

Page 2644—*Real Property Ordinance, 1913-1939.*

Omit note (12) and substitute:—

“(12) Pursuant to Section 139, the Lieutenant-Governor by Order in Council dated 8.6.1917 published in *Papua Govt. Gaz.* of 4.7.1917 and printed on p. 2261, appointed fees to be charged by the Registrar General”.

REAL PROPERTY ORDINANCE, 1913-1939. ⁽¹⁾

An Ordinance to consolidate and amend the Laws relating to the Transfer and Encumbrance of Freehold and other Interests in Land in the Territory of Papua.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

PART I.—INTRODUCTORY.

1. This Ordinance may be cited as the *Real Property Ordinance, 1913-1939.* ⁽¹⁾

Short title.
Amended by
No. 2 of 1930,
s. 2.

It shall commence on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette.* ⁽¹⁾

Commencement.

2. This Ordinance is divided into parts as follows:—

Division.

- Part I.—Introductory.
- Part II.—Department of Registrar of Titles.
- Part III.—Register Book and Registration.
- Part IV.—Crown Leases.
- Part V.—Dealings:

(1) The *Real Property Ordinance, 1913-1939*, comprises the *Real Property Ordinance, 1913*, as amended by the other Ordinances referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov.	Date of reservation by Lieut.-Gov.	Date on which assent of Gov.-Gen. in Council published in Papua Govt. Gaz.	Date on which came into operation.
<i>Real Property Ordinance, 1913</i> (No. 13 of 1913)	14. 8. 1913 ^(a)	—	—	1.5.1914 (<i>Papua Govt. Gaz.</i> of 16.3.1914)
<i>Real Property Ordinance, 1914</i> (No. 13 of 1914)	19. 8. 1914 ^(b)	—	—	19. 8. 1914 (<i>Statute Law of Papua, 1888</i> to 1916, p. 939)
<i>Real Property Ordinance, 1917</i> (No. 8 of 1917)	23. 8. 1917 ^(c)	—	—	23. 8. 1917 (<i>Ordinances etc. of Papua, 1917</i> , p. 37)
<i>Real Property Ordinance, 1935</i> (No. 16 of 1935)	—	18. 7. 1935	4. 12. 1935	4. 12. 1935 (<i>Papua Govt. Gaz.</i> of 4. 12. 1935)
<i>Real Property Ordinance, 1939</i> (No. 17 of 1939)	—	14. 8. 1939	6. 12. 1939	6. 12. 1939 (<i>Papua Govt. Gaz.</i> of 6. 12. 1939)

(a) Notified in *Papua Govt. Gaz.* of 4. 3. 1914 as not disallowed by Gov.-Gen. in Council.

(b) Notified in *Papua Govt. Gaz.* of 7. 4. 1915 as not disallowed by Gov.-Gen. in Council.

(c) Notified in *Papua Govt. Gaz.* of 6. 2. 1918 as not disallowed by Gov.-Gen. in Council.

LAND—

Division 1.—Transfers;
Division 2.—Leases;
Division 3.—Mortgages and Encumbrances;
Division 4.—Transfer and Charge.

Part VI.—Caveats.
Part VII.—Easements.
Part VIII.—Implied Covenants and Powers and Short Forms.
Part IX.—Trusts and Transmissions.
Part X.—Powers of Attorney.
Part XI.—General.
Part XII.—Fees and Assurance Fund.
Part XIII.—Civil Rights and Remedies.
Part XIV.—Cancellation and Correction of Instruments.
Part XV.—Recovery of Penalties and Money.

Repeal.

3. The following enactments are repealed :—The “*Real Property Act of 1861*,” 25 Vic. No. 14 (Queensland adopted); “*The Real Property Act of 1877*,” 41 Vic. No. 18 (Queensland adopted); *The Real Property Ordinance of 1889*, No. 11 of 1889; *The Registrar of Titles Ordinance of 1903*, No. 5 of 1903.

Savings.

4.—(1.) All lands estates and interests which at the commencement of this Ordinance are subject to the provisions of the enactments so repealed shall be subject to the provisions of this Ordinance.

(2.) All rules⁽²⁾ forms⁽²⁾ and orders⁽³⁾ made under the provisions of any Ordinance hereby repealed and in force at the commencement of this Ordinance shall be deemed to have been made under the corresponding provisions of this Ordinance.

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

(4.) All laws statutes Acts Ordinances rules regulations and practice whatsoever relating to freehold and other interests in land and operative on the sixteenth day of November One thousand eight hundred and eighty-nine are so far as inconsistent with the provisions of this Ordinance hereby repealed so far as regards their application to land under the provisions of this Ordinance.

(2) No rules or forms had been made under the repealed Ordinances.

(3) Particulars of an order continued in force by Section 4(2) are included in footnote (12) to this Ordinance, printed on p. 2644.

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

(6.) Nothing in this Ordinance contained shall be deemed to affect or control the provisions of the *Married Women's Property Ordinance, 1912.*

5. In the construction and for the purposes of this Ordinance 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:—

Interpretation.
Q. 25 Vic.
No. 14, s. 3.
Q. 41 Vic.
No. 18, s. 3.

- “Land” extends to and includes 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 watercourses 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” means the original grant in fee-simple of any land by the Crown;
- “Proprietor” means any person seised or possessed of any freehold or other estate or interest in land at law or in equity in possession in futurity or expectancy and includes any person in possession of or entitled to any charge upon any land;
- “Transfer” means the passing of any estate or interest in land under this Ordinance whether for valuable consideration or otherwise;
- “Transmission” means the acquirement of title to or interest in land consequent on the death insolvency or marriage of a proprietor;
- “Certificate of Title” means any instrument evidencing the seisin of the fee-simple or other estate of freehold in any land executed by the Registrar in the form of the First Schedule hereto or such other form as under the provisions of this Ordinance may for the like purpose be authorized;
- “Mortgage” means any charge on land created merely for securing a debt;
- “Mortgagor” means the proprietor of land subject to a mortgage;

LAND—

- “Mortgagee” means the proprietor of a mortgage;
- “Encumbrance” means any charge on land created for the purpose of securing the payment of an annuity or sum of money other than a debt;
- “Encumbrancer” means the registered proprietor of land subject to an encumbrance;
- “Encumbrancee” means the proprietor of an encumbrance;
- “Registrar” means the Registrar of Titles and includes any deputy registrar of titles appointed under the provisions of this Ordinance;
- “Lunatic” means any person who shall have been declared by the Central Court⁽⁴⁾ or a judge thereof upon petition to be of unsound mind and incapable of managing his affairs;
- “Person of unsound mind” means any person not an infant who not having been so declared as aforesaid shall be certified by two duly qualified medical practitioners to be incapable from infirmity of mind to manage his own affairs;
- “Consular Officer” includes Consul-General Consul and Vice-Consul and any person for the time being discharging the duties of Consul-General Consul or Vice-Consul;
- “Instrument” means and includes 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 or evidencing the title thereto;
- “Appraiser” means and includes any person appointed by the Registrar of Titles under this Ordinance to value land;
- “Court” means the Central Court⁽⁴⁾ or any judge thereof;
- The describing any person as proprietor transferor transferee mortgagor mortgagee encumbrancer encumbrancee lessor or lessee or as trustee or as seised 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

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

only shall extend to a female and shall include a body corporate; and whenever a form in the schedules hereto is directed to be used such direction shall apply equally to any form to the like effect signed by the Registrar or which for the same purpose may be authorized under the provisions of this Ordinance; 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.

