Grants and Leases to Deceased Persons. 48 Vic. No. 9, 1884.

1. In any case in which a person who is entitled, or if he had longer lived would have become entitled, to have a Deed of Grant or Lease of Crown Lands issued to him, dies before such Deed of Grant or Lease is actually issued, or before his right to have the Deed of Grant or Lease issued has accrued, the Governor in Council may nevertheless (and in the latter case upon the happening of the event on which the right to have the Deed of Grant or Lease so issued accrues) issue a Deed of Grant or Lease of the land to and in the name of such deceased person as if he were still alive.

Every Deed of Grant and Lease so issued shall be as valid as if the person in whose name it is issued had been living at the time of the issue thereof, and shall have the same effect, as between the several persons entitled to the land comprised therein, as if the deceased person had died immediately after the issue thereof.

2. Any Deed of Grant or Lease heretofore issued which would have been valid if this Act had been in force at the time of such issue shall be deemed to have been issued under the authority of this Act.

3. This Act may be cited as "The Grants and Leases to Deceased Persons Act of 1884."

TRANSFER AND ENCUMBRANCE.*

An Act to simplify the Laws relating to the Transfer and Encumbrance of Freehold and other Interests in Land.

[Assented to 7th August, 1861.]

WHEREAS it is expedient to amend the Laws relating to the transfer and encumbrance of freehold and other interests in land in the Colony of Queensland Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows

1. From and after the commencement of this Act all Laws Statutes Acts Ordinances Rules Regulations and Practice whatsoever relating to freehold and other interests in land so far as they may be inconsistent with the provisions of this Act and so far as regards their application to Land under the provisions of this Act or the bringing of Land under the provisions of this Act shall be and the same are hereby repealed

2. This Act may be cited for all purposes as the "Real Property Act of 1861"

3. In the construction and for the purposes of this Act and in all instruments purporting to be made or executed thereunder (if not inconsistent with the context and subject matter) the following terms shall have the respective meanings hereinafter assigned to them that is to say

"Land" shall extend to and include messuages tenements and hereditaments corporeal and incorporeal of every kind and description whatever may be the estate or interest therein together with all paths passages ways waters water courses liberties privileges easements plantations gardens mines minerals and quarries and all trees and timber thereon or thereunder lying or being unless the same are specially excepted
"Grant" shall mean the original grant of any land of the Crown by the Governor for the time being.

"Proprietor" shall mean any person seized or possessed of any freehold or other estate or interest in land at law or in equity in possession in futurity or expectancy.

"Transfer" shall mean the passing of any estate or interest in land under this Act whether for valuable consideration or otherwise.

"Memorandum of transfer" shall mean any instrument in form D (Schedule D) of the Schedule hereto or in such other form as under the provisions of this Act may for the like purpose be authorized executed by any person with a view of transferring any estate or interest in land.

"Transmission" shall mean the acquisition of title to or interest in land consequent on the death, insolvency, or marriage of a proprietor.

"Certificate of title" shall mean any instrument evidencing the seisin of the fee-simple or other estate of freehold in any land executed by the Registrar-General in form C of the Schedule hereto or such other form as under the provisions of this Act may for the like purpose be authorized.

"Mortgage" shall mean any charge on land created merely for securing a loan.

"Mortgagor" shall mean the borrower of money on the security of any estate or interest in land.

"Mortgagee" shall mean the lender of money on the security of any estate or interest in land.

"Bill of mortgage" shall mean any instrument in form F of the Schedule hereto or in such form as under the provisions of this Act may for the like purpose be authorized executed by the intending mortgagor with a view to creating any such mortgage as aforesaid.

"Encumbrance" shall mean any charge on land created for the purpose of securing the payment of an annuity or sum of money other than a loan.

"Encumbrancer" shall mean any person not being a mortgagor who shall have charged any estate or interest in land with any annuity or sum of money other than a loan.

"Encumbranee" shall mean any person not being a mortgagee for whose benefit any estate or interest in land shall have been charged with any annuity or sum of money other than a loan.

"Bill of encumbrance" shall mean any instrument in form G of (Schedule G) the Schedule hereto or in such other form as under the provisions of this Act may for the like purpose be authorized executed by any person having estate or interest in land with the view of creating any such encumbrance as aforesaid.

"Registration abstract" shall mean any instrument under the hand and seal of the Registrar-General executed in the form M of the Schedule hereto or in such other form as under the provisions of this Act may for the like purpose be authorised available in lieu of the register book for the purpose of enabling a person to mortgage or to sell in places without the limits of the said colony land whereof he may be seized as proprietor.
"Lunatic" shall mean any person who shall have been found to be a lunatic upon inquiry by the Supreme Court, or by any Judge thereof or upon a Commission of Inquiry issuing out of the Supreme Court in the nature of a writ de lunatico inquiriendo.

"Person of unsound mind" shall mean any person not an infant who not having been found to be a lunatic shall be certified by two duly qualified medical practitioners to be incapable from infirmity of mind to manage his own affairs.

"Consular officer" 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.

"Instrument" shall mean and include any land grant certificate of title conveyance assurance deed map plan will probate or exemplification of will or any other document in writing relating to the transfer or other dealing with land.

The describing any person as proprietor transferor transferee mortgagor mortgagee encumbrancer encumbrancer lessee or lessee or as trustee or as seized of or having any estate or interest in any land shall be deemed to include the heirs executors administrators and assigns of such person.

And generally unless the contrary shall appear from the context every word importing the singular number only shall extend to several persons or things and every word importing the plural number shall apply to one person or thing and every word importing the masculine gender only shall extend to a female and shall include a body corporate and whenever a form in the schedule hereto is directed to be used such direction shall apply equally to any form to the like effect signed by the Registrar-General or which for the same purpose may be authorised under the provisions of this Act and any variation from such forms not being a variation in matter or substance shall not affect their validity or regularity but they may be used with such alterations as the character of the parties or the circumstances of the case may render necessary.

4. The department of the Registrar-General shall be the department authorized to carry into execution the provisions of this Act and of any Acts to amend or extend the provisions of this Act and the persons holding the office of Registrar-General at the time of this Act coming into operation shall perform all the duties of Registrar-General under this Act.

And whenever by any law for the time being in force in the said Colony anything is appointed to be done by the Registrar-General the same may be lawfully done by any Deputy Registrar-General.

5. Upon the death resignation or removal from office of the Registrar-General or of any Deputy Registrar-General it shall be lawful for the Governor with the advice of the Executive Council by Commission under his hand and the seal of the Colony to appoint a fit and proper person to be Registrar-General or Deputy Registrar-General as the case may be and every such person to remove and to appoint another in his stead.

6. The oath following shall be taken before a Judge of the Supreme Court by the present Registrar-General and Deputy Registrar-General and by every Registrar-General and by every Deputy Registrar-General...
2152

REAL PROPERTY.


(2) He may summon any such proprietor mortgagee or other person to appear and give evidence respecting such land or the instruments affecting the title thereto and if upon requisition in writing made by the Registrar-General such proprietor mortgagee or other person refuses or neglects to produce any such instrument or to allow the same to be inspected or refuses or neglects to give any evidence which he is hereinbefore required to give or knowingly misleads or deceives any person hereinbefore authorized to demand any such evidence he shall for such offence incur a penalty not exceeding One Hundred Pounds and the Registrar-General if the instrument or information so withheld appears to him material shall not be bound to proceed with the bringing of such land under the provisions of this Act or with the registration of such mortgage or sale or with the issuing of such powers of mortgage or sale as the case may be.

(3) He may administer oaths or in lieu of administering an oath may require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

(4) He may upon such evidence as shall appear to him and the Master of Titles sufficient in that behalf correct errors in certificates of title or in the register book or in entries made therein respectively and may supply entries omitted to be made under the provisions of this Act. Provided always that in the correction of any such error he shall not erase or render illegible the original words and shall affix the date on which such correction was made or entry supplied together with his initials and every certificate of title so corrected and every entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted except as regards any assurance or instrument which may have been entered in the register book previously to the actual time of correcting such error or supplying such omitted entry.

(5) He may enter a caveat on behalf of the Crown or on behalf of any person who may be absent from the Colony or who may be under the disability of infancy coverture lunacy or unsoundness of mind to prohibit the transfer or dealing with any land belonging to or supposed to belong to the Crown or any such absentee or person under disability as aforesaid or on behalf of any person whose rights may appear to him likely to be endangered or compromised by any misdescription of land or of its boundaries of which he may be cognizant.

12. It shall be lawful for the Governor with the advice of the Executive Council by Commission under his hand and the seal of the Colony to appoint a person who shall be styled "The Master of Titles" and who together with the Registrar-General shall investigate and deal with applications for the bringing of land under the provisions of this Act.
13. The Master of Titles shall be a Barrister-at-Law or an Attorney of the Supreme Court and he shall not directly or indirectly be concerned in any case relating to the title to freehold land

14. It shall be lawful for the Registrar-General and the Master of Titles in any case under the provisions of this Act by order of a Judge to state any question or questions of law in a special case for the opinion of the Supreme Court

15. All lands in the Colony remaining unalienated from the Crown on the day appointed for this Act to come into operation whether waste lands or lands set apart as roads or as reserves for public purposes shall when alienated in fee be subject to the provisions of this Act

16. All Land alienated from the Crown in fee prior to the day appointed for this Act to come into operation whether such land shall constitute the whole or only a part of the land included in any grant may be brought under the provisions of this Act in the following manner that is to say:

The Registrar-General shall receive applications in form A of the Schedule hereto or in words to the like effect for bringing land under the provisions of this Act if made by any of the following persons that is to say:

By any person claiming to be the person in whom the fee-simple of the land is vested in possession. Provided that wherever trustees seised in fee simple have no express power to sell the land which they may seek to bring under the operation of this Act the person claiming to be beneficially entitled for the first estate of freehold in the said land shall consent in such application

By any person claiming to be entitled beneficially to land for an estate of freehold in possession. Provided that where the applicant is a married woman her husband shall consent in such application

By the father if he shall be living or if the father shall be dead by the mother or other guardian of any minor claiming to be entitled to land for an estate of freehold in possession in the name of such minor

By the committee or guardian of any lunatic or person of unsound mind claiming to be entitled to land for an estate of freehold in possession in the name of such lunatic or person of unsound mind

Provided always that the Registrar-General shall not receive any such application from any person claiming to be entitled to an undivided share of any land unless the persons who shall appear to be entitled to the other undivided shares of the said land shall join in such application with a view to bringing the entirety of the said land under the provisions of this Act nor shall the Registrar-General receive any application from the mortgagee of any land subject to mortgage to bring such land under the provisions of this Act unless the mortgagee shall consent in such application nor from the mortgagee of any land except in the exercise of a power of sale contained in the mortgage deed nor from the proprietor of any land in respect to which any judgment may have been entered upon unless the judgment creditor shall consent to such application.

17. Every such applicant shall in his application state the nature of his estate or interest in such land and of every estate or interest held therein by any other person whether at law or in equity in possession or in futurity or expectancy and whether the land be subject to dower and
whether it be occupied or unoccupied and if occupied the name and description of the occupant and the nature of his occupancy and whether such occupancy be adverse or otherwise and shall state the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect to which application is made so far as known to him and shall make and subscribe a declaration of the truth of such statement and shall deposit with the Registrar-General all instruments in his possession or under his control constituting or in any way affecting his title to such land and also if required a map or diagram of all lands included in such application and an abstract of title in which he shall set forth and describe every instrument constituting or in any way affecting his title to such land together with the names and so far as shall be within his knowledge the addresses of all persons if any seized or possessed of any estate or interest in such land at law or in equity in possession or in futurity or expectancy and shall make and subscribe a declaration of the truth of such abstract and that he has deposited with the Registrar-General all deeds or other instruments in his possession or under his control constituting or in any way affecting his title to such land or if such applicant be the sole and only person having estate or interest in such land then he shall make and subscribe a declaration to that effect.

18. Upon the receipt of any such application the Registrar-General shall refer the same to the Master of Titles for his consideration and if it shall appear to him that the applicant is the original grantee from the Crown of the land in respect to which application is made and that no sale mortgage or other encumbrance or transaction affecting the title to such land has at any time been registered then and in such case it shall be lawful for the Registrar-General to bring such land under the provisions of this Act forthwith by issuing to the applicant or to such person as he may by writing under his hand direct or appoint a Certificate of Title for the same as hereinafter described.

19.* If it shall appear to the satisfaction of the said Master of Titles that the land in respect to which application is made is held by the applicant for the estate or interest described therein free from mortgage encumbrance or other beneficial interest affecting the title thereto or if any such mortgage encumbrance or interest remains unsatisfied that the parties interested therein are also parties to such application then and in any such case the Registrar-General shall cause notice of such application to be published once in the "Queensland Government Gazette" and three times in at least one newspaper published in the Colony and shall further limit and appoint a time not less than one month nor more than twelve months from the date of such advertisement in the "Government Gazette" upon or after the expiration of which the Registrar-General shall unless he shall in the interval have received a caveat forbidding him to do proceed to bring such land under the provisions of this Act.

20.* If it shall appear to the satisfaction of the said Master of Titles that any parties interested in any unsatisfied mortgage or encumbrance affecting the title to such land or beneficially interested therein otherwise than as lessees are not parties to such application or that the evidence of title set forth by such applicant is imperfect or incomplete it shall be lawful for the Master of Titles to reject such application altogether or to direct the Registrar-General to cause notice of such application to be published in the "Queensland Government Gazette" and in the "London Gazette" and in the official Gazettes of each of the Colonies.

* As to supplementing defective applications, see the Act of 1877 (41 Vic. No. 10, s. 10), next Act printed.
of New South Wales, Tasmania, New Zealand, Victoria, South Australia, and Western Australia, or in any one or more of such Gazettes and the said Registrar-General shall specify the number of times and at what intervals such advertisements shall be published in each or any of such Gazettes and shall also limit and appoint a time not less than two months nor more than three years from the date of the first of such advertisements in the Queensland Government Gazette upon or after the expiration of which it shall be lawful for the Registrar-General to bring such land under the provisions of this Act unless he shall in the interval have received a caveat forbidding him so to do.

21. It shall be lawful for the Registrar-General, of his own accord or at the request of the applicant to direct that notice of any application to bring land under the provisions of this Act shall at the expense of the applicant be given by personal service to any person named in such direction and the Registrar-General shall preserve in his office the affidavit or other evidence of such personal service and the proof of such personal service or that any person had received notice of such application through the post or by advertisement as herein directed or was cognizant of such application having been made shall operate to bar any action of ejectment or for the recovery of compensation from the person benefitted by the bringing of such land under the provisions of this Act or from the Assurance Fund at the suit of the person so personally served with notice or receiving notice through the post or otherwise cognizant of such application or at the suit of any person claiming through or from him unless it shall be shown to the satisfaction of the Court before whom such action shall be tried that such notice was not received or such cognizance acquired in time to enable such person to lodge a caveat forbidding the bringing of such land under the provisions of this Act as hereinafter provided.

