant but it shall be lawful for the Surveyor General to alter the survey boundaries marked upon the ground as aforesaid so that however such alteration does not interfere with any improvements which may have been in good faith effected by the lessee or grantee from the Crown.

Crown survey boundaries as marked on the ground to be deemed the true boundaries.

152. EVERY Crown grant purporting to convey a location allotment or other parcel of land whether describing it by a distinguishing number or letter or by metes and bounds or otherwise shall be deemed to convey the land included within the survey boundaries of such parcel of land marked on the ground in the Crown survey thereof notwithstanding any discrepancy between the dimensions of such survey boundaries or the area they include and the dimensions or area expressed in such grant or lease or shown in any plan used in connection with the alienation by the Crown of such parcel of land. Provided that nothing in this and the next preceding section shall apply to any such section location allotment or parcel of land where an actual patent mistake or error has been made.

Crown grant or lease to be deemed to convey the land within the survey boundaries.

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As to aliquot parts of Crown sections having excess of area.

153. WHERE a Crown section has been subdivided by the Crown into allotments or portions of equal area and by reason of excessive measurements in the original Crown survey the area of the section as marked on the ground by the survey boundaries exceeds the sum of the areas of all the allotments or portions as shown by any plan or description used at the Crown sale or as deducible from any Crown grant of any such allotment or portion the total excess of area of the section shall be deemed originally distributable amongst the allotments or portions equally; and every Crown grant purporting to be a grant of one of such allotments or portions shall where the original subdivisional survey boundaries thereof do not exist or if not inconsistent with such boundaries where they do exist be construed to be a grant of such aliquot part of the total area included within the survey boundaries of such section as is obtained by dividing such area by the number of original allotments or portions.

How survey boundaries may be proved in the absence of survey marks.

154. WHEN the survey marks of the boundaries of any section allotment or other parcel of land have been removed or obliterated but it is proved in some court of competent jurisdiction or to the satisfaction of the Commissioner of Titles (where the land is under "*The Transfer of Land Act 1874*" or is under or is proposed to be brought under the operation of this Act in any proceeding or application in which the boundaries of such parcel of land have to be determined that certain buildings fences walls or other improvements of a permanent nature or a succession of such improvements—

- (1) have ever since the removal or obliteration of such survey marks indicated or agreed in position with the boundaries originally marked on the ground by the survey marks so removed or obliterated; or
- (2) have for the full period of twenty years without interruption been used and regarded by the owner or occupier or successive owners or occupiers of such parcel of land as marking or agreeing in position with the boundaries of the parcel of land comprised in the document of title under or by virtue of which such land is or has been occupied—

such proof as aforesaid shall be deemed and received as sufficient evidence of the true positions of the original survey boundaries of such parcel of land.

Margin of error allowed in description of boundaries.

155. FROM and after the coming into operation of this Act the dimensions of the boundaries of any parcel of land as stated in any document of title now made or hereafter to be made relating to such land or as represented on any plan drawn on and referred to in any such document of title shall unless such construction is expressly negatived or modified by such document of title or contract be construed as though the phrase "a little more or less" immedi-

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ately followed and referred to the dimensions so stated or represented; and such phrase shall in all cases whether so implied or expressed be deemed to cover any difference between the dimensions so stated or represented as aforesaid and the actual dimension of such boundaries as found by admeasurement on the ground when such difference does not exceed the following limits that is to say a limit of two inches for any one boundary line irrespective of its length where the length does not exceed one hundred and thirty-two feet but where it exceeds one hundred and thirty-two feet a limit equivalent to one in five hundred computed upon the total length of such boundary line. No action shall be brought by reason or in respect of such difference (whether of excess or deficit) where it does not exceed the aforesaid limits; and in any case where such difference does exceed such limits an action for damages or compensation in respect thereof shall only lie in respect of such excess.

156. ON any application made to bring land under this Act or to have a certificate of title amended as to the description of land therein as hereinafter authorised and on any proposed subdivision under section one hundred and seventy-two of this Act the Commissioner may require such survey and plans to be made and such particulars of the boundaries abuttals adjacent buildings of stone or brick area and position to be furnished at the cost of the applicant or registered proprietor as the Commissioner shall think fit. All surveys required by the Commissioner in bringing land under this Act shall be made by a surveyor licensed under this Act.

Commissioner may require special survey of land.

157. THE Commissioner may require any such survey to be tied on to any general or local survey of Western Australia or any district city or town at such permanent datum or other point or points of connexion and the measurement of the boundaries to be commenced from such starting point on the land and carried round the boundaries in such direction and order as he may direct; and he may require the accuracy of any such survey to be verified by the signature of the surveyor making the same.

Commissioner may require accuracy of survey to be verified.

158. IN dealing with any applications involving the amendment of a certificate or adjustment of boundaries the Commissioner may disregard any difference in the dimensions of boundaries or any encroachment excess or deficit which does not exceed a quarter of a link in town and suburban allotments and one link in ten chains in rural locations.

Commissioner may disregard minute errors of dimensions.

159. WHERE a block of land has been subdivided into allotments and by reason of erroneous measurements in the original survey the area of the block as marked on the ground exceeds the sum of the areas of all the allotments and roadways (if any), as

Excess of land may be apportioned between different owners or proprietors.

shown by any plan or description used at the sale thereof or by the grants or certificates of title of such allotments the total excess of area of the block shall be deemed originally apportionable amongst the allotments and roadways (if any) proportionately to their relative dimensions and if the area of the land included in any application to bring land under this Act or for an amended certificate is in the applicant's possession and was in the possession of the applicant or of him and those through whom he claims for a period of not less than fifteen years previous to the application and does not exceed the area attributable to the allotment or allotments or fraction of an allotment represented by the land included in such application after such apportionment of excess as aforesaid the Commissioner may without ascertaining the dimensions of the other allotments or fraction of allotment and without the consent of the owner or owners thereof issue a certificate in respect of the land included in such application as if the whole of it had been included by metes and bounds in the original grant or certificate thereof.

The Commissioner may determine doubtful boundaries of old subdivisions.

160. WHERE a block of land has been subdivided and the whole or part thereof sold in allotments according to a plan of subdivision but such block is altogether or in part unoccupied and by reason of errors of survey or misdescription in the muniments of title the boundaries and positions of such subdivisional allotments cannot be ascertained with certainty or are found to be inconsistent with each other and with the scheme of subdivision indicated by what appears on the ground or in the muniments of title then if it is upwards of twenty years since the original subdivision was made and if the original external survey boundaries of such block can be determined and sufficient evidence is available to satisfy the Commissioner as to the governing features of the original scheme the number and relative positions and relative dimensions of the subdivisional allotments roads streets and ways he may upon an application to bring any such subdivisional allotment or allotments under this Act or where such land is already under "*The Transfer of Land Act 1874*" or this Act to have a separate certificate of title issued for such allotment or allotments or an existing certificate amended cause a survey to be made and if it be found that such land or any portion thereof has been erroneously described as regards position dimensions or area or that an excess or deficiency of measurement exists he may if of opinion that such a course is necessary and expedient for the recognition or issue of titles to land comprised in the said block prepare a scheme of subdivision of the whole or any portion of such block agreeing as near as may be with the original scheme as indicated by such evidence as aforesaid and for that purpose may adjust and determine all or any of the boundary lines and the position and dimensions of the roads streets and ways and apportion any excess either in accordance with the last preceding section of this Act or in such other manner as he

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shall deem equitable and expedient for the purposes of such subdivision.

161. THE scheme of subdivision so prepared shall be embodied in a plan and adopted provisionally for the purposes of the notices hereinafter mentioned.

A plan of scheme to be made.

162. AFTER such plan has been constructed the Commissioner shall in addition to any other notices which he may think fit direct notice of the proposed subdivision to be advertised once at least in a newspaper published in Perth and in a newspaper (if any) published and circulating in the neighborhood of the land and also to be served upon all persons appearing by the register to be owners or proprietors of the fee simple of any portion of such land by sending the same through the post-office in a registered letter marked on the outside "Office of Titles" to the address appearing upon the register and also to any other address ascertained by the Commissioner to be the address for the time being of the person notified; such notice shall state that such provisionally adopted plan can be inspected at the Office of Titles and appoint a time not less than fourteen days nor more than six months within which objections or proposals to alter the same and evidence in support of such objections or proposals will be received by the Commissioner. But it shall be in the discretion of the Commissioner whether or not he will concede to any objections or adopt any alteration submitted to him upon such notice; and if he do adopt any such alteration whether or not any and what notice thereof shall be given to all or any of the persons previously notified.

Notice to be advertised and given to registered owners and proprietors.

163. AFTER a scheme of subdivision has been finally decided upon the plan embodying it shall be verified by the Commissioner and Chief Draftsman or officer discharging the duties of Chief Draftsman signing a statement written on the face of the plan in the form in the Twenty-third Schedule hereto and the plan so verified shall be marked with a distinguishing symbol and kept in the Office of Titles as an approved lodged map of subdivision and shall as from the date of such verification govern the titles thereafter issued under this Act to the block so subdivided or any portion thereof. And the remedy of any person having an estate or interest in the land subdivided or in any portion thereof who shall be injured by any certificate of title issued in pursuance of such subdivision shall lie in damages only and the same may be sued for and recovered in manner indicated by section two hundred and seven of this Act.

The subdivisional plan to be signed by the Draftsman and Commissioner and become a lodged map of subdivision. Twenty-third Schedule.

164. NOTICE of such subdivision and verification of the plan shall be published in the *Government Gazette* and in some newspaper circulating in the neighborhood of the land.

Notice of subdivision and plan to be published in the *Government Gazette*.

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Expense of survey
how paid.

165. THE expense of any survey which the Commissioner shall cause to be made under section one hundred and sixty of this Act shall in the first instance be defrayed out of the consolidated revenue but every applicant who after such subdivision shall apply to bring any portion of the land comprised in such subdivision under this Act or to have a certificate issued or amended as to any such land for the first time after such subdivision shall in addition to any other moneys chargeable in such case pay to the Registrar (to be by him paid into the consolidated revenue) such amount as the Commissioner shall under his hand certify to be in his judgment an equitable share of such expense to be contributed in respect of the land comprised in such application.

Proprietor sub-
dividing to deposit
map if required.
Ibid., sect. 119.

166. ANY proprietor subdividing any land under the operation of this Act for the purpose of selling the same in allotments shall deposit with the Registrar a map of such land if so required. Such map shall exhibit distinctly delineated all roads streets passages thoroughfares squares or reserves appropriated or set apart for the use of the purchasers and all permanent drains and also all allotments into which the said land may be divided marked with distinct numbers or symbols and shall also show the areas and shall comply in every respect with the Rules and Regulations for the time being for the guidance of surveyors when practising under this Act and the survey shall be performed in all other respects as therein directed and the map shall be declared to be accurate by a statutory declaration in the form of Schedule twenty-seven of this Act of a licensed surveyor. In case a portion only of the land comprised in any certificate be subdivided the existing certificate shall be cancelled to the extent of such portion and a fresh certificate shall be issued for the same.

Schedule 27 hereof.

Number of allotment
on plan of sub-
division sufficient
description for pur-
poses of dealing.

167. AFTER the subdivision of land and deposit of plan under the last preceding section of this Act the numbers of the allotments marked upon such plan may be used as sufficient description of the land for the purpose of dealings with any one or more of such allotments on the sale thereof according to such plan of subdivision and on any subsequent dealings comprising the whole of one or more allotment or allotments.

Abuttals may be
used in description
of land in certificate.

Schedule 5.

Manner in which
abuttals may be

168. ON an application to bring land under this Act or for an amended certificate the land included in the certificate to be issued shall at the request of the applicant and may at the discretion of the Commissioner notwithstanding sections twenty-five and forty-eight and the Fifth Schedule of this Act be described by its abuttals both in the body of the certificate and in the plan thereon or in the plan only. Any abuttal so used may be described by the name by which it is commonly known and with or without the name of its reputed owner; and if the abuttal is upon or consists of land under this Act

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the number of the certificate of the land constituting the abuttal or on which the abuttal stands shall be mentioned; and abuttals shall be used in addition to and not in substitution for dimensions unless the Commissioner shall specially authorise the land or any boundary of the land being described by abuttals only.

used to describe boundaries.