PART II.—DEPARTMENT OF REGISTRAR OF TITLES.

6. The Department of the Registrar shall be the Department authorized to carry into execution the provisions of this Ordinance and of any Ordinances to amend or extend the provisions of this Ordinance; and the persons holding the offices of Registrar of Titles and deputy registrar of titles and the other officers of the said Department at the time of this Ordinance coming into operation shall perform all the duties of their respective offices under this Ordinance.

Functions of the Registrar and his Department.
Q. 25 Vic.
No. 14, s. 4.

7.—(1.) The Lieutenant-Governor⁽⁴⁾ may appoint—

- (a) a Registrar of Titles;
- (b) one or more deputy registrars of titles;
- (c) a Master of Titles to advise and assist in carrying out the provisions of this Ordinance; and
- (d) such other officers and clerks as may be necessary for carrying out the provisions of this Ordinance.

Appointment of officers.
Q. *Ib.* ss. 5-12.
Pap. No. 5. of
1903, ss. 1-3.

(2.) Such appointments shall be notified in the *Gazette*.

To be gazetted.

8. Whenever by this Ordinance or any law anything is appointed to be done by the Registrar of Titles the same may be lawfully done by any deputy registrar of titles.

Functions of deputy registrar of titles.
Q. *Ib.* s. 4.
Pap. *Ib.* s. 3.

9.—(1.) The Master of Titles shall be a barrister or solicitor of the Central Court⁽⁴⁾ and he shall not directly or indirectly be concerned in any case relating to the title to freehold land.

Master of Titles.
Q. *Ib.* s. 13.
Pap. No. 11 of
1899, s. 4.

(2.) It shall not be necessary to appoint a Master of Titles but such appointment may be made whenever the Lieutenant-Governor⁽⁴⁾ deems it expedient so to do. During such time as the office of Master of Titles remains unfilled the Registrar shall possess and exercise all the powers of a Master of Titles and may do alone whatever by this Ordinance is required to be done by him in con-

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

junction with or by the direction of the Master of Titles; and it shall not be requisite that the Registrar of Titles shall be a barrister or solicitor.

Oaths of office.
Q. 25 Vic.
No. 14, s. 6.

10. The oath following shall be taken before a judge of the Central Court⁽⁴⁾ by every Registrar of Titles and by every deputy registrar of titles that may hereafter be appointed before entering upon the execution of his office:—

I A.B. do solemnly swear that I will faithfully and to the best of my ability execute and perform the office and duties of Registrar of Titles [*or* deputy registrar of titles] for the Territory of Papua according to the provisions of the *Real Property Ordinance, 1912*.⁽⁵⁾ So help me God.

Certain documents to be received as evidence.
Q. *Ib.* s. 7.

11. All documents purporting to be issued or written by or under the directions of the Registrar and purporting to be sealed with his seal of office or signed by him or by one of his deputies shall be received in evidence and shall be deemed to be issued or written by or under the direction of the Registrar without further proof unless the contrary be shown.

Seal of office.
Q. *Ib.* s. 8.
Pap. No. 5 of 1903, s. 5.

12. The Registrar of Titles shall have and use a seal of office bearing the impression of the Royal Arms of the United Kingdom and having inscribed in the margin thereof the words "Registrar of Titles Territory of Papua"; and the imprint of such seal shall be valid whether impressed or made in wax ink or other substance.

Registrar with sanction of Lieutenant-Governor to issue forms of instruments &c.
Q. *Ib.* s. 9.

13. The Registrar may from time to time subject to the approval of the Lieutenant-Governor⁽⁴⁾ and the Executive Council make such alterations in the several forms of instruments prescribed in the schedules hereto as he may deem requisite and shall before finally issuing any such altered form give such public notice⁽⁶⁾ thereof as he may deem necessary and shall cause every such form to be sealed with his seal or marked with some other distinguishing mark and to be supplied at the office of the Registrar of Titles free of charge or at such moderate prices as he may from time to time fix or may license any person to print and sell the same; and every such form if made in a form purporting to be a proper form and to be sealed or marked as aforesaid shall be taken to be made in the form hereby required or in the form sanctioned by the Registrar unless the contrary is proved.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

(5) The figures "1912" appeared in the original Ordinance. They have now been omitted and the figures "1913" inserted in their stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

(6) No alterations to the forms of instruments prescribed in the schedules have been published in *Papua Govt. Gaz.*

Real Property Ordinance, 1913-1939.

14. Every person who in any case in which a form prescribed by this Ordinance or sanctioned by the Registrar is by this Ordinance required to be used uses without reasonable excuse any form not so prescribed or sanctioned or who prints sells or uses any document purporting to be a form so sanctioned knowing the same not to be so sanctioned for the time being or not to have been prepared and issued by the Registrar shall for each such offence incur a penalty not exceeding Ten pounds.

Penalty for not using forms issued by the Registrar of Titles.
Q. 25 Vic. No. 14, s. 10.

15. The Registrar may exercise the following powers that is to say:—

Powers of Registrar.

(1) he may require any proprietor mortgagee or other person interested in land under the provisions of this Ordinance in respect of which any transfer lease mortgage encumbrance or other dealing or any release from any mortgage or encumbrance is about to be effected or in respect of which any transmission is about to be registered under this Ordinance to produce all deeds wills or other instruments in his possession or within his control affecting such land or the title thereto;

To inspect documents.
Q. *Ib.* s. 11.

(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 and if upon requisition in writing made by the Registrar 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 each such offence incur a penalty not exceeding One hundred pounds and the Registrar if the instrument or information so withheld appears to him material shall not be bound to proceed with the registration or issuing of such instrument transmission or dealing as the case may be;

To summon and examine witnesses.

(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;

To administer oaths.

(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 Ordinance: Provided always that in the correc-

To correct errors.

tion 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;

To enter caveats.

- (5) he may enter a caveat on behalf of the Crown or on behalf of any person who may be absent from the Territory 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.

Opinion of court may be obtained.
Q. 25 Vic.
No. 14, s. 14.

16. It shall be lawful for the Registrar and the Master of Titles in any case under the provisions of this Ordinance by order of a judge to state any question or questions of law in a special case for the opinion of the court.

PART III.—REGISTER BOOK AND REGISTRATION.

Registrar of Titles to keep register book.
Q. 17. s. 32.

17. The Registrar 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.

Certificates of title to be in duplicate and to be bound up in register.
First Schedule.
Q. 17. s. 33.

18. Every certificate of title shall be in duplicate and in the form of the First Schedule hereto and the Registrar 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 be issued to a minor or to a person otherwise under disabilities he shall state the age of such minor or the nature of the disability so far as known to him and shall cause one 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.

19. Every certificate of title duly authenticated under the hand and seal of the Registrar 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 is under the provisions of this Ordinance.

Certificate of title to be conclusive evidence of particulars &c. Q. 25 Vic. No. 14, s. 33.