22. The Registrar-General shall under such direction as aforesaid or under any order of the Supreme Court cause notice to be published in such manner as by such direction or order may be prescribed that application has been made for bringing the land therein referred to under the provisions of this Act and shall also cause a copy of such notice and of the map or diagram included in such application to be posted in a conspicuous place in his office and in such other places as he may deem necessary and shall forward through the Post Office copies of such notice and of such map or diagram addressed to all persons if any declared by the applicant to be in occupation of such land or to be occupants or proprietors of land contiguous thereto and also to such persons as may upon investigation of the title appear to have previously held estate or interest in the fee of such land so far as his knowledge of the addresses of such persons may enable him or shall cause the like notice to be served personally upon any person that he may think fit or that the applicant may request and unless within the time limited in such direction or order he shall have received a caveat as hereinafter described forbidding him so to do shall bring such land under the provisions of this Act by issuing to the applicant or to such person as he may by writing under his hand request or direct a certificate of title for the same as hereinafter described.

23. It shall be lawful for any person having or claiming an interest in any land so advertised or for the attorney of any such person within the time that may be limited by such direction or order as aforesaid to lodge with the Registrar-General a caveat in form B of the schedule hereto (Schedule B) forbidding the bringing of such land under the provisions of this Act and every such caveat shall particularise the estate interest lien or charge.
REAL PROPERTY.


claimed by the person lodging the same and the person lodging such caveat shall if required by the Registrar-General deliver a full and complete abstract of his title which shall contain the same matters and be subject to the same regulations as are hereinbefore prescribed for the case of an abstract deposited by a person applying to have land brought under the provisions of this Act.

24. The Registrar-General upon receipt of any such caveat within the time limited as aforesaid shall notify the same to the applicant and shall suspend further action in the matter and the lands in respect of which such caveat may have been lodged shall not be brought under the provisions of this Act until such caveat shall have been withdrawn or shall have lapsed from any of the causes hereinafter provided or until a decision shall have been obtained from the Court having jurisdiction in the matter.

25. After the expiration of three calendar months from the receipt thereof every such caveat shall be deemed to have lapsed unless the person by whom or on whose behalf the same was lodged shall within that time have taken proceedings in any Court of competent jurisdiction to establish his title to the estate interest lien or charge therein specified and shall have given written notice thereof to the Registrar-General or shall have obtained from the Supreme Court an order prohibiting the Registrar-General from bringing the land therein referred to under the provisions of this Act.

26. The Registrar-General shall not notice any caveat prohibiting the bringing of land under the provisions of this Act if the person lodging the same claims only an estate or interest to take effect after the determination or in defeasance of an estate tail or prohibits the bringing of such land under the provisions of this Act on the plea only of the absence of legal evidence that a former proprietor was in being and capable at the time when any power of attorney executed by such proprietor was exercised by his attorney in the selling or purchasing or releasing of such land.

27. If upon the application of any proprietor to have land of which he is seized brought under the provisions of this Act the Registrar-General shall refuse so to do or if such applicant shall be dissatisfied with the decision upon his application given by the Master of Titles it shall be lawful for him to require the Registrar-General to set forth in writing under his hand the grounds of his refusal or the grounds upon which such decision was given and such applicant may at his own costs summon the Registrar-General to appear before the Supreme Court to substantiate and uphold the grounds of his refusal or of such decision aforesaid and the summons in every such case shall be issued under the hand of a Judge of the said Court at the request of such applicant or his solicitor and shall be served upon the Registrar-General six clear days at least before the day appointed for the hearing and every such case shall be heard by the said Court upon motion and if any question of fact shall arise upon the hearing the said Court shall direct an issue to be tried to decide such fact and it shall thereupon be lawful for the said Court to prohibit the bringing of such land under the provisions of this Act or to order that such land may be brought under the same after the expiration of such period of time as the said Court shall think fit not exceeding the period limited by any law for the time being in force in the said Colony as the period within which actions of ejectment may be brought and the Registrar-General shall obey such order.
28. Upon any such motion as aforesaid it shall be lawful for the Registrar-General or for any person interested in any land touching or concerning the title to which such motion shall be made by himself or his counsel to argue the same before the said Court and all expenses attending upon any of the matters or proceedings aforesaid shall be borne and paid by the person requiring such land to be brought under the provisions of this Act.

29. It shall be lawful for any applicant to withdraw his application at any time prior to the issuing of a certificate of title and the Registrar-General shall in such case upon request in writing signed by such applicant return to him the abstract and all instruments of title deposited by him for the purpose of supporting his application.

30. Upon issuing a certificate of title bringing land under the provisions of this Act the Registrar-General shall stamp as cancelled and retain in his office every instrument of title deposited by the proprietor when making his application. Provided that if any such instrument shall relate to or include any property whether personal or real other than the land included in such certificate of title then the Registrar-General shall endorse thereon a memorandum cancelling the same in so far only as relates to the land included in such certificate of title and shall return such instrument to the proprietor otherwise he shall retain the same in his office. Provided also that the powers or authorities of the husband of any married woman or of the guardian or committee of any minor lunatic or person of unsound mind shall in no wise be altered or abridged in consequence of the issuing of any certificate of title in the name of such married woman, minor, lunatic or person of unsound mind.

31. In any case any person applying to have land brought under the provisions of this Act or any person to whom any such applicant may have directed a certificate of title to be issued shall die in the interval between the date of the application and the date appointed for the certificate of title to issue the certificate of title shall be issued in the name of such applicant or in the name of the person to whom he may have directed it to be issued as the case may require and the land shall devolve in the same manner as if the certificate of title had been issued prior to the death of such applicant or person so named by him.

32. The Registrar-General shall keep a book to be called the "Register Book," and shall enter therein the duplicates of all grants and of all certificates of title and shall record thereon the particulars of all instruments affecting the land included under each such grant or certificate of title distinct and apart.

33. Every certificate of title shall be in duplicate and in the form of the Schedule hereto and the Registrar-General shall note thereon in such manner as to preserve their priority the particulars of all unsatisfied mortgages or other encumbrances and of every lease, rent charge or term of years or outstanding estate or interest whatsoever affecting such land which may have been registered or of which he may have notice and if such certificate is issued to a minor or to a person otherwise under disabilities he shall state the age of such minor or the nature of the disability so far as known to him and shall cause one of such certificates of title to be bound up in the register book and shall deliver the other to the person entitled to the land described in such certificate. The power to withdraw an application is restricted when a third party is interested; see the Act of 1877 (41 Vic. No. 19, s. 9), next Act printed.
and every certificate of title duly authenticated under the hand and
seal of the Registrar-General shall be received in all Courts of Justice as
evidence of the particulars therein set forth and of their being entered
in the register book and shall be conclusive evidence that the person
named in such certificate of title or in any entry thereon as seised of
or as taking estate or interest in the land therein described is seised or
possessed of such land for the estate or interest therein specified and that
the property comprised in such certificate of title has been duly brought
under the provisions of this Act

and no certificate of title shall be impeached or defeasible on the
ground of want of notice or of insufficient notice of the application to
bring the land therein described under the provisions of this Act or on
account of any error omission or informality in such application or in the
proceedings pursuant thereto by the Master of Titles or by the Registrar-
General

34. Every land grant and certificate of title shall be deemed and
taken to be registered under the provisions and for the purposes of this
Act so soon as the same shall have been marked by the Registrar-General
with the folio and volume appertaining to it in the register book and every
memorandum of transfer or other instrument purporting to transfer or
in any way to affect land under the provisions of this Act shall be
deoemed to be so registered so soon as a memorial thereof shall have been
entered in the register book upon the folium constituted by the existing
grant or certificate of title of such land and every such memorial shall
state the day and hour of the production for the purpose of registration
of the instrument to which it relates and shall contain such other
particulars as the Registrar-General may direct and shall be signed by
the Registrar-General

and the person named in any grant certificate of title or other
instrument so registered as seised of or taking any estate or interest
shall be deemed to be the registered proprietor thereof

35. So soon as a memorial thereof shall have been entered in the
register book every instrument drawn in any of the several forms
provided in the Schedule hereto or in any form which for the same pur-
pose may be authorised as herein provided shall for the purposes of this
Act be deemed and taken to be embodied in the register book as part and
parcell thereof and any such instrument when so constructively embodied
shall create and impose the like obligations on the persons signing the
same and for the like period of time as if the same had been sealed and
delivered and every such instrument presented for registration shall be
in duplicate* and the Registrar-General upon registration thereof shall file
one original in his office and shall deliver the other to the person entitled
thereto

36. Whenever a certificate of title shall have been issued to a pro-
prietor in respect of a life estate or any other estateless than an estate in fee-
simple the person entitled as remainderman may apply to be entered in the
Register-book as a remainderman and the Registrar-General shall there-
upon cause the title of such applicant to the estate or interest claimed by
him to be investigated and shall take the direction of the Master of
Titles thereon and shall cause advertisements to be published in manner
hereinbefore directed for the case of bringing land under the provisions
of this Act and shall proceed to enter the name of such applicant on the

* It is not necessary to execute transfers of an estate in fee-simple in duplicate; see the Act of
1877 (21 Vic. No. 19, s. 16), next Act printed.
register-book as remainderman of the estate or interest to which the shall appear to be entitled unless a caveat forbidding such entry shall be received by him within the time for that purpose limited in such direction or by any order of the Supreme Court

and the Registrar-General shall endorse upon the certificate of title of such land if produced to him for that purpose a memorandum setting forth that such applicant had been entered in the register-book as such remainderman with the day and hour in which such entry had been made

and the Registrar-General shall in every such case receive the same fees and payments excepting the sum payable to the assurance fund as are required to be paid by persons applying to bring land under the provisions of this Act

37. Every remainderman and every person deriving through a remainderman registered as such in the register book shall thereafter transfer mortgage encumber or otherwise deal with the estate or interest in respect to which he is so registered in manner and by the use of the instruments and forms by this Act prescribed and not otherwise

and the Registrar-General shall enter in the register book the particulars of every memorandum of transfer bill of mortgage bill of encumbrance or other instrument duly executed by a remainderman or person deriving through a remainderman in manner hereinafter directed for the case of transfers mortgages encumbrances and other dealings with land under the provisions of this Act

38. Upon proof to the satisfaction of the Registrar-General that the life estate or other less estate than an estate in fee-simple in respect of which a certificate of title shall have been issued is determined or has become vested in the person entitled to the land for the estate next in remainder or that the person to whom such certificate has been issued or a purchaser is absolutely entitled to the said land for a present estate in fee-simple in possession it shall be lawful for the Registrar-General to cancel the existing certificate of title of such land and in lieu thereof to issue such new certificate of title as the nature of the case may require and the Registrar-General shall in every such case enter in the register book and on the certificate of title when delivered up the particulars by this Act prescribed to be entered in the case of cancelling a certificate of title consequent on a transfer or transmission

Provided also that previous to issuing any such new certificate of title the Registrar-General may require the title of the person claiming to be entitled in remainder to be investigated and may cause advertisements to be published as hereinbefore directed in the case of applications for bringing land under the provisions of this Act and shall receive the same fees and payments including the sum payable to the assurance fund as are required to be paid by persons applying to bring land under the provisions of this Act

39. Whenever the life estate in any land in respect to which a certificate of title has been issued shall have determined it shall not be lawful for the reversioner or remainderman entitled to the next estate of freehold in possession to transfer or otherwise deal with such land until he shall have brought his estate therein under the provisions of this Act and the death of a tenant for life shall not operate to defeat or in any way prejudice any lease mortgage or other dealing lawfully made by such tenant for life and duly registered under the provisions of this Act
REAL PROPERTY.


40. Two or more persons who may be registered as joint proprietors of an estate or interest in land under the provisions of this Act shall be deemed to be entitled to the same as joint tenants and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land such persons shall be bound to receive separate and distinct certificates of title or other instruments evidencing title to such undivided shares.

41. Upon the first bringing of land under the provisions of this Act whether by the alienation thereof in fee from the Crown or consequent upon the application of the proprietor of an estate of freehold as hereinbefore provided and also upon the registration of the title to any land under the provisions of this Act derived through the will or intestacy of a previous proprietor there shall be paid to the Registrar-General the sum specified in the list marked R in the Schedule hereto and in the case of land brought under the provisions of this Act by alienation of the fee from the Crown the price paid for such land shall be deemed and taken to be the value thereof for the purpose of levying such sum and in all other cases as aforesaid such value shall be ascertained by the oath or solemn affirmation of the applicant or person deriving such land by transmission.

Provided always that if the Registrar-General shall not be satisfied as to the correctness of the value so declared or sworn to it shall be lawful for him to require such applicant or person deriving such land by transmission to produce a certificate of the value under the hand of a sworn appraiser which certificate shall be received as conclusive evidence of the value for the purpose aforesaid.

42. All sums of money so received as aforesaid shall be paid to the Treasurer of the Colony who shall from time to time invest the same in Queensland Government securities together with all interest and profits that may have accrued thereon to constitute an assurance fund out of which shall be made good the full amount awarded by any verdict, judgment or decree of Court to any person deprived of any land or of any estate or interest therein by bringing such land under the provisions of this Act or by the issue of any certificate of title or by the registration of any transmission transfer or other dealing with land under the provisions of this Act failing recovery from the person who derived benefit thereby.

Provided always that in case of the insufficiency of such assurance fund the full amount so awarded shall be made good to the person entitled thereto out of the General Revenues of the said Colony.

Provided also that no person shall be entitled to be indemnified out of the said Assurance Fund or General Revenue of the Colony for any loss occasioned by any breach of trust or default committed by any trustee, guardian, committee of a lunatic or of a person of unsound mind, executor, administrator or other person standing in the relation of trustee to any other person.

43. No instrument shall be effectual to pass any estate or interest in any lands under the provisions of this Act or to render such land liable as security for the payment of money until such instrument shall have been registered in accordance with the provisions of this Act but upon the registration of any such instrument the estate or interest intended to be thereby granted or conveyed shall pass or as the case may be the land shall become liable as security in the manner and subject to the covenants and conditions set forth in such instrument or by this Act declared to be implied in instruments of a like nature and if two or more instruments executed by the same proprietor purporting to transfer or encumber the same estate or interest should be at the same time presented.
to the Registrar-General for registration and endorsement he shall register and endorse that instrument under which the person claims property who shall produce to him the grant or certificate of title of such land.

44. Notwithstanding the existence in any other person of any estate or interest whether derived by grant from the Crown or otherwise which but for this Act might be held to be paramount or to have priority the registered proprietor of land or of any estate or interest in land shall except in the case of fraud hold the same subject to such encumbrances liens estates or interests as may be notified by entry or memorial on the folium of the register book constituted by the land grant or certificate of title of such land but absolutely free from all other encumbrances liens estates or interests whatever except the estate or interest of a proprietor claiming the same land under a prior grant registered under the provisions of this Act and except as regards the omission or misdescription of any right of way or other easement created in or existing upon the same land or the wrong description thereof or of its boundaries.

45. Whenever a memorial of any instrument shall have been entered in the register book the Registrar-General shall record the like memorial on the duplicate grant certificate of title lease or other instrument evidencing title to the estate or interest intended to be dealt with or in any way affected unless he shall in any case dispense with the production of the same. He shall endorse on every instrument so registered a memorandum of the day and hour on which the said memorial was entered in the register book and shall authenticate each such endorsement by signing his name and affixing his seal thereto and every instrument so endorsed and authenticated shall be received in all Courts of Justice as conclusive evidence of the particulars therein set forth and of all covenants conditions and matters therein expressed or by this Act declared to be implied and that such instrument has been duly registered.

46. So soon as any land shall have been brought under the provisions of this Act no transferee or mortgagee shall be entitled to the production of any deed or other instrument surrendered by the proprietor or any memorandum of transfer or other instrument dated prior to the existing certificate of title of such land unless such instrument be recorded in the register book and upon the existing certificate of title as an encumbrance lien or interest affecting the said land.

