



WESTERN AUSTRALIA.

ANNO TRICESIMO OCTAVO

VICTORIÆ REGINÆ.

No. XIII.

AN ACT to simplify the Title to and the dealing with
Estates in Land.

[Assented to, 6th August, 1874.]

WHEREAS it is expedient to give certainty to the title to
estates in land and to facilitate the proof thereof, and also
to render dealings with land more simple and less expensive: Be it
enacted by His Excellency the Governor of Western Australia and
its Dependencies, by and with the advice and consent of the Legisla-
tive Council thereof, as follows:—

Preamble.

PRELIMINARY.

1 ALL Laws, Statutes, Acts, Ordinances, Rules, Regulations,
and practice whatsoever, relating to freehold and other interests in
land, so far as is inconsistent with the provisions of this Act, are
hereby repealed, so far as regards their application to land under
the provisions of this Act, or the bringing of land under the opera-
tion of this Act.

Repeal of previous Acts.

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Short title.

2 THIS Act may be cited as "*The Transfer of Land Act, 1874*," and shall come into operation on the first day of July, 1875.

Interpretation

3 IN the construction of this Act, except when the subject-matter or context or the other provisions hereof require a different construction—

The word "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.

The word "proprietor" shall mean the owner solely, jointly, or in common with any other person, whether in possession, remainder, reversion, expectancy or in tail, or otherwise of land, or of a lease, mortgage, or charge; and such word shall also include the donee of a power, or other person empowered or authorised to appoint or dispose of the same.

The word "grant" shall mean the deed of grant from the Crown of Waste Crown Lands in Western Australia, whether in fee or for years, and shall include all leases and licenses issued under "*An Act to repeal the Acts of Parliament now in force respecting the disposal of the Waste Lands of the Crown in Her Majesty's Australian Colonies, and to make other provisions in lieu thereof*," and the regulations for the sale, letting, disposal, and occupation of Waste Lands of the Crown in Western Australia, made or to be made in pursuance thereof.

The word "annuity" shall mean a sum of money payable periodically and charged on land under the operation of this Act by an instrument hereunder.

The word "charge" shall mean the instrument creating and charging an annuity.

The word "grantor" shall mean the proprietor of land charged with the payment of an annuity.

The word "encumbrances" shall include all 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, adversely and preferentially to the title of the proprietor.

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The word "instrument" shall include a conveyance, assignment, transfer, lease, mortgage, charge, and also the creation of an easement.

The word "endorsed" shall include anything written upon, or in the margin, or at the foot of any document.

The word "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.

The word "transmission" shall mean the mode of acquiring the ownership of land under any will or settlement, or by descent, or by executors or administrators as such.

The word "person" shall include a corporation, whether aggregate or sole.

The word "judge" shall mean a judge of the Supreme Court of Western Australia.

The word "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 a writ of *fieri facias*.

The expression "commissioner for taking affidavits" shall mean a Justice of the Peace or other officer or person authorised to take affidavits in the Supreme Court of Western Australia.

PART I.—APPOINTMENT, POWERS, AND FUNCTIONS OF OFFICERS.

4 THE Governor, with the advice of the Executive 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 practice, to be "the Commissioner of Titles" (hereinafter styled "Commissioner") for superintending the department hereby established, and for investigating and dealing with applications for bringing land under the provisions of this Act, and for other purposes hereinafter appointed. The Governor, with the advice aforesaid, may upon any and every vacancy occurring in such office by death, resignation, or removal, from time to time appoint a fit person to supply such vacancy.

Commissioner of Titles.

5 THE Governor, with the advice aforesaid, may appoint one registrar of titles (hereinafter styled the "Registrar"), and any other officers necessary for carrying out the provisions of this Act, and

Appointment of other and removal of all officers.

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may remove any Commissioner, Registrar, or any other
whether by this Act appointed or hereafter to be appointed
supply any vacancy thereby or otherwise occurring.

Power to appoint a deputy
in case of illness.

6 IN case of illness or absence, the Governor may ap-
 person to act as the deputy of any officer appointed under th
 during such illness or absence, and such deputy, while acting
 such appointment, shall have all the powers and perform
 duties of the officer of whom he may be the deputy.

Certain signatures to be judicially noticed.

7 ALL courts, judges, and persons acting judicially shall take judicial notice of the signature of the Commissioner and Registrar, and of any deputy appointed hereunder.

Seal of Office.

8 THE Commissioner shall cause to be prepared and shall use a seal bearing the impression of the Royal Arm having inscribed in the margin thereof the words "Office of Western Australia"; and all certificates of title and other ments purporting to be sealed with such seal, and to be signed by the Commissioner or his deputy, shall be admissible as evidence without further proof.

Commissioner not to practise

9 THE Commissioner shall not nor shall any deputy commissioner under this Act, directly or indirectly practise as a barrister or as an attorney, proctor, or solicitor, or participate in the business of any other person so practising.

Powers of Commissioner.

10 THE Commissioner may, by summons under his hand and seal, in the form in the Sixteenth Schedule hereto, require the proprietor, 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 disposition, or from any mortgage or charge is proposed to be transacted or registered, or in respect of which any change of ownership by transmission is proposed to be registered or registration abstract issued, to appear at a time and place to be appointed in such summons, and give an explanation concerning such land or any document affecting the same, thereto, and to produce any grant, certificate of title, will, mortgage, or other instrument or document in his possession or within his power, affecting such land or the title thereto; and the Commissioner is hereby authorised to examine upon oath (which oath he is 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

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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 summoned before a Judge, and by him 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 he shall not be bound to proceed with the transaction.