169. FOR the purpose of this Act any of the objects hereinafter mentioned may be mentioned as an abuttal:—Any building wall sectional division of party wall fence permanent drain public or private street or road lane or passage land dedicated to or reserved for the public Government reserve Crown section allotment or portion land described in any certificate of title and any bay lake river creek or natural or artificial water-course; and mention of an abuttal in any certificate of title shall not be deemed to give title to the abuttal or to be evidence of the title of any person who may be referred to in the description as owner or occupant of the land upon which any abuttal stands or of any land constituting an abuttal.

Objects which may constitute abuttals.

PART IX.—RECTIFICATION OF CERTIFICATES.

170. A PROPRIETOR may apply to have his certificate of title amended in any case in which the boundaries area or position of the land therein described differ from the boundaries area or position of the land actually and *bonâ fide* occupied by him and purporting to be so occupied under the title in respect of which the certificate issued or in any case in which the description in the certificate is erroneous or imperfect on the face of it.

Proprietor may apply for amendment of certificate to make boundaries coincide with land occupied under certificate.

171. A PROPRIETOR may apply for the rectification of the original and duplicate certificate of any other proprietor or proprietors in any case in which the land described in the applicant's certificate and actually and *bonâ fide* occupied by him comprises land which by reason of any error in survey or other misdescription is included in the land described in any other certificate or certificates.

Proprietor may apply to have other certificates amended where inconsistent with the description of the land in his certificate and occupied by him.

172. ANY application to be made as aforesaid shall be in the form set forth in the Twenty-fourth Schedule hereto and the attorney of any corporation registered as proprietor may apply on behalf of the corporation in manner provided by section twenty of this Act.

Form of application. Twenty-fourth Schedule.

173. THE Registrar shall refer any application made as aforesaid to an Examiner of Titles who shall report thereon and submit the same to the Commissioner for his direction (or if there be no Examiner then to the Commissioner himself) who shall direct notice of the application to be advertised once at least in one newspaper

How application to be dealt with.

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published in the city of Perth or circulating in the neighborhood of the land and to be served on any persons named by him and to be posted in a conspicuous place outside a post office in the neighborhood of such land and shall appoint a time not less than fourteen days from such notice or from the advertisement or the first of such advertisements if more than one on or after the expiration of which the application may be granted unless a caveat shall be lodged forbidding the granting thereof.

Special notice to be given to other proprietors where application affects land described in their certificates.

174. IN any case in which the granting of an application to be made as aforesaid or of an application to bring land under this Act would affect land comprised in any other certificate or cause a certificate to issue which would be inconsistent with any other certificate the Commissioner shall in addition to any other notices which he may require direct notice of the application to be served upon all persons appearing by the register to be the owners of an estate in fee simple in or lessees or mortgagees of the land which would be affected or the land comprised in the certificate as to which the inconsistency would arise accompanied by a plan showing accurately the extent to which the certificate thereof would be affected if the application were granted and a copy of such plan shall until such application has been finally dealt with be kept open for inspection at the Office of Titles.

Notice of application to be published and posted in office.

175. THE Registrar shall under such direction as aforesaid cause notice to be published in such manner as by such direction may be prescribed that application has been made to amend the certificate of title in the manner specified and shall cause a copy of such notice to be posted in a conspicuous place in the Office of Titles together with any plan deposited as hereinbefore mentioned and shall send through the post office a registered letter marked outside "Office of Titles" to every person whom the Commissioner shall have directed to be served with notice; and notwithstanding any direction given by the Commissioner as to any such application he may reject the same if the applicant shall not comply to his satisfaction within such time as to him may seem reasonable with any requisition which he may have made in regard to such application.

Person objecting to application being granted may lodge caveat.

176. ANY person claiming any estate or interest in the land in respect of which any such application shall be made as hereinbefore provided may before the granting thereof lodge a caveat with the Registrar forbidding the granting of the application; and every such caveat shall in all other respects be in the same form shall be subject to the same provisions and shall have the same effect with respect to the application against which it is lodged as an ordinary caveat against bringing land under the operation of this Act.

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177. ON any application under section one hundred and seventy or one hundred and seventy-one of this Act or to bring land under this Act the Commissioner may grant the same although the certificate to be issued or the rectification of the register to be made upon such application may affect land comprised in any other certificate if it shall appear that the land so affected has been included in such other certificate by reason of some error in survey or other misdescription unless the title to the land so affected has been theretofore determined in a contested proceeding under this Act or in any court of competent jurisdiction in which the right to the possession of such land was in question.

Application may be granted although other certificates may be affected thereby.

178. UPON granting any such application the Commissioner shall direct the Registrar to rectify the register by making the requisite alteration in the original of any other certificate accompanied by a statement made and signed by him in the register book of the circumstances under which the rectification has been made; and the Registrar shall make the requisite alteration in the duplicate certificate when brought to him for that purpose or when the same shall be lodged in or brought to the office for the purpose of any dealing with the land comprised therein and may detain the duplicate until the rectification thereof shall be completed; and the Registrar may refuse to register any dealing with the land or any estate or interest therein until the duplicate shall have been brought in for rectification.

On granting application other certificates may be rectified and substituted certificates issued.

179. UPON rectifying the original of any certificate as hereinbefore mentioned the Registrar shall give notice in writing to the proprietor of the land comprised in the certificate informing him of the rectification and that on the duplicate certificate being brought in to the Office of Titles a new duplicate certificate with the amended description will be issued to him free of cost; and on the same being brought in the proprietor shall be entitled to receive a new duplicate certificate with an amended description in substitution for the duplicate certificate so brought in; and every new certificate so issued shall bear the same number as that for which it is substituted with the word "substituted" prefixed to the number.

Proprietor of land as to which certificate is rectified to have notice of rectification.

PART X.—SPECIAL POWERS AND DUTIES OF THE COMMISSIONER AND REGISTRAR.

180. THE Commissioner may by summons under his hand in form in the Twenty-fifth Schedule hereto require the proprietor or mortgagee or other person interested in any land under or proposed to be brought under the operation of this Act in respect of which any transfer lease mortgage charge or other dealing or any discharge

Power to the Commissioner to require explanation and production of documents.

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Act of 1874.
Sect. 10.

Twenty-fifth
Schedule.

from any mortgage or charge is proposed to be transacted or registered or in respect of which any transmission is proposed to be registered to appear at a time and place to be appointed in such summons and give any explanation concerning such land or any document affecting the title thereto and to produce any grant certificate of title will mortgage or other instrument or document in his possession or within his control affecting such land or the title thereto; and the Commissioner is hereby authorised to examine upon oath (which oath he is hereby empowered to administer) any such proprietor mortgagee or other person as aforesaid; and any such proprietor mortgagee or other person who shall fail refuse or neglect to attend the Commissioner for the purpose of being examined or to produce any such document or to allow the same to be inspected or shall refuse or neglect to give any such explanation as aforesaid shall be liable on any such default to be dealt with as in the case of a contempt of the Supreme Court; and if the information or document withheld appears to the Commissioner to be material the Registrar shall not be bound to proceed with the transaction.

Power to make
certain regulations
and to alter forms of
instruments, &c.

Ibid. sect. 11.

181. THE Commissioner may from time to time with the consent of the Governor in Council make regulations respecting the parcels of land that may be included in one certificate of title and may with the like consent repeal or alter such regulations; and he may also with the like consent from time to time make such alterations in the several forms in the several schedules hereto as he may deem requisite and may license any person to sell the same forms; and every form authenticated by the seal of the office shall be taken to be in the legally authorised form unless the contrary be proved.

Registrar to carry
out order vesting
trust estate.

Ibid. sect. 101.

182. WHENEVER any person interested in land under the operation of this Act or any estate or interest therein shall appear to the Supreme Court or to the Commissioner to be a trustee of such land estate or interest within the intent and meaning of any Act now or hereafter to be in force relating to trusts and trustees and any vesting order shall be made in the premises by the said court or by the Commissioner (which order he is hereby empowered to make concurrently with the said court) the Registrar on being served with such order or an office copy thereof shall enter in the register book and on the duplicate certificate of title and duplicate instrument (if any) the date of the said order the time of its production to him and the name and addition of the person in whom the said order shall purport to vest the said land estate or interest; and upon such entry in the register book such person shall become the transferee and be deemed to be the proprietor thereof. Unless and until such entry shall be made the said order shall have no effect

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or operation in transferring or otherwise vesting the said land estate or interest.

183. IF it be proved to the satisfaction of the Commissioner that land under this Act has been sold by the proprietor and the whole of the purchase money paid and that the purchaser or those claiming under him have entered and taken possession under such purchase and such entry and possession have been acquiesced in by the vendor or his representatives but that no transfer or formal conveyance has ever been executed by the vendor and cannot be obtained by reason that the vendor is dead or residing out of the jurisdiction or cannot be found the Commissioner may in his discretion make a vesting order in the premises and the Registrar on being served with such order shall make the entries directed to be made by the last preceding section in this Act in the case of the vesting orders therein mentioned and the making or the omission to make such entries shall be attended by the same results as declared by the said section in respect of the vesting orders therein mentioned.

Power to Commissioner to make a vesting order in cases of completed purchase.

184. WHERE it shall be proved to the satisfaction of the Commissioner that the rights of an official assignee or trustee in bankruptcy or of an execution creditor notified as an encumbrance on the certificate have been fully satisfied extinguished or otherwise determined and no longer affect the land comprised in the certificate the Commissioner may either direct a statement to that effect signed by the Registrar to be endorsed on the certificate or permit any subsequent certificate dealing with the same land to be issued free from such encumbrance.

Certain encumbrances which have ceased to affect the title may be removed from the register.

185. ON proof to the Commissioner that any judgment of which a copy writ of execution has been entered under section one hundred and thirty-three of this Act has been satisfied before the period for which such entry is operative has elapsed the Commissioner may write the word "Satisfied" with his signature and the date of the signing upon or below the entry of copy writ in the register book and thereupon such writ shall cease to affect the land as to which the entry was made.

Satisfaction of judgment may be entered before the expiration of three months from the entry of copy writ.

186. IF at the time when any mortgage conveyance or transfer on sale of any real property or any application or consent under this Act which is liable to duty under "*The Stamp Act 1882*" is left at the Titles Office there is affixed thereto an adhesive stamp uncanceled or only partially cancelled it shall be competent for any officer authorised by the Commissioner of Titles or Registrar of Titles to cancel such stamp as if he were the person by whom it was affixed and upon his so doing such mortgage conveyance transfer application or consent shall be deemed to be duly stamped and as valid in

Commissioner or Registrar of Titles may cancel stamps on transfers &c. of real property.

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all respects as if the stamp had been duly cancelled by the person by whom it was affixed. Provided that such conveyance or transfer of sale shall be so cancelled subject to the provisions and penalties of and within the time limited by "*The Stamp Act 1882.*"

Entry to be made in the register book of appointment of executor or administrator or of the curator.
47 Vict. No. 20.

187. UPON the receipt of an office copy of the probate of any will or of any letters of administration or of an order to administer granted to the Curator whereby it shall appear that any person has been appointed the executor or administrator or the Curator of the estate of any deceased person and upon the notification in the *Government Gazette* of the appointment of any succeeding Curator the Registrar of Titles shall on an application in writing of the executor administrator or Curator as the case may be to be registered as proprietor in respect of any land therein described enter in the register book upon the leaf constituted by the certificate of title of such land a memorandum notifying the appointment of such executor administrator or Curator and the day of the death of the proprietor when the same can be ascertained and upon such entry being made such executor administrator or Curator shall become the transferee and be deemed to be the proprietor of the estate or interest of the deceased proprietor in such land or of such part thereof as shall then remain unadministered and shall hold the same subject to the equities upon which the deceased held the same but for the purpose of any dealings with such land every such executor administrator or Curator shall be deemed to be the absolute proprietor thereof. If in any case probate or administration shall be granted to more persons than one all of them for the time being shall join and concur in every instrument relating to the land. No contribution to the assurance fund under this Act shall be payable on the registration of such executor administrator or Curator.

Powers of Registrar.
Act of 1874 sect. 13.