Provided that nothing herein contained shall interfere with any order that may be made by a Judge of the Supreme Court for the production of any such deed or instrument.

47. The bringing of land under the provisions of this Act shall not be held to extinguish the reversion expectant on any lease and the person named in any certificate of title as seized of the land therein described shall be held in every court of law and equity to be seized of the reversion expectant upon any lease that may be noted by memorial thereon and to have all powers rights and remedies to which a reversioner is by law entitled.

48. When land under the provisions of this Act is intended to be transferred the transferor shall execute a memorandum of transfer in form D of the Schedule hereto and every such memorandum shall be [Schedule D].

---

* Notwithstanding the provisions of this section, the estate of a registered proprietor shall not be paramount over any tenancy from year to year or for any term not exceeding three years. See the Act of 1877 (41 Vic. No. 18, s. 11), next Act printed.

† As to a transfer and charge, see the Act of 1877 (41 Vic. No. 18, ss. 23 et seq.), next Act printed.
attested by a witness and shall for description of the land intended to be transferred refer to the grant or certificate of title of such land or shall give such description as may be sufficient to identify that particular portion of land intended to be transferred and shall contain an accurate statement of the estate or interest intended to be transferred and a memorandum of all mortgages and other encumbrances affecting the same and if such land be leased the name and description of the lessee with a memorandum of the lease.

If estate in fee-simple be transferred certificate of title to be delivered up and cancelled as far as regards the portion of land transferred.

49. If any such memorandum of transfer purports to transfer an estate in fee-simple in the whole or in any part of the land mentioned in any grant or certificate of title the transferor shall deliver up the grant or certificate of title of the said land and the Registrar-General shall in such case enter on such grant or certificate of title a memorandum cancelling the same either wholly or partially according as the memorandum of transfer purports to transfer the whole or part only of the land mentioned in such grant or certificate of title and setting forth the particulars of the transfer intended to be effected.

Fresh certificate to be issued to purchaser.

50. The Registrar-General upon cancelling any grant or certificate of title either wholly or partially pursuant to any such transfer shall make out to the purchaser or other registered transferee a certificate of title to the land mentioned in such memorandum of transfer and every such certificate of title shall refer to the original grant of such land and to the memorandum or other instrument of transfer to the purchaser or other registered transferee thereof and the Registrar-General shall retain every such cancelled or partially cancelled grant or certificate of title and whenever required thereto by the proprietor of an unsold portion of land included in any such partially cancelled grant or certificate of title or by a registered purchaser or transferee of such portion or of any part thereof shall make out to such proprietor purchaser or transferee a certificate of title for such portion or for the part thereof of which he is the proprietor purchaser or transferee.

A certificate for the balance if any untransferred to be issued to proprietor when demanded or to a registered transferee thereof.

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

Easements and incorporeal rights to be registered.

52. When any land under the provisions of this Act is intended to be leased or demised for a life or lives or for any term of years exceeding three years the proprietor shall execute a lease in form E of the Schedule hereto and every such lease shall refer to the description that is given in the grant or certificate of title of the land or shall give such other description as may be necessary to identify such land and shall be attested by a witness.

Provided always that no lease of mortgaged or encumbered land executed subsequently to the registration of any bill of mortgage or bill of encumbrance shall be valid and binding against the mortgagee or encumbrancer unless such mortgagee or encumbrancer shall have consented to such lease prior to the same being registered.

* Except in certain cases it is no longer necessary that under the circumstances mentioned in these sections a fresh certificate should issue; see the Act of 1877 (41 Vic. No. 18, e. 27), next Act printed.

† As to easements created by a transfer and charge, see the Act of 1877 (41 Vic. No. 18, e. 28), next Act printed.

‡ As to leases under three years, see the Act of 1877 (41 Vic. No. 18, e. 28), next Act printed.
53. In any such lease a right to purchase the fee simple of the land thereby demised may be granted to the lessee by a stipulation to that effect expressed in such lease or a covenant to purchase the fee simple of the said land may be entered into by the lessee and in such case the true amount of the purchase-money to be paid the period within which such right may be exercised or such covenant is to be performed and such other particulars as may be considered necessary for explaining the terms of such right or covenant shall be stated on such lease and in case the lessee shall pay the purchase-money stipulated, and otherwise observe his covenants expressed and implied in such lease the lessor shall be bound to execute a memorandum of transfer to such lessee of the said land and the fee simple thereof and to perform all necessary acts by this Act directed to be done for the purpose of transferring to a purchaser any land and the fee simple thereof.

54. Whenever any lease or demise which is required to be registered by the provisions of this Act is intended to be surrendered and the surrender thereof is effected otherwise than through the operation of law the surrender in law or than under the provisions of any law at the time being in force in the said Colony relating to insolvent estates there shall be endorsed upon such lease or on the counterpart thereof the word "Surrendered" with the date of such surrender and such endorsement shall be signed by the lessee and by the lessor as evidence of the acceptance thereof and shall be attested by a witness and the Registrar-General thereupon shall enter in the register book a memorandum recording the date of such surrender and such endorsement having been made in the register book and upon such entry being so made in the register book the estate or interest of the lessee in such land shall vest in the said Colony and in the person in whom having regard to intervening circumstances (if any) the said land would have vested if no such lease had been executed and production of such lease or counterpart bearing such endorsement and memorandum shall be sufficient evidence that such lease has been so surrendered.

55. Whenever any lease shall be delivered up by an insolvent lessee under the provisions of the Insolvent Act to the lessor in consequence of the official assignee having declined to accept the same the Registrar-General upon proof to his satisfaction by affidavits or otherwise that the Official Assignee has declined to accept such lease shall enter in the register book a memorandum to that effect and shall also endorse upon such lease a memorandum of the fact of such entry having been made.

56. Whenever any land or any estate or interest in land under the provisions of this Act is intended to be charged or made security in favor of any mortgagee the mortgagor shall execute a bill of mortgage in form F of the Schedule hereto and every such bill of mortgage or bill of encumbrance shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered and shall refer to the description given in the grant or certificate of title of the land in which such estate or interest is held or shall give such other description as may be necessary to identify such land together with a statement of all mortgages and other encumbrances affecting the same (if any).
and every such bill of mortgage or bill of encumbrance shall be attested by a witness and shall be registered in the order of time in which the same is produced to the Registrar-General for that purpose and bills of mortgage and bills of encumbrance registered in respect to or affecting the same estate or interest shall notwithstanding any express implied or constructive notice be entitled to priority one over the other according to the date of registration and not according to the date of each instrument itself.

In case default shall be made for the space of one calendar month in payment of the principal money or interest or any part thereof secured by any registered bill of mortgage or if default shall be made in the observance of any covenant that may be expressed in such bill of mortgage or that is therein as against the mortgagor declared to be implied as hereinafter provided or in case such default for the space aforesaid shall be made in payment of the annuity rent charge principal money or interest or any part thereof secured or charged by any registered bill of encumbrance or if default shall be made in the observance of any covenant that may be expressed in such bill of encumbrance or that is therein as against the encumbrancer hereinafter declared to be implied the mortgagee or encumbrancee after giving to the mortgagor or encumbrancer notice in writing to pay the money then due or owing on such bill of mortgage or bill of encumbrance or to observe the covenants therein expressed or implied as the case may be or after leaving such notice on the mortgaged or encumbered land or at the usual or last known place of abode in Queensland of the mortgagor or encumbrancer or other person claiming to be then entitled to the said land and after such default in payment or in observance of covenants continuing for the further space of one calendar month from the date of such notice is hereby authorised and empowered to sell the said land so mortgaged or encumbered or any part thereof and all the estate and interest therein and all the estate and interest of the mortgagor or encumbrancer and either altogether or in lots by public auction or by private contract or by both such modes of sale and subject to such conditions as he may think fit and to buy in and resell the same without being liable for any loss occasioned thereby and to make and execute all such instruments as shall be necessary for effecting the sale thereof all which sales contracts matters and things hereby authorized shall be as valid and effectual as if the mortgagor or encumbrancer had made done or executed the same and the receipt or receipts in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of such land estate or interest or any portion thereof for so much of his purchase money as may be thereby expressed to be received and no such purchaser shall be answerable for the loss misapplication or non-application or be obliged to see to the application of the purchase money by him paid nor shall he be concerned to inquire as to the fact of any default notice or requisition having been made or given as aforesaid and the purchase money to arise from the sale of any such land estate or interest shall be applied First In payment of the expenses occasioned by such sale Secondly In payment of the moneys which may

* For further provisions as to priority of registration, see the Act of 1877 (41 Vic. No. 18, s. 12), next Act printed.
then be due to the mortgagee or encumbrancer* and the surplus if any
shall be paid to the mortgagor or encumbrancer as the case may be.

58. Upon the registration of any memorandum or instrument of
transfer executed by a mortgagee or encumbrancee for the purpose of
such sale as aforesaid the estate or interest of the mortgagor or encum-
brancee therein described as to be conveyed shall pass to and vest in
the purchaser freed and discharged from all liability on account of such
mortgage or encumbrance or of any mortgage or encumbrance registered
subsequent thereto and if such memorandum of transfer purports to pass
an estate in fee simple the purchaser shall be entitled to receive a
certificate of title for the same.

59. The payment of any sum of money by weekly instalments or other payments by
periodical payments may be secured on any land or on any estate or
interest therein by bill of mortgage or bill of encumbrance in the form
F or G of the Schedule hereto by varying such form so as to express
fully the terms and modes of payment of such sum of money.

Provided also that the period of time hereinbefore limited as the
period after expiration of which it shall be lawful for a mortgagee or
encumbrancee to sell an estate pledged as security in the event of default
made in payment of interest or principal or of any annuity or rent charge
or in consequence of the non-fulfilment of any covenant may by condition
expressed in any such bill of mortgage or bill of encumbrance be extended
or shortened and notwithstanding such variations in such form the like
covenants rights powers and obligations shall be implied thereunder and
thereby both against the mortgagee or encumbrancee and the mortgagor
or encumbrancee as would be implied if no such variation had been made.

60. Every bill of mortgage and bill of encumbrance shall be construed
and have effect only as a security for the sum of money annuity or rent
charge intended to be thereby secured and shall not operate or take effect
as a transfer of land estate or interest intended to be thereby charged
with the payment of any money.

but it shall be lawful for the mortgagee or encumbrancee upon
default in payment of the money secured by such bill of mortgage or bill
of encumbrance or any part thereof to enter into possession of the
mortgaged or encumbered land by receiving the rents and profits thereof
or to distrain upon the occupier or tenant of the said land under the
power to distrain hereinafter contained.

Provided also that it shall be lawful for any registered mortgagee or
encumbrancee whenever any principal or interest money annuity or rent
charge shall have become in arrear to bring an action of ejectment to obtain
possession of the said land either before or after entering into the
receipt of the rents and profits thereof or making any distress as aforesaid
and either before or after any sale of such land shall be effected
under the power of sale given or implied in such bill of mortgage or bill
of encumbrance and any such registered mortgagee or encumbrancee
shall be entitled by suit or other proceedings in equity to foreclose the
right of the mortgagor or encumbrancee to redeem the said mortgaged or
encumbered lands.

61. Besides his personal remedy against the mortgagee or encum-
brancee as the case may be every mortgagee or encumbrancee for the
better recovery of any principal sum or of any arrears of interest which
may be due under any bill of mortgage or of the arrear of any annuity or

* As to retaining principal when it is payable by instalments, such instalments not being actually
due, see the Act of 1877 (41 Vic. No. 18, s. 20), next Act printed.
rent charge or principal sum or any interest which may be due under any bill of encumbrance shall be entitled after such principal sum interest annuity or rent charge shall have become in arrear for twenty-one days and after application in writing for the payment thereof shall have been made to the occupier or tenant to enter upon the mortgaged or encumbered land and distress and sell the goods and chattels of such occupier or tenant and to detain thereout the moneys which shall be so in arrear and all costs and expenses occasioned by such distress and sale.

Provided that no lessee or tenant occupying such land shall be liable to pay to any mortgagee or encumbrancee of such land a greater sum than the amount to pay to any mortgagor or encumbrancee or to the person claiming the said land under the mortgagor or encumbrancee.

62. Any mortgagee or encumbrancee of a leasehold interest in land under the provision of this Act or any person claiming through from or under such mortgagee or encumbrancee shall after entering into possession of the said land or the rents and profits thereof become and be subject and liable to the lessor of the said land or the person for the time being entitled to the said lessor's estate or interest in the said land to the same extent as the lessee or tenant was subject to and liable for prior to such mortgagee encumbrancee or other person entering into possession of the said land and the rents and profits thereof.

63. Upon the production of any such bill of mortgage or bill of encumbrance having thereon an endorsement signed by the mortgagee or encumbrancee and attested by a witness discharging the estate or interest thereby pledged or subjected as security from the whole or part of the principal sum or annuity thereby secured or discharging any part of the land comprised in such bill of mortgage or bill of encumbrance from the whole of such principal sum or annuity the Registrar-General shall make an entry in the register book noting that the said mortgage or encumbrance is discharged wholly or partially or that part of the land is discharged as aforesaid as the case may require and upon such entry being made in the register book the estate or interest which by such bill of mortgage or bill of encumbrance having thereon an endorsement signed by the mortgagee or encumbrancee and attested by a witness discharging the estate or interest thereby pledged or subjected as security from the whole or part of the principal sum or annuity thereby secured or discharging any part of the land comprised in such bill of mortgage or bill of encumbrance from the whole of such principal sum or annuity the Registrar-General shall make an entry in the register book noting that the said mortgage or encumbrance is discharged wholly or partially or that part of the land is discharged as aforesaid as the case may require and in case any annuity or sum of money shall be secured by any such bill of encumbrance during the life of any encumbrancee or other person or contingent upon the occurrence of any event the Registrar-General on the production of such bill of encumbrance together with proof of the death of such annuitant or person or of the occurrence of the event from which such annuity or sum of money is payable and upon proof that all arrears of such annuity or sum of money of all interest thereon have been paid satisfied or discharged shall make an entry in the register book noting that such annuity or sum of money is satisfied and discharged and shall cancel such bill of encumbrance and upon such entry being made in the register book the land estate or interest which had been pledged or subjected as security for the payment of such annuity or sum of money shall cease to be subject to or liable for the same or any charges incident thereon and the Registrar-General shall in any or either such case endorse on the grant certificate of title or other instrument evidencing the title of the mortgagor or
encumbrancer to the land estate or interest mortgaged or encumbered a memorandum of the date on which such entry was made by him in the register book whenever such grant certificate of title or other instrument shall be presented to him for that purpose.

Provided always that the discharge of part only of the land comprised in any bill of mortgage or bill of encumbrance shall only have the effect of discharging the portion of land described in such endorsement as intended to be discharged and shall not have the effect of discharging the whole of the land so comprised from such principal sum or annuity as aforesaid.