11 THE Commissioner may from time to time, with the consent of the Governor, with the advice aforesaid, 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 every form authenticated by the seal of the office shall be taken to be in the legally authorised form, unless the contrary be proved.

Power to make certain regulations.

12 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 Court to give its judgment thereon, and such judgment shall be binding upon the Commissioner and Registrar respectively.

Power to state a case for Supreme Court.

13 THE Registrar may exercise the following powers and duties; that is to say:—

Powers of Registrar.

- (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

To administer oaths, &c.

To correct errors, &c.

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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.

To enter caveat.

- (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.

Sworn valuers.

14 THE Governor may appoint persons to be valuers under this Act, and at pleasure annul the appointment of any such person

PART II.—PROCEDURE IN BRINGING LAND UNDER THE PROVISIONS OF THE ACT.

Crown Lands remaining unalienated to be registered under this Act.

15 THE grants in fee or for years of all Crown Lands remaining unalienated at the time of the commencement of this Act shall be delivered, not to the grantee, but to the Registrar, who shall retain the same, and after payment of the contribution to the assurance fund (in cases wherein such contribution shall be payable register the same in manner hereinafter directed. Such registration shall be deemed and taken to be an enrolment of record of the grant and such enrolment shall relate back to the day of the date of the grant, and either part of the grant when registered under this Act shall be sufficient evidence of a duly enrolled grant of the land therein described to the person therein named on the day of the date thereof.

As to grants for public purposes.

16 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.

Lands alienated in fee may be brought under this Act.
First Schedule

17 LAND alienated in fee by the Crown before this Act shall come into operation may be brought under the operation of this Act by an application in the form in the First Schedule hereto, which

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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, if the owner of the first vested estate of inheritance shall consent to the application.
- (v.) Trustees for the 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.

Provided, always, that a mortgagor shall not be entitled to make such application unless the mortgagee shall consent thereto, nor a mortgagee unless for the purpose of 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 hereinafter 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 or 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.

18 THE Registrar shall submit such application and the papers to the Commissioner for his direction, and if it shall appear to the Commissioner

How application to be dealt with when no registered dealing.

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Commissioner that no transaction affecting the land has been registered under any general registration Ordinance or Act concerning the registration of instruments relating to or affecting land, he shall direct the Registrar to bring the land under the operation of this Act forthwith, by registering a certificate of title.

And when a registered dealing.

19 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, the Commissioner shall direct notice of the application to be advertised once at least 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.

Service of notices.

20 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.

Land to be brought under the Act unless caveat received.

21 IF before the expiration of the time limited in the notice aforesaid for lodging a caveat the Registrar shall not have received a caveat forbidding the bringing of the land in question under the operation of the Act, he shall bring such land under this Act by registering, in the name of the applicant, or in the name of such person-as-may-have been directed in that behalf, a certificate of title to such land in the form in the Second Schedule hereto.

Second Schedule.

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22 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 Third 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 particularize the estate or interest claimed; and the person lodging such caveat shall, if required by the Registrar, support the same by a statutory declaration, stating the nature of the title under which the claim is made, and also deliver a perfect abstract of the title to such estate or interest. 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.

Parties interested may lodge caveat.

Third Schedule.

23 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 hereinafter 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.

24 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.

25 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 for his inspection, upon such terms and subject to such conditions and for such charge or fee as the judge making the order

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

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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 person applying to have the land brought under this Act, or by the person to whom he may have directed a certificate of title to be issued.

Applicant may withdraw his application.

26 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 the caveator shall 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 which include other property to be returned.

Documents of title which include other property to be retained.

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

27 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.

Certificate of title to issue in the name of deceased applicant or his nominee.

28 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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29 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.

30 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; and in the other cases such 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 valuer appointed under this Act, which certificate shall be received as conclusive evidence thereof.

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

Last Schedule.

31 WHENSOEVER in any memorial received under any Ordinance or Act concerning the registration of instruments relating to or affecting land the instrument purporting to be registered shall be stated to be a release or a conveyance or a reconveyance, such memorial may, if the applicant desire it, for the purpose of bringing land under this Act, be deemed by the Commissioner sufficient evidence of the instrument referred to being a conveyance in fee

Certain memorials under previous registration Ordinances to be sufficient evidence of conveyances in fee.

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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.

Additional indemnity fund
for imperfect title.

32 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 in equity
may be deemed sufficient.

33 AN office copy of any order heretofore made or which shall hereafter be made by the Supreme Court in equity (whether such order shall hereafter be in the form of an order confirming the master's report 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 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. 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, have been wholly paid.

PART III.—REGISTER BOOK—MODE OF REGISTERING AND EFFECT OF REGISTRATION.

Certificates of title to be in
duplicate.
Second Schedule.

34 CERTIFICATES of title shall be in duplicate, in the form in the Second Schedule hereto; and the registrar shall keep a book,

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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 (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.

Register Book and entries therein.

35 BEFORE the delivery of any 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.

Receipts may be required for certificates.

36 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.

Certificates of title registered when entered in the register book.

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

37 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.

Instruments may be in duplicate.

Instruments entitled to priority according to date of registration.

38 THE Registrar shall not enter in the register book notice of any trust, whether express, implied, or constructive: 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 he may deem advisable the rights of the persons for the time being beneficially interested thereunder,

No notice of trusts to be entered in register book.

Document declaring trusts may be deposited but not registered.

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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.

Memorandum defined.

39 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 to be entered on duplicate instrument.

40 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 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 and equity as conclusive evidence that such instrument has been duly registered.

Certificate of registration to be evidence.

Instruments not effectual until registered.

41 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 certificate of title.

Proprietor of land entitled to certificate of title.

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

42 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.

Persons may be registered as joint tenants, tenants in common, or coparceners.