20.—(1.) Every land grant and certificate of title shall be deemed and taken to be registered under the provisions and for the purposes of this Ordinance so soon as the same shall have been marked by the Registrar 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 Ordinance shall be deemed 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 may direct and shall be signed by the Registrar.

Grants and certificates of title registered when embodied in register book. Q. Ib. s. 34.

(2.) 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.

Registered proprietor. Q. Ib. s. 34.

21.—(1.) Subject to the provisions of Subsection (3.) of this section all instruments shall be registered in the order in which the same shall be produced to the Registrar for that purpose and all instruments registered in respect of or affecting the same estate interest or security shall notwithstanding any express implied or constructive notice be entitled to priority one over the other according to the dates of the production of such instruments to the Registrar for registration and not according to the dates of such instruments.

Priorities of registration. Q. 41 Vic. No. 18, s. 12.

(2.) For the purpose of determining such priorities the Registrar shall endorse on every instrument registered by him the day and hour of the production of such instrument for registration.

(3.) If any instrument shall be produced to the Registrar for registration which cannot be registered in consequence of the non-production of the instruments of title relating to the estate or interest or security proposed to be dealt with and before the registration thereof any other instrument executed by the same proprietor or owner and purporting to transfer or otherwise deal with the same estate or interest or the same security shall be

produced to the Registrar for registration and shall be accompanied by the instruments of title he shall first register that instrument which shall be produced by the person producing to him the instruments of title relating to the estate or interest or security proposed to be dealt with.

Instrument to take effect from date of production for registration.

Q. 41 Vic.
No. 18, s. 14.

22. All instruments when registered shall take effect from the date of the production of such instruments to the Registrar for registration which date shall be expressed in the certificate of title or other instrument issued by him.

Date of instrument.

Q. 1b, s. 15.

23. The date of the production of any instrument to the Registrar for registration shall for the purpose of registration be deemed to be the date of such instrument.

Upon entry of particulars instrument deemed to be part of register book.

Q. 25 Vic.
No. 14, s. 35.

24.—(1.) 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 schedules hereto or in any form which for the same purpose may be authorized as herein provided shall for the purposes of this Ordinance be deemed and taken to be embodied in the register book as part and parcel thereof.

(2.) 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.

(3.) Every such instrument presented for registration shall except as hereinafter provided be in duplicate and except in the case of a grant or lease from the Crown shall be attested by a witness; and the Registrar upon registration thereof shall file such instrument (if single) in his office and if in duplicate or triplicate shall file one original in his office and shall deliver the other or others to the person entitled thereto.

Transfers of fee-simple not in duplicate.

Leases may be in triplicate.

Q. 41 Vic.
No. 18, s. 16.

25. It shall not be necessary to execute transfers of an estate in fee-simple in land under this Ordinance in duplicate. Leases of land subject to the provisions of this Ordinance may be in triplicate.

Memorial to be recorded on duplicate grant or other instrument unless dispensed with.

Q. 25 Vic.
No. 14, s. 45.

26.—(1.) Whenever a memorial of any instrument shall have been entered in the register book the Registrar 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; and 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.

Real Property Ordinance, 1913-1939.

(2.) The Registrar in case he shall see reasonable cause for so doing may dispense with the production of any instrument for the purpose of making such record and endorsement thereon and in such case if he shall think proper may require proof to be made by statutory declaration 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.

Registrar may dispense with production of duplicates of instruments in certain cases.
Q. 25 Vic. No. 14, s. 95.

(3.) When production has been so dispensed with the Registrar shall notify in the memorial in the register book that no endorsement of such memorial has been made on the duplicate instrument and such dealing shall thereupon be as valid and effectual as if the endorsement had been made.

(4.) The Registrar before dispensing with production as aforesaid shall give fourteen days' notice of his intention so to do in the *Gazette* and in at least one newspaper published in the Territory.

(5.) 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 Ordinance declared to be implied and that such instrument has been duly registered.

Endorsement to be evidence.
Q. *Ib.* s. 45.

27. The person named in any certificate of title as seised of the land therein described shall be held in every court of justice to be seised of the reversion expectant upon any lease that may be noted by memorial thereon and to have all powers rights and remedies to which a reversioner is by law entitled.

Reversioner's right preserved.
Q. *Ib.* s. 47.

28.—(1.) No instrument shall be effectual to pass any estate or interest in any lands under the provisions of this Ordinance 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 Ordinance; but upon the registration of any such instrument the estate or interest specified in such instrument 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 Ordinance declared to be implied in instruments of a like nature.

Instruments not effectual until entry in register book.
Q. *Ib.* s. 43.

(2.) 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 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.

29. 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 Ordinance might be held to be paramount or

Estate of registered proprietor paramount.
Q. *Ib.* s. 44.

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 whatsoever except—

- (a) the estate or interest of a proprietor claiming the same land under a prior certificate of title or under a prior grant or Crown lease registered under the provisions of this Ordinance; and
- (b) in the case of the omission or misdescription of any right-of-way or other easement created in or existing upon the same land; and
- (c) in the case of the wrong description of the land or of its boundaries; and
- (d) as to any tenancy from year to year or for any term not exceeding three years created either before or after the issue of the certificate of title of such registered proprietor.

Q. 41 Vic.
No. 18, s. 11.

Transferee
not affected by
notice.

Q. 25 Vic.
No. 14, s. 109.

30. A transferee whether voluntary or not of land under the provisions of this Ordinance 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 Ordinance 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 the *Mercantile Ordinance*, 1912.⁽⁷⁾

Registered
proprietor
bringing action
for specific
performance to
be entitled to
decree.

Q. 17. s. 96.

31. In any action for specific performance brought by the registered proprietor of any land against a person who may have contracted to purchase such land the certificate of title of such registered proprietor shall be held in every court of justice 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.

PART IV.—CROWN LEASES.

32.—(1.) Leases granted under the *Land Ordinance*, 1911,⁽⁸⁾ shall when executed be deemed to be Crown leases and shall be in the form provided for leases under this Ordinance or to the like

Register of
Crown leases.
Pap. No. 5 of
1912, s. 24.

(7) Now the *Mercantile Ordinance*, 1912-1924.

(8) Now the *Land Ordinance*, 1911-1940.

effect which may be altered from time to time with the approval of the Lieutenant-Governor⁽⁴⁾ and shall be in duplicate and after being duly executed shall be forwarded to the Registrar who shall bind one copy in a book to be called the "Register of Crown Leases" and shall forward the other to the person entitled thereto.

(2.) The Registrar shall mark on each part of every Crown lease a copy whereof shall be bound in the Register of Crown Leases the volume and folio as appearing in the Register of Crown Leases; and such Crown lease shall thereupon be deemed subject to the provisions of and to be registered under this Ordinance and may be transferred mortgaged and dealt with for all the purposes and in like manner (but subject always to the provisions of the *Land Ordinance*, 1911,⁽⁸⁾) as if it had been granted by a registered proprietor of land under this Ordinance and registered in the register book in the ordinary way excepting only that every transfer of a Crown lease shall be made by separate instrument and not by endorsement and that any entries which ordinarily would require to be made in the register book shall be made in the Register of Crown Leases and on the folio constituted by the Crown lease.

Pap. No. 5 of
1912, s. 24.