64. In case any mortgagee of property under the provisions of this Act shall be absent from the Colony or in case there shall be no person authorised to give a receipt to the mortgagor for the mortgage money at or after the date appointed for the redemption of any mortgage it shall be lawful for the Treasurer of the Colony to receive such mortgage money with all arrears of interest then due thereon in trust for the mortgagee or other person entitled thereto.

and the Registrar-General shall upon the receipt of the said Treasurer for the amount of the said mortgage money and interest make an entry in the register book discharging such mortgage stating the day and hour on which such entry is made and such entry shall be a valid discharge for such mortgage and shall have the same force and effect as is hereinbefore given to a like entry when made upon production of a bill of mortgage with the receipt of the mortgagee.

and the Registrar-General shall endorse on the grant certificate of title or other instrument as aforesaid and also on the bill of mortgage whenever those instruments shall be brought to him for that purpose the several particulars hereinbefore directed to be endorsed upon each of such instruments respectively and upon and after the date of such payment to the said Treasurer the interest upon such mortgage shall cease to run or accrue.

65. A registered mortgage a registered lease or the interest of a registered encumbrance may be transferred to any person by memorandum of transfer as aforesaid or by an instrument in the form H of the Schedule hereto which instrument may be endorsed upon the bill of mortgage lease or bill of encumbrance and upon such memorandum of transfer or other instrument being registered the estate or interest of the transferor as set forth in such instrument with all rights powers and privileges thereto belonging or appertaining shall pass to the transferee and such transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in such instrument originally as mortgagee encumbrancer or lessee of such land estate or interest.

66. By virtue of every such transfer as is hereinbefore mentioned the right to sue upon any bill of mortgage bill of encumbrance 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 cause 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 in equity in the transferee thereof.

Provided always that nothing herein contained shall prevent a Court of Equity from giving effect to any trusts effecting the said debt sum of money annuity or damages in case the transferee shall hold the same as a trustee for any other person.
67. In every instrument creating or transferring any estate interest or charge for valuable consideration under the provisions of this Act there shall be implied the following covenants by the person creating or transferring such estate interest or charge that is to say
That he will at the cost of the person requiring the same do all such acts and execute all such instruments as in accordance with the provisions of this Act may be necessary to give effect to all covenants conditions and purposes expressly set forth or by this Act declared to be implied in any such instrument.

68. In every instrument transferring an estate or interest in land under the provisions of this Act subject to a bill of mortgage or bill of encumbrance there shall be implied the following covenant by the transferee of such estate or interest that is to say:
That he will pay the interest and annuity secured by such bill of mortgage or bill of encumbrance after the rate and at the times therein mentioned and will indemnify and keep harmless the transferor from and against the principal sum secured by such bill of mortgage or bill of encumbrance and from and against all liability in respect of any of the covenants therein contained or by this Act declared to be implied on the part of the transferor.

69.* In every bill of mortgage there shall be implied the following covenants against the mortgagor that is to say:
(1) That he will pay the principal money and interest thereby secured after the rate and at the times therein mentioned without any deduction whatsoever.
(2) That he will repair and keep in repair all buildings or other improvements erected and made upon such land and that the mortgagee may at all convenient times until such mortgage be redeemed be at liberty with or without surveyors or other persons to enter into and upon such land to view and inspect the state of repair of such buildings or improvements.

70.† In every lease there shall be implied the following covenants against the lessee that is to say:
(1) That he will pay the rent thereby reserved at the times therein mentioned and all rates and taxes which may be payable in respect of the demised property during the continuance of the lease.
(2) That he will keep and yield up the demised property in good and tenantable repair.

71. In every case there shall also be implied the following powers in the lessor that is to say:
(1) That he may by himself or his agents at all reasonable times enter upon the demised property and view the state of repair thereof and may serve upon the lessee or leave at his last or usual place of abode in this Colony or upon the demised property a notice in writing of any defect requiring him within a reasonable time to be therein prescribed to repair the same.
(2) That in case the rent or any part thereof shall be in arrear for the space of six calendar months or in case default shall be made in the fulfilment of any covenant whether expressed or implied in such lease on the part of the lessee and shall be

* As to a husband being liable on his wife's covenants, see the Act of 1877 (4 Vic. No. 18, s. 29), next Act printed.
† The covenants implied by this section are suspended in case of the destruction of the building; see the Act of 1877 (4 Vic. No. 18, s. 31), next Act printed.
continued for the space of six calendar months or in case the repairs required by such notice as aforesaid shall not have been completed within the time therein specified it shall be lawful for such lessor to re-enter upon and take possession of such demised premises

72. In any such case the Registrar-General upon proof to his satisfaction of re-entry and recovery of possession by the lessor by any proceeding in law shall note the same by entry in the register book and the estate of the lessee in such land shall thereupon determine but without releasing him from his liability in respect of the breach of any covenant in such lease expressed or implied and the Registrar-General shall cancel such lease if delivered up to him for that purpose

73. Such of the covenants hereinafter set forth as shall be declared in any lease or mortgage to be implied against the lessee or mortgagor shall if expressed in the form of words hereinafter appointed and prescribed for the case of each such covenant be implied against such lessee or mortgagor as fully and effectually as if such covenants were set forth fully and in words at length in such lease or mortgage that is to say the words "that he will insure" shall imply as follows that he will insure и so long as the term expressed in the said mortgage or lease shall not have expired will keep insured in some public insurance office to be approved by such mortgagee or lessor against loss or damage by fire to the full amount specified in such lease or bill of mortgage or if no amount be specified then to their full value all buildings tenements or premises erected on such land which shall be of a nature or kind capable of being insured against loss or damage by fire and that he will at the request of the mortgagee or lessor hand over to and deposit with him the policy of every such insurance and produce to him the receipt or receipts for the annual or other premiums payable on account thereof

Provided always that all moneys to be received under or by virtue of any such insurance shall in the event of loss or damage by fire be laid out and expended in making good such loss or damage

Provided also that if default shall be made in the observance or performance of the covenant last above-mentioned it shall be lawful for the mortgagee or lessor without prejudice to and concurrently with the powers granted him by his bill of mortgage or lease in manner in and by this Act to proceed to insure such building and the cost and charges of such insurance shall until such mortgage be redeemed or such lease shall have expired be a charge upon the said land

The words "and paint outside every alternate year" shall imply as follows viz. and also will in every alternate year during the currency of such lease paint all the outside woodwork and ironwork belonging to the hereditaments and premises mentioned in such lease with two coats of proper oil-colors in a workmanlike manner

The words "and paint and paper inside every third year" shall imply as follows viz. and will in every third year during the currency of such lease paint the inside wood iron and other works now or usually painted with two coats of proper oil-colors in a workmanlike manner and also re-paper with paper of a quality as at present such parts of the said premises as are now papered and also wash stop whiten or color such parts of the said premises as are now whitened or colored respectively

The words "and will fence" shall imply as follows viz. and also Fence will during the continuance of the said lease erect put up and maintain
on the boundaries of the land therein-mentioned or upon such boundaries upon which no substantial fence now exists a good and substantial fence.

The words “and cultivate” shall imply as follows viz. and will at all times during the said lease cultivate and manage all such parts of the land therein mentioned as are or shall be broken up or converted into tillage in a proper and husbandmanlike manner and will not impoverish or waste the same.

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

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

The words “and will not carry on offensive trades” shall imply as follows and also that no noxious noisome or offensive art trade business once of the said term be used exercised carried on permitted or suffered in or upon the said hereditaments and premises above-mentioned and that no act matter or thing whatsoever shall at any time during the said term be done in or upon the said hereditaments and premises or any part thereof which shall or may be or grow to the annoyance nuisance grievance damage or disturbance of the occupiers or owners of the adjoining lands and hereditaments.

The words “and will not without leave assign or sublet” shall imply as follows viz. and also that the said lessee shall not nor will during the term of such lease assign transfer demise sub-let or set over or otherwise by any act or deed procure the lands or premises therein mentioned or any of them or any part thereof to be assigned transferred demised sublet or set over unto any person whomsoever without the consent in writing of the said lessor first had and obtained.

The words “and will not cut timber” shall imply as follows and also that the said lessee shall not nor will cut down fell injure or destroy any growing or living timber or timber-like trees standing and being upon the said hereditaments and premises above-mentioned without the consent in writing of the said lessor.

The words “and will carry on the business of a publican and conduct the same in an orderly manner” shall imply as follows viz. and also that the said lessee will at all times during the currency of such lease use exercise and carry on in and upon the premises therein mentioned the trade or business of a licensed victualler or publican and retailer of spirits wines ale beer and porter and keep open and use the messuage tenement or inn and building standing and being upon the said land as and for an inn or public-house for the reception accommodation entertainment of travellers guests and other persons resorting thereto or frequenting the same and manage and conduct such trade or business in a quiet and orderly manner and will not do commit or permit or suffer to be done or committed any act matter or thing whatsoever whereby or by means whereof any license shall or may be forfeited or become void or liable to be taken away suppressed or suspended in any manner howsoever.

The words “and will apply for renewal of license” shall imply as follows viz. and also shall and will from time to time during the continuance of the said term at the proper times for that purpose apply for and endeavor to obtain at his own expense all such licenses as are or may be necessary for carrying on the said trade or business of a licensed
2171

REAL PROPERTY.

1861. Real Property Act of 1861.

vicualler or publican in and upon the said hereditaments and premises and for keeping the said messuage tenement or inn open as and for an inn or public-house as aforesaid.

The words "and will facilitate the transfer of license" shall imply as follows viz. and also shall and will at the expiration or other sooner determination of the said lease sign and give such notice or notices and allow such notice or notices of a renewal or transfer of any license as may be required by law to be affixed to the said messuage tenement or inn to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf and generally to do and perform all such further acts matters and things as shall be necessary to enable the said lessor or any other person authorised by him to obtain the renewal of any license or any new license or the transfer of any license then existing and in force.

74. Where any memorandum of transfer or other instrument in accordance with the provisions of this Act is executed by more parties than one such implied covenants shall be construed to be several and not to bind the parties jointly and in any declaration in an action for a supposed breach of any such covenants the covenant alleged to be broken may be set forth and it shall be lawful to allege that the party against whom such action is brought did so covenant precisely in the same manner as if such covenant had been expressed in words in such memorandum of sale or other instrument any law or practice to the contrary notwithstanding.

75. Every covenant which shall be implied by virtue of this Act shall have the same force and effect and be enforced in the same manner as if it had been set out at length in the instrument wherein the same shall be implied.

76. Every covenant and power to be implied in any instrument by virtue of this Act may be negatived or modified by express declaration contained in the instrument or endorsed thereon.

77. Whenever any registered proprietor of land under the provisions of this Act or of any estate or interest in such land is desirous of vesting the same in trustees it shall be lawful for him by an instrument in form of the Schedule hereto to nominate any persons to be trustees of the said land estate or interest and every such instrument shall be attested by a witness and shall contain an accurate statement of the estate or interest intended to be vested in such trustees and shall refer to the description given in the grant or certificate of title of the land in which such estate or interest is held or shall give such other description as may be necessary to identify such land.

78. The trusts which are intended to be declared of any land estate or interest vested in trustees as hereinbefore mentioned may be declared by a separate instrument or deed. Whenever the said trusts are declared by a separate instrument or deed the same may include as well land under the provisions of this Act as land which is not under the provisions of this Act provided that in every such instrument or deed the description of the several parcels of land therein contained shall sufficiently distinguish the land which is under the provisions of this Act from the land which is not under the provisions of this Act and a duplicate or attested copy of such instrument shall be deposited with the Registrar-General for the purpose of safe custody and reference but such duplicate or attested copy shall not be registered.
79. Whenever any land or any estate or interest in land, under the provisions of this Act shall be settled or shall become vested in trustees upon any trust whether expressed implied or constructive, the Registrar-General shall not make any entry of the said trusts in the register book and the trustees after the entry in the register book of the nomination of trustees in manner hereinbefore provided shall notwithstanding any trust affecting the said land estate or interest be entitled to sell transfer mortgage or otherwise deal with the same in the like manner as if the said trustees had been the beneficial owners thereof and if the fee-simple of any such land shall be so settled or vested in trustees they shall be entitled to receive a certificate of title for the same at their desire and the receipt of such trustees or (except in the case where "no survivorship" is stipulated as hereinafter provided) the receipt of the surviving trustees or trustee or of the legal personal representative of the last surviving trustee shall be a sufficient discharge to any purchaser or mortgagee of such land estate or interest whether such purchaser or mortgagee shall not have had notice of such trusts and such purchaser or mortgagee shall not be bound to see to the appropriation of any purchase money or mortgage money by him paid.

80. Whenever the registered proprietor of any land under the provisions of this Act or of any estate or interest in such land shall insert the words "no survivorship" in any instrument intended by such registered proprietor to operate as a nomination of trustees it shall not be lawful for any less number of trustees than the number named in such instrument to sell transfer mortgage or otherwise deal with the said land estate or interest without obtaining the sanction of the Supreme Court or of a Judge hereof by order which may be granted in a summary way on motion or petition by or on behalf of any person beneficially interested in such land estate or interest and it shall be lawful for the said Court or Judge by any order so obtained to give such direction for the investment or application of the purchase money or mortgage money as the said court or judge may think fit or by the like order to direct the appointment of any new trustee or trustees in the place of any former trustee or trustees and the Registrar-General shall enter a memorial of every such order in the register book and upon the receipt of any memorandum of transfer or other instrument executed in accordance with such order he shall register such instrument in manner hereinbefore directed.

Provided that nothing herein contained shall prevent any less number of trustees than the number which may be named in any instrument operating as a nomination of trustees from filling up any vacancy which may arise by nominating any other person to be co-trustee with the acting or continuing trustees and such new trustee may be nominated by any instrument in form I of the Schedule hereunto and upon the registration of such instrument or upon entry in the register book of the memorial of any order appointing new trustees as aforesaid any such new trustee shall have the like estate interest power and authority as if he had been originally nominated a trustee by the registered proprietor of such land estate or interest.

81. Whenever the words "no survivorship" shall be written upon any instrument intended to operate as a nomination of trustees the Registrar-General shall during the existence of such trust cause the words "no survivorship" to be written on every certificate of title of land issued to such trustees and also on the duplicate of every such certificate bound up in the register book.

* The operation of this section is restricted in the case of Public Lands by "The Trustees of Public Lands Act 1869" (33 Vic. No. 5) supra, title Parks and Public Lands.
82. It shall be lawful for the registered proprietor of any land or of any estate or interest in land whether such land estate or interest shall be of the nature of real or personal property by any of the forms of instruments of transfer provided by this Act and containing such alterations (if any) as may be deemed necessary to transfer such land estate or interest or any part thereof to his wife or if such registered proprietor be a married woman it shall be lawful for her to make such transfer to her husband or it shall be lawful for such registered proprietor to make such transfer to himself jointly with any other person or persons and it shall not be necessary for the purpose of such transfer in any such case to limit any use or execute any re-assignment but upon the registration of such transfer the said land estate or interest shall vest in such registered proprietor jointly with any other person or persons or otherwise according to the intent and meaning appearing in such instrument and thereby expressed.