To administer oaths.

To correct errors.

188. THE Registrar may exercise and shall perform the following powers and duties (that is to say):—

- (I.) He may administer an oath and may take and receive the declaration of any person voluntarily making the same (in this Act called a statutory declaration).
- (II.) He shall upon the direction of the Commissioner correct errors in the register book or in entries made therein or in duplicate certificates or instruments and may supply entries omitted to be made under the provisions of this Act; but 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 and initial the same; and every error or entry so corrected or supplied shall have the like validity and effect as if such error had not been

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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.

- (iii.) He shall upon the direction of the Commissioner lodge a caveat on behalf of Her Majesty or on behalf of any person who shall be under the disability of infancy coverture lunacy unsoundness of mind or absence from Western Australia to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person and also to prohibit the dealing with any land in any case in which it shall appear that an error has been made by misdescription of such land or otherwise in any certificate of title or in any instrument or for the prevention of any fraud or improper dealing.

To enter caveats

189. THE Registrar may without the direction of the Commissioner correct any patent error appearing on the face of any instrument lodged for registration without such instrument being withdrawn from the office. Provided always that such correction be made in compliance with sub-section (ii.) of the last preceding section and such correction shall have the same validity and effect as if made under the direction of the Commissioner under the said section.

Registrar may correct apparent errors in instruments without direction of Commissioner.

190. THE Registrar shall keep a correct account of all sums of money which shall be received by him under 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 by any Act or regulations for the time being in force relating to the collection and payment of the public moneys and the audit of the public accounts. All penalties and fees received under the provisions of this Act (except sums received as contributions to the assurance fund or in augmentation thereof) shall be carried to and form part of the consolidated revenue.

Registrar to pay moneys to Colonial Treasurer and to render accounts.
Ibid. Sect. 126.

191. FROM the coming into operation of this Act it shall be lawful for the Registrar to demand the fees specified in the Last Schedule hereto or such other fees as shall hereafter from time to time be appointed by the Governor in Council in lieu thereof or in addition thereto.

Fees to be paid under Act.
Ibid. Sect. 124.
Last Schedule.

192. WHENEVER any instrument caveat surrender discharge of encumbrance writ of *fi. fa.* or other document lodged for registra-

Defective instrument or document lodged

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if not amended on notice within twenty-one days may be rejected.

tion or in relation to any land title estate or interest or in connection with any application or dealing is erroneous or defective the Registrar may require the correction and re-execution or correction only (as the case may require) of such document to be made or procured by the person lodging the same; and if after notice in writing of such error or defect sent through the post in a registered letter marked outside "Office of Titles" addressed to such person he shall fail to procure the same to be amended if it be an instrument or an application to bring land under this Act or to amend a certificate of title within a period of three months or if it be any other document within a period of twenty-one days from the date of notice the Registrar may if he think fit reject such document and notify such rejection to the person lodging the document and thereupon half the fees paid on the lodging of the document shall be forfeited and dealt with as a penalty under section one hundred and ninety of this Act and the other half may be returned to the person lodging the document on his withdrawing the same.

Power to state a case for Supreme Court.
Ibid. Sect. 12.

193. IT shall be lawful for the Commissioner whenever any question shall arise with regard to the performance of any duty or the exercise of any of the functions by this Act conferred or imposed either on him or on the Registrar to state a case for the opinion of the Supreme Court; and thereupon it shall be lawful for the said court to give its judgment thereon; and such judgment shall be binding upon the Commissioner and Registrar respectively.

PART XI.—ASSURANCE FUND.

Assurance fund to be invested in Government securities.
Ibid. Sect. 127.

194. ALL sums of money which shall be received by the Registrar as contributions to the assurance fund or in augmentation thereof shall be paid to the Colonial Treasurer who shall place such sums to the credit of an account to be kept in the Treasury to be called "the assurance fund," and shall from time to time invest the same together with all dividends and profits accruing thereon in Western Australian Government securities to constitute an assurance fund for the purposes hereinafter mentioned.

Moneys paid out of assurance fund may be recovered.
Ibid. Sect. 135.

195. WHENEVER any amount has been paid out of the assurance fund on account of any person who may be dead such amount may be recovered from the estate of such person by action against his personal representatives in the name of the Registrar; and whenever such amount has been paid on account of a person who shall have been adjudged bankrupt the amount so paid shall be considered to be a debt due from the estate of such bankrupt and a certificate signed by the Colonial Treasurer certifying the fact of such payment out of the assurance fund and delivered to the

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trustee shall be sufficient proof of such debt; and whenever any amount has been paid out of the assurance fund on account of any person who may have absconded or who cannot be found within the jurisdiction of the Supreme Court and may have left any real or personal estate within Western Australia it shall be lawful for the said Court or a judge thereof upon the application of the Registrar 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 as nominal defendant to allow the Registrar to sign judgment against such person forthwith for the amount so paid out of the assurance fund together with the costs of the application and such judgment shall be final and signed in like manner as a final judgment by confession or default in an adverse suit and execution may issue immediately; and if such person shall not have left real or personal estate within Western Australia sufficient to satisfy the amount for which execution may have been issued as aforesaid it shall be lawful for the Registrar to recover such amount or the unrecovered balance thereof by action against such person at any time thereafter if he shall be found within the jurisdiction of the Supreme Court.

196. THE assurance fund shall not under any circumstances be liable for compensation for any loss damage or deprivation occasioned by the breach by a proprietor of any trust whether express implied or constructive; nor in any case in which the same land may have been included in two or more grants from the Crown; nor shall the assurance fund be liable in any case in which loss or deprivation has been occasioned by any land being included in the same certificate of title with other land through misdescription of boundaries or parcels of any land unless in the case last aforesaid it shall be proved that the person liable for compensation and damages is dead or has absconded or has been adjudged 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. Provided always that any amount paid out of the assurance fund on account of any person who may have absconded may be recovered from such person by action in the name of the Registrar at any time thereafter if such person shall be found within the jurisdiction of the Supreme Court. Provided also that the said fund shall be liable for such amounts only as the sheriff shall fail to recover from the person liable as aforesaid.

Assurance fund not liable in certain cases.

Ibid. Sect. 136.

197. UPON granting an application made under this Act for amendment of a certificate or made under this Act for the exercise by the Commissioner of any of the powers conferred on him by sections one hundred and four one hundred and fifty-nine one hundred and sixty one hundred and eighty-three one hundred

Indemnity chargeable in cases under this Act.

and eighty-six two hundred and thirty and two hundred and thirty-one of this Act or for the waiver of any requisition made in connection with a proposed dealing under this Act the Commissioner may grant such application conditioned upon the applicant contributing to the assurance fund in augmentation thereof such a sum of money as the Commissioner shall certify under his hand to be in his judgment a sufficient indemnity by reason of the non-production of any document affecting the title or of inability to obtain a consent serve a notice or comply with any other requisition made in the case or by reason of the imperfect nature of the evidence of title or as against any uncertain or doubtful claim or demand incident to or which may arise upon the title or any risk to which the assurance fund may be exposed by the granting of the application.

PART XII.—ACTIONS AND OTHER REMEDIES.

Officers not to be liable for acts done *bona fide*.
Ibid. sect. 122.

198. THE Commissioner shall not nor shall the Registrar or any person acting under the authority of either of them 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 in the exercise or supposed exercise of the powers of this Act.

Registered proprietor protected against ejection except in certain cases.
Ibid. sect. 128.

199. NO action of ejection 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):—

- (i.) The case of a mortgagee as against a mortgagor in default:
- (ii.) The case of an annuitant as against a grantor in default:
- (iii.) The case of lessor as against a lessee in default:
- (iv.) The case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud or as against a person deriving otherwise than as a transferee *bona fide* for value from or through a person so registered through fraud:
- (v.) The case of a person deprived of or claiming any land included in any 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:

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(vi.) The case of a registered proprietor claiming under a certificate of title prior in date of registration under the provisions of this Act in any case in which two or more certificates of title or a certificate of title may be registered under the provisions of this Act in respect of the same land:

And in any case other than as aforesaid the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described any rule of law or equity to the contrary notwithstanding.

200. UPON the recovery of any land estate or interest by any proceeding at law or in equity from the person registered as proprietor thereof it shall be lawful for the court or a judge in any case in which such proceeding is not herein expressly barred to direct the Registrar to cancel any certificate of title or instrument or any entry or memorandum in the register book relating to such land estate or interest and to substitute such certificate of title or entry as the circumstances of the case may require; and the Registrar shall give effect to such order.

Powers of court to direct cancellation of certificate or entry in certain cases.
Ibid. sect. 123.

201. ANY person deprived of land or of any estate or interest in land in consequence of fraud or through the bringing of such land under the operation of this Act or by the registration of any other person as proprietor of such land estate or interest or in consequence of any error or misdescription in any certificate of title or in any entry or memorandum in the register book may bring and prosecute an action at law for the recovery of damages against the person upon whose application such land was brought under the operation of this Act or such erroneous registration was made or who acquired title to the estate or interest through such fraud error or misdescription. Provided always that except in the case of fraud or of error occasioned by any omission misrepresentation or misdescription in the application of such person to bring such land under the operation of this Act or to be registered as proprietor of such land estate or interest or in any instrument signed by him such person shall upon a transfer of such land *bonâ fide* for value cease to be liable for the payment of any damage beyond the value of the consideration actually received which but for such transfer might have been recovered from him under the provisions herein contained; and in such last-mentioned case and also in case the person against whom such action for damages is directed to be brought as aforesaid shall be dead or shall have been adjudged bankrupt or cannot be found within the jurisdiction of the Supreme Court then

Compensation of party deprived of land.
Ibid. sect. 129.

and in any such case such damages with costs of action may be recovered out of the assurance fund by action against the Registrar as nominal defendant. Provided also that in estimating such damages the value of all buildings and other improvements erected or made subsequently to the deprivation shall be excluded.

Purchasers
protected.
Ibid. sect. 130.

202. NOTHING in this Act contained shall be so interpreted as to leave subject to an action of ejectment or to an action for recovery of damages as aforesaid or for deprivation of the estate or interest in respect to which he is registered as proprietor any purchaser *bonâ fide* for valuable consideration of land under the operation of this Act on the ground that the proprietor through or under whom he claims may have been registered as proprietor through fraud or error or may have derived from or through a person registered as proprietor through fraud or error; and this whether such fraud or error shall consist in wrong description of the boundaries or of the parcels of any land or otherwise howsoever.

Proprietor may
summon Commis-
sioner or Registrar
to show cause if
dissatisfied.
Ibid. sect. 120.

203. IF upon the application of any owner or proprietor to have land brought under the operation of this Act or to have any dealing or transmission registered or recorded or to have any certificate of title foreclosure order or other document issued or to have any act or duty done or performed which by this Act is required to be done or performed by the Commissioner or Registrar either of them shall refuse so to do or if such owner or proprietor shall be dissatisfied with the direction upon his application given by the Commissioner it shall be lawful for such owner or proprietor to require the Commissioner or Registrar to set forth in writing under his hand the grounds of his refusal or the grounds upon which such direction was given; and such owner or proprietor may if he think fit at his own costs summon the Commissioner or Registrar as the case may be to appear before the Supreme Court to substantiate and uphold the grounds of his refusal or of such direction as aforesaid such summons to be issued under the hand of a judge and to be served upon the Commissioner or Registrar six clear days at least before the day appointed for hearing the complaint of such owner or proprietor. Upon such hearing the Commissioner or Registrar or his counsel shall have the right of reply; and the said court may if any question of fact be involved direct an issue to be tried to decide such fact; and thereafter the said court shall make such order in the premises as the circumstances of the case may require; and the Commissioner or Registrar 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 court shall certify that there was no reasonable ground for such refusal or direction as aforesaid.

Expenses how borne.

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204. UPON any summons or proceeding under the last preceding section the court may notwithstanding anything in the said section to the contrary make such order as to the costs expenses of and attendant upon such summons or proceeding as it shall deem just; and all costs and expenses to be paid by the Registrar under such order shall be paid out of the assurance fund.

Costs of summons and proceedings under last preceding section to be in the discretion of the court.