33. The Registrar upon notification appearing in the *Gazette* that a Crown lease has been declared forfeited by the Lieutenant-Governor⁽⁴⁾ shall make an entry to that effect in the Register of Crown Leases and such forfeiture shall thereupon have effect.

Registrar to
enter forfeiture.
Pap. *ib.* s. 52.
S.A. 380 of
1886, s. 94.

PART V.—DEALINGS.

Division 1.—Transfers.

34. When land under the provisions of this Ordinance is intended to be transferred the transferor shall execute a transfer in form of the Second Schedule hereto and every such transfer 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.

Transfer.

Second Schedule.
S.A. *ib.* s. 48.

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

If estate in
fee-simple be
transferred
certificate of
title to be
delivered up and
cancelled unless
the whole of the
land is
transferred.
Q. 25 Vic.
No. 14, s. 49.
Q. 41 Vic.
No. 18, s. 17.
Cf. N.S.W. No.
25 of 1900, s. 48.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(8) Now the *Land Ordinance*, 1911-1940.

(2.) (i) If the transfer purports to transfer an estate in fee-simple in the whole of the land mentioned in any grant or certificate of title the transferee may (except where a tenancy in common is created or cancelled) at his option either—

(a) take out a certificate of title in his own name in which case the Registrar shall after registering the transfer enter on such grant or certificate of title of the transferor a memorandum cancelling the same; or

(b) receive the grant or certificate of title of the transferor or in the case of a sale by a mortgagee the grant or certificate of the mortgagor with a memorial of the transfer in each case endorsed thereon.

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

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

Fresh certificate to be issued to purchaser.
Q. 25 Vic.
No. 14, s. 50.

36.—(1.) The Registrar upon cancelling any grant or certificate of title either wholly or partially pursuant to any such transfer shall make out to the transferee a certificate of title to the land mentioned in such transfer; and every such certificate of title shall refer to the original grant of such land and to the transfer.

A certificate for the balance if any untransferred to be issued to proprietor or to a registered transferee thereof.
Q. 1b. s. 50.

(2.) The Registrar shall retain every such cancelled or partially cancelled grant or certificate of title and whenever required thereto by the proprietor of any balance or portion of any balance of land included in any such partially cancelled grant or certificate of title or by a registered transferee of such balance or of any part thereof shall make out to such proprietor or transferee a certificate of title for such balance or for the part thereof of which he is the proprietor or transferee.

Transfer of mortgage encumbrance and lease.
Third Schedule.
Q. 1b. s. 65.

37. A registered mortgage lease or encumbrance may be transferred to any person by transfer as aforesaid or by an instrument in the form of the Third Schedule hereto which instrument may be endorsed upon the memorandum of mortgage lease or encumbrance. Upon such 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 encumbrancee or lessee of such land estate or interest.

38.—(1.) By virtue of every such transfer as is hereinbefore mentioned the right to sue upon any mortgage 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 chose in action and all interest in any such debt sum of money annuity or damages shall be transferred so as to vest the same at law as in equity in the transferee thereof.

Transfer of mortgage or lease includes transfer of right to sue thereunder.
Q. 25 Vic. No. 14, s. 66.

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

Saving powers to court to give effect to trusts.

39. Whenever any land subject to any charge or encumbrance shall have been transferred to the person entitled to such charge or encumbrance such person shall be entitled to demand and obtain a certificate of title to the land discharged from such charge or encumbrance.

Case of purchase of land by mortgagee.
Q. 41 Vic. No. 18, s. 19.

40. The registered proprietor of any estate or interest in land whether of the nature of real or personal property may by any of the forms of instruments of transfer provided by this Ordinance modified as may be necessary transfer such estate or interest or any part thereof to the wife or husband of such registered proprietor or to such registered proprietor and any other person, or persons as joint tenants or tenants in common and may limit any estates by remainder or otherwise without limiting any use or executing any reassignment; and upon the registration of such transfer the estate or interest thereby dealt with or transferred shall vest in the transferee or transferees according to the intent and meaning appearing in and expressed by such instrument.

Proprietor may vest estate jointly in himself and others without limiting any use or executing any assignment.
S.A. 380 of 1886, s. 11.
Cf. Q. 25 Vic. No. 14, s. 82.
Cf. N.S.W. No. 25 of 1900, s. 99.

40A.—(1.) The consideration for a transfer shall be truly set forth therein and where such consideration shall not consist of money the words describing the consideration in the forms of transfer contained in the Second and Third Schedules to this Ordinance shall not be used but the true consideration shall be concisely stated.

True consideration to be stated in transfer.
Cf. Vic. 1149 (1900) s. 52.
Section 40A. inserted by No. 8 of 1917, s. 2.

(2.) Any person who executes a transfer of land under the provisions of this Ordinance or of land contained in any Crown Lease deemed subject to the provisions of and to be registered under this Ordinance which has not the true consideration set forth therein shall on conviction thereof be liable to a penalty not exceeding Fifty Pounds.

Penalty.

LAND—

Division 2.—Leases.

Lands how leased.
Fourth Schedule.
Q. 25 Vic.
No. 14, s. 52.
Q. 41 Vic.
No. 18, s. 18.

Description of land.
Q. 25 Vic.
No. 14, s. 52.

Right of purchase may be granted or covenant stipulated.
Q. 1b. s. 53.

No lease of mortgaged land valid without consent of mortgagee.
Q. 1b. s. 52.

Leases &c. for less than three years valid though unregistered.
Cf. Q. 41 Vic. No. 18, s. 18.
S.A. 380 of 1886, s. 119.

Lease may be surrendered by endorsement by lessee with concurrence of lessor.
Q. 25 Vic.
No. 14, s. 54.

41.—(1.) When any land under the provisions of this Ordinance is intended to be leased or demised for a life or lives or for any term of years exceeding three years the proprietor shall or for any less term may execute a lease in form of the Fourth Schedule hereto.

(2.) Every such lease shall for description of the land intended to be dealt with refer to the grant or certificate of title of the land or shall give such other description as may be necessary to identify such land.

(3.) 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 Ordinance directed to be done for the purpose of transferring to a purchaser any land and the fee-simple thereof.

(4.) No lease of mortgaged or encumbered land executed subsequently to the registration of any mortgage or encumbrance shall be valid and binding against the mortgagee or encumbrancee unless such mortgagee or encumbrancee shall have consented to such lease prior to the same being registered.

42.—(1.) Every registered dealing with land shall be subject to any prior unregistered lease or any agreement for lease or for letting for a term not exceeding three years to a tenant in actual possession thereunder.

(2.) No right or covenant to purchase the freehold contained in any such lease or agreement nor any right or covenant for renewal of such lease or agreement shall be valid as against any subsequent purchaser of the reversion lessee mortgagee or encumbrancee unless such lease or agreement be registered or protected by caveat.

43.—(1.) Whenever any lease or demise which is required to be registered by the provisions of this Ordinance is intended to be surrendered and the surrender thereof is effected otherwise than through the operation of a surrender in law or than under the provisions of any law at the time being in force relating to 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.

(2.) The Registrar thereupon shall enter in the register book a memorandum recording the date of such surrender and shall likewise endorse upon the lease a memorandum recording the fact of such entry having been made in the register book.