83. Whenever any person interested in land under the provisions of this Act shall appear to the Supreme Court to be a trustee* within the intent and meaning of the Trustee Acts 1852 and 1853 and any order shall be thereupon made by the Supreme Court or Judge thereof and whenever any land under the provisions of this Act or any estate or interest therein shall be sold under any direction decree or order of the Supreme Court the Registrar-General on being served with an office copy of such direction decree or order shall enter in the register book and also on the instrument evidencing title to the said land estate or interest in case the same shall be produced to him the date of such direction decree or order and the day and hour of the production of the same respectively and unless and until such entry shall have been made no such order shall have any effect or operation in transferring or otherwise vesting the said land nor shall any sale or transfer under any such direction decree or order be valid or effectual

But after such entry shall have been made the person named in any order of the court as the person in whom the land estate or interest therein referred to is to vest shall be deemed to be the registered proprietor thereof or as the case may be the person thereto authorised by any such direction decree or order shall do all such acts and execute all such instruments as under the provisions of this Act may be necessary to transfer the said land estate or interest

84. Whenever any person entitled to or interested in land as a trustee would be entitled under the last preceding clause to bring or defend any action of ejectment in his own name for recovering the possession of land under the provisions of this Act every such person shall be bound to allow his name to be used as a plaintiff or defendant in such action of ejectment by any beneficiary or person claiming an estate or interest in the said land

Provided nevertheless that every such person shall be entitled to be indemnified in like manner as a trustee would before the passing of this Act have been entitled to be indemnified in a similar case of his name being used in any such action or proceeding by his cestui que trust

85.†

86. Whenever such transmission shall take place by virtue of the insolvency of a registered proprietor an office copy or other duly certified copy of the appointment of the official assignee of the insolvent estate.

* For express provision for the registration of a vesting order, see the Act of 1877 (41 Vic. No. 18, s. 4), next Act printed.

† Section 85 related to the authorization of transmission of land; it was repealed by "The Real Property Act of 1877" (41 Vic. No. 18, s. 4), next Act printed.
Upon entry of such appointment of such official assignee and of the appointment of such official assignee or of such other sufficient evidence of such appointment or appointments as he may require shall be left with the Registrar-General and he shall thereupon enter a memorandum of the particulars of such appointment in the register book.

and upon such entry being made it shall be lawful for such official assignee or official and such official assignee or elected assignee to transfer to any purchaser or other person the land estate or interest so transmitted as aforesaid and every memorandum of transfer other instrument for that purpose executed by such official assignee or such official and elected assignee in accordance with the provisions of this Act shall have the same validity and effect as a like instrument would have had if executed by the registered proprietor before his insolvency.

Provided always that nothing herein contained shall alter or vary the position of the official assignee or official and elected assignee of an insolvent trustee of any land as between such official assignee or official and elected assignee and any person who may be beneficially interested in any land of which such insolvent trustee is the registered proprietor but the rights of such persons (if any) as between them and such official assignee or official and elected assignees in respect of such land shall remain entirely unaffected notwithstanding the insolvency of the registered proprietor of the said land and the said insolvent shall transfer the said land to the persons beneficially interested therein and shall do and execute all acts which may be necessary for nominating a new trustee or new trustees of the said land and carrying into effect any trusts affecting the said land at the date of his insolvency.

Upon the marriage of a female registered proprietor the Registrar-General on production of the register of such marriage or other certified evidence of the celebration thereof accompanied by a declaration to be made of the identity of the woman named in the register book with the person named in such register of marriage shall enter on the register book a memorandum of the day and hour of the production to him of the register or other evidence of such marriage and of the particulars certified to him by such declaration and shall when required by such female proprietor or other person claiming through her register any instrument purporting to transfer or otherwise affect her land estate or interest in accordance with the provisions of this Act provided that every such instrument shall in all cases when the same is by law required to be acknowledged by such married woman for the purpose of transferring the said land estate or interest be duly acknowledged by such married woman in the manner hereinafter provided previously to the same being registered.

Whenever any mortgage encumbrance or lease shall be transmitted in consequence of the death of the registered proprietor thereof or probate or an office copy of the will of the deceased proprietor or letters of administration in case he shall have died intestate shall be produced and left with the Registrar-General for the purpose of being recorded in the register book and the Registrar-General shall enter in the register book the date of the will and of the probate or as the case may be the date of the grant of the letters of administration and the names of the executors or administrators and whenever the same can be ascertained the date of the death of such proprietor together with such other particulars as he shall deem necessary.

* As to the consequences of an insolvency being annulled. see the Act of 1877 (41 Vic. No. 8, s. 34), next Act printed.
and upon such entry being made such executors or administrators shall be deemed to be registered proprietors of such mortgage encumbrance or lease.

89. It shall be lawful for the heir-at-law or devisee or other person interested in the land of a deceased proprietor or for the Curator of Intestate Estates in any case in which by virtue of any law in force in the said Colony he may be authorised to take the charge or management of the real or personal estate of a deceased person at any time by motion or petition in a summary way to apply* to the Supreme Court or a Judge thereof to make an order for the Registrar-General to register such heir-at-law, devisee or other person as the proprietor of such land or to register the Curator of Intestate Estates as the proprietor of any mortgage encumbrance or lease in place of such deceased proprietor.

and the Supreme Court or a Judge thereof shall make such order therein as may seem proper and may thereby direct any caveat to be entered for the protection of the interests of such other persons if any as may be interested in such land estate or interest and may direct advertisements to be made and notices served in such manner as to such court may seem fit and may also direct the costs of such application to be borne and paid out of the estate of the said deceased proprietor or by such other person or in such other manner as the Court may think just and such order shall be left with the Registrar-General who shall enter the particulars thereof in the register book and shall forthwith give effect to the said order by complying with the directions therein contained and upon such entry being made the person named in the said order shall be deemed to be the registered proprietor of such land estate or interest.

Provided always that the person registered consequent upon such order or any executor or administrator when registered in respect of any mortgage encumbrance or lease shall hold such land estate or interest in trust for the persons and purposes to which it is applicable by law but for the purposes of any dealings with such land estate or interest under the provisions of this Act he shall be deemed to be absolute proprietor thereof.

90. For the purpose of registration of an estate or interest in land under the provisions of this Act or on any application for the issuing by the Registrar-General of a certificate of title under the provisions of this Act it shall be lawful for the Supreme Court or a Judge thereof in its equitable jurisdiction upon motion or petition to exercise all such powers as are conferred or as may be applicable for any of the purposes hereinbefore mentioned under a Statute passed in the sixth year of the reign of Her Majesty Queen Anne and intituled "An Act for the More Effectual Discovery of the Death of Persons Pretended to be Alive to the Prejudice of those who Claim Estates after their Deaths"; and of the application of the said judgment or writ in such cases as may be referred to the Registrar-General of a certificate of title in the said judgment or writ.

91. No judgment entered up or to be hereinafter entered up nor any writ of execution issued in pursuance of any such judgment notwithstanding any purchaser, mortgagee or creditor may have had actual or constructive notice thereof shall bind or affect or be effectual against any land under the provisions of this Act or any estate or interest therein as to purchasers, mortgagees or creditors unless and until a memorial of the said judgment or writ as the case may be shall have been entered in the register book of the said land.

* The application may be direct to the Registrar-General without an application to the court; see the Act of 1877 (41 Vic. No. 18, s. 32), next Act printed.

† As to transfers by the Sheriff, see the Act of 1877 (41 Vic. No. 18, s. 35), next Act printed.
2176 REAL PROPERTY.

Real Property Act of 1861. 25 Vic. No. 14,

the register book and also upon the instrument evidencing title to the estate or interest intended to be charged or taken in execution in case such instrument shall be produced to the Registrar-General and upon proof to his satisfaction that any such judgment or writ of execution has been discharged or satisfied the Registrar-General may enter in the register book and on the certificate of title or other instrument evidencing title to the estate or interest charged or affected a memorandum to that effect and upon such entry being made the judgment or writ of execution to which such entry relates shall be deemed to be discharged or satisfied.

Provided always that no writ of execution although duly entered in the register book as aforesaid shall affect any land under the provisions of this Act or any estate or interest therein as to purchasers mortgagees or creditors unless such writ be executed and put in force within three calendar months from the date of the entering such writ.

92. Whenever it is intended that partition shall be made by coparceners, joint tenant or tenants in common of any land under the provisions of this Act or of any estate or interest therein such coparceners joint tenants or tenants in common may execute a memorandum of transfer lease or other such instrument of transfer as in accordance with the provisions of this Act the nature of the estate or interest may require.

93. Where any attorney or agent acting under a power-of-attorney from a person who would himself be entitled to make application to bring land under the provisions of this Act and to receive a certificate of title for the same shall by such power be authorised to sell or absolutely to dispose of such land it shall be lawful for such attorney or agent on behalf of his principal to bring such land under the provisions of this Act and to receive a certificate of title for the same in the name of his principal and every instrument dealing with such land in accordance with the provisions of this Act and signed by such attorney or agent on behalf of his principal shall be valid and effectual for the purposes intended by such instrument and such land shall be considered to have been properly brought under this Act notwithstanding the absence of any express authority from the principal to sign such instruments or make such declaration or application.

Provided that nothing herein contained shall interfere with any express direction prohibiting an attorney or agent from bringing any land under the operation of this Act.

94. Upon the application of any registered proprietor of land held under separate grants or certificates of title or of land held under one grant or certificate and upon his delivering up such grant or grants certificate or certificates of title it shall be lawful for the Registrar-General to issue to him a single certificate of title for the whole of such land or several certificates each containing portion of such land as the case may require and as far as the same may be done consistently with any regulations at the time being in force respecting the parcels of land that may be included in one certificate of title regard being had to the descriptions of such parcels of land and the plans thereof by this Act required to be delineated on such certificate of title and upon issuing any such certificate of title the Registrar-General shall cancel the grant or previous certificate of title so delivered up and shall endorse thereupon a memorandum setting forth the occasion of such cancellation and referring to the certificate of title so issued in which the land described in such cancelled grant or certificate of title is included.
95. It shall be lawful for the Registrar-General in case he shall see reasonable cause for so doing to dispense with the production of any grant certificate of title lease or other instrument for the purpose of making the endorsement thereon which by this Act is required to be made upon the transfer or other dealing with land under the provisions of this Act and the Registrar-General may in such case if he shall think proper require proof to be made by affidavit or otherwise of the identity of the person transferring or otherwise dealing with the said land with the person who is registered as proprietor thereof

and upon the registration of such transfer or other dealing the Registrar-General shall notify in the memorial that no endorsement of such transfer or other dealing has been made on the grant certificate of title lease or other instrument and such transfer or other dealing shall thereupon be as valid and effectual as if the endorsement had been made upon the grant certificate of title lease or other instrument

Provided always that the Registrar-General before making such endorsement as aforesaid shall give at least fourteen days' notice of his intention so to do in the Government Gazette and in at least one newspaper published in the Colony.

96. In any suit for specific performance brought by the registered proprietor of any land against a person who may have contracted to bring suit for purchase such land the certificate of title of such registered proprietor shall be held in every court of law or equity to be conclusive evidence that such registered proprietor has a good and valid title to the land therein mentioned or described and shall entitle such registered proprietor to a decree for the specific performance of such contract.

97. No vendor of any land under the provisions of this Act shall have any equitable lien thereon by reason of the non-payment of the purchase-money or any part of the purchase-money for the same

98. Any person claiming an estate or interest in any land may by a caveat in the form K of the Schedule hereto or as near thereto as circumstances will permit forbid the registration of any instrument affecting such land estate or interest either absolutely or until after notice of intention to register such instrument shall have been served as hereinafter described.

99. Upon receipt of any caveat the Registrar-General shall notify the same to the person against whose right to deal with land under the provisions of this Act or against whose application to bring land under the provisions of this Act such caveat may be lodged and such person may if he think fit summon the person signing such caveat to attend before the Supreme Court of the Colony or any Judge thereof to show cause why such caveat should not be withdrawn and it shall be lawful for the said Court or any such Judge upon proof that such last-mentioned person has been summoned to make such order in the premises either ex parte or otherwise as to the said Court or Judge shall seem fit.

100. Every caveat left under the provisions of this Act with the Registrar-General shall state the name and address of the person by whom or on whose behalf such caveat shall be lodged and shall contain a sufficient description to identify the land which is intended to be affected and the estate or interest (if any) claimed therein and every such caveat shall be signed by the person by whom or on whose behalf the same is lodged or by his solicitor, known agent or attorney and all notices relating to such caveat or any proceedings in connection therewith shall be served on the person lodging the same or on his solicitor, known agent or attorney or any person appearing for him in that behalf.

* For further provisions as to these caveats, see the Act of 1877 (41 Vic. No. 13, ss. 39 to seq.), next Act printed.
respect thereof shall be served either at the place of address mentioned in such caveat or at the office of the solicitor known agent or attorney who shall have signed such caveat and such service shall be deemed sufficient service of the notice as against all persons who may claim under the said caveat.

101. So long as any caveat † shall remain in force prohibiting the transfer or other dealing with land the Registrar-General shall not enter in the register book any memorandum of transfer or other instrument purporting to transfer or otherwise deal with or affect the land estate or interest in respect to which such caveat may be lodged.

102. Any caveat † which may be lodged under the provisions herein-before contained may be cancelled by the Registrar-General upon its being proved to his satisfaction and that of the Master of Titles that the estate interest or claim of the person by whom or on whose behalf the same is lodged has ceased been abandoned or withdrawn or that the rights of the persons on whose behalf such caveat may have been lodged are satisfied or arranged or in case the Registrar-General and the Master of Titles shall be satisfied that the nature of the estate interest or claim of the person by whom or on whose behalf the caveat is lodged is not such as to entitle him to prohibit the sale or mortgage or other dealing with the land estate or interest referred to in such caveat.

Provided always that at least seven days before cancelling any caveat in such last-mentioned case the Registrar-General shall cause notice to be served in the manner hereinbefore provided upon the person by whom the caveat is lodged.

103. Any person lodging a caveat with the Registrar-General without reasonable cause shall be liable to pay such damages as may be recovered in an action at law by any person aggrieved thereby.

104. The proprietor of any land under the provisions of this Act or any person registered as having estate or interest therein may by a power of attorney in any form heretofore in use for the like purpose or in form L of the Schedule hereto authorize and appoint any person to act for him or on his behalf in respect to the leasing or mortgage of his estate or interest therein or otherwise lawfully to deal with such land estate or interest in accordance with the provisions of this Act and upon any such power being brought to the Registrar-General he shall enter a memorial of the same in the register book and after the date of such entry in the register book all acts lawfully done or performed by the person so appointed under authority of and within the limits prescribed in such power shall have the same force and effect and be equally binding on such proprietor as if the said acts had been done or performed by him.

Provided always that an original or an attested copy of every such power of attorney shall be deposited with the Registrar-General.

* Caveats are to state addresses of persons to whom the same are to be notified; see the Act of 1877 (41 Vic. No. 18, s 36, next Act printed).
† As to lapsing of caveats, see the Act of 1877 (41 Vic. No. 18, ss 30 and 40, next Act printed).
‡ For further provisions as to the registration of powers of attorney, see the Act of 1877 (41 Vic. No. 18, s 13, next Act printed.)
1861. Real Property Act of 1861.

105. The Registrar-General upon the application of any registered proprietor of land under the provisions of this Act shall grant to such proprietor a registration abstract in the form M of the Schedule hereto enabling him to transfer mortgage or otherwise deal with his estate or interest in such land at any place without the limits of the Colony and shall at the same time enter in the register book a memorandum recording the issue of such registration abstract and shall endorse on the grant certificate of title or other instrument evidencing or constituting the title of such proprietor a like memorandum recording the issue of such registration abstract.

and from and after the issuing of any such registration abstract no transfer mortgage lease or other transaction transferring encumbering or in any way affecting the estate or interest in respect of which such registration abstract is issued shall be entered in the register book until such abstract shall have been surrendered to the Registrar-General to be cancelled or the loss or destruction of such abstract proven to his satisfaction.