205. ANY person sustaining loss through any omission mistake or misfeasance of the Registrar or any other officer or clerk in the execution of their respective duties under the provisions of this Act or by any error omission or misdescription in any certificate of title or any entry or memorandum in the register book or by the registration of any other person as proprietor and who by the provisions of this Act is barred from bringing an action of ejectment or other action for the recovery of the land estate or interest may in any case in which the remedy by action for recovery of damages as herein provided is inapplicable bring an action against the Registrar as nominal defendant for recovery of damages; in estimating which damages however the value of all buildings and other improvements erected or made subsequently to the loss or deprivation shall be excluded.

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

Ibid. of sect. 131.

206. ANY person sustaining any loss or damage by any rectification of a certificate under this Act or by the bringing of land under this Act if the rectification or the issue of the certificate by which such loss or damage was occasioned was in consequence of or justified by any inaccuracy in any survey or plan or description of land used upon any sale of land by the Crown then notwithstanding the provisions of section two hundred and one and section two hundred and five of this Act but without prejudice to the rights (if any) of such person thereunder he may in the first instance and without any obligation to pursue the remedies provided by such sections bring an action against the Registrar as nominal defendant for recovery of damages and may recover the damages awarded together with the costs of the action out of the assurance fund.

Persons sustaining loss by inaccuracy in Crown survey may recover damages against the assurance fund.

207. ANY person who shall have sustained or shall hereafter sustain any loss or damage in or by the exercise by the Commissioner of any of the powers conferred on him by "*The Transfer of Land Act 1874*" or by this Act and who shall not have been party or privy to the application or dealing in connection with which such power was exercised may notwithstanding the provisions of section two hundred and one and section two hundred and five of this Act and without prejudice to the rights (if any) of such person thereunder in the first instance and without any obligation to pursue the remedies provided by such sections bring an action against the

Damages against the assurance fund in certain other cases.

Transfer of Land Act, 1893.

Registrar as nominal defendant for recovery of damages and may recover the damages awarded together with the costs of the action out of the assurance fund. And where such person shall have been party or privy to such application or dealing he shall be at liberty to join the Registrar as a nominal co-defendant in any action brought by him in respect of such loss or damage against any other person or persons who shall have been party or privy to such application or dealing and all damages and costs recovered against the Registrar in such action whether by the plaintiff or a co-defendant may be recovered out of the assurance fund.

Persons claiming
may before action
brought apply to
Commissioner in
writing for compen-
sation.

208. ANY person sustaining loss or damage in any case in which heretofore he would have been entitled to bring an action to recover damages against the Registrar as nominal defendant may before commencing proceedings against the Registrar make application in writing to the Commissioner for compensation and such application shall be supported by affidavit or declaration. If the Commissioner admit the claim or any part thereof and certify accordingly to the Attorney General thereupon the Governor may if he shall think fit issue a warrant to the Treasurer for the amount so certified out of the assurance fund.

Notice of action to
be served.
Ibid. Sect. 132.

209. IN any case in which an action for recovery of damages is permitted to be brought against the Registrar as nominal defendant notice in writing of such action and of the cause thereof shall be served upon such nominal defendant one month at least before the commencement of such action; and if any such action judgment be 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 recovered in the name of the nominal defendant by the like process of execution as in other actions.

Payment of amount
recovered.
Ibid. Sect. 133.

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

Limitation of
actions.

211. NO action for recovery of damages sustained through deprivation of land or of any estate or interest in land shall lie or be

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sustained against the Registrar or against the assurance fund or against the person upon whose application such land was brought under the operation of this Act or against the person who applied to be registered as proprietor in respect to such land unless such action shall be commenced within the period of six years from the date of such deprivation. Provided nevertheless that any person being under the disability of coverture infancy unsoundness of mind or absence from Western Australia may bring such action within six years from the date on which such disability shall have ceased so however that such action be brought within thirty years next after the date of such deprivation. The plaintiff in any such action at whatever time it may be brought and the plaintiff in any action for the recovery of land shall be non-suited in any case in which the deprivation complained of may have been occasioned through the bringing of land under the operation of this Act if it shall be made to appear to the satisfaction of the judge before whom such action shall be tried that such plaintiff or the persons through or under whom he claims title had notice by personal service or otherwise or was aware that application had been made to bring such land under the operation of this Act and had wilfully or collusively or negligently omitted to lodge a caveat forbidding the same or had allowed such caveat to lapse.

Ibid. Sect. 134.

Persons having notice or cognizant neglecting to lodge &c. caveat barred.

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

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

Supreme Court may make rules &c.
Ibid. Sect. 137.

213. NOTHING in this Act contained shall entitle any person to refuse to make a complete discovery in any action or to answer any question or interrogatory in any civil proceeding in any court of law or bankruptcy; but no answer to any question or interrogatory shall be admissible in evidence against such person in any criminal proceeding except in any case where the contrary may be specially enacted.

Obligation to make discovery not excluded.
Ibid. Sect. 142.

PART XIII.—OFFENCES.

214. IF any person wilfully makes any false statement or declaration in any application to bring land under the operation of this Act or in any application to be registered as proprietor whether in possession remainder reversion or otherwise on a transmission or

Certain fraudulent acts to be deemed misdemeanors.
Ibid. Sect. 138.

in any other application to be registered under this Act as proprietor of any land lease mortgage or charge or suppresses or conceals or assists or joins in or is privy to the suppressing withholding or concealing from the Commissioner or Registrar any material document fact or matter of information or wilfully makes any false statutory declaration required under the authority or made in pursuance of this Act or if any person in the course of his examination before the Commissioner wilfully and corruptly gives false evidence or if any person fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of any certificate of title or instrument or of any entry in the register book or of any erasure or alteration in any entry in the register book or whether fraudulently or not defaces erases or alters any words memorandum or diagram in or upon any duplicate certificate or duplicate instrument or knowingly misleads or deceives any person hereinbefore authorised to require explanation or information in respect to any land or the title to any land under the operation of this Act or in respect to which any dealing or transmission is proposed to be registered such person shall be guilty of a misdemeanor; and shall incur a penalty not exceeding Five hundred pounds or may at the discretion of the court by which he is convicted be imprisoned with or without hard labor for any period not exceeding three years; and any certificate of title entry erasure or alteration so procured or made by fraud shall be void as against all parties or privies to such fraud.

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

Forgery to be a felony.

Ibid. sect. 139.

- (I.) Forges or procures to be forged or assists in forging the seal of the Office of Titles or the name signature or handwriting of any officer in cases where such officer is by this Act expressly or impliedly authorised to affix his signature:
- (II.) Stamps or procures to be stamped or assists in stamping any document with any forged seal purporting to be that of the Office of Titles.
- (III.) Forges or procures to be forged or assists in forging the name signature or handwriting of any person whomsoever to any instrument which is by this Act or in pursuance of any power contained in this Act expressly or impliedly authorised to be signed by such person:
- (IV.) Uses with an intention to defraud any person whomsoever any document upon which any impression or part of the impression of the seal of the office has

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been forged knowing the same to have been forged or any document the signature to which has been forged knowing the same to have been forged:

such person shall be guilty of felony.

216. ANY person convicted of felony under this Act shall be liable to imprisonment with or without hard labor for any term not exceeding two years or to be kept in penal servitude for any term not exceeding fourteen years.

Punishment of
felony.
Ibid. sect. 140.

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

Conviction not to
affect civil remedy.
Ibid. sect. 141.

218. UNLESS in any case herein otherwise expressly provided all offences against the provisions of this Act may be prosecuted and all penalties or sums of money imposed or declared to be due or owing by or under the provisions of the same may be sued for and recovered in the name of the Attorney General by information in the Supreme Court.

Jurisdiction.
Ibid. sect. 143.

PART XIV.—MISCELLANEOUS.

219. A DEVISEE or person claiming any estate of freehold in possession or a power to appoint transfer or dispose of the same on a transmission may make application in writing to the Commissioner to be registered as proprietor thereof and shall produce the will or an office copy or probate of the will of the deceased proprietor or letters of administration with his will annexed or the letters of administration in case of intestacy or the settlement under which such applicant claims and shall afterwards furnish such other evidence as may be deemed necessary. Such application shall state the nature of every interest held by any other person at law or equity in the land within the applicant's knowledge and that he verily believes himself to be entitled to the estate in or power over such land in respect to which he applies to be registered and shall also state the value of the property. The devisee or other person making such application shall deliver up the duplicate certificate or title prior to his being entered in the register book as the proprietor.

Application on a
transmission.
Ibid. sect. 51.

220. SUCH application shall be referred to the Commissioner or if there be such an officer then to an Examiner of Titles for his examination and report who shall afterwards submit the papers to the Commissioner and the Commissioner may either reject such application altogether or direct notice thereof to be published once

Application how
dealt with.
Ibid. sect. 53.

Notice to be
published.
Ibid. sect. 52.

at least in one newspaper published in the city of Perth or circulating in the neighbourhood of the land and such further publicity to be given to such application as he may deem fit; and the Commissioner shall appoint a time not less than fourteen days from the advertisement or the first of such advertisements if more than one upon or after which the Registrar shall unless a caveat shall be lodged forbidding the same register such applicant as the proprietor of such land or estate by entering in the register book the particulars of the transmission through which such applicant claims and by registering a certificate of title to the land or estate so transmitted. Upon such entry being made the applicant shall become the transferee of such land or estate and be deemed to be the proprietor thereof. Provided always that the person registered consequent on such direction shall hold such land or estate for the purposes for which it may be applicable by law; but for the purpose of any dealings therewith under the provisions of this Act he shall be deemed to be the absolute proprietor thereof. The Commissioner may direct a caveat to be entered by the Registrar for the protection of the interests of any other persons interested in such land or estate.

Remainder-man or
reversioner may
apply to be
registered as such.

Application to be
referred.
Ibid. sect. 53.

221. ANY person claiming to have acquired any estate in remainder reversion or otherwise on a transmission may apply to be registered as so entitled in like manner and supported by the like evidence as near as may be as is herein provided with respect to a devisee or other person claiming an estate of freehold in possession on a transmission. Such application shall be dealt with in like manner as is mentioned in the last preceding section; and any entry made thereupon shall have the same effect and the person registered shall hold the land for the same purposes and shall have the same powers as is and are mentioned in such section. If there shall be any doubt dispute or litigation under this or under either of the last two preceding sections as to the true construction or legal validity or effect of any will or settlement relating to any freehold land or estate or if the person entitled under any of the provisions of this Act to any land or estate under any will settlement or instrument cannot be ascertained the Supreme Court sitting in the exercise of its equitable jurisdiction may appoint a person to be registered as the representative of such land or estate; and such person when registered shall become the transferee and be deemed to be the proprietor thereof for the purposes of this Act subject however to any directions which shall from time to time be given by the court sitting as aforesaid touching the disposition thereof or the dealing therewith.

Person claiming
title under the

222. ANY person claiming to have acquired under or by virtue of any statute of limitations an estate in fee simple in

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possession in land under the operation of this Act may make application in the form in the Fourth Schedule hereto to be registered as proprietor thereof and shall furnish such evidence as the Commissioner may deem necessary to prove his title. Such application shall also state the value of the land.

Statute of Limitations may apply to be registered.
44 Vict., No. 23, sect. 2.

223. SUCH application with the papers shall be submitted to the Commissioner who may either reject such application altogether or direct notice thereof to be published once at least in a newspaper published in the City of Perth or circulating in the neighborhood of the land and to be served on any persons named by him and such further publicity to be given as he shall think fit; and the Commissioner shall in such notice appoint a time not less than fourteen days nor more than twelve calendar months from such notice or from the advertisement or the first of such advertisements (if more than one) on or after the expiration of which the Registrar shall unless a caveat shall be lodged forbidding the same register such applicant as the proprietor of such land by endorsing on the registered certificate in the register book the particulars of the title under which such applicant claims and registering in his name a certificate of title to the land. Upon such registry being effected the applicant shall become the transferee of such land and be deemed to be the proprietor thereof.

Application to be referred to Commissioner.
Ibid. sect. 3.