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

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

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

N.S.W. No. 25
of 1900, s. 54
(5).

44. Whenever any lease shall be disclaimed by the trustee under the provisions of the *Insolvency Ordinance, 1912*, the Registrar upon proof to his satisfaction by statutory declaration or otherwise that the trustee 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.

Proceedings
when lessee
is insolvent.
Q. 25 Vic.
No. 14, s. 55.

45. The Registrar upon proof to his satisfaction of re-entry by the lessor under any power in that behalf declared by this Ordinance to be implied in a lessor or of 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 shall cancel such lease if delivered up to him for that purpose.

Registrar to
note particulars
of re-entry in
register book.
Q. *Ib.* s. 72.

Division 3.—Mortgages and Encumbrances.

Lands under
this Ordinance
how mortgaged
or encumbered.
Fifth Schedule.
Q. 25 Vic.
No. 14, s. 56.

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

(2.) Whenever any such land estate or interest is intended to be charged with or made security in favour of any encumbrancee for the payment of an annuity rent charge or sum of money the encumbrancer shall execute an encumbrance in form of the Sixth Schedule hereto.

Sixth Schedule.

(3.) Every such mortgage or encumbrance shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered and shall for description of the land intended to be dealt with refer to the grant or certificate of title of the land in which such estate or interest is held or shall give such other description as may be necessary to identify such land together with a statement of all mortgages and other encumbrances affecting the same (if any).

Mortgage or
encumbrance
not a transfer.
Q. 1b. s. 60.

47. Every mortgage and 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.

Remedy when
mortgagor or
encumbrancer
is in default.
Q. 1b. s. 57.

48.—(1.)—

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 mortgage; or

if default shall be made in the observance of any covenant that may be expressed in such 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 encumbrance; or

if default shall be made in the observance of any covenant that may be expressed in such encumbrance or that is therein as against the encumbrancer hereinafter declared to be implied

the mortgagee or encumbrancee may give to the mortgagor or encumbrancer notice in writing to pay the money then due or owing on such memorandum of mortgage or encumbrance or to observe the covenants therein expressed or implied as the case may be or

may leave such notice on the mortgaged or encumbered land or at the usual or last-known place of abode in the Territory of the mortgagor or encumbrancer or other person claiming to be then entitled to the said land.

(2.) After such default in payment or in observance of covenants continuing for the further space of one month from the date of such notice such mortgagee or encumbrancee is hereby authorized and empowered to sell the said land so mortgaged or encumbered or any part thereof and all the estate and interest therein of the mortgagor or encumbrancer and either altogether or in lots by public auction or by private contract or 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 affecting 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.

Power to sell.

(3.) The receipt 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.

Receipt of mortgagee or encumbrancee sufficient discharge to a purchaser.

(4.) 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.

(5.) 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 then be due to the mortgagee or encumbrancee; and the surplus (if any) shall be paid to the mortgagor or encumbrancer as the case may be.

Appropriation of proceeds.

49. In case of any sale taking place under the provisions of the last preceding section by reason of default in payment of interest only or of any instalments the mortgagee or encumbrancee may retain out of the purchase-money received all principal moneys intended to be secured by the mortgage or encumbrance in pursuance of which such sale shall have taken place whether the same shall actually be due or not.

Application of proceeds of sale under mortgage &c. Q. 41 Vic. No. 18, s. 20.

50. Upon the registration of any memorandum or instrument of transfer executed by a mortgagee or encumbrancee for the purpose of any sale under the aforesaid powers of sale the estate or interest of the mortgagor or encumbrancer therein described as to

Registrar of Titles to give effect to sale by mortgagee or encumbrancee. Q. 25 Vic. No. 14, s. 58.

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.

Payments by instalments.
Q. 25 Vic. No. 14, s. 59.

51.—(1.) The payment of any sum of money by weekly instalments or other periodical payments may be secured on any land or on any estate or interest therein by mortgage or encumbrance in the form of the Fifth or Sixth Schedules hereto by varying such form so as to express fully the terms and modes of payment of such sum of money.

Power to vary time of enforcing payment.

(2.) 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 mortgage or 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 mortgagor or encumbrancer and the mortgagee or encumbrancee as would be implied if no such variation had been made.

In case of default mortgagee or encumbrancee may enter and take possession or may distrain.
Q. *Ib.* s. 60.
May bring action for ejectment or may foreclose right of redemption.

52. The mortgagee or encumbrancee upon default in payment of the principal sum interest annuity or rent charge secured by such mortgage or encumbrance or any part thereof may enter into possession of the mortgaged or encumbered land by receiving the rents and profits thereof or distrain upon the occupier or tenant of the said land under the power to distrain hereinafter contained or 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 mortgage or encumbrance; and any such registered mortgagee or encumbrancee shall be entitled by action or other proceedings in the Central Court⁽⁴⁾ to foreclose the right of the mortgagor or encumbrancer to redeem the said mortgaged or encumbered lands.

Mortgagee or encumbrancee may distrain on tenant or occupier for arrears not exceeding the amount of rent due by such tenant or occupier.
Q. *Ib.* s. 61.

53.—(1.) Besides his personal remedy against the mortgagor or encumbrancer 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 mortgage or of the arrear of any annuity or rent charge or principal sum or any interest which may be due under any encumbrance shall be entitled after such

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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 distrain 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.

(2.) 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 of rent which at the time of making such distress may be then due from such occupier or tenant to the mortgagor or encumbrancer or to the person claiming the said land under the mortgagor or encumbrancer.

No lessee liable for greater sum than the amount of rent actually owing by him.

(3.) Any amount paid by such occupier or tenant to the mortgagee or encumbrancee or realized by distress as aforesaid shall be deemed *pro tanto* a satisfaction of the said rent.

Amount recovered to be in or towards satisfaction of rent.

S.A. 380 of 1886, s. 138.

54. Any mortgagee or encumbrancee of a leasehold interest in land under the provisions of this Ordinance 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.

Mortgagee or encumbrancee of leasehold entering into possession of rents and profits becomes liable to lessor.

Q. 25 Vic. No. 14, s. 62.

55.—(1.) Upon the production of any such mortgage or 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 mortgage or encumbrance from the whole of such principal sum or annuity the Registrar 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.

Discharge of mortgages and encumbrances.

Q. 1b. s. 63.

(2.) Upon such entry being so made the estate or interest which by such mortgage or encumbrance had been pledged or subjected as security for any principal sum or annuity or the portion of land mentioned or referred to in such endorsement as aforesaid as intended to be discharged from such principal sum or annuity shall cease to be subject to or liable for the same or as the case may be for the part thereof noted in such entry as discharged.

(3.) In case any annuity or sum of money shall be secured by any such encumbrance during the life of any encumbrancee or other person or contingent upon the occurrence of any event the Registrar on the production of such encumbrance together with proof of the death of such annuitant or person or of the occurrence of the event upon which such annuity or sum of money shall cease to be payable and upon proof that all arrears of such annuity or sum of money and 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 encumbrance.

(4.) Upon such entry being made in the register book the land estate or interest which has 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.

(5.) The Registrar 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.

(6.) The discharge of part only of the land comprised in any mortgage or 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.