106. Whenever any transfer mortgage lease or other dealing with land is intended to be effected under any such registration abstract a memorandum of transfer bill of mortgage lease or other instrument as the case may require shall be prepared in duplicate in form hereinbefore prescribed and shall be produced to some one of the persons hereinafter appointed as persons before whom the execution of instruments without the limits of the Colony may be proven.

and upon memorial of such instrument being entered upon the registration abstract and authenticated by the signature of such authorised person in manner hereinbefore directed for the entry of memorials in the register book such transfer mortgage lease or other dealing shall be as valid and binding to all intents and purposes as if the same had been made within the limits of the Colony and recorded in the register book by the Registrar-General and subject to the rules hereinafter for each such case prescribed.

and registration abstracts powers of attorney and registration abstracts.

107. The following rules shall be observed as to powers of attorney and registration abstracts:

(i) The power shall be exercised in conformity with the directions contained therein.

(ii) No transfer mortgage lease or encumbrance bona fide made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such transfer mortgage lease or encumbrance.

(iii) No transfer mortgage lease or encumbrance bona fide made to a purchaser mortgagee lessee or encumbrancer without notice shall be impeached by reason of the insolvency of the person by whom the power was given.

(iv) If a transfer be effected there shall be delivered up to the Registrar-General the memorandum of transfer by which the land or any estate or interest therein is contracted to be transferred together with the registration abstract and the grant certificate of title lease or other instrument of title and he shall thereupon enter in the register book a memorandum.
of the particulars of such transfer and of the cancelling of such abstract and shall endorse on such memorandum of transfer and also on the grant certificate of title lease or other instrument of title a memorandum of the day and hour on which such entry was made and if a full estate in fee simple in such land or in any part thereof shall have been transferred he shall cancel the grant or certificate of title so delivered up and shall issue a certificate of title of such land or of the portion thereof transferred and if part only be transferred he shall also issue to the proprietor a certificate of title of the remainder and shall before issuing them endorse on each of such certificates of title a memorandum of the particulars of all unsatisfied mortgages or encumbrances appearing in the register book or on the registration abstract as affecting the land included in each such certificate of title.

(v) Every mortgage or encumbrance which is so endorsed on the registration abstract shall have priority over all bills of mortgage of the same estate executed subsequently to the date of the entry in the register book of the issuing of such abstract and if there be more mortgages than one so endorsed the respective mortgagees claiming thereunder shall notwithstanding any express implied or constructive notice be entitled one before the other according to the date at which a record of each instrument is endorsed on such abstract and not according to the date of the bill of mortgage.

(vi) The discharge and also the transfer of any mortgage so endorsed on such abstract may be endorsed on such abstract by any person hereinbefore authorized to record a mortgage thereon upon the production of such evidence and the execution of such instruments as are hereinbefore required to be executed and produced to the Registrar-General on the entry of the discharge or transfer of a mortgage in the register book and such endorsement so made on such abstract shall have the same effect and be as valid to all intents and purposes as if such transfer or discharge had been entered in the register book by the Registrar-General in manner hereinafore provided.

(vii) Upon proof at any time to the satisfaction of the Registrar-General that any power of attorney or registration abstract is lost 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 the Registrar-General as circumstances may require either to issue a new power-of-attorney or registration abstract as the case may be or to direct such entries to be made in the register book or such other matter or thing to be done as might have been made or done if no such loss or obliteration had taken place.

(viii) Upon the delivery of any abstract to the Registrar-General he shall cancel the same after recording in the register book in such manner as to preserve its priority the particulars of every lease and of every unsatisfied mortgage registered thereof and shall enter the fact of such cancellation in the register book and shall also by endorsement on the grant or certificate of title lease or other instrument evidencing the title to such land note the particulars of every such unsatisfied mortgage and of every such lease and the cancellation of such
REAL PROPERTY.

2181

registration abstract and every registration abstract so can-
celled shall be void to all intents and purposes and he shall
file in his office the duplicates of every memorandum of
transfer bill of mortgage lease or other instrument executed
thereunder which may for that purpose be delivered to him

108. The registered owner for the time being of any land in respect
of which a power-of-attorney has been issued may for the purpose of
revoking such power execute an instrument in the form N of the Schedule (Schedule N)
hereto and the Registrar-General shall except in any case where a regis-
tration abstract is outstanding enter the particulars thereof in the register
book and shall record thereon the day and hour in which such entry was
made and from and after the date of such entry the Registrar-General
shall not give effect to any memorandum of transfer or other instrument
executed pursuant to such power-of-attorney and if the holder of such
power shall neglect or refuse to surrender the same to such owner or his
agent exhibiting such revocation order he shall be guilty of a misde-
meanor and on conviction thereof shall forfeit and pay a sum not exceed-
ing One Hundred Pounds unless it shall be made to appear to the
satisfaction of the Court before whom the case may be tried that the
powers given therein had been exercised prior to the presentation of such
revocation order.

109. A transferee whether voluntary or not of land under the pro-
visions of this Act shall not except in case of fraud be affected by actual
or constructive notice of any claims rights titles or interests other than
those which have been notified or protected by entry in the register book
according to the provisions of this Act any rule of law or equity to the
contrary notwithstanding

Provided always that nothing herein contained shall be held to
deprive creditors of any rights or remedies given or provided by a
statute passed in the thirteenth year of Her Majesty Queen Elizabeth
Chapter 5.

110. If the consent or direction of any person shall be requisite or
necessary upon a sale or other disposition of land under the provisions of this
Act or any estate or interest therein such consent or direction may be
endorsed upon the memorandum of transfer or other instrument executed
for the purpose of transferring or otherwise dealing with such land or
estate or interest therein in the words following that is to say “I consent
hereunto” which consent or direction when signed by such consenting or
directing party and attested in manner hereinafter prescribed shall have
full validity and effect

111. If any person interested in any land or in any estate or interest
in land under the provisions of this Act is by reason of infancy lunacy or
other disability incapable of making any declaration or doing anything
required or permitted by this Act to be made or done by a proprietor
then the guardian or committee if any of such incapable person or if there
be none then any person appointed by any Court or Judge possessing
jurisdiction in respect of the property of incapable persons upon the
petition of any person on behalf of such incapable person or upon the
petition of any other person interested in the making of such declaration
or doing such thing may make such declaration and do such thing in the
name and on behalf of such incapable person and all acts done by such
substitute shall be as effectual as if done by the person for whom he is
substituted

* The provisions of this Act are embodied in “The Mercantile Act of 1837” (31 Vic. No. 30, ss. 46 to
49), supra, title Mercantile.
† As to consent of husband to a mortgage by his wife, see the Act of 1827 (31 Vic. No. 18, s. 29), next
Act revised.
112. In all cases where a married woman is interested in land under the provisions of this Act it shall be lawful for the Registrar-General or a Judge of the Supreme Court or the Master in Equity or any person now or hereafter authorized by law to take such acknowledgments on the transfer or other dealing with such land by such married woman and whether the instrument of transfer or other dealing shall embrace or relate solely to land under the provisions of this Act or shall embrace or relate both to land under the provisions of this Act and also to land not under its provisions to take the acknowledgment of such married woman touching the instrument executed by her for the purpose of transferring or otherwise dealing with such land in such manner as the deeds of any married woman is now required* be acknowledged by her and also to examine her apart from her husband touching her knowledge of such instrument and to ascertain whether she freely and voluntarily consents thereto.

And the Registrar-General or Judge or Master or any other person taking such acknowledgment and examination shall sign a memorandum to be endorsed on such instrument in form O of the Schedule hereto and an entry of the said acknowledgment shall be made in the register book and every such instrument so acknowledged and recorded in the register book shall be as effectual to pass all the estate right title or interest of the married woman by whom the same is executed in the lands to which the same relates as if she had been then unmarried.

113. The benefits and liabilities in respect to any covenants or powers under the provisions of this Act shall in case of a married woman extend to and be implied against such married woman and her husband conjointly during coverture.

114. A Corporation for the purpose of transferring or otherwise dealing with land under the provisions of this Act in lieu of signing the proper instrument for such purpose prescribed may affix thereto the common seal of such Corporation with a certificate that such seal was affixed by the proper officer verified by his signature.

115.† All instruments executed pursuant to the provisions of this Act if attested by one witness shall be held to be duly attested and if the persons executing the same be resident within the Colony the execution thereof may be proved before the Registrar-General or before a Notary Public of the Peace or a Commissioner for taking affidavits or if the said persons be resident in the United Kingdom of Great Britain and Ireland then before the Mayor or other Chief Officer of any Corporation or before a Notary Public or if the said persons be resident in any British Possession then before the Chief Justice Judge of any Superior Court having jurisdiction in such Possession or before the Governor Government Resident or Chief Secretary thereof or before a Notary Public Justice of the Peace or Commissioner for taking affidavits or if the said persons be resident at any foreign place then before the British Consular Officer resident at such place.

116. The execution of any such instrument or of any release transfer or surrender may be proved before any such person as aforesaid by the oath or solemn affirmation of the parties executing the same or of a witness attesting the signing thereof and if such witness shall answer in the affirmative each of the questions following that is to say.

Are you the witness who attested the signing of this instrument and is the name purporting to be your name as such attesting witness your own handwriting.

* As to the acknowledgment of instruments in the colony before a barrister, solicitor, or conveyancer, see the Act of 1877 (25 Vic. No. 15) next Act printed.
Do you personally know the person signing this instrument and whose signature you attested?

Is the name purporting to be his signature his own handwriting or mark and did he freely and voluntarily sign or make the same

Then the Registrar-General Justice or other person before whom the witness shall prove such signature shall endorse upon the instrument a certificate in form P of the Schedule hereto.

Provided always that if any person signing any such instrument transfer release or surrender as the maker thereof shall be personally known to the Registrar-General Justice or other person as aforesaid it shall be lawful for such person to attend and appear before such Registrar-General Justice or other person to whom he is personally known and then and there acknowledge that he did freely and voluntarily sign such instrument transfer release or surrender and upon such acknowledgment the Registrar-General Justice or other person as the case may be shall endorse on such instrument a certificate in the form or to the effect of the form marked Q in the Schedule hereto and it shall not be necessary for such instrument to be proved by the attesting witness in manner aforesaid.

Provided also that such questions as aforesaid may be varied as circumstances shall or may require in case any person shall sign such instrument by his mark.

Provided also that on the signing of any such instrument by any married woman and the acknowledgment thereof by her in manner mentioned or referred to in this Act no further or other proof or acknowledgment shall be requisite or necessary and every such certificate as aforesaid shall be sufficient evidence that the execution of such instrument has been duly proved.

117. In the event of the grant or certificate of title of land under the provisions of this Act being lost, mislaid or destroyed the proprietor of such land together with any other persons having knowledge of the circumstances may make a declaration before the Registrar-General or before any of the persons hereinbefore appointed as persons before whom the execution of instruments may be proved stating the facts of the case, the names and descriptions of the registered owners and the particulars of all mortgages encumbrances or other matters affecting such land and the title thereto to the best of the declarant’s knowledge and belief and it shall be lawful for the Registrar-General if satisfied as to the truth of such declaration and the bona fides of the transaction to issue to such proprietor a provisional certificate of title which provisional certificate shall contain an exact copy of the original grant or certificate of title bound up in the register book and of every memorandum and endorsement thereon at the time appearing and shall also contain a statement of the circumstances under which such provisional certificate is issued and the Registrar-General shall at the same time enter in the register book notice of the issuing of such provisional certificate and the date thereof and the circumstances under which it was issued and such provisional certificate shall be available for all purposes and uses for which the grant or certificate of title so lost or mislaid would have been available and as valid to all intents and purposes as such lost grant or certificate.

Provided always that the Registrar-General before issuing such provisional certificate shall by advertisement in the Government Gazette and in at least one newspaper published in the City of Brisbane give not less than thirteen clear days’ notice of his intention so to do.
118. Upon the application of any person producing a certificate of competency signed by the Surveyor-General or other officer who may for that purpose be appointed by the Governor and Executive Council the Registrar-General shall license such person as a Surveyor for the purposes of this Act.

119. Any proprietor sub-dividing any land under the provisions of this Act for the purpose of selling the same in allotments as a township shall deposit with the Registrar-General a map of such township provided that such map shall exhibit distinctly delineated all roads, streets, passages, thoroughfares, squares or reserves appropriated or set apart for public use and also all allotments into which the said land may be divided marked with distinct numbers or symbols and every such map shall be certified as accurate by the declaration of a licensed surveyor before the Registrar-General or a Justice of the Peace.

120. The Registrar-General may require the proprietor applying to have any land brought under the provisions of this Act or desiring to transfer or otherwise to deal with the same or any portion thereof to deposit at the Registry Office a map or plan of such land certified by a Licensed Surveyor in manner aforesaid.

and if the said land or the portion thereof proposed to be transferred or dealt with shall be of less area than one statute acre then such map or plan shall be on a scale not less than one inch to two chains

and if such land or the portion thereof about to be transferred or dealt with shall be of greater area than one statute acre but not exceeding five statute acres then such map or plan shall be upon a scale not less than one inch to five chains

and if such land or the portion thereof as aforesaid shall be of greater area than five statute acres but not exceeding eighty statute acres then such map or plan shall be upon a scale of not less than one inch to ten chains

and if such land or the portion thereof as aforesaid shall be of greater area than eighty statute acres then such map or plan shall be upon a scale of one inch to twenty chains

and if such proprietor shall neglect or refuse to comply with such requirement it shall not be incumbent on the Registrar-General to proceed with the bringing of such land under the provisions of this Act or with the registration of such transfer or other dealing.

Provided always that subsequent subdivisions of the same land may be delineated on the map or plan of the same as deposited if such map be upon a sufficient scale in accordance with the provisions herein contained and the correctness of the delineation of such subdivision shall be certified in manner prescribed for the case of the deposit of an original map.

121. Any person may upon payment of the fee specified in the list marked R in the Schedule hereto have access to the register book for the purpose of inspection at any reasonable time during the hours and upon the days appointed for search.

122. The Registrar-General upon payment of the fee specified in the list marked R in the Schedule hereto shall furnish to any person applying at a reasonable time for the same a certified copy of any registered

---

* A list of the surveyors is to be published annually; see the Act of 1877 (41 Vic. No. 18, s. 41), next Act printed. Further provisions as to the appointment, etc. of licensed surveyors will be found in the Act of 1877, ss. 42 et seq. As to the examination of surveyors, see "The Crown Lands Act of 1884" (42 Vic. No. 38, s. 120), supra, title Lands, Crown.

† A map or plan showing undue subdivision of land shall not be received except in certain cases; see "The Unwise Subdivision of Land Prevention Act of 1893" (49 Vic. No. 13, s. 8), infra, under this title.
123. Except in the case hereinbefore provided of a mortgagee or
encumbrancer against a mortgagor or encumbrancer or in the case of
lessor against a lessee or tenant or in the case of a person deprived of
any land by fraud as against a person registered as proprietor through
fraud or against a person deriving otherwise than as a purchaser or
mortgagee bona fide for value from or through a person registered as
proprietor through fraud or in the case of a person deprived of any land
by reason of a wrong description of any land or of its boundaries and
except in the case of a registered proprietor claiming under a prior cer-
tificate of title or under a prior grant, registered under the provisions
of this Act in any case in which two grants or two certificates or a grant
and a certificate may be registered under this Act in respect of the same
land no action of ejectment shall lie or be sustained against a registered
proprietor for the recovery of land under the provisions of this Act and
except in any of the cases aforesaid the grant or certificate of title 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 grant or
certificate of title as seised of or entitled to such land.