224. UPON every registration as aforesaid there shall be paid to the Registrar in aid of the Assurance Fund a sum not exceeding a halfpenny in the pound sterling of the value of the land and such value shall be ascertained by the declaration of the applicant. If the Registrar shall not be satisfied of the correctness of the value so declared he may require such applicant to produce a certificate of such value under the hand of a sworn valuator appointed under this Act which certificate shall be received as conclusive evidence of such value.

Contribution to the Assurance Fund.
Ibid. sect. 4.

225. THERE shall further be payable to the Registrar a duty at the rate of One pound for every One hundred pounds of the value of such land; and at the like rate when the value of such land shall be less than One hundred pounds.

Duty of one per cent. to be paid.
Ibid. sect. 5.

226. THE Commissioner upon production of sufficient proof of the marriage of a female proprietor of any land or of any lease mortgage or charge not appearing by the register book to be held for her separate use accompanied by an application in writing signed by such female proprietor to register her husband as joint proprietor thereof in her right shall direct the Registrar to enter in the register book and also upon the duplicate certificate of title and duplicate instrument (if any) evidencing the title of such female proprietor

Marriage of female proprietor.
Act of 1874, sect. 98.

when produced to him for that purpose the name and addition of her husband the date and place of the marriage and the time of making such entry; and the husband of such female proprietor shall on such entry being made in the register book become a joint transferee thereof and be deemed to be joint proprietor thereof in right of his wife. Until such entry shall be made she shall be deemed to be the sole and absolute proprietor of such land lease mortgage or charge and may transfer or otherwise deal with the same at law and in equity.

Registration of
survivor of joint
proprietors.
Ibid. sect. 99.

227. UPON the death in the life-time of his wife of any husband registered as joint proprietor with her of an estate in fee simple or of a lease mortgage or charge in her right or upon the death of any female proprietor whose husband shall be entitled as tenant by the curtesy to any freehold land or upon the death of any person registered with any other person as joint proprietor of any land or of any lease or charge or as joint proprietor of any mortgage owned on a joint account in equity the Commissioner on the application of the widow husband or person entitled and proof to his satisfaction of such events as aforesaid may direct the Registrar to register such applicant as the proprietor thereof; and she or he shall upon being registered in the manner herein prescribed for the registration of a like estate or interest become the transferee of such land lease mortgage or charge and be deemed the proprietor thereof but as regards any tenancy by the curtesy for the life-time only of such husband.

Proprietors and
transferees for the
time being to stand
in the places of
previous owners.
Ibid. sect. 100.

228. WITHOUT lessening or prejudicing any of the other rights powers and remedies hereby given and conferred every proprietor and every transferee when registered of any land lease mortgage or charge shall whilst continuing so registered have the same estates rights powers and remedies and be subject to the same engagements obligations and liabilities and may sue and be sued in his own name at law and in equity in respect thereof or thereupon in like manner as if he had been the original proprietor of the land by or with whom the engagement obligation or liability sued upon was entered into or incurred or the original lessee mortgagee or annuitant.

Proprietor to allow
his name to be
used by person
interested.
Ibid. sect. 102.

229. THE proprietor of any land or of any lease mortgage or charge shall on the application of any beneficiary or person interested therein be bound to allow his name to be used by such beneficiary or person in any action suit or proceeding which it may be necessary or proper to bring or institute in the name of such proprietor concerning such land lease mortgage or charge or for the protection or benefit of the title vested in such proprietor or of the interest of any such beneficiary or person; but nevertheless such

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proprietor shall in any such case be entitled to be indemnified in like manner as if being a trustee he would before the passing of this Act have been entitled to be indemnified in a similar case of his name being used in any such action suit or proceeding by his *cestui que trust*.

230. UPON an application to bring land under this Act or to amend a certificate if it shall be proved to the satisfaction of the Commissioner that any land constituting a private road street or way or a portion thereof respectively or subject to an easement of right-of-way has been exclusively continuously and adversely occupied by the applicant or by him and those through whom he claims for a period of not less than twenty years the Commissioner may notwithstanding section sixty-nine of this Act at his discretion issue a certificate for the fee simple of such land without notifying such road rights or easement of right-of-way as an encumbrance and thereafter the same shall not be preserved by section sixty-eight of this Act.

Abandonment of easement of right-of-way may be presumed after twenty years' adverse possession.

231. IF upon an application to bring land under this Act or to amend a certificate it is found that a building of a permanent nature has been erected so as to encroach upon the width or alignment of a public road street or way within the limits of the City of Perth or town of Fremantle but it is proved to the satisfaction of the Commissioner that such encroachment has continued for a period of not less than twenty years the Commissioner may issue a certificate for or including the land covered by such building provided notice of such application and alleged encroachment shall have been duly given to the corporation or other body in whom such road street or way is vested or who have the trust or legal control thereof. In the event of such body sending in objections it shall be heard in support thereof and the Commissioner shall have power to examine witnesses upon oath on behalf of the applicant and the corporation or other body and make such order as to him may seem fit. Provided always that no encroachment so allowed by the Commissioner shall exceed three feet. Provided also that the Governor in Council may from time to time upon a petition in that behalf signed by two-thirds of the total number of members of the council of any town or city sealed with the common seal of the municipality affected order that the operation of this section be extended to such town or city and every order so made shall be published in the *Government Gazette* and shall take effect as from the day of such publication.

Where encroachment on road has existed twenty years title may be given.

232. ON any documents being lodged with the Registrar for any of the purposes of this Act the Registrar shall if required so to do give to the person lodging the same an acknowledgment of the same having been lodged. Provided always that to obtain such

Registrar to give receipt for documents lodged.

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acknowledgment the person lodging such documents shall fill in duplicate lists of the same upon printed forms supplied by the Office of Titles one of which signed by such person shall be retained by the office and the other with the seal of the Office of Titles attached and bearing the initials of the officer attaching the same shall constitute the acknowledgment so to be given. Provided also that documents so lodged shall be returned only to the person who lodged the same or to some person claiming through or under him or authorised in writing by the person entitled to receive the same.

Lis pendens not to affect dealings with land under this Act.

233. TO determine doubts which may arise as to the operation of *lis pendens* on land under this Act it is hereby declared that no *lis pendens* or registration of *lis pendens* shall affect or be deemed to have affected the right of any person to obtain the registration of any dealing under this Act or shall deprive or be deemed to have deprived any person dealing under this Act of the benefit of section one hundred and thirty-four or of any other section of this Act.

Devolution upon bankruptcy.
Ibid. sect. 97.

234. UPON the bankruptcy of the proprietor of any land lease mortgage or charge or upon any bankrupt becoming proprietor of any land lease mortgage or charge the trustee of such bankrupt shall be entitled to be registered as proprietor in respect of the same; and the Registrar upon the receipt of an office copy of the appointment of such trustee accompanied by an application in writing under his hand to be so registered in respect of any land lease mortgage or charge of such bankrupt therein described or of any estate or interest to which he was entitled before his adjudication in bankruptcy or after adjudication and before obtaining his certificate of discharge became entitled or able to transfer or dispose of under any power of appointment or disposition which he might legally execute for his own benefit shall enter in the register book upon the folium constituted by the certificate of title of such land or on the lease mortgage or charge a memorandum notifying the appointment of such trustee; and upon such entry being made such trustee shall become the transferee and be deemed to be the proprietor of such land lease mortgage or charge estate or interest and shall hold the same subject to the equities upon and subject to which the bankrupt held the same but for the purpose of any dealing therewith under the provisions of this Act such trustee shall be deemed to be the absolute proprietor thereof.

Until assigned registered bankruptcy of proprietor not to affect dealings.

235. UNTIL such application shall be made as aforesaid and subject to the operation of any caveat which may be lodged by such trustee dealings by a bankrupt proprietor with land under the operation of this Act may be registered and thereupon shall not be affected by the order of adjudication either at law or in equity.

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236. AN estate tail under this Act shall have the same incidents as a similar estate under the general law and the proprietor of such an estate shall have the same power to bar the estate tail and create an estate in fee simple absolute as against all persons whose estates are to take effect after the determination or in defeasance of the estate tail.

Tenant in tail.

237. ON any sale of land under the operation of this Act by public auction or private contract the conditions set out in the table marked A in the Twenty-sixth Schedule hereto may be adopted by inserting the words "The conditions in table A of 'The *Transfer of Land Act 1893*' shall apply to this contract" and when so adopted the said conditions shall be construed as part of the contract subject to any express modification or exclusion of any of them which may be contained in the contract.

Conditions of sale in Twenty-sixth Schedule to apply in the absence of other conditions and may be adopted by reference.

238. THE forms contained in the several schedules hereto and the forms for the time being in force under this Act may be modified or altered in expression to suit the circumstances of every case; and any variation from such forms respectively in any respect not being matter of substance shall not affect their validity or regularity.

Forms may be modified.
Ibid. sect. 121.

239. ANY person may on payment of the fee for the time being payable in that behalf inspect the register book during the hours and upon the days of business that is to say from nine to noon on Saturdays and from nine to three on other week-days subject however to the exceptions set forth in the 4th section of the "*Bank Holidays Act 1884.*" The Registrar on payment of the fee for the time being payable for a certified copy shall furnish to any person applying for the same a certified copy of any certificate of title caveat or registered instrument affecting land under the operation of this Act; and every such certified copy signed by him or by any Assistant Registrar and authenticated by the seal of the Office of Titles 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 the original certificate caveat or instrument and of all the matters contained or recited in or endorsed thereon respectively.

Searches and certified copies.

48 *Vict. No. 9.*

240. EVERY notice notification and requisition required by this Act to be given or served may except where otherwise provided be transmitted as a registered letter by the Post in the ordinary way and shall be deemed to have been given or served at the time when it would be delivered in the ordinary course of Post.

Notices how served.

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241. NOTHING contained in this Act shall enable any lessee of waste lands of the Crown to transfer or otherwise deal with such land contrary to the Regulations for the sale letting disposal and occupation of such lands.

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

W. C. F. ROBINSON, Governor.

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SCHEDULES.

FIRST SCHEDULE.

Section 2.

WESTERN AUSTRALIA.

Date of Act.	Title of Act.	Extent of Repeal.
38 Vict. No. 13 ...	"The Transfer of Land Act 1874."	So much as is not already repealed.
42 Vict. No. 15 ...	"The Transfer of Land Act 1874 Amendment Act 1878."	So much as is not already repealed.
42 Vict. No. 17 ..	"An Act to enforce the payment of Duty on the Transfer of Land."	The whole.
43 Vict. No. 17 ...	"An Act to further amend 'The Transfer of Land Act 1874.'"	The whole.
44 Vict. No. 23 ...	"The Transfer of Land Act 1874 Amendment Act 1880."	The whole.
47 Vict. No. 22 ...	"The Transfer of Land Amendment Act 1883."	The whole.

SECOND SCHEDULE.

WESTERN AUSTRALIA.

Section 20.

Application to bring Land under the operation of the Transfer of Land Act 1893.

To the Registrar of Titles.

I [*insert name and addition*] hereby apply to have the land hereinafter described brought under the operation of the *Transfer of Land Act 1893*. And I declare—

1. That I am the owner of an estate in fee simple in possession [*or of an estate of freehold in possession for my life or otherwise as the case may require*] in ALL THAT

[*if the land be part only of that granted by the Crown add which land contains (insert area) or thereabouts and is described in the document numbered in the Schedule hereto or otherwise after the word thereabouts set forth a sufficient description to identify the land*].

2. That such land including all buildings and other improvements thereon is of the value of _____ pounds and no more.

3. That there are no documents or evidences of title affecting such land in my possession or under my control other than those included in the Schedule hereto.

4. That I am not aware of any mortgage or encumbrance or lease affecting the said land or that any other person hath any estate or interest therein at law or in equity in possession remainder reversion or expectancy [*if there be any add other than as follows and set the same forth*].

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SEVENTH SCHEDULE.

Section 82.

WESTERN AUSTRALIA.

Transfer of Land.