43 TWO or more persons may be registered under this Act as joint tenants, tenants in common, or coparceners of any land. In

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all cases where two or more persons are registered as tenants in common, or as coparceners of any land, one certificate for the entirety, or separate certificates for the undivided shares may be issued; but in the case of persons registered as joint tenants, one certificate only shall be issued.

44 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.

Insertion of the words "no survivorship" to operate to prevent other persons than those registered dealing with the land without an order.

45 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 neighbourhood 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.

Notice to be published before effect is given to order.

46 NO certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the

Certificate to be conclusive evidence of title.

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provisions herein contained shall be received in all courts of law and equity 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.

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

47 IN any suit for specific performance or action at law 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 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 suit entitle such proprietor to a decree for the specific performance of such contract.

Estate of registered proprietor paramount.

48 NOTWITHSTANDING the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the 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 his 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 assessments, and also, where the possession is not adverse, to the interests 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.

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

Purchaser from registered proprietor not to be affected by notice.

50 THE person named in any certificate of title as the proprietor of an estate of freehold in possession in the land therein described shall be held in every court of law and equity 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.

As to reversions expectant on leases.

51 ANY person claiming to have acquired by transmission any estate of freehold in possession in land that has been brought under the operation of this Act, or a power to appoint, transfer, or dispose of the same, may make application in writing to the Commissioner to be registered as proprietor thereof, and shall furnish such evidence as may be deemed necessary to prove his title by transmission. 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, subject or not to encumbrances, as the case may be, in respect to which he applies to be registered, and shall also state the value of the property. The person making such application shall deliver up the certificate of title prior to his being entered in the register book as the proprietor.

Devisee may apply to be registered as proprietor.

52 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 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 in the said notice appoint a time (not less than fourteen days from the advertisement,

Application to be referred to commissioner.

Notice to be published.

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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.

Remainderman or reversioner may apply to be registered as such.

Application to be referred.

53 ANY person claiming to have acquired any remainder, reversion, or other future interest by 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 person claiming to have acquired an estate of freehold in possession by transmission. Such application shall be dealt with in the 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.

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

54 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

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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.

55 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 or grant; but it shall not be necessary, in any certified copy of any certificate, grant, 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 affecting land to be preserved.

56 UPON production of a receipt of the Treasurer of the Colony for the full purchase money of any land sold by the Crown in fee, together with an instrument dealing with such land, signed by the purchaser, the Registrar shall endorse upon such receipt such memorandum as he is herein required to enter in the register book upon the registration of any dealing of a like nature with land registered, and shall sign such endorsement, and shall endorse such instrument with the certificate of registration herein required on the registration of a like instrument after a grant relating to land under the operation of this Act has been registered, and so on from time to time with respect to any other dealings before the registration of a certificate of title to such; and every such instrument shall thereupon be held to be duly registered under this Act. The Registrar shall file such receipt and instrument in the office, and upon the registration of a certificate of title to the land he shall enter thereon a memorandum of every dealing endorsed on such receipt, and issue a certificate of title to the then transferee of the land (if any).

Dealings may be registered prior to issue of Crown grant.

57 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 Fourth 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

Transfers.

Fourth Schedule.

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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.

Transfer to include right to sue thereunder.

Saving powers of courts of equity to give effect to trusts.

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

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

58 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 of equity 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.

59 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 if seized or possessed jointly with any other person then jointly with such person to himself alone, or to create or execute any power of appointment or disposition, or to 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 favor any such power may have been executed or who may take 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.

60 EVERY instrument executed by a married woman under this Act shall be executed and acknowledged by her in the same manner as any deed or other instrument is at the date of the passing of this Act required to be executed or acknowledged by her. And the person attesting such execution or taking such acknowledgment

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shall endorse on such instrument a certificate under his hand of such execution and acknowledgment. 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*.

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

Certificate of title to be delivered up and cancelled so far as regards the portion of land transferred; and fresh certificate to be issued to purchaser, and a certificate for the part untransferred to be issued to proprietor when demanded.

62 IN every transfer of land under the operation of this Act, subject to a mortgage or charge there shall be implied a covenant with the transferor 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 transferor 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 transferor.

Transferee of land subject to encumbrance to indemnify transferor.

63 WHENEVER any transfer or lease of freehold land 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*], such words shall have the same effect and be construed as if there had been inserted in such transfer or lease the words contained in the Fifth Schedule hereto. A memorandum of any transfer or lease creating any easement over or

Creation of easements.

Fifth Schedule.
Memorandum of easements to be registered.

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upon or 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.

Words of inheritance or succession to be implied.

64 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.

Leases of land.

Sixth Schedule.

65 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 Sixth Schedule hereto, but no lease of any land 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.

66 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.

67 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 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

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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.

68 WHENEVER in any lease made under this Act the lessee shall employ any of the forms of words contained in column one of the Seventh 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.

Seventh Schedule.

69 IN every transfer of a lease made under this Act and in every transfer of a grant for years, there shall be implied a covenant with the transferor by the transferee binding him and 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 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 transferor and his representatives against all actions, suits, 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.

70 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 upon such entry being made determine, but without prejudice to any action or cause of action which shall previously have been com-

Recovery of possession by
lessor to be entered in regis-
ter book.

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menced 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 the interest of a bankrupt lessee may apply to be entered as transferee of the lease and on default lessor may apply.

71 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 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 forty-two 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 as 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 declared to be implied therein.

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

72 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.

73 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 Eighth Schedule hereto, and may charge the same with the payment of an annuity by signing a charge thereof in the form in the Ninth Schedule hereto.

Mortgages and charges.
Eighth Schedule.
Ninth Schedule.