124. In the event of the recovery of any land by action of eject-
ment from a fraudulent proprietor or from any of the persons against
whom action of ejectment is not by this Act expressly barred it shall
be lawful for the Supreme Court to make an order for cancelling or
altering any certificate of title or other instrument or entry in the
register book relating to the said land and for substituting any fresh
certificate of title or instrument or entry in lieu thereof and direct-
and ordering such other acts and instruments to be done and executed as
such Court shall under the circumstances deem necessary and just and
the Registrar-General shall give effect to any such order.

125. For the purpose of bringing an action of ejectment against any
person against whom such action is not expressly barred or for the pur-
pose of suing for damages as hereinafter provided the registration as
proprietor of the person against whom such action or suit is brought
shall be equivalent to possession by him of the land in respect to which
such action is brought.

126. Any person deprived of any land or of any estate or interest in
land in consequence of fraud or in consequence of the issue of a certifi-
cate of title to any other person or in consequence of any entry in the
register book or of any error or omission in any certificate of title or
in any entry in the register book may bring and prosecute an action at
law in the Supreme Court for the recovery of damages against the
person who derived benefit by such fraud or in consequence of the issue
of such certificate of title or by such entry or in consequence of such
error or omission provided always that no such action shall lie or be
sustained unless the same shall be commenced within six years from the date of such
deprivation except nevertheless that any person being under the disability of
coverture or infancy or absence from the colony or of unsoundness
of mind may bring such action within six years from the date on which
such disability shall have ceased.
Provided also that nothing in this Act contained shall be interpreted to subject to any action of ejectment or for recovery of damages any purchaser or mortgagee for valuable consideration of any land under the provisions of this Act although his vendor or mortgagor 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 whether by wrong description of land or of its boundaries or otherwise.

127. In case the person against whom such action for damages is directed to be brought shall be dead or shall have been adjudged insolvent or shall have absconded out of the jurisdiction of the Supreme Court then in such case it shall be lawful to bring an action for damages against the Registrar-General as nominal defendant for the purposes of recovering the amount of the said damages and costs against the assurance fund hereinbefore described and in any such case and also in any case in which damages may be awarded in any action against the person deriving benefit by any fraud or in consequence of the issue of any certificate of title or otherwise as aforesaid and the Sheriff shall make a return of nulla bona or shall certify that the full amount with costs awarded cannot be recovered from such person the Treasurer of the Colony upon receipt of a certificate of a Judge of the Supreme Court and of a warrant under the hand of the Governor as hereinafter provided shall pay the amount of such damages and costs or the unrecovered balance thereof as the case may be and shall charge the same to the account of the assurance fund.

Provided always that the assurance fund shall not be liable for payment of any damages after the expiration of six years from the time when the cause of action arose.

Provided also that any person so absconding beyond the jurisdiction if subsequently found within the jurisdiction shall be liable to be sued in the name of the Registrar-General for the amount of the damages and costs so recovered from the assurance fund.

128. Every action which shall be brought by any person to recover damages for or by reason of any loss or damage occasioned by any omission mistake or misfeasance of the Registrar-General or any of his officers or clerks in the execution of their duties under the provisions of this Act shall be brought against the Registrar-General as nominal defendant in case in any such action the plaintiff recover final judgment against such nominal defendant then upon the application or motion of such plaintiff any Judge of the Supreme Court shall and he is hereby directed to certify to the Treasurer the fact of such judgment having been recovered and the amount of damages and costs recovered and thereupon or before the expiration of two calendar months after such judgment is so certified the said Treasurer upon receipt of a warrant under the hand of the Governor shall pay the amount of such damages and costs to the person recovering the same his executors or administrators and shall charge the same to the account of the assurance fund hereinbefore described.

Provided always that notice in writing of every such action and of the cause thereof shall be served upon the Attorney-General and also upon the Registrar-General one calendar month at least before the commencement of such action.

Provided also that the Registrar-General shall not be personally chargeable upon any judgment recovered as aforesaid nor shall any process or notice in or relating to any such action (except aforesaid) be served upon the Registrar-General but all such processes and notices shall be served upon the Attorney-General for the time being.
129. 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 levied in the name of the nominal defendant by the like process of execution as in other actions on the case.

130. If any grant certificate of title or other instrument affecting land under the provisions of this Act or any entry memorandum or endorsement in or upon any such instrument shall be fraudulently or wrongfully obtained from or procured to be made or issued by the Registrar-General or if any such instrument shall be wrongfully retained by any person it shall be lawful for the Registrar-General to summon before him the person who shall have so fraudulently or wrongfully obtained or retained the same or procured the same to be made or issued and in case such person shall not attend at the time so appointed having no lawful impediment to be notified to the Registrar-General at the time so appointed the Registrar-General may apply to a Judge of the Supreme Court to issue a warrant authorizing and directing some person to be therein named to apprehend and arrest the person so summoned and bring him before a Judge of the Supreme Court for examination and such Judge shall thereupon issue a warrant for that purpose.

131. In case it shall be shown by affidavit to the satisfaction of the Registrar-General that the person to whom a summons ought to be directed as hereinbefore mention is keeping out of the way and cannot be personally served therewith and that due pains have been taken to effect such personal service it shall be lawful for the Registrar-General to order by endorsement upon the summons that the delivery of a copy of such summons to the wife or servant or some adult inmate of the house or family of such person at his usual or last known place of abode or business after the purport thereof has been explained to such wife servant or inmate shall be equivalent to personal service and in every such case the service of such summons in pursuance of such order shall be deemed and taken to be of the same force and effect to all intents and purposes as if the party to whom such summons was directed had been personally served therewith.

132. Upon the appearance before the Registrar-General or Court or Judge of any person summoned or brought up by virtue of a warrant as aforesaid it shall be lawful for the Registrar-General or Court or Judge to examine such person upon oath and in case the same shall seem proper to order such person to deliver up such grant certificate of title or other instrument as aforesaid and upon refusal or neglect by such person to deliver up the same within a time to be named for that purpose in such order the Registrar-General shall issue to the proprietor of the said land such certificate of title or other instrument as is herein provided to be issued in the case of any grant or certificate of title being lost, mislaid or destroyed and the Registrar-General shall enter in the register book notice of the issuing of the said certificate of title or other instrument and the circumstances under which the same was issued and such other particulars as having regard to the estate or interest of the registered proprietor of such land he may deem necessary to enter therein.

133. If the person who is charged with having so fraudulently or wrongfully obtained from or procured to be made or issued by the Registrar-General or with having wrongfully retained such grant certificate of title or other instrument or such entry memorandum or endorsement as hereinbefore mentioned shall be proved to the satisfaction of the
Registrar-General or Court or Judge to have absconded so that the Judge's warrant or summons of the Registrar-General cannot be served upon him the same proceedings may then be taken as if such person had been duly summoned or been brought up by virtue of a warrant as aforesaid and had refused or neglected to deliver up such grant certificate of title or other instrument.

134. In every proceeding under this Act relating to any summons, examination or warrant it shall be lawful for the Registrar-General Court or Judge to give to or withhold from any of the persons who may attend any such proceeding his reasonable costs and expenses and to direct by whom such costs and expenses are to borne and paid.

135. In case such costs and expenses shall not be paid pursuant to the direction for payment thereof the amount of such costs and expenses shall be levied by distress and the Registrar-General or Judge shall issue his warrant of distress accordingly and the sum therein directed to be levied shall be levied by distress and sale of the goods and chattels of the person liable to pay the same and the overplus arising from the sale of such goods and chattels after satisfying such sum of money and the expenses of the distress and sale shall be returned on demand to the person whose goods shall have been distrained.

136. No distress levied by virtue of this Act shall be deemed unlawful nor shall any person making the same be deemed a trespasser on account of any defect or want of form in the application warrant of distress or other proceeding relating thereto nor shall such person be deemed a trespasser ab initio on account of any irregularity afterwards committed by him but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action on the case.

137. The Registrar-General shall not except as hereinbefore is provided be subject to be sued or prosecuted by any person whomsoever on account of any act done or default made by him in his character of Registrar-General unless the same has happened through his wilful act or default and the person goods or lands of the Registrar-General shall not be liable to execution of any legal process by reason of any act or default made or done by him in his character of Registrar-General but he shall be indemnified out of the assurance fund or out of the general revenues of the Colony in case such assurance fund shall prove to be insufficient in respect of all losses costs or damages which may be incurred or recovered by any person under any action or suit brought or prosecuted under the provisions of this Act touching or concerning any matter or thing relating to the execution of this Act and the powers hereby granted.

138. Every person summoned to attend before the Registrar-General as a witness in respect of any instrument required to be produced or any act matter or thing by this Act authorized to be done proceeded with or inquired into by or before the Registrar-General shall have his necessary expenses tendered to him in like manner as is now by law required upon service of a subpoena to a witness in an action at law.

139. The Registrar-General shall not receive any application for bringing land under the provisions of this Act or any instrument purporting to deal with or affecting any land under the provisions of this Act unless there shall be endorsed thereon a certificate that the same is correct for the purposes of this Act signed by the applicant or party claiming under or in respect of such instrument or by his solicitor and the Registrar-General shall not be required to compare the said instrument with the duplicate thereof and shall not incur or become
subject to any liability action or other proceeding in consequence of any error, mistake or discrepancy therein but the person who shall falsely or negligently certify to the correctness of any such application or other instrument shall incur therefore a penalty not exceeding Fifty Pounds.

Provided always that such penalty shall not prevent the person who may have sustained any damage or loss in consequence of error or mistake in any such certified instrument or any duplicate thereof from recovering damages against the person who shall have certified the same.

140. It shall be lawful for the Registrar-General to charge and recover such fees as shall be appointed by the Governor of the said Colony with the advice of the Executive Council not in any case exceeding the several fees specified in the list marked R in the Schedule [Schedule R] hereto.

141. The Registrar-General shall keep a correct account of all such sums of money as shall be received by him in accordance with the provisions of this Act and shall pay the same into the public Treasury of the Colony at such times and shall render accounts of the same to the persons and in such manner as may be directed in any regulations that may for that purpose be from time to time issued by the Governor with the advice of the Executive Council.

and the Registrar-General shall address to the Treasurer requisitions to pay moneys received by him or by the Treasurer in trust or otherwise on account of absent mortgagees or other persons entitled in accordance with the provisions of this Act and the Treasurer shall be bound to obey all such requisitions when proved and audited in manner directed by any such regulations as aforesaid and accompanied by warrant for payment of the same under the hand of the Governor and all fines and fees received under the provisions of this Act except fees payable to the Lands Titles Commissioners for the bringing of land under the operation of this Act shall be carried to account by the Treasurer as general revenue.

142.* Any person who shall wilfully or knowingly by fraud or misrepresentation make or cause or obtain to be made in the register book any entry which might in any way affect the right title estate or interest of himself or of any person in any land under the provisions of this Act or who shall wilfully or knowingly by fraud or misrepresentation procure from the Registrar-General any certificate of title registration abstract or other instrument evidencing or relating to title or estate or interest in land under the provisions of this Act or who shall wilfully or knowingly by fraud or misrepresentation cause or procure to be made any entry certificate memorandum or endorsement by this Act directed to be made in or upon any such certificate abstract or other instrument or who shall use or utter any such certificate abstract or other instrument knowing the same to be counterfeited forged or altered or to have been obtained by fraud or misrepresentation or to contain or bear any entry memorandum certificate or endorsement which has been forged counterfeited or altered or obtained by fraud or misrepresentation and who shall be thereof lawfully convicted shall be deemed guilty of felony and be sentenced to be imprisoned for any period not exceeding four years and to be kept to hard labour or in solitary confinement for any part of the period.

* So much of section 142 as relates to the punishment of any offence punishable as felony, or punishable under any Act mentioned in the preamble to 26 Vict. No. 14, is repealed by this Act, s. 1, 5.27, title Regal.
and if any person shall wilfully or knowingly make a false oath or declaration touching or concerning any matter or procedure made or done in pursuance of this Act, and be thereof lawfully convicted such person shall be deemed guilty of perjury and be imprisoned for the period and in the manner aforesaid

and in addition to such punishment any person dammified or suffering loss by any such fraud misrepresentation forgery counterfeit alteration use or utterance of any such certificate abstract or other instrument as aforesaid or by the making of any such false oath or declaration shall have a right of action against and be entitled to recover damages from the person guilty of such fraud misrepresentation forgery counterfeit alteration use or utterance or making such false oath or declaration the amount of all damages he may have sustained thereby with full costs of suit as hereinbefore provided

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 or of the Registrar-General before any Court in the said Colony having jurisdiction for punishment of offences of the like nature or for the recovery of penalties or sums of money of the like amount.

144. This Act shall commence and take effect from and after the first day of January 1862

SCHEDULES REFERRED TO.

A.

Application to bring land under the provisions of the Real Property Act of 1861.

I, A.B., of [describe the location and land description], do declare (that I am or on behalf of [describe the location and land description]) that he (or she) [state the description of the estate, whether in for sale or a lease estate, or as trustee or held in trust for use or sale] in all that piece of land situated in [state the description of the estate, whether in for sale or a lease estate, or as trustee or held in trust for use or sale] containing [state the area] the same a little more or less (exclusive of roads intersecting the same if any) with [state the rights of way and other privileges or easements appertaining, and set forth a sufficient description to identify the land] which piece of land is of the value of $[state the amount], and no more, and is [state if part of the town allotment or country section, or is part of the town allotment, country section, or reserve, respectively granted to [state the name of the person] by land grant under the hand and seal of Governor of the Colony of Queensland (or formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated). Dated the [state the date] day of [state the month], numbered [state the number] in the plan of the [state the name of the district, township, or county], of [state the name of the district, township, or county], as delineated on the public maps of the Colony, deposited in the Survey Office, Brisbane. And I do further declare that I am not aware of any mortgage, encumbrance, or claim affecting the said land, or that any person hath any claim, estate, or interest in the said land, at law, or in equity, in possession or in expectancy, other than as set forth and stated as follows, that is to say—[state the particulars of all unassigned mortgages, encumbrances, claims, or interests, if any]. And I further declare that there is no person in possession or occupation of the said lands adversely to my estate or interest therein, and that the said land is now [state the name and description of occupier, or that the land is unoccupied], and I make this solemn declaration conscientiously believing the same to be true.

Dated at this [state the place], this [state the day] day of [state the month], 18[state the year].

Made and subscribed by the above-named [state the name of the person], in the presence of [state the name of the person], Registrar-General, or Justice of the Peace.

I, A.B., the above declarant, do hereby apply to have the piece of land described in the above declaration brought under the provisions of the Real Property Act of 1861.

Dated at this [state the place], this [state the day] day of [state the month], 18[state the year].

Witness to signature—C.D.

A.B.
REAL PROPERTY.

1861.

Real Property Act of 1861.

B.

Caveat forbidding lands to be brought under the Real Property Act of 1861.

Take notice that I, claiming estate or interest (here state the nature of the estate or interest claimed, and the ground on which such claim is founded) in lands described as (here state particulars of description from declaration of applicant) in notice dated the day of , advertising the same as land in respect to which claim has been made, to have the same brought under the provisions of the Real Property Act of 1861, do hereby forbid the bringing of the said land under the provisions of the said Act.

Dated this day of .

Signed in my presence, this day of .

To the Registrar-General of the Colony of Queensland.

C.

QUEENSLAND.

(Royal Arms.)