I [insert name and addition] being registered as the proprietor of an estate in fee simple [if not in fee simple state the nature of the estate and if the property be leasehold say of a leasehold estate for years from the day of One thousand eight hundred and] in the land hereinafter described [if the transfer be by a mortgagee or annuitant under his power of sale say being the proprietor of a mortgage (or charge as the case may be) from C.D. registered the day of One thousand eight hundred and numbered upon the land hereinafter described] subject to the encumbrances notified hereunder in consideration of the sum of paid to me by E.F. [insert addition] Do HEREBY TRANSFER to the said E.F. all my estate and interest in [if the transfer be by a mortgagee or annuitant under his power of sale say all the estate and interest of the said C.D. on the said day of One thousand eight hundred and or which he was then entitled or able to transfer or dispose of in] ALL THAT [if the transferred land be part only of the land comprised in the existing certificate set forth in links or links and feet the boundaries and refer to a map.]

Dated the day of One thousand eight hundred and

Signed by the said in the presence of

Signed by the said E.F. in the presence of

ENCUMBRANCES REFERRED TO.

WESTERN AUSTRALIA.

Transfer of a Lease Mortgage or Charge.

I [insert name and addition] being registered as the proprietor of a lease [or mortgage or charge or as the case may be] numbered of (or upon) the land hereinafter described subject to the encumbrances notified hereunder in consideration of the sum of paid to me by C.D. [insert addition] Do HEREBY TRANSFER to the said C.D. all my estate and interest as such registered proprietor in ALL THAT [or otherwise according to the description in the lease mortgage or charge or describe the land in general terms by reference to the registered instrument.]

Dated the day of One thousand eight hundred and

Signed by the said in the presence of

Signed by the said C.D. in the presence of

ENCUMBRANCES REFERRED TO.

Transfer of Land or of a Lease Mortgage or Charge by Endorsement.

I the within-named [insert name] in consideration of the sum of paid to me by G.H. [insert addition] hereby transfer to said G.H. the within-mentioned land [or lease or mortgage or charge as the case may be] subject however to the encumbrances notified or endorsed on the within certificate in the register book.

Dated the day of One thousand eight hundred and

Signed by the said
in the presence of
Signed by the said G.H. in the
presence of

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EIGHTH SCHEDULE.

WESTERN AUSTRALIA.

Memorandum of Mortgage to a Benefit Building Society under the Transfer of Land Act 1893. Section 129.

I A.B. (insert addition) being the holder of shares of £ each in (insert name of Society) and being registered as the proprietor of an estate (here state nature of estate) subject to such encumbrances liens and interests as are notified by memoranda (if any) endorsed hereon in all that (insert description of the land according to the certificate or if the land mortgaged be part only of the land comprised in the existing certificate state the fact and set forth in links or links and feet the boundaries and refer to a map) in consideration (here set forth the consideration) do hereby covenant with the present and future trustees of the said Society that I will pay to the said Society or the person appointed to receive the same all repayments subscriptions fines interest and other payments (and the costs and expenses attending the recovery of the same) which shall become due according to the rules of the said Society in respect of the said share (or shares) and also that I will observe all the rules and regulations of the said Society until with the consent of the present or future trustees of the said Society I shall pay off such balance as according to the rules and regulations of the said Society may be owing to the said Society in respect of the said share (or shares) with all arrears of subscriptions repayments fines and other payments hereby covenanted to be paid to the said Society. (Here set out any special covenants.) And for the better securing to the present and future trustees of the said Society the payment of such subscriptions repayments fines interest and other payments as aforesaid I hereby mortgage to the present and future trustees of the said Society all my estate and interest in the said lands before described; and I empower the present and future trustees of the said Society to sell the estate and interest hereby pledged to them as security whenever I shall make default for the space of three calendar months in payment of the said subscriptions repayments fines interest or other payments to become due in respect of the said share (or shares) according to the rules and regulations of the said Society without serving me with any written demand for payment of such moneys pursuant to the provisions contained in the "Transfer of Land Act 1893" or complying with the other requirements and provisions of the said Act in reference to the power of sale conferred on mortgagees claiming under any mortgage. And I do hereby further covenant with the present and future trustees of the said Society that they may from time to time under the power of distress conferred on a mortgagee by the "Transfer of Land Act, 1893," recover and reimburse themselves all such repayments subscriptions fines and other moneys as aforesaid and all costs damages and expenses which they or the said Society may sustain or be put to by reason of any breach of the provisions of this security or of the said rules and regulations of the said Society. And save as hereinbefore mentioned I hereby confirm unto the present and future trustees of the said Society all powers and remedies given to a mortgagee under the "Transfer of Land Act 1893."

In witness whereof I have hereunto signed my name this day of 189 . A.B.

Mortgagor.

Mortgagees.

Signed by the beforenamed A.B. as mortgagor this day of 189 in the presence of Signed by the beforenamed as mortgagees the day of 189 in the presence of

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NINTH SCHEDULE.

WESTERN AUSTRALIA.

Creation of Right of Carriage-way in a Transfer of Freehold Land.

Section 65.

Together with full and free right and liberty to and for the transferee hereunder and to and for the registered proprietor or proprietors for the time being of the land hereby transferred or any part thereof and his her and their tenants servants agents workmen and visitors to go pass and repass at all times hereafter and for all purposes and either with or without horses or other animals carts or other carriages into and out of and from the said land or any part thereof through over and along the road or way or several roads or ways delineated and colored brown on the said map.

Creation of Right of Carriage-way in a Lease of Freehold Land.

Together with full and free right and liberty to and for the said lessee and his transferees proprietors for the time being of the land hereby leased or any part thereof and his her and their tenants servants agents workmen and visitors to go pass and repass at all times hereafter during the continuance of this lease and for all purposes and either with or without horses or other animals carts or other carriages into and out of and from the said land or any part thereof through over and along the road or way or several roads or ways delineated and colored brown on the said map.

TENTH SCHEDULE.

WESTERN AUSTRALIA.

Section 85.

I certify that the within-named B.B. came the day of One thousand eight hundred and before me at [state place] and acknowledged apart from any person that the within document (which I did not prepare and under which I am not interested) was understood by her and that she signed it without coercion.

ELEVENTH SCHEDULE.

WESTERN AUSTRALIA.

Lease.

Section 91

A.B. [insert addition] (hereinafter called the lessor) and who is registered as the proprietor of an estate [here state nature of the estate] in the land hereinafter described subject to the encumbrances notified hereunder HEREBY LEASES to C.D. [insert addition] (hereinafter called the lessee) ALL THAT [or otherwise according to the certificate] [if the land leased be part only of the land comprised in the existing certificate set forth in links or links and feet the boundaries and refer to a map] TO BE HELD by the lessee for the term of years from the day of One thousand eight hundred and at the clear yearly rent of payable [here insert terms of payment] subject to the covenants and powers implied under the *Transfer of Land Act 1893* (unless hereby negatived or modified) and also to the covenants and conditions hereinafter contained [here set forth any special ones.]

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The following covenants by the lessee are to be construed according to section ninety-four of the *Transfer of Land Act 1893* :—

- The lessee will not transfer or sublet.
- The lessee will fence.
- The lessee will cultivate.
- The lessee will not cut timber.
- The lessee will insure against fire in the name of the lessor.
- The lessee will paint outside every third year.
- The lessee will paint and paper inside every fourth year.
- The lessee will not use the premises as a shop.
- The lessee will not carry on any offensive trade.
- The lessee will carry on the business of a licensed victualler and conduct the same in an orderly manner.
- The lessee will apply for a renewal of license.
- The lessee will facilitate the transfer of license.

Dated the day of One thousand eight hundred and
Signed by the said lessor in the }
 presence of }
Signed by the said lessee in the }
 presence of }

ENCUMBRANCES REFERRED TO.

TWELFTH SCHEDULE.

Column One.

Column Two.

- | | | |
|---|---|-------------|
| 1. The lessee will not transfer or sublet. | 1. The lessee his executors administrators or transferees will not during the said term transfer assign or sublet the premises hereby leased or any part thereof or otherwise by any act or deed procure the said premises or any part thereof to be transferred or sublet without the consent in writing of the lessor or his transferees first had and obtained. | Section 94. |
| 2. The lessee will fence. | 2. The lessee his executors administrators or transferees will during the continuance of the said term erect and put up on the boundaries of the said land or on those boundaries upon which no substantial fence now exists a good and substantial fence. | |
| 3. The lessee will cultivate. | 3. The lessee his executors administrators or transferees will at all times during the said term cultivate use and manage in a proper and husbandlike manner all such parts of the land as are now or shall hereafter with the consent in writing of the said lessor or his transferees be broken up or converted into tillage and will not impoverish or waste the same. | |
| 4. The lessee will not cut timber. | 4. The lessee his executors and administrators or transferees will not cut down fell injure or destroy any growing or living timber or timber-like trees standing and being upon the said land without the consent in writing of the said lessor or his transferees. | |
| 5. The lessee will insure against fire in the name of the lessor. | 5. The lessee his executors administrators or transferees will insure and during the said term keep insured against loss or damage by fire in the name of the lessor or his transferees in some public insurance office approved of by him or them to the amount of their full value all buildings which shall for the time being be | |

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erected on the said land and which shall be of a nature or kind capable of being insured against damage by fire and will when required deposit with the lessor or his transferees the policy of such insurance and within seven days after each premium shall become payable the receipt for such premium and on any breach or non-observance of this covenant the lessor or his transferees may without prejudice to and concurrently with the powers granted to him and them by this lease and by the *Transfer of Land Act 1893* insure such buildings and the costs of effecting such insurance shall during the said term be a charge upon the said land. All moneys which shall be received under or by virtue of any such insurance shall be laid out and expended in making good the loss or damage.

6. The lessee will paint outside every third year.

6. The lessee his executors administrators or transferees will in every third year during the continuance of the said term paint all the outside woodwork and ironwork belonging to the leased property with two coats of proper oil colors in a workmanlike manner.

7. The lessee will paint and paper inside every fourth year.

7. The lessee his executors administrators or transferees will in every fourth year during the continuance of the said term paint the inside wood iron and other work now or usually painted with two coats of proper oil colors in a workmanlike manner and also re-paper with paper of the same quality as at present such parts of the said premises as are now papered and also whiten or color such parts of the said premises as are now whitened or colored respectively.

8. The lessee will not use the premises as a shop.

8. The lessee his executors administrators or transferees will not convert use or occupy the said premises 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 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 or his transferees.

9. The lessee will not carry on any offensive trade.

9. The lessee his executors administrators or transferees will not at any time during the said term use exercise or carry on or permit or suffer to be used exercised or carried on in or upon the said premises or any part thereof any noxious noisome or offensive art trade business occupation or calling and no act matter or thing whatsoever shall at any time during the said term be done in or upon the said 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 properties.

10. The lessee will carry on the business of publican and conduct the same in an orderly manner.

10. The lessee his executors administrators or transferees will at all times during the continuance of the said term use exercise and carry on in and upon the premises the trade or business of a licensed victualler or publican and seller of fermented and spirituous liquors and keep open and use the house inn and buildings standing and being upon the 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 or conduct such trade or business in a quiet and orderly

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manner and will not do or commit or suffer to be done or committed any act matter or thing whatsoever whereby or by means whereof any license shall be allowed to expire or to become void or shall or may be liable to be forfeited suspended taken away or refused.

11. The lessee will apply for renewal of license. 11. The lessee his executors administrators or transferees will from time to time during the continuance of the said term at the proper times for that purpose apply for and endeavor to obtain such license or licenses as is or are or may be necessary for carrying on the said trade or business of a licensed victualler or publican in and upon the said premises and keeping the said house or inn open as and for an inn or public-house as aforesaid.

12. The lessee will facilitate the transfer of license. 12. The lessee his executors administrators or transferees will at the expiration or other sooner determination of the said term sign and give such notice or notices and allow such notice or notices of a transfer or renewal of any license as may be required by law to be affixed to the said house 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 will do and perform all such acts matters and things as shall be necessary to enable the said lessor or his transferees or any person authorised by him or them to obtain the transfer of any license then existing and in force or the renewal of any license or any new license.

THIRTEENTH SCHEDULE.

WESTERN AUSTRALIA.

Sub-lease.