74 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.

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

75 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 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 to the mortgagor or grantor 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 enquire whether such default as aforesaid shall have been made or have happened

Power to sell.

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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.

76 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 the 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.

77 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 mortgage 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

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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.

78 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.

In case of default mortgagee or annuitant may enter and take possession or may distrain.

Mortgagee may bring action for ejectment or may foreclose right of redemption.

79 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

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

No occupier or tenant liable for greater sum than the amount of rent actually owing by him.

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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.

80 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.

Covenants to be implied in every mortgage.

81 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.

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

82 WHENEVER in any mortgage made under this Act the mortgagor shall employ the form of words contained in column one of the tenth 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

Short form of covenant by mortgagor to insure.
Tenth Schedule.

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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.

83 IN addition to and concurrently with the rights and powers conferred on mortgagees and on transferees of mortgagees by this Act, every 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 a lease made 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.

84 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. 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.

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Application of moneys obtained from suits by the mortgagor.

85 Any sum of money which shall become payable to the mortgagor or his transferee under any decree or order in any suit by him in the Supreme Court in equity, for or on account of any waste or damage of or to the land mortgaged shall be paid to the first mortgagee or his transferee, in reduction or satisfaction of the moneys 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 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.

86 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 suit in equity 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.

87 ANY money received by a first 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.

88 WHENEVER default has been made in payment of the principal or interest moneys secured by a mortgage, and such default

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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 person licensed to act as an auctioneer after notice of sale served as hereinbefore provided, and that the amount of the highest bidding at such sale was not sufficient to satisfy the moneys secured by such mortgage, together with the expenses occasioned by such sale, 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 directed 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 such other proof of the matters stated by the applicant as the Commissioner may require, and the statements made in such application shall be verified by statutory declaration.

89 UPON such application the Commissioner may direct the Registrar to cause notice to be published once in each of 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

Application to be advertised.

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proprietor thereof, and be entitled to receive a certificate of title to the same.

Discharge of mortgages and annuities.

90 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 the 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.

Entry of satisfaction of annuity.

91 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 Colonial Treasurer if mortgagee be absent from the colony and mortgage discharged.

92 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 of Western Australia 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 Colonial 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

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him for that purpose. The Colonial 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 duly authorised Government securities in Western Australia or otherwise as a judge shall direct, 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 Colonial Treasurer requisitions, countersigned by the Commissioner, to pay to such persons the moneys to which they may be entitled hereunder, and such moneys shall be issued in like manner as moneys are now issued from the General Revenue.

Moneys received under this section to be invested.

93 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 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 the Colony, 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 substituted for signature.

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

94 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.

Implied covenants and powers may be modified or negatived.

Implied covenants to be several as well as joint.

95 WHENEVER any lease, mortgage, or charge of or upon land brought under the operation of this Act shall have been acquired by transmission, probate of the will of the deceased proprietor, or letters

Succession to personal estate of deceased proprietor.

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Will or probate or letters of administration to be produced.

of administration with his will annexed or letters of administration of his goods, or the settlement by virtue of which such lease, mortgage, or charge has so been acquired as aforesaid, or an office copy of any such document accompanied by an application in writing from the person claiming to be registered as proprietor by transmission 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 settlement, the time of the production of the same to him, and the day of the death of the deceased proprietor when the same can be ascertained, or the day of the happening of the event on the happening of which such lease, mortgage, or charge has been acquired as aforesaid as the case may be; and upon such entry being made the person so entitled by transmission shall become the transferee, and be deemed to be the proprietor of such 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 person becoming a transferee under this section shall upon such entry being made relate back to and be deemed to have arisen upon the happening of the event upon which such lease, mortgage, or charge shall have been acquired by transmission, as if there had been no interval of time between the happening of such event and such entry.

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

Eleventh Schedule.

96 NO execution registered 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. fa.* issued out of the Supreme Court, or of any decree 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 Eleventh 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

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lodged for execution at the time of the purchase, and notwithstanding the purchaser had actual or constructive notice of the lodgment of such writ. 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 such writ shall be deemed to be satisfied. Every such writ shall cease to bind, charge, or affect any land, lease, mortgage, or charge specified as aforesaid, unless a transfer upon a sale under such writ shall be left for entry upon the register within three months from the day on which the copy was served.

97 UPON the Bankruptcy of the proprietor of any land, lease, mortgage, or charge, the trustee 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 which he was 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 grant or certificate of title of such land, 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 trustee held the same; but for the purpose of any dealings therewith under the provisions of this Act, such trustee shall be deemed to be the absolute proprietor thereof. If the trustee shall omit or neglect to make the application aforesaid, or to lodge a caveat under the general provision relating to caveats hereinafter contained, within seven days after the Registrar shall have notified to him by a letter delivered or registered that application has been made for the registration of an instrument concerning property (to be in such notice described) standing in the register book in the name of the bankrupt, such instrument may be registered, and thereupon shall not be affected by the order of adjudication, either at law or in equity. If a caveat shall be lodged pursuant to such notice, the same shall be dealt with and be subject to the same provisions as other caveats, with this variation, that the fourteen days' notice required in general cases need not actually be given to the caveator, but shall be deemed to have been given on the day on which the caveat was lodged.

Devolution on bankruptcy.

Upon entry of appointment trustee to be deemed registered proprietor.

But to hold subject to equities.

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Marriage of female proprietor.