Certificate of Title.

A.B., of (here insert description, and if certificate be issued pursuant to any transfer, reference to memorandum of transfer) is now seized of an estate (here state whether in fee simple), subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the (county, or township) of (here insert sufficient description to identify the land), which was said piece of land (or is part of) the (country section, or town allotment) marked delineated in the public map of the said (county, or township) deposited in the office of the Surveyor-General, originally granted the day of , under the hand and seal of Governor of the said Colony (or of formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated) to C.D.,

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

Signed, sealed, and delivered, in presence of .

Registrar-General, (L.S.)

D.

QUEENSLAND.

Memorandum of Transfer.

I, A.B., being registered as the proprietor of an estate (here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate) subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in all that piece of land situated in the (county, or township) of , containing (here state area), be the same a little more or less (exclusively of roads intersecting the same, if any) (here state rights of way, privileges, or easements, if any, intended to be conveyed), and if the land to be dealt with contains all that is included in an existing grant or certificate, refer thereof for description of parcels and diagrams, otherwise set forth the boundaries in chains, links, or feet, and refer to plan delineated on the margin, or annexed to the instrument, or deposited in the Registry Office, which said piece of land is (or is part of) the (country section, or town allotment), marked delineated in the public map of the said (county, or township) deposited in the office of the Surveyor-General, which was originally granted the day of , under the hand and seal of Governor of the said Colony (or formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated) to C.D., in consideration of the sum of , paid to me by E.F., the receipt of which sum I hereby acknowledge, do hereby transfer to the said E.F. (all my estate or interest, or a lesser estate or interest, describing such lesser estate,) in the said piece of land, in witness whereof I have hereunto subscribed my name, this day of .

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

E.

Lease.

I, A.B., being registered as proprietor of an estate (here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate) subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the (county, or township) of , containing (here state area), be the same a little more or less (exclusively of roads intersecting the same, if any) (here state rights of way, privileges, or easements, if any, intended
REAL PROPERTY.


to be conveyed.] If the land to be dealt with contains all that is included in an existing grant or certificate of title, refer thereto for description and diagram; otherwise set forth the boundaries in chains, links, or feet, and refer to a plan thereof on margin of or annexed to the lease, or deposited in the Registry Office, which said piece of land is (or is part of) the (county section, or town allotment) marked (here state description), delineated in the public map of the said (county, or township) deposited in the office of the Surveyor-General, which was originally granted the day of , under the hand and seal of , Governor of the said Colony (or , formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated), to C.D., do hereby lease to E.F., of (here insert description) all the said lands, to be held by him, the said E.F., as tenant for the space of year, at the yearly rental of E , payable (here insert terms of payment of rent) subject to the following covenants, conditions, and restrictions (here set forth all special covenants, if any, and state what covenants declared by the Real Property Act of 1861, to be implied without a lease and lease respectively are intended to be barred or modified, and in what manner).

I, E.F., of (here insert description), do hereby accept this lease of the above described lands, to be held by me as tenant, and subject to the conditions, restrictions, and covenants above set forth.

Dated this day of , under the hand and seal of , Governor of the said Colony (or formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated) to C.D.

Signed by the above-named A.B., as lessee, and by the above-named E.F., as lessee, this day of , in presence of X.Y.

(Signed) A.B., Lessee.

E.F., Lessee.

[See sections 5, 68, 92]

F.

Bill of Mortgage.

I, A.B., being registered as proprietor of an estate (here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate) subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed thereon in that piece of land situated in the county or township, or on the day of , under the hand and seal of , Governor of the said Colony (or , formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated) to C.D., do hereby mortgage to E.F., of (here insert description) all the said lands, to be held by him, the said E.F., as tenant for the space of year, at the yearly rental of E , the sum of (or any part of) the (county section, or town allotment) marked (here state description), delineated in the public map of the said (county, or township) deposited in the office of the Surveyor-General, which was originally granted the day of , under the hand and seal of , Governor of the said Colony (or formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated) to C.D.

In consideration of the sum of E , this day lent to me by E.F., of (here insert description), the receipt of which sum I hereby acknowledge, do hereby covenant with the said E.F., that I will pay interest on the said sum at the rate of E per cent. per annum on the day of , and on the day of in every year. Further (here set forth specific covenants, if any are intended, and state what covenants declared by the Real Property Act of 1861, to be implied in mortgages are intended to be barred or modified, and in what manner). And for the better securing to the said E.F. the repayment in manner aforesaid of the said principal sum and interest, I hereby mortgage to the said E.F. all my estate and interest in the said land above described.

In witness whereof I have hereunto signed my name this day of , in presence of G.H.

Signed by the above-named A.B., as mortgagor, this day of .

A.B., Mortgagor.

[See sections 5, 68, 92]

G.

Bill of Encumbrance for securing a sum of Money.

I, A.B., being registered as proprietor of an estate (here state nature of the estate or interest) subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed thereon in that piece of land situated in the county, township) of containing (here state area) be the same a little more or less (exclusive of roads intersecting the same, if any), (here state rights of way, privileges, or easements, if any existing), and if the land to be dealt with contains all that is included in an existing grant or certificate of title, refer thereto for description of parcels and diagram; otherwise set forth the boundaries in chains, links, or feet, and refer to a plan thereof on margin of or annexed to the lease, or deposited in the Registry Office, which said piece of land is (or is part of) the (county section, or town allotment) marked (here state description), delineated in the public map of the said (county or township) deposited in the office of the Surveyor-General, which was originally granted the day of.
REAL PROPERTY.

1861.

Real Property Act of 1861.

under the hand and seal of Governor of the said Colony, (or formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated) to C.D. of the said Colony.

And desiring to render the said land available for the purpose of securing to and for the benefit of C.D. the (sum of money, annuity, or rent charge) hereinafter mentioned, do hereby encumber the said land for the benefit of the said C.D. with the (sum, annuity, or rent charge) of £ , to be raised and paid at the times and in the manner following, that is to say—here state the times appointed for the payment of the sum, annuity, or rent charge, intended to be secured, the interest, if any, and the events on which such sum, annuity, or rent charge shall become and cease to be payable, also any special covenants or powers, and any modification of the powers or remedies given to an encumbrance by the Real Property Act of 1861.

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

H.

Transfer of Mortgage, Lease, or Encumbrance, to be endorsed on Original Mortgage Bill of Encumbrance, or Lease.

I, the within-mentioned C.D., in consideration of £ , this day paid to me by X.Y., of the receipt of which sum I do hereby acknowledge, hereby transfer to him the estate or interest in respect to which I am registered proprietor, as set forth and described in the within-written security, together with all my rights, powers, estate, and interest therein.

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

Signed by the above-mentioned C.D., in the presence of E.F., the day of Accepted as above X.Y., transferree.

In the presence of G.H.

I.

Nomination of Trustees.

I, A.B., being registered as the proprietor of an estate (here state nature of the estate or interest) subject to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the (county or township) of (here state area) be the same a little more or less, exclusive of roads intersecting the same if any (here state rights of way, privileges, or easements, if any, intended to be conveyed in trust, and if the land to be dealt with contains all that is included in an existing grant or certificate, refer thereto for description or parcelts and diagram otherwise set forth, the boundaries in chains, links, or feet, and refer to plan delineated in margin, or annexed to instrument, or deposited in Registry Office) which said piece of land is (or is part of the country section or town allotment) named deposited in the office of the Surveyor-General, which was originally granted the day of under the hand and seal of Governor of the said Colony (or formerly Governor of the Colony of New South Wales, in which Colony the said land was then situated) of the said Colony, to C.D., do hereby transfer all my estate or interest in the said land above described to C.D., of E.F., of , and G.H., of , as trustees of the same, under the provisions of the Real Property Act of 1861.

In witness whereof I have hereunto signed my name, this day of Accepted—C.D., E.F., G.H., in the presence of A.B.

Schedule of Trusts.

It is agreed that the above described land shall be held by the above-named trustees upon the trusts following that is to say—

K.

Caveat forbidding registration of dealing with estate or interest.

To the Registrar-General of Queensland.

Take notice, that I claiming estate or interest (here state the nature of the estate or interest claimed, and the grounds on which such claim is founded) in (here describe land) forbid the registration of any memorandum of sale, or other instrument affecting the said land, until this caveat be by me, or by the order of the Supreme Court, or some judge thereof, withdrawn, or until days shall have elapsed after notice of such intended registration shall have been delivered to me, or left at or forwarded through the post to my address in the Colony as under written. Dated this (here insert date of cavea) day of .

A.B.
I. Power-of-Attorney.

I, A.B., being registered as proprietor of an estate (here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate) subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in (here refer to schedule for description and content of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificates of title or land grants or such parcel) do hereby appoint (D.D.), to be my true and lawful attorney and on my behalf, to (here state the nature and extent of the powers intended to be conferred, as whether to sell, lease, mortgage, etc.) the lands in the said schedule described, subject nevertheless to the restrictions and limitations declared and set forth at foot hereof, and to execute all such instruments, and do all such acts, matters, and things as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants, or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for the protection of the same from waste, damage, or trespass.

I declare the said lands (or my estate or interest in the said lands) shall not be sold for less than £ (here insert conditions, if any to be imposed).

I declare the amount of money to be raised by mortgage on the security of the said lands under this power shall not exceed £, or be less than £, and that the rate of interest at which the same is raised shall not exceed £, for every £100, by the year.

I declare the said land shall not be leased for any term of years exceeding or at a less rent than £ (here insert conditions, such as whether right of purchase may be given, and at what price, etc., etc.)

I declare that this power shall not be exercised after the expiration of (here state number of years from the date hereof).

In witness whereof I have heretofore subscribed my name this day of .

Signed by the above-named A.B. this day of in the presence of X.Y.

Schedule referred to.

[See sections 3, 106.]

M. Registration Abstract.

I, A.B., being registered as proprietor of an estate (here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate) subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in (here refer to schedule for description and content of the several parcels of land intended to be dealt with, which schedule must contain reference to the existing grants or certificates of title, or land grants or such parcel) request that a registration abstract of my title to the said lands may be granted, enabling me to sell, lease, or otherwise deal with the same, at places without the limits of the Colony.

(Signed) A.B.

To the Registrar-General.

Signed by the above-named A.B., this day of , in the presence of X.Y.

I, the Registrar-General of the Colony of Queensland, do hereby certify that the above particulars relating to the above-described land, and to the estate and interest therein of A.B., whose signature is above subscribed, are correct as appears by entries recorded in the register book of the said Colony, Vol. Fol.

Pursuant therefore to the above application, and by virtue of the powers in me vested by Act of the Legislature of the said Colony, intituled, "The Real Property Act of 1861," this registration abstract is issued for the purpose of enabling the said A.B. to deal with the said lands at places without the limits of the said Colony.

This abstract shall continue in force from the date thereof to the day of , unless sooner delivered up.

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

Signed, sealed, and delivered the day of in the presence of X.Y.

Schedule referred to.

[See section 108.]

N. Revocation Order.

I, A.B., of , being seized of an estate (here state nature of the estate, whether in fee simple or of a less description), all that piece of land (here describe land, referring to the existing grant, certificate, or other instrument of title), hereby revoke the power of mortgaging (or selling) the said land, given by me to by a power-of-attorney, dated the day of

Signed, sealed, and delivered the day of

In the presence of X.Y.
REAL PROPERTY.

1861.

Real Property Act of 1861.

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

I, M.M., Registrar-General, hereby certify that the above named proprietor has executed this revocation order in manner above appearing, and that the particulars thereof are entered in the register book.

(Signed) Registrar-General.

O.

Certificate of Registrar-General upon acknowledgment of instrument to be made by a Married Woman.

I certify that this instrument was this day produced before me, the undersigned M.N. (Registrar-General, Judge, or Master of the Supreme Court of Queensland, or A.B., a Commissioner duly authorized, in that behalf, for taking acknowledgments of married women, or E.P., the Commissioner named in the Commission before recited annexed, or G.H., Mayor, or Police Magistrate of ), and was acknowledged by , the wife of, therein named, being personally present before me, and being of full age and competent understanding, to be her act and instrument; previous to which acknowledgment, the said being examined by me separately and apart from her husband, touching her knowledge of the contents of the said instrument, and her consent thereto, declared that she fully understood the nature and effect thereof, and that the same was freely and voluntarily executed by her.

As witness my hand this day of A.B.

(Signed) Registrar-General.

P.

Certificate of Registrar-General, Justice of the Peace, &c., taking declaration of attesting witness.

Appeared before me at , the day of C.D., of attesting witness to this instrument, and acknowledged his signature to the same; and did further declare that A.B., the party executing the same, was personally known to him, the said C.D., and that the signature of this said instrument is in the handwriting of the said A.B.

(Signed) Registrar-General or J.P.

Q.

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

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

(Signed) Registrar-General or J.P.

R.

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

For the bringing land under the provisions of this Act, to be paid to the Registrar-General, over and above the cost of all advertisements herein directed to be published:—

When the title consists of a land grant only
When the title is of any other description, and the value exceeds £200
Ditto ditto ditto exceeds £200, and does not exceed £300
Ditto ditto ditto exceeds £100, and does not exceed £200
Ditto ditto ditto when the value does not exceed £100

Contribution to assurance fund upon first bringing land under this Act—

And upon transmission by will or intestacy—in the pound sterling

Other fees—

For every certificate of title or Registration Abstract

For every certificate of title issued to proprietor for balance of land left upon a transfer of portion of the land included under a former grant, or certificate of title

For certificates of title issued under other circumstances

Registering memorandum of sale, bill of mortgage, bill of encumbrance, lease, or nomination of trustees, or any direction, licence, or order of the Supreme Court, or any judgment or writ

For registering transfer of mortgage or of encumbrance, or release of mortgage or encumbrance, or the transfer or surrender of a lease, or discharge or satisfaction of any judgment or writ

Fees payable for the performance of the several acts, matters, and things herein specified.
An Act to Amend "The Real Property Act of 1861."

[ASSENTED TO 5TH NOVEMBER, 1877.]

WHEREAS it is desirable to amend "The Real Property Act of 1861." Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

1. This Act shall be read and construed with and as an amendment of "The Real Property Act of 1861."

2. This Act may be cited for all purposes as "The Real Property Act of 1877."

3. In the construction and for the purposes of this Act and in all instruments purporting to be made or executed thereunder (if not inconsistent with the context and subject-matter) the following terms shall have the respective meanings hereinafter assigned to them that is to say—

"The Principal Act" shall mean "The Real Property Act of 1861."

"This Act" shall mean "The Real Property Act of 1861," as amended by this Act.

"Proprietor" shall include any person possessed of or entitled to any charge upon any land.

"Appraiser" shall mean and include any person appointed by the Registrar-General under this Act to value land.

4. Section eighty-five of the Principal Act is hereby repealed.

5. All instruments executed in this colony pursuant to the provisions of this Act unless the execution thereof be proved before the Registrar-General a notary public justice of the peace or commissioner for taking affidavits as provided by section one hundred and fifteen of the Principal Act shall be attested by the Registrar-General a notary public justice of the peace commissioner for taking affidavits barrister solicitor or conveyancer.

6. The Registrar-General may from time to time subject to the approval of the Governor in Council by an instrument under his hand and the seal of his office appoint fit and proper persons to be appraisers to value land under this Act.

7. Every appraiser shall before performing any duties under this Act take the following oath before the Registrar-General or some