A.B. [*insert addition*] (hereinafter called the sub-lessor) and who is registered as the proprietor of a lease numbered _____ of the land hereinafter described subject to the encumbrances notified hereunder hereby sub-leases to C.D. [*insert addition*] (hereinafter called the sub-lessee) all that piece of land being [*if the sub-lease is of all the land in the lease copy here the description of the land given in the lease ; but if only a part set forth the boundaries by measurements in links or links and feet and by abuttals making the description coincide so far as practicable with that in the lease and refer to a map*] being [*insert if applicable part of*] the land comprised in the said lease to be held by the sub-lessee for the term of [*insert term of sub-lease*] at the clear yearly rent of _____ payable [*insert terms of payment*] subject to the covenants and powers implied under the *Transfer of Land Act 1893* (unless hereby negatived or modified) and also to the covenants and conditions hereinafter contained [*here set forth any special covenants and conditions*].

Section 99.

The following covenants by the sub-lessee are to be construed according to section ninety-four of the *Transfer of Land Act 1893*:—[*Insert here such of the covenants given in the Twelfth Schedule to this Act as may be agreed upon substituting "sub-lessee" for "lessee" and "sub-lessor" for "lessor" and using the short forms given in column one of that schedule*].

Dated the _____ day of _____ One thousand eight hundred and _____

Signed by the said sub-lessor {
in the presence of {
Signed by the said sub-lessee {
in the presence of {

ENCUMBRANCES REFERRED TO.

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FOURTEENTH SCHEDULE.

WESTERN AUSTRALIA.

Mortgage.

Section 105.

I A.B. [insert addition] being registered as the proprietor of an estate [here state nature of the estate] in the land hereinafter described subject to the encumbrances notified hereunder in consideration of the sum of this day lent to me by C.D. [insert addition] (hereinafter called the mortgagee) do hereby covenant with the said mortgagee

FIRSTLY to pay to the said mortgagee or his transferees the principal sum of pounds on the day of

SECONDLY to pay to the said mortgagee or his transferee so long as the said principal sum or any part thereof shall remain unpaid interest on the said sum or on so much thereof as shall for the time being remain unpaid at the rate of per centum per annum by equal payments on the day of and on the day of in every year.

THIRDLY that I will insure against fire in the name of the mortgagee.

FOURTHLY [here set forth any special covenants].

AND for better securing the payment in manner aforesaid of the said principal sum and interest I HEREBY MORTGAGE to the said mortgagee all my estate and interest and all the estate and interest which I am entitled or able to transfer or dispose of in ALL THAT

[if the land mortgaged be part only of the land comprised in the grant or existing certificate set forth in links or links and feet the boundaries and refer to a map].

Dated day of One thousand eight hundred and Signed by the said A.B. in the presence of Signed by the said C.D. in the presence of

ENCUMBRANCES REFERRED TO.

FIFTEENTH SCHEDULE.

WESTERN AUSTRALIA.

Charge.

Section 105.

I A.B. [insert addition] being registered as the proprietor of an estate [here state nature of the estate] in ALL THAT

[if the land charged be part only of the land comprised in the existing certificate set forth in links or links and feet the boundaries and refer to a map] subject to the encumbrances notified hereunder and desiring to render the said land available for the purpose of securing to and for the benefit of C.D. [insert addition] the annuity hereinafter mentioned Do HEREBY CHARGE the said land for the benefit of the said C.D. with an annuity of to be paid at the times and in the manner following that is to say [here state the times appointed for the payment of the annuity and the events on which it shall cease to be payable also any special covenants or powers and any modification of the powers or remedies given to an annuitant by the Act].

And subject as aforesaid the said C.D. shall be entitled to all powers and remedies given to an annuitant by The Transfer of Land Act 1893.

Dated the day of One thousand eight hundred and Signed by the said A.B. in the presence of Signed by the said C.D. in the presence of

ENCUMBRANCES REFERRED TO.

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SIXTEENTH SCHEDULE.

Column One.

Column Two.

Section 115.

That I will insure against fire in the name of the mortgagee.

That I my heirs executors administrators or transferees will insure and so long as any money shall remain secured by this mortgage keep insured against loss or damage by fire in the name of the mortgagee or his transferees in some public insurance office to be approved of by him or them all buildings which shall for the time being be erected on the said land and which shall be of a nature or kind capable of being so insured to the amount either of the principal money hereby secured or of the full value of such buildings and will when required deposit with the mortgagee or his transferees the policy of such insurance and within seven days after each premium shall become payable the receipt for such premium. And that the moneys which shall be received on account of such insurance shall at his or their option be applied either in or towards satisfaction of the moneys secured by this mortgage or in rebuilding or reinstating under the superintendence of his or their surveyor the buildings destroyed or damaged. And that on any breach or non-observance of this covenant he or they shall be at liberty to effect such insurance and continue the same for such period as may be deemed fit and the costs and expenses paid on account thereof shall be a charge upon the said land and bear interest at the same rate as if principal money overdue.

SEVENTEENTH SCHEDULE.

WESTERN AUSTRALIA.

Sections 90 133.

Form of Transfer of Land under Writ of Fieri Facias.

I [insert name] as the Sheriff of
in pursuance of a writ of *fieri facias* tested the day of
One thousand eight hundred and and issued out of the Supreme
Court in an *action* wherein is the plaintiff and the
defendant which said is registered as the proprietor of an estate
[here state nature of the estate] in the land hereinafter described subject to the
encumbrances notified hereunder and to effectuate the sale made under such writ
do hereby in consideration of the sum of paid to me by E.F.
[insert addition] transfer to the said E.F. all the estate and interest
of the said in All that
[if the land transferred be part only of the land comprised in the grant or existing
certificate set forth in links or links and feet the boundaries and refer to a map].

Dated the day of One thousand eight hundred and
Signed by the said in }
the presence of }
Signed by the said E.F. }
in the presence of }

ENCUMBRANCES REFERRED TO

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WESTERN AUSTRALIA.

Form of Transfer of Lease Mortgage or Charge under Writ of *Fieri Facias.*

I [insert name] as the Sheriff of
in pursuance of a writ *fieri facias* tested the day of
One thousand eight hundred and and issued out of the Supreme
Court in an *action* wherein is the plaintiff and
the defendant which said is registered as the proprietor of a lease
[or mortgage or charge as the case may be] numbered of [or upon]
the land hereinafter described subject to the encumbrances notified hereunder and
to effectuate the sale made under such writ do hereby in consideration of the sum
of paid to me by E.F. [insert addition] transfer to the said E.F.
all the estate and interest of the said as such
registered proprietor in All that
 [or otherwise according to the description in the lease mortgage or
charge or describe the land in general terms by reference to the registered instrument.]

Dated the day of One thousand eight hundred and

Signed by the said in }
the presence of }

Signed by the said E.F. }
in the presence of }

ENCUMBRANCES REFERRED TO.

WESTERN AUSTRALIA.

Form of Transfer of Land under Decree or Order of Supreme Court.

I [insert name] in pursuance of a decree or order of the Supreme Court dated
the day of One thousand eight hundred and
and entered in the register book vol. fol. hereby
transfer to E.F. [insert addition] subject to the encumbrances notified hereunder
all the estate and interest of (who is registered as the proprietor of
an estate [here state nature of the estate] in the land hereinafter described) in All
that [if the land transferred be part only of
the land comprised in the grant or existing certificate set forth in links or links and
feet the boundaries and refer to a map].

Dated the day of One thousand eight hundred and

Signed by the said in }
the presence of }

Signed by the said E.F. }
in the presence of }

ENCUMBRANCES REFERRED TO.

WESTERN AUSTRALIA.

Form of Transfer of Lease Mortgage or Charge under Decree or *Order of Supreme Court.*

I [insert name] in pursuance of a decree or order of the Supreme Court dated
the day of One thousand eight hundred and
and entered in the register book vol. fol. hereby transfer
to E.F. [insert addition] subject to the encumbrances notified hereunder all the

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estate and interest of _____ (who is registered as the proprietor of a lease
[or mortgage or charge as the case may be] numbered _____ of [or upon]
the land hereinafter described) in All That
[or otherwise according to the description in the lease
mortgage or charge or describe the land in general terms by reference to the registered
instrument].

Dated the _____ day of _____ One thousand eight hundred and _____
Signed by the said _____ in }
the presence of _____ }
Signed by the said E.F. }
in the presence of _____ }

ENCUMBRANCES REFERRED TO.

EIGHTEENTH SCHEDULE.

WESTERN AUSTRALIA.

Section 137.

Caveat forbidding Registration of any Change in Proprietorship or any dealing with Estate or Interest.

To the Registrar of Titles.

Take notice that I [insert name and addition], claim [specify the estate or interest claimed] in [describe land] standing in the register book in the name of

And I forbid the registration of any person as transferee or proprietor of and of any instrument affecting the said estate or interest absolutely [or until after notice of any intended registration or registered dealing be given to me at the address hereinafter mentioned or unless such instrument be expressed to be subject to my claim as the case may require] I appoint _____ as the place at which notices and proceedings relating to this caveat may be served

Dated this _____ day of _____ One thousand eight hundred and _____
Signed in the presence of _____

NINETEENTH SCHEDULE.

WESTERN AUSTRALIA.

Section 143.

Form of Power of Attorney.

I A.B. [insert addition] do hereby appoint C.D. [insert addition] my attorney to sell to any person all or any lands leases mortgages whether extended or not or charges whether now belonging to me or which shall hereafter belong to me under or by virtue of the *Transfer of Land Act 1893* or of which I am now or shall hereafter be the proprietor or owner under the said Act ALSO to mortgage all or any such lands or leases for any sum at any rate of interest ALSO to charge the same with any annuity of any amount ALSO to lease all or any such lands as shall be of freehold tenure for any term of years not exceeding *twenty-one* years in possession at any rent ALSO to surrender or obtain or accept the surrender of any lease in which I am or may be interested ALSO to exercise and execute all powers which now are or shall hereafter be vested in or conferred on me as a lessor mortgagee or annuitant under the said Act [or otherwise according to the nature and extent of the powers intended to be conferred] AND for me and in my name 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 re-

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covering 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 any contracts covenants or conditions binding upon any 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.

For Attestation see
Section 145.

Dated this day of One thousand eight hundred and
Signed by the said A.B. in }
the presence of }

TWENTIETH SCHEDULE.

WESTERN AUSTRALIA.

Certificate of Registrar &c. taking Declaration of attesting Witness.

Section 145.

Appeared before me at the day of One
thousand eight hundred and C.D. the attesting witness to this instru-
ment and declared that he personally knew A.B. the person signing the same and
whose signature the said C.D. attested and that the name purporting to be the
signature of the said A.B. is his own handwriting and that he was of sound mind
and freely and voluntarily signed such instrument.

TWENTY-FIRST SCHEDULE.

OFFICE OF TITLES OF WESTERN AUSTRALIA.

Application for Search Certificate.

Section 146.

I hereby request to be informed whether there is any and if any what obstacle
to a dealing by—[A.B. give name of proprietor and number of certificate]—with the
land comprised in certificate vol. fol.

Signature of applicant—

Search Certificate 18 No.

The last registered dealing or encumbrance affecting the title of the proprietor
to the land comprised in the above certificate of title is noted upon the certificate
as follows:—[Refer to the last entry upon the certificate in such a way as distinctly
to identify or if the title be clear state that there is no dealing or encumbrance men-
tioned upon the certificate.]

At the time of issuing this certificate there is nothing to prevent the registra-
tion of a dealing by the registered proprietor except—[If the title be clear and
there is nothing to prevent dealing strike out the word "except."]

[If there be any caveat dealing lodged for registration application by official
assignee notice of fi. fa. or other obstacle to dealing not noted on the certificate of title
refer to such obstacle in such a way as to give the applicant notice of it and to enable
him to ascertain particulars by inspection.]

The information above given refers only to the present state of the register
and the present right to register a dealing with the interest of the proprietor
appearing on the register.

The seal of the Office of Titles was affixed to this search certificate at the
hour of o'clock on the day of 18 .

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TWENTY-SECOND SCHEDULE.

OFFICE OF TITLES OF WESTERN AUSTRALIA.

Section 148.

*Application for Stay of Registration as to Title of A.B. to Land
comprised in Certificate No. as to which Search Certificate
18 No. has been applied for.*

I C.D. of now dealing *bonâ fide* for value with the above-named A.B. as to land comprised in the above certificate in order to protect such dealing hereby apply for a stay of registration of any instrument affecting the land proposed to be dealt with for forty-eight hours from the time named in the search certificate. The particulars of the proposed dealing are as follows:—

The transaction is—[*State whether sale mortgage exchange lease or other dealing for value*].