98 THE Commissioner, upon production of sufficient proof of the marriage of a female registered as 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 have the fact of her marriage, with the name and addition of the husband, endorsed upon the certificate of title, shall direct the Registrar to make such endorsement, and thereupon the husband of such female proprietor shall acquire all such title, estate, and interest to and in such land, lease, mortgage, or charge as he would have acquired if this Act had not been passed, and shall be deemed to be registered in respect thereof, to all intents and purposes. Until such entry shall be made such woman shall be deemed at law and in equity the sole and absolute proprietor of such land, lease, mortgage, or charge, to all intents and purposes as if she had remained unmarried.

Registration of survivor of joint proprietors.

99 WHENEVER the fact of any marriage and the name of the husband has been so endorsed as aforesaid, then upon the death of the husband in the lifetime of the wife, or upon the death of the wife leaving her husband entitled as tenant by the curtesy of land comprised in the certificate of title upon which the said endorsement has been made, and in any case 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 by survivorship as aforesaid, 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 lifetime only of such husband.

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

100 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 mortgagee, lessee, or annuitant.

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101 WHENEVER any person interested in land under the operation of this Act, or any estate or interest therein, shall appear to the Supreme Court to be a trustee of such land, estate, or interest, within the intent and meaning of any Act or statute 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, the Registrar, on being served with such order, or an office copy thereof, shall enter in the register book and on the 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 or operation in transferring or otherwise vesting the said land, estate, or interest.

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

102 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 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 *cestuique trust*.

Proprietor to allow his name to be used by person interested.

PART IV.—POWERS OF ATTORNEY.

103 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 or to the effect in the Twelfth Schedule hereto. Every such power or a duplicate or attested copy thereof shall be deposited with the Registrar, who shall note the effect thereof in a book to be kept for that purpose; and if deposited and noted within four months after the date thereof shall be in force from the time of noting thereof until registration of a revocation thereof.

Powers of attorney and revocation thereof.

Twelfth Schedule.

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Existing and future powers
of attorney when filed avail-
ble.

104 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 the same or a duplicate or attested copy shall have been deposited and noted as aforesaid shall, while continuing in force, be valid and available within the scope and 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.

PART V.—ATTESTATION OF INSTRUMENTS.

Attestation of instruments
and powers of attorney.

105 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—

Within the limits of Western Australia:

The Commissioner, Registrar, or a Justice of the Peace, notary public, solicitor of the Supreme Court, or any person authorised to take affidavits.

And without the limits of Western Australia:

Either a notary public or commissioner for taking affidavits, or else the mayor or other chief officer of any city or municipal corporation within the United Kingdom of Great Britain and Ireland, or the Officer Administering the Government of or a 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.

Proof of signature.

Thirteenth Schedule.

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 enquiries of such witness, shall endorse upon the instrument or power a certificate in the form in the Thirteenth Schedule hereto, and such certificate shall be deemed sufficient proof of the due execution of such instrument or power. No fee shall be 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

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Registrar, or Justice of the Peace who shall demand or take any such fee shall forfeit a sum of not less than Five pounds or more than Twenty pounds.

PART VI.—CAVEATS.

106 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, or by devolution in law or otherwise, may lodge a caveat with the Registrar in the form in the Fourteenth 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 intended 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 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, support the same by a statutory declaration, stating the nature of the title under which the claim is made, and may withdraw any such caveat. No such caveat shall be received unless some address or place within the present 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 out of the said city at the foot of such caveat, in which case a registered letter shall be sent through the Post Office to such address on the same day as that on which any notice relating to such caveat 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 lodged.

Fourteenth Schedule.

Caveat may be withdrawn.

Caveat to have an address in Perth for service of notices.

An additional address may be given elsewhere for sending a registered letter.

107 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 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

Notice of caveat to be given.

Caveator may be summoned to show cause.

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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.

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 given to the caveator that such proprietor has applied for the registration of a transfer or other dealing or the issue of a registration abstract. 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 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 the Registrar to delay registering any dealing with the land, lease, mortgage, or charge, or issuing a registration abstract for a further period to be specified in such order, or may make such other order as may be just.

Insolvency or Bankruptcy prior to registered proprietorship to be the subject of a caveat after preliminary notice given to the official assignee or trustee.

108 IN every case in which prior to a person becoming a registered proprietor of any land, lease, mortgage, or charge under this Act an order of sequestration of his estate or an adjudication in bankruptcy shall have been or shall hereafter be made, and any instrument affecting such land, lease, mortgage, or charge is presented for registration, the Registrar shall forthwith notify to the official assignee or trustee of such estate by a letter delivered or registered (in which shall be mentioned the bankrupt's name) that application has been made for the registration of such instrument; and unless a caveat forbidding such registration shall be lodged within seven days after the service or posting of such letter, such instrument may be registered, and thereupon shall not be affected by such order of sequestration or adjudication in bankruptcy, either at law or in equity. If a caveat shall be lodged under this section the same shall be dealt with and be subject to the same provisions as if it had been a caveat lodged under the last preceding section, with this variation, that the fourteen days' notice therein mentioned need not actually be given to the caveator, but shall be deemed to have been given on the day on which the caveat was lodged.

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

109 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

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instrument purporting to transfer or otherwise deal with or affect the estate or interest in respect to which such caveat may be lodged, or issue any registration abstract.

110 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.

Compensation for lodging caveat without reasonable cause.

PART VII.—REGISTRATION ABSTRACTS.

111 THE Registrar, upon the application of any proprietor of land under the operation of this Act, shall issue to such proprietor a registration abstract in the form in the Fifteenth Schedule hereto, enabling him to transfer or otherwise deal with his estate or interest in such land at any place without the limits of Western Australia, and shall at the same time enter in the register book a memorandum recording the issue of such registration abstract, and shall endorse on the certificate of title a like memorandum; and after the issuing of such registration abstract no transfer or other dealing in any way affecting the estate or interest in respect of which such registration abstract is issued (excepting under the sections hereinbefore contained relating to a sale under a writ of *feri facias* or a decree or order of the Supreme Court and to the bankruptcy or insolvency of a proprietor) shall be entered in the register book until such abstract shall have been surrendered to the Registrar to be cancelled, or the loss, destruction, or obliteration of such abstract shall have been proved to the satisfaction of the Commissioner, or the time during which it is to continue in force shall have expired.