Mortgage money may be paid to Treasurer if mortgagee be absent from the Territory and mortgage discharged.
Q. 25 Vic.
No. 14, s. 64.

56.—(1.) In case any mortgagee of property under the provisions of this Ordinance shall be absent from the Territory or in case there shall be no person authorized to give a receipt to the mortgagor for the mortgage money at or after the date appointed for the redemption of any mortgage it shall be lawful for the Treasurer of the Territory to receive such mortgage money with all arrears of interest then due thereon in trust for the mortgagee or other person entitled thereto; and thereupon the interest upon such mortgage shall cease to run or accrue.

(2.) The Registrar shall upon the receipt of the Treasurer for the amount of the said mortgage money and interest make an entry in the register book discharging such mortgage stating the day and hour on which such entry is made.

(3.) Such entry shall be a valid discharge for such mortgage and shall have the same force and effect as is hereinbefore given to a like entry when made upon production of a mortgage with the receipt of the mortgagee.

(4.) The Registrar shall endorse on the grant certificate of title or other instrument as aforesaid and also on the 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.

57. Whenever there shall be inserted in any mortgage or encumbrance the words "The money intended to be secured belongs to the mortgagees (or encumbrancees as the case may be) upon joint account" there shall be transmitted to the survivors and survivor of the mortgagees or encumbrancees the joint right at law as well as in equity to recover and receive and give discharges for the money and the interest thereon or the annuity or rent charge secured by the registered mortgage or encumbrance and to exercise and enjoy in respect of the registered mortgage or encumbrance all the powers and privileges vested in mortgagees or encumbrancees by this Ordinance:

Rights in respect of moneys lent on a joint account to survive.
Q. 41 Vic.
No. 18, s. 21.

Provided that such transmission shall not take effect until the same shall have been registered in manner hereinafter provided.

58.—(1.) An equitable mortgage or lien upon land or any estate or interest in or security upon land under the provisions of this Ordinance or any instrument affecting any such land may be created by deposit of the instrument of title; and such deposit shall subject to the provisions hereinafter contained have the same effect on the estate interest or security sought to be charged as a deposit of title deeds would have had before the passing of this Ordinance.

Equitable mortgage may be created.
Q. *Ib.* s. 30.

(2.) Any equitable mortgagee may lodge a caveat against any dealings with the estate interest or security except subject to such mortgage or lien. Every such caveat shall state the amount and nature of the charge or lien.

Caveat may be lodged.

Division 4.—Transfer and Charge.

59. Land under the provisions of this Ordinance may be transferred subject to a charge or security or subject to any easement.

Land to be transferable subject to a charge or easement.
Q. *Ib.* s. 23.

60.—(1.) When land under the provisions of this Ordinance is intended to be transferred subject to a charge or a security or subject to any easement the transferor and transferee shall execute a transfer and charge in one of the forms of the Seventh Schedule hereto; and every such instrument shall be 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 the part or portion of land intended to be transferred and shall contain a statement of the estate or interest intended to be transferred and of the

Transfer subject to a charge.
Q. *Ib.* s. 24.
Seventh Schedule.

charge or security intended to be created 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.

Transfers subject to a charge to be in duplicate.
Q. 41 Vic. No. 18, s. 25.

(2.) Every transfer and charge creating a charge or security shall be in duplicate and the Registrar of Titles shall register the same and after such registration he shall retain one of such memoranda and shall deliver the other to the person in whose favour the charge or security shall have been created.

Transfer subject to charge when registered to be equivalent to a mortgage.
Q. 1b. s. 26.

61. Every transfer and charge when registered shall have the same effect so far as relates to the charge or security therein mentioned as a mortgage would have had executed by the transferee to the person in whose favour the charge or security shall have been created.

Certificate of title to transferee under a transfer subject to a charge to be noted as subject to such charge.
Q. 1b. s. 27.

62. The Registrar shall note on the certificate of title made out to the transferee under any registered transfer and charge particulars of the charge security or easement created thereby.

PART VI.—CAVEATS.

Caveat may be lodged.
Q. 25 Vic. No. 14, s. 98.
Eighth Schedule.

63. Any person claiming an estate or interest in any land may by a caveat in the form of the Eighth 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.

Notice of caveat to parties.
Q. 1b. s. 99.
Q. 41 Vic. No. 18, s. 38.

64.—(1.) Upon receipt of any caveat the Registrar shall notify the same to the person against whose right to deal with land under the provisions of this Ordinance such caveat may be lodged and such person or any other person claiming any estate or interest in the land may if he think fit summon the person signing such caveat to attend before the Central Court⁽⁴⁾ or any judge thereof to show cause why such caveat should not be removed; 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.

Person lodging caveat may be summoned to show cause.

Notification may be posted.
Q. 1b. s. 37.

(2.) Notification by the Registrar under this section may be sent by post in a prepaid registered letter addressed to the person entitled to the notice at his last known place of abode and if so sent shall be sufficient.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

65.—(1.) Every caveat left under the provisions of this Ordinance with the Registrar shall—

- (a) state the name and address of the person by whom or on whose behalf such caveat shall be lodged; and
- (b) state so far as the caveator can do so the name and address of the person to whom the same is required to be notified by the Registrar under the last preceding section; and
- (c) shall contain a sufficient description to identify the land which is intended to be affected and the estate or interest (if any) claimed therein.

Contents of caveat.
Q. 25 Vic.
No. 14, s. 100.
Q. 41 Vic.
No. 18, s. 36.

(2.) 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 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.

66. So long as any caveat shall remain in force prohibiting the transfer or other dealing with land the Registrar shall not enter in the register book any 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.

No entry to be made in register book affecting lands in respect to which caveat continues in force.
Q. 25 Vic.
No. 14, s. 101.

67.—(1.) Any caveat which may be lodged under the provisions hereinbefore contained may be cancelled by the Registrar 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 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.

Registrar may cancel caveat in certain cases.
Q. 1b. s. 102.

(2.) At least seven days before cancelling any caveat in such last-mentioned case the Registrar shall cause notice to be served in the manner hereinbefore provided upon the person by whom the caveat is lodged.

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

Compensation for lodging caveat without reasonable cause.
Q. 1b. s. 103.

Caveats to lapse unless proceedings taken.

Q. 41 Vic.
No. 18, s. 39.

69. After the expiration of three calendar months from the lodgment with the Registrar of any caveat under this part of this Ordinance such caveat shall be deemed to have lapsed unless it shall have been lodged with the written consent of an equitable mortgagee or the registered proprietor of the land affected thereby or 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 or interest therein specified and shall have given written notice thereof to the Registrar.

Second caveat not to be lodged on same grounds.

Q. 1b, s. 40.

70. Whenever any caveat shall have lapsed under the last preceding section or shall have been ordered to be removed by any order made by the court or a judge thereof it shall not be lawful for the same person to lodge another caveat on directly or substantially the same grounds upon which the caveat so ordered to be removed was lodged.

PART VII.—EASEMENTS.

Easements and incorporeal rights to be registered.

Q. 25 Vic.
No. 14, s. 51.

71. Whenever any easement or any incorporeal right other than an annuity or rent charge affecting any land under the provisions of this Ordinance is created for the purpose of being annexed to or used and enjoyed together with other land under the provisions of this Ordinance the Registrar 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.