The consideration is—[*State the price to be paid or amount to be lent rent to be paid or other consideration*].

The land to be comprised in the dealing is all the land comprised in the above certificate—[*If not all strike out the words following "is" and describe the land in such a manner as distinctly to identify it*].

Signature of the applicant or his solicitor—

I consent to the above application for stay of registration and certify that the proposed dealing is as above stated.

Signature of proprietor or of his authorised agent—

Order for Stay of Registration.

I hereby direct that for forty-eight hours from o'clock on the day of 189 nothing is to be entered on the register as to the land above described except an instrument giving effect to the above dealing which if lodged for registration within that time is to have priority over all other instruments which may be lodged for registration during such forty-eight hours.

Registrar of Titles.

TWENTY-THIRD SCHEDULE.

WESTERN AUSTRALIA.

Section 163.

This map correctly embodies the scheme of subdivision of the land therein comprised prepared approved and adopted by the Commissioner of Titles under the provisions of "*The Transfer of Land Act, 1893.*"

Verified this day of 189 .

(Signature).

Commissioner of Titles.

(Signature).

Chief Draftsman in the Office of Titles
(or Acting Chief Draftsman or as the case may be).

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Section 172.

TWENTY-FOURTH SCHEDULE.

WESTERN AUSTRALIA.

Application to amend Certificate.

To the Registrar of Titles.

1. I hereby apply to have the certificate of title No. amended in the following particulars:—*[State the nature of proposed amendment and in a case in which the description in the certificate is erroneous or imperfect on the face of it add the words on the ground that the certificate is erroneous or imperfect on the face of it].*

2. That the land which would be described by the certificate when amended in accordance with this application is now in my occupation, and has been actually and *bonâ fide* occupied by me or persons holding under me since—

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

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

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

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

Dated the day of 189 .

Made and subscribed at in the presence of

Application to rectify Register.

To the Registrar of Titles.

1. I the registered proprietor of the land which is described as follows in the certificate of title No. —*[set out full particulars as in certificate]*—hereby apply to have the register of titles rectified in the following particulars:—*[State the nature of the proposed rectification and mention the number of every certificate and the name of every registered proprietor whose certificate of title would be affected by the proposed rectification].*

2. That to the best of my knowledge and belief the discrepancy between the description in my certificate of title and that in the other certificates above mentioned is due to error in survey or misdescription and has arisen—*[Give the supposed cause of discrepancy or state that the applicant is unable to assign any specific cause for the discrepancy].*

3. That the title to the land affected by the proposed rectification has never been in contest between me as or as I believe any one from whom I claim and any other person in any proceeding under “The Transfer of Land Act 1893” or in any court of law or equity.

4. That the land as described in my certificate has been actually and *bonâ fide* occupied by me and persons holding under me since—

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

Dated the day of 189 .

Made and subscribed at in the presence of

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TWENTY-FIFTH SCHEDULE.

WESTERN AUSTRALIA.

Section 180.

Summons.

In the matter of "The Transfer of Land Act, 1893."

A.B. [*insert addition*] is hereby summoned to appear before me at the office of Titles Perth on the day of One thousand eight hundred and at of the clock in the [*fore*] noon then and there to be examined at the instance of C.D. [*insert addition*] concerning and the said A.B. is hereby required to bring with him and produce at the time and place aforesaid [*describe documents*] and all other writings and documents in his custody or power in anywise relating to the premises.

Given under my hand the day of One thousand eight hundred and

Commissioner of Titles.

TWENTY-SIXTH SCHEDULE.

WESTERN AUSTRALIA.

Section 237.

TABLE A.

General Conditions of Sale.

1. The purchaser shall complete his purchase upon the day that the last of the acceptances or notes for purchase money become due; but he shall be entitled to the possession of the lot or lots purchased by him or to the receipt of the rents and profits thereof upon his acceptance of the title to such lot or lots; and if from any cause whatsoever his purchase shall not be completed at the time above specified the purchaser shall pay interest on such of his acceptances or notes as shall become overdue at the rate of eight pounds per cent. per annum to the time of completion without prejudice however to the vendor's right under the sixth condition.

2. All roads or ways adjoining or leading to or from the land sold or shown on the existing certificate of title to the property the areas of which roads are not included in such certificate shall be deemed by the purchaser either to be appurtenant to such land or to have become public roads.

3. The certificate of title to the property sold shall be produced and a copy thereof may be made by the purchaser or his solicitor on application in that behalf to the vendor or his solicitor and the purchaser shall within fourteen days after the day of sale deliver to the vendor or his solicitor a statement in writing of all objections or requisitions (if any) to or on the title or concerning any matter appearing on the particulars or conditions and in this respect time shall be of the essence of the contract. All objections or requisitions not included in such statements to be delivered within the time aforesaid shall be deemed absolutely waived by the purchaser and in default of such objections (if none) and subject only to such (if any) so delivered the purchaser shall be considered as having accepted the title and it shall be lawful for the auctioneer to pay over and deliver to the said vendor all sums of money paid and acceptances or notes given by the said purchaser on account of the purchase money without being liable to any action or other proceeding for recovery of the same.

4. In case the purchaser shall within the time aforesaid make any objection to or requisition on the title or otherwise which the vendor shall be unable or unwilling to remove or comply with and such objection or requisition shall be insisted on it shall be lawful for the vendor or his solicitor (whether he shall have

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attempted to remove such objection or to comply with such requisition or not and notwithstanding any negotiation or litigation in respect of the same) at any time by notice in writing to annul the sale and within one week after giving such notice to repay to the purchaser the amount of his purchase money or so much thereof as shall have been paid in full satisfaction of all claims and demands whatsoever by the purchaser and also to return all unpaid acceptances given by the purchaser but without any interest costs or damages of any description.

5. If any mistake be made in the description or area of the property or if any other error whatsoever shall appear in the particulars of the property such mistake or error shall not annul the sale; but a compensation or equivalent to be settled by two referees mutually appointed in writing or their umpire shall be given or taken as the case may require. The party discovering such mistake or error to give notice in writing thereof to the other party within seven days after such discovery and each party within seven days after such notice shall appoint in writing a referee and if either party shall refuse to appoint a referee within the term above specified the referee of the other party alone may proceed in the matter and make a final decision. If two referees be appointed they are to nominate an umpire in writing before they enter upon the business and the decision of such referees or umpire as the case may be shall be final.

6. If the purchaser shall fail to comply with the above conditions or shall not pay the whole of the deposit or shall not give the acceptances or notes provided for by the contract or shall not duly pay the same or any of them his deposit money or so much thereof as shall have been paid shall be actually forfeited to the vendor who shall be at liberty without notice to rescind the contract and to re-sell the property bought by the purchaser by public auction or private contract and the deficiency (if any) in price occasioned by such sale together with all expenses attending the same shall immediately be made good by the defaulter at this present sale and in case of non-payment the amount of such deficiency and expenses shall be recoverable by the vendor as and for liquidated damages and it shall not be necessary previously to tender a transfer to the purchaser or the vendor may deduct and retain such deficiency and expenses out of the amount of any of the before-mentioned acceptances or notes which shall then have been paid re-paying unto such defaulter within seven days after the completion of the sale the residue of such amount but without any interest and returning without any unnecessary delay any then unpaid acceptances or notes.

7. That the vendor will upon due payment of the full amount of purchase money sign a transfer of the property to the purchaser such transfer to be prepared by and at the expense of the purchaser.

8. That the purchaser shall pay or bear the expense of all stamp duties on or in respect of the acceptances or notes provided for by the contract and of the transfer to him.

9. The vendor shall not at any time be required by any purchaser or purchasers at the present sale to join in erecting any dividing fence upon any part of the land sold or offered for sale nor shall the vendor be liable at any time to contribute towards the expense of erecting any such dividing fence whether the land now offered for sale be sold or not; but this condition shall not prejudice or affect the rights of purchasers as to dividing fences as between themselves and all other parties except the vendor.

TWENTY-SEVENTH SCHEDULE.

WESTERN AUSTRALIA.

DECLARATION.

I (*name in full*) of _____ Western Australia do solemnly and sincerely declare that I am a Surveyor duly licensed under "The Transfer of Land Act 1893," and that the parcels of land herein delineated and colored [] have been surveyed by me personally and pegged on the ground and plotted in accordance

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with the Regulations and Instructions for the guidance of Surveyors under the said Act published on the 30th day of June 1892 [or as the case may be] and that the plan is in all respects accurate.

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of an Ordinance made and passed in the eighteenth year of the Reign of Her present Majesty No. 12 entitled "An Ordinance for the abolition of unnecessary Oaths and to substitute Declarations in lieu thereof."

(Signed) (L.S.)

Declared at this day of 18 .
before me. J. P.

LAST SCHEDULE.

WESTERN AUSTRALIA.

On making application to bring land under the operation of the Act exclusive of advertisements :—	£	s.	d.	
When the applicant is the original grantee and no transaction affecting the land has been registered ...	0	5	0	Section 191.
When the title is of any other description or when the application is to be registered in respect of an estate of freehold on a transmission and the value exceeds £500	2	10	0	
The like when the value exceeds £400 and does not exceed £500 ...	2	0	0	
The like when the value exceeds £300 and does not exceed £400 ...	1	10	0	
The like when the value exceeds £200 and does not exceed £300 ...	1	0	0	
The like when the value does not exceed £200 ...	0	10	0	
<hr/>				
Contribution to assurance fund upon first bringing land under this Act and upon the registration of an estate of freehold on a transmission :—				
In the pound sterling of value of land ...	0	0	0½	
For every certificate of title ...	1	0	0	
For every certificate of untransferred balance of land issued to proprietor ...	0	10	0	
For every memorandum of transfer by endorsement ...	0	10	0	
For registering a transfer or a lease mortgage or charge or transfer or extension of a lease mortgage or charge or a discharge of a mortgage or charge wholly or partially or a satisfaction of an annuity or a surrender of a lease	0	10	0	
For registering a transfer to persons being trustees of any society registered under any Ordinance or Act relating to Friendly Societies ...	0	5	0	
For certificate of title thereon ...	0	10	0	
For registering a transfer by such persons ...	0	5	0	
For certificate of title thereon ...	0	10	0	
When any instrument purports to deal with or affect land included in more than one certificate for each memorandum after the first ...	0	2	0	

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	£	s.	d.
For registering proprietor of any freehold estate or interest on a transmission	1	0	0
For every caveat	0	10	0
For withdrawal or partial withdrawal of caveat... ..	0	2	6
For entry of foreclosure... ..	1	0	0
For every search	0	2	0
For every general search	0	5	0
For every map deposited	0	5	0
For depositing documents declaratory of trusts	0	10	0
For registering recovery of possession by legal proceedings or registering the lessor or surrenderee	0	10	0
For registering vesting of lease in mortgagee on refusal of trustee to accept the same	0	10	0
For entering notice of marriage or death	0	10	0
For entering notice of writ of <i>fi. fa.</i> or any order of the Supreme Court or of the Commissioner	0	10	0
For entering satisfaction of any such writ	0	1	0
For order dispensing with production of any duplicate certificate or instrument under section 74	0	10	0
For returning documents of title deposited in support of application on withdrawal of application or rejection of title	0	5	0
For order for and inspection of any documents permanently retained	0	5	0
For copy of or extract from any document deposited in support of an application to bring land under the Act and retained or from any caveat at per folio of seventy-two words	0	0	6
For every certified copy first folio of seventy-two words	0	5	0
For every folio or part of a folio after the first	0	0	8
For every map thereon	0	2	0
For a special commission	0	15	0
For every summons	0	2	0
For examination thereunder	0	10	0
For statement of grounds under section 203	0	10	0
For entry of an executor or administrator or the curator or the trustee of bankrupt as a transferee or proprietor	0	10	0
For entry of husband as joint proprietor	0	10	0
For entry of survivors or other persons as proprietors in case of joint proprietorship	0	10	0
For registering every dealing on a permit	0	10	0
For every endorsement after the first entered upon certificate in pursuance of such dealing	0	2	0