Registration abstract for registering dealings without the limits of Western Australia.

Fifteenth Schedule.

112 WHENEVER any transfer or other dealing is intended to be transacted under any registration abstract, the transfer or such other instrument, as the case may require, shall be attested by some one of the persons herein authorized to attest the signature to instruments signed without the limits of Western Australia, and upon a memorandum of such instrument being entered upon the registration abstract, and also upon the certificate, and authenticated by the signature of such authorized person as aforesaid, the instrument to which such memorandum refers shall be held to be registered, and such transfer or other dealing shall be as valid and binding to all intents as if the same had been entered in

Mode of procedure under registration abstract.

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the register book by the Registrar and signed by him; and the certificate of registration endorsed on the instrument of which the memorandum has been so entered and signed by such authorized person shall be received in all courts of law or equity as conclusive evidence that such instrument has been duly registered.

Procedure upon delivery of registration abstract to the registrar.

113 UPON the delivery of any registration abstract to the Registrar he shall enter in the register book, in such manner as to preserve their priorities, every transfer or other instrument signed thereunder, and shall cancel such abstract, and note the fact of such cancellation in the register book; and if the land be transferred the certificate of title shall be delivered up to the Registrar, who shall thereupon proceed as hereinbefore directed in the case of an ordinary transfer.

Procedure when registration abstract lost.

114 UPON proof at any time to the satisfaction of the Commissioner that any registration abstract has been lost or destroyed, or is so obliterated as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised then upon proof of the several matters and things that have been done thereunder, it shall be lawful for him to direct the Registrar, as circumstances may require, either to issue a new registration abstract or to make such entries in the register book, or do such acts as might have been made or done if no such loss, destruction, or obliteration had taken place.

PART VIII.—MISCELLANEOUS PROVISIONS.

Registrar may dispense with certificate, &c., in certain cases.

115 WHENEVER any transaction affecting land under this Act is proposed to be registered, and it is required by this Act that a memorandum of such transaction shall be endorsed upon the certificate of title, the Registrar, with the consent of the Commissioner, may dispense with the production of such duplicate for the purpose of making such endorsement. 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 transaction shall thereupon be as valid and effectual as if such memorandum had been entered thereon. The Registrar may, with the like consent, dispense with the production of the certificate of title required to be delivered up prior to the registration of a devisee or other person on the transmission of an estate of freehold. Provided always, that before registering such transaction or transmission the Registrar shall require proof by statutory

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declaration that the certificate is not deposited or held as a security or lien, and shall give at least fourteen days' notice of his intention to register such transaction in at least one newspaper published in the city of Perth or circulating in the neighbourhood of the land.

But notice to be given before registering any dealing.

116 IN the event of the 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, 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 it was issued; and such special certificate shall be available for all purposes and uses for which the certificate so lost or destroyed or obliterated would have been available, and shall be equally valid therewith to all intents. 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.

Provision in case of lost certificate.

117 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

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

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

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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.

Party appearing may be examined on oath.

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

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

118 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 it 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 for any period not exceeding six months, unless such certificate or instrument shall be sooner delivered up; and in such 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 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 certificate of title or instrument as aforesaid so refused or neglected to be delivered up as aforesaid, shall be deemed for all purposes to be null and void so far as the same shall be inconsistent with the certificate or instrument so issued in lieu thereof.

Proprietor subdividing to deposit map if required.

119 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 or diagram of such land, if so required. Such map or diagram shall exhibit, distinctly delineated, all roads, streets, passages, thoroughfares, squares, or reserves appropriated or set apart for the use of the purchasers, 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 be declared to be accurate by a statutory declaration of a licensed surveyor. No person shall be permitted to practise as a surveyor under this Act unless specially licensed for that purpose by the Commissioner of Crown Lands.

Proprietor may summon registrar to show cause if dissatisfied.

120 IF, upon the application of any owner or proprietor to have land brought under the operation of this Act or to have any transaction or transmission registered or recorded, or to have any

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certificate of title, registration abstract, 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, the Commissioner 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 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 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 six clear days at least before the day appointed for hearing the complaint of such owner or proprietor. Upon such hearing the Commissioner 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 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 probable ground for such refusal or direction as aforesaid.

Expense to be borne by applicant.

121 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.

122 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 *bonâ fide* done or admitted to be done in the exercise or supposed exercise of the powers of this Act.

Officers not to be liable for acts done *bonâ fide*.

123 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 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.

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Fees.

124 IT shall be lawful for the Registrar to demand such fees as shall be appointed by the Governor, with the advice aforesaid, from time to time, not in any case exceeding the several fees specified in the last Schedule hereto.

Last Schedule.

Searches and certified copies.

125 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. 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.

Registrar to pay moneys to Colonial Treasurer and to render accounts.

126 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 public revenue.

Assurance fund to be invested.

127 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 Colonial 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 or otherwise as the Governor may direct, to constitute an assurance fund for the purposes hereinafter mentioned.

Registered proprietor protected against ejectment except in certain cases.

128 NO action of ejectment or other action, suit, or proceeding 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—

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- (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 a lessor as against a lessee in default;
- (IV.) The case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee *bonâ 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 *bonâ fide* for value;
- (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 certificate of title or lease shall be held in every court of law or equity to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding.