When certificate of title may be issued for an easement.

Q. 41 Vic.
No. 18, s. 28.

72. Whenever an easement is created by a transfer and charge or otherwise it shall be lawful for the Registrar at any time upon the application of the transferor or other person in whose favour the land shall be charged with such easement to deliver to him a certificate of title for such easement.

PART VIII.—IMPLIED COVENANTS AND POWERS AND SHORT FORMS.

General covenants to be implied in instruments.

Q. 25 Vic.
No. 14, s. 87.

73. In every instrument creating or transferring any estate interest or charge for valuable consideration under the provisions of this Ordinance there shall be implied a covenant by the person creating or transferring such estate interest or charge 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 Ordinance may be necessary to give effect to all covenants conditions and purposes expressly set forth or by this Ordinance declared to be implied in any such instrument.

Real Property Ordinance, 1913-1939.

74. In every instrument transferring an estate or interest in land under the provisions of this Ordinance subject to a mortgage or encumbrance there shall be implied the following covenant by the transferee of such estate or interest that is to say:—

Transferee of land subject to mortgage or encumbrance to indemnify transferor.
Q. 25 Vic. No. 14, s. 68.

That he will pay the interest or annuity secured by such mortgage or 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 mortgage or encumbrance and from and against all liability in respect of any of the covenants therein contained or by this Ordinance declared to be implied on the part of the transferor.

75. In every mortgage there shall be implied the following covenants against the mortgagor that is to say:—

Covenants to be implied in every mortgage.
Q. 1b. s. 69.

- (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.

76. In every lease there shall be implied the following covenants against the lessee that is to say:—

Covenants to be implied in every lease against the lessee.
Q. 1b. s. 70.

- (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.

77. Whenever any buildings erected upon any demised property under the provisions of this Ordinance shall be destroyed by fire storm flood or tempest or otherwise by the act of God and without any default on the part of the lessee then unless it shall be by the lease otherwise stipulated the covenant to pay rent and to keep and yield up the demised property in good and tenantable repair specified in the last preceding section shall be suspended until the lessor shall have reinstated the buildings in good and tenantable repair.

If buildings destroyed rent and obligation to repair to be suspended.
Q. 41 Vic. No. 18, s. 31.

Powers to be implied in lessor.
Q. 25 Vic.
No. 14, s. 71.

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

- (1) that he may by himself or his agents 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 the Territory or upon the demised property a notice in writing of any defect requiring him within a reasonable time to be therein prescribed to repair the same;
- (2) that in case the rent or any part thereof shall be in arrear for the space of six calendar months or in case default shall be made in the fulfilment of any covenant whether expressed or implied in such lease on the part of the lessee and shall be continued for the space of six calendar months or in case the repairs required by such notice as aforesaid shall not have been completed within the time therein specified it shall be lawful for such lessor to re-enter upon and take possession of such demised premises.

Husband consenting to his wife's mortgage to be liable on implied covenants.
Q. 41 Vic.
No. 18, s. 29.

79. Whenever any mortgage encumbrance or transfer and charge executed by a married woman shall have been executed by her with the consent of her husband a memorandum of such consent signed by such husband shall be endorsed thereon; and whenever a mortgage or encumbrance or transfer and charge executed by a married woman having endorsed thereon such consent as aforesaid shall be registered the husband of such married woman shall be bound by all the covenants expressed in such instrument or implied therein by virtue of this Ordinance in the same manner and to the same extent as if he had been a party to and had executed such instrument.

Such memorandum of consent shall be in the following words or words to the like effect:—

I consent hereto and to be liable for covenants.

Abbreviated form of words for expressing covenants to be as effectual as if such covenants were set forth in words at length.
Q. 25 Vic.
No. 14, s. 73.

80. 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:—

Insure.

The words "that he will insure" shall imply as follows that he will insure and so long as the term expressed in the said mortgage

Real Property Ordinance, 1913-1939.

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 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 mortgage or lease in manner in and by this Ordinance provided to insure such building; and the costs and charges of such insurance shall until such mortgage be redeemed or such lease shall have expired be a charge upon the said land.

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-colours in a workmanlike manner.

Paint outside.

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-colours in a workmanlike manner and also re-paper with paper of a quality as at present such parts of the said premises as are now papered and also wash stop whiten or colour such parts of the said premises as are now whitened or coloured respectively.

Paint and paper inside.

The words "and will fence" shall imply as follows viz. and also 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.

Fence.

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

Cultivate.

Not use as a shop.

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.

Offensive trades.

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

Assign or sublet.

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 sublet or set over or otherwise by any act or deed procure the lands or premises therein mentioned or any of them or any part thereof to be assigned transferred demised sublet or set over unto any person whomsoever without the consent in writing of the said lessor first had and obtained.

Cut timber.

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.

Business of publican in orderly manner.

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 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 licence 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 licence" shall imply as follows viz. and also shall and will from time to time during the continuance of the said term at the proper times for that purpose apply for and endeavour to obtain at his own expense all such licences as are or may be necessary for carrying on the said trade or business of a licensed victualler or publican in and upon the said hereditaments and premises and for keeping the said messuage tenement or inn open as and for an inn or public-house as aforesaid.

Apply for renewal of licence.

The words "and will facilitate the transfer of licence" 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 licence as may be required by law to be affixed to the said messuage tenement or inn to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf and generally to do and perform all such further acts matters and things as shall be necessary to enable the said lessor or any other person authorized by him to obtain the renewal of any licence or any new licence or the transfer of any licence then existing and in force.

Facilitate the transfer of licence.

81. Where any memorandum of transfer or other instrument in accordance with the provisions of this Ordinance 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 action for a supposed breach of any such covenants it shall be lawful to allege that the party against whom such action is brought did so covenant precisely in the same manner as if such covenant had been expressed in words in such memorandum of transfer or other instrument any law or practice to the contrary notwithstanding.

Such covenants may be alleged in actions for breach.

Q. 25 Vic. No. 14, s. 74.

82. Every covenant which shall be implied by virtue of this Ordinance 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.

Covenants declared to be implied to have the same force as if the same had been expressed.

Q. *Ib.* s. 75.

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

Covenants declared to be implied may be negatived or modified.

Q. *Ib.* s. 76.

PART IX.—TRUSTS AND TRANSMISSIONS.

84. Whenever any registered proprietor of land under the provisions of this Ordinance or of any estate or interest in such land is desirous of vesting the same in trustees it shall be lawful

Lands may be vested in trustees by instrument of nomination.

Q. *Ib.* s. 77.

Ninth Schedule.

for him by an instrument in form of the Ninth 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.

Trusts may be declared either by schedule to instrument of nomination or by separate deed or instrument.

Q. 25 Vic. No. 14, s. 78.

85. 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 Ordinance as land which is not under the provisions of this Ordinance:

Instrument declaring trusts to be deposited but not registered.

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 not under the provisions of this Ordinance from the land which is under the provisions of this Ordinance; and a duplicate or attested copy of such instrument shall be deposited with the Registrar for the purpose of safe custody and reference but such duplicate or attested copy shall not be registered.

No entry of trusts to be made in register book.