129 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,

Compensation of party deprived of land.

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such person shall, upon a transfer of such land *bonâ fide* for valuable consideration, cease to be liable for the payment of any damage beyond the value of the consideration actually received, which damage 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 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.

130 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 descriptions of the boundaries or of the parcels of any land, or otherwise howsoever.

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

131 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.

Notice of action to be served.

132 IN any case in which an action for recovery of damages is permitted to be brought against the Registrar as nominal defendant,

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notice in writing of such action and of the cause thereof, shall be served upon such nominal defendant one month at least before the commencement of such action; and if in any such action judgment be given in favor of the nominal defendant, 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.

133 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 general revenue, and the amount so advanced shall be repaid from the assurance fund as the same may thereafter accrue.

Payment of amount recovered.

134 NO action for recovery of damages sustained through deprivation of land, or of any estate or interest in land, shall lie or be 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 nonsuited 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 actual notice 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.

Limitation of action.

Persons having notice neglecting to lodge caveat barred.

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Moneys paid out of assurance fund may be recovered.

135 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 or suit 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 of Western Australia certifying the fact of such payment out of the assurance fund and delivered to the 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 of Western Australia 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.

Assurance fund not liable in certain cases.

136 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 such loss or deprivation has been occasioned by any land being included in the same certificate of title with other land through misdescription of boundaries or parcels of any land, unless in the case last aforesaid it shall be proved that the person liable for compensation and damages is dead, or has absconded, or has been adjudged bankrupt, or the sheriff shall certify that such person is unable to pay the full amount awarded in any action for the recovery of such compensation.

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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.

137 IN all actions and suits brought under this Act the same rules of procedure and practice shall apply, and there shall be the same rights of appeal 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 Supreme Court shall have power from time to time to make rules and orders for regulating proceedings in the Supreme Court under this Act, and from time to time to rescind, alter or add to such rules and orders.

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

Supreme Court may make rules, &c.

138 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 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 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.

Certain fraudulent acts to be deemed misdemeanors.

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Forgery to be a felony.

139 IF any person is guilty of the following offences, or any of them; that is to say:

- (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 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 an impression or part of the impression of the seal of the office has been forged, knowing the same to have been forged, or any document the signature of which has been forged, knowing the same to have been forged;

such person shall be guilty of felony.

Punishment of felony.

140 ANY person convicted of felony under this Act shall be liable to imprisonment for any term not exceeding three years, and to be kept to hard labor for the whole or any part of the period aforesaid, or be kept in penal servitude for any term not exceeding fourteen or less than three years.

Conviction not to affect civil remedy.

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

Obligation to make discovery not excluded.

142 NOTHING in this Act contained shall entitle any person to refuse to make a complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court of law or equity or bankruptcy; but no answer to any such bill, question, or interrogatory shall be admissible in evidence against such person in any criminal proceeding.

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

144 NOTHING contained in this Act shall enable any lessee of land under any grant to transfer or otherwise deal with such land contrary to the Regulations for the sale, letting, disposal, and occupation of Waste Lands of the Crown in Western Australia.

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

FRED. A. WELD, Governor.

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SCHEDULES.

First Schedule.

WESTERN AUSTRALIA.

Application to bring Land under the operation of "The Transfer of Land Act."

To the Registrar of Titles.

Section 17.

I (*insert name and addition*) hereby apply to have the land hereinafter described brought under the operation of "*The Transfer of Land Act.*" 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 [*insert, if applicable, part of* , or otherwise, according to the Crown grant or certificate of title. If the land be part only of that granted 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 affecting the said land, or that any other person hath any estate or interest therein at law or in equity, in possession, remainder, reversion, contingency, or expectancy [*If there be any add other than as follows, and set the same forth*].

5. That the said land is occupied [*If unoccupied prefix un to occupied; if occupied, add by whom, and state the name and addition of the occupant, and the nature of his occupancy*].

6. That the names and addresses, so far as known to me, of the occupants of all lands contiguous to the said land are as follows:—

7. That the names and addresses, so far as known to me, of the owners of all lands contiguous to the said land are as follows:—

[*If the certificate of title is not to issue to the applicant add*] And I direct the certificate of title to be issued in the name of (*insert name and addition*).

Dated this day of One thousand eight hundred and

Made and subscribed at
in the presence of

}

[*The applicant, if within the colony, to sign before the registrar or a notary public or justice of the peace; if abroad, before a notary public, consul, or a justice of the peace.*]

SCHEDULE OF DOCUMENTS REFERRED TO.

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Second Schedule.



Register Book.

Vol. Fol.

WESTERN AUSTRALIA.

Certificate of Title under "The Transfer of Land Act."

(Insert name and addition) is now the proprietor [here state whether sole or otherwise] 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 _____] subject to the encumbrances notified hereunder, in ALL THAT _____ containing _____ (insert area) or thereabouts, being [insert, if applicable, part of _____ or otherwise according to the Crown grant or certificate of title. If the grant was for any public purpose shortly mention it].

Sections 21 and 34.

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

Commissioner of Land Titles.

Sent of
Office.

ENCUMBRANCES REFERRED TO.

Third Schedule.

WESTERN AUSTRALIA.

Caveat forbidding Land to be brought under "The Transfer of Land Act."

To the Registrar of Titles.

TAKE NOTICE that I (insert name and addition) claim (particularize the estate or interest claimed) in the land described as (copy description from the advertisement) in the advertisement relating to the application of (state applicant's name and addition), and I forbid the bringing of such land under the operation of "The Transfer of Land Act." I appoint _____ as the place at which notices and proceedings relating hereto may be served.

Section 22.

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

Signed in the presence of _____

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Fourth Schedule.

WESTERN AUSTRALIA.

Transfer of Land.

Section 57.

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, chains, or 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.

Section 59.

I (*insert name and addition*) being 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, 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.

38° VICTORIÆ, No. 13.

Transfer of Land.

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 the 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,
[*or 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 }

Fifth Schedule.

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

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 Section 63.
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 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 on the said map.

38° VICTORIÆ, No. 13.

Transfer of Land.

Sixth Schedule.

WESTERN AUSTRALIA.

Lease.

Section 65.

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 . [*If the land leased be part only of the land comprised in the existing certificate, set forth in links, chains, or 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*," unless hereby negatived or modified, and also to the covenants and conditions hereinafter contained [*here set forth any special ones*].

The following covenants by the lessee are to be construed according to the 68th section of "*The Transfer of Land Act*."

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 publican, and conduct the same in an orderly manner.

The lessee will apply for 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.

38° VICTORIÆ, No. 13.

Transfer of Land.

Seventh Schedule.

Column One.

Column Two.

Section 68.

- | | |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 lessor or his transferees first had and obtained. |
| 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 tree 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 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 " <i>The Transfer of Land Act</i> ," 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. |

38° VICTORIÆ, No. 13.

Transfer of Land.

<i>Column One.</i>	<i>Column Two.</i>
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 of the adjoining lands and properties.
10. The lessee will carry on the business of a 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 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 endeavour 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.

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Transfer of Land.

Column One.

12. The lessee will facilitate the transfer of license.

Column Two.

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.

Eighth Schedule.

WESTERN AUSTRALIA.

Mortgage.

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 Section 73.

FIRSTLY, to pay to the said mortgagee, or his transferee, 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 [*insert, if applicable, part of*

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

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.

38° VICTORIÆ, No. 13.

Transfer of Land.

Ninth Schedule.

WESTERN AUSTRALIA.

Charge.

Section 73.

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 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.*"

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.

Tenth Schedule.

Column One.

Column Two.

Section §2.

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 monies 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.

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Transfer of Land.

Eleventh Schedule.

WESTERN AUSTRALIA.

Form of Transfer of Land under Writ of Fieri Facias.

Section 96.

I (*insert name*) as the Sheriff of Western Australia, in pursuance of a writ of *feri 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 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 Writ of Fieri Facias.

I (*insert name*) as the Sheriff of Western Australia, in pursuance of a writ of *feri 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 _____
Signed by the said _____ in the }
in the presence of _____ }
Signed by the said E.F. in the }
presence of _____ }

ENCUMBRANCES REFERRED TO.

38° VICTORIÆ, No. 13.

Transfer of Land.

WESTERN AUSTRALIA.

Form of Transfer of Land under Decree or Order of the 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 existing certificate, set forth, in links or 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 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.

38° VICTORIÆ, No. 13.

Transfer of Land.

Twelfth Schedule.

Form of Power of Attorney.

I, A.B. (*insert addition*), do hereby appoint C.D. (*insert addition*) my attorney Section 103.
to sell to any person all or any lands, leases, mortgages, or charges, whether
now belonging to me or which shall hereafter belong to me under or by virtue of
“*The Transfer of Land Act*,” 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
recovering all sums of money that are now or may become due or owing to me
in respect of the premises, and for enforcing or varying 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.

Dated this day of One thousand eight hundred and

Signed by the said A.B. in the }
presence of }

Thirteenth Schedule.

Certificate of Registrar, &c., taking Declaration of Attesting Witness.

Appeared before me at , the day of , One Section 105.
thousand eight hundred and , C.D., the attesting witness to this
instrument, 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.

Fourteenth

38° VICTORIÆ, No. 13.

Transfer of Land.

Fourteenth Schedule.

WESTERN AUSTRALIA.

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

Section 111. 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 _____

Fifteenth Schedule.

WESTERN AUSTRALIA.

Registration Abstract.

(*Copy certificate of title.*)

Section 117. This registration abstract is issued under the provisions of "*The Transfer of Land Act*" for the purpose of enabling the proprietor above named to transfer or otherwise deal with the above-described land at any place without the limits of the said Colony, and will continue in force from the date hereof until the _____ day of _____ One thousand eight hundred and _____, or until the same be surrendered to me for cancellation, or the loss, destruction, or obliteration hereof proved to the satisfaction of the Commissioner of Titles.

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

Registrar of Titles.

Seal of
Office.

Sixteenth Schedule.

Summons.

In the matter of "*The Transfer of Land Act.*"

Section 106.

A.B. (*insert addition*) is hereby summoned to appear before me, at the Office of Titles, _____ 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 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 any wise relating to the premises.

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

Commissioner of Titles.

38° VICTORIÆ, No. 13.

Transfer of Land.

Seventeenth and Last Schedule.

On making application to bring land under the operation of the Act, exclusive of advertisements:—

£ s. d. Section 124.

When the applicant is the original grantee, and no transaction affecting the land has been registered	0	5	0
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

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 registering a transfer, or a lease, mortgage, or charge, or transfer thereof, 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 grant or certificate, for each memorandum after the first	0	2	0
For registering proprietor of any freehold estate or interest on a transmission	1	0	0
For every registration abstract	1	0	0
For cancelling registration abstract	0	5	0
For every caveat	0	10	0
For withdrawal of caveat	0	5	0
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

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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 taking an acknowledgment by a married woman	0	5	0
For order dispensing with production of any duplicate grant, certificate, or instrument	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 taking affidavit or statutory declaration	0	1	0
For commission to a perpetual commissioner to take acknowledgments	1	0	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 120	0	10	0
For entry of an executor or administrator, 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