Q. 1b. s. 79.

86.—(1.) Whenever any land or any estate or interest in land under the provisions of this Ordinance shall be settled or shall become vested in trustees upon any trust whether expressed implied or constructive the Registrar shall not make any entry of the said trusts in the register book.

Trustees to receive certificate of title and deal with same as if beneficial owners.

(2.) 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.

Receipt of trustees a discharge to purchasers or mortgagees.

(3.) 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 or 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.

87. Nothing contained in this Ordinance shall be construed to take away or affect the jurisdiction of the courts of law and equity on the ground of actual fraud or over contracts or agreements for the sale or other disposition of land or over equitable interests generally.

Equitable jurisdiction not abolished.
Q. 41 Vic.
No. 18, s. 51.

And the intention of this Ordinance is that without prejudice to the provisions therein contained for preventing the particulars of any trusts from being entered in the register book and without prejudice to the powers of disposition or other powers conferred by this Ordinance on proprietors of land or of any estate or interest in or security upon land under the provisions of this Ordinance equities may be enforced against such proprietors in respect of their estate interest or security in the same manner as equities may be enforced against proprietors in respect of land not under the provisions of this Ordinance:

Provided that no unregistered estate interest security contract or agreement shall prevail against the title of any subsequent purchaser for valuable consideration duly registered under this Ordinance.

88.—(1.) Whenever the registered proprietor of any land under the provisions of this Ordinance 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 an order of the court or of a judge thereof 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.

Insertion of words “no survivorship” in nomination of trustees and effect thereof.
Q. 25 Vic.
No. 14, s. 80.

(2.) It shall be lawful for the 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 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 shall enter a memorial of every such order in the register book and upon the receipt of any transfer or other instrument executed in accordance with such order he shall register such instrument in manner hereinbefore directed.

(3.) 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

Continuing trustees may nominate co-trustees in case of vacancy.

Ninth Schedule.

Appointment of new trustees to be noted in register book.

be nominated by any instrument in form of the Ninth Schedule hereto 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.

The words "no survivorship" to be written on certificate of title if on instrument of nomination.

Q. 25 Vic. No. 14, s. 81.

89. Whenever the words "no survivorship" shall be written upon any instrument intended to operate as a nomination of trustees the Registrar 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.

Direction decree or order of court to be registered.

Q. *Ib.* s. 83.

90.—(1.) Whenever any person interested in land under the provisions of this Ordinance shall appear to the court to be a trustee within the intent and meaning of the *Trustees and Executors Ordinance*, 1912, and any order shall be thereupon made by the court or a judge thereof and whenever any land under the provisions of this Ordinance or any estate or interest therein shall be sold under any order of the court the Registrar on being served with an office copy of such 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 order and the day and hour of the production of the same; 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 order be valid or effectual.

(2.) 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 authorized by any such order shall do all such acts and execute all such instruments as under the provisions of this Ordinance may be necessary to transfer the said land estate or interest.

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

Q. *Ib.* s. 84.

91.—(1.) 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 Ordinance 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.

Real Property Ordinance, 1913-1939.

(2.) Every person entitled or interested as such trustee shall be entitled to be indemnified in like manner as a trustee would before the passing of this Ordinance 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*.

Trustee to be indemnified.

92. Whenever the court shall make any order that any land under the provisions of this Ordinance or any estate or interest therein or security thereon shall vest in any person for all the estate of the registered proprietor of such land estate or interest or security the Registrar shall on production of such order to him enter the particulars thereof in the register book and make and issue all such certificates of title or other instruments as may be necessary to give full effect to such order.

Vesting order to be registered. Q. 41 Vic. No. 18, s. 46.

92A. Whenever the Lieutenant-Governor⁽⁴⁾ or the Government Secretary shall certify in the form prescribed in the Sixteenth Schedule to this Ordinance that the registered proprietor of any land under the provisions of this Ordinance or any estate or interest therein or security thereon is a native and has died intestate and that a specified native is entitled by native custom to any such land estate or interest or security the Registrar shall upon production to him of such certificate enter the particulars thereof in the register book or the register of Crown leases and shall make and issue all such certificates of title or other instruments as may be necessary to give effect to such certificate.

Natives entitled upon death of intestate native registered proprietor. Inserted by No. 16 of 1935, s. 2.

93.—(1.) Upon the insolvency of the registered proprietor of any land estate or interest under the provisions of this Ordinance the trustee of such insolvent shall be entitled to be registered as proprietor in respect of the same.

Transmission by insolvency. N.S.W. No. 25 of 1900, s. 90(1). S.A. 380 of 1886, s. 170.

(2.) The Registrar upon the receipt of an office copy or other duly certified copy of the appointment of the official trustee of the insolvent estate or of the appointment of such official trustee or of an elected trustee as the case may be or such other sufficient evidence of such appointment as he may require shall enter a memorandum of the particulars of such appointment in the register book.

Certified copy of appointment of official or elected trustee to be deposited. Q. 25 Vic. No. 14, s. 86.

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

Upon entry of such appointment trustee empowered to deal with lands. Q. 1b. s. 86.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

Insolvency of trustees not to affect beneficiaries.
Q. 25 Vic.
No. 14, s. 86.

(4.) Nothing herein contained shall alter or vary the position of the official or elected trustee of an insolvent trustee of any land as between such official or elected trustee 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 or elected trustee 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.

Transmission by registered adjudication of insolvency subsequently annulled.
Q. 41 Vic.
No. 18, s. 34.

94.—(1.) Whenever transmission shall take place by reason of an adjudication of insolvency on which a transmission has been entered being annulled an office copy or other duly certified copy of the order annulling the adjudication shall be left with the Registrar and he shall thereupon enter a memorandum of the particulars of such order in the register book against any property undisposed of under the previous entry.

(2.) Upon such entry being made the person named in that behalf in the order annulling the adjudication or if no person be so named then the person who was adjudged insolvent shall be deemed to be the proprietor of the property so undisposed of.

Marriage of female proprietor to be entered on register book.
S.A. 380 of 1886, s. 189.
Q. 25 Vic.
No. 14, s. 87.
N.S.W.
No. 25 of 1900, s. 92.

95. The Registrar upon the production of a certified copy of the register of or other sufficient proof of the marriage of a female registered proprietor accompanied by a statutory declaration as to the identity of the female registered proprietor with the woman named in such certified copy and by an application in writing signed by such female registered proprietor to that effect shall enter on the register book and also upon the certificate of title or other instrument evidencing her title when produced to him for that purpose the name and description of her husband the date and place of the marriage and the time of making such entry.

Husband may be registered as co-proprietor except in certain cases.
S.A. 1b. s. 190.
Cf. Q. 1b. s. 87.

96.—(1.) The husband of any female registered proprietor shall unless she hold the land estate or interest for her separate use or the same is her separate property be entitled to be registered as co-proprietor in the right of his wife; and the Registrar upon application to that effect and upon production of the certificate or other instrument of title shall comply with such application.

Effect of such registration.
S.A. 1b. s. 190.

(2.) Upon the husband being so registered he shall be seised of and entitled to the same estate and interest in the said land as he

would have been had such lands not been under the provisions of this Ordinance.

(3.) Until such registration the wife shall for the purposes of this Ordinance be deemed to be the sole proprietor for her separate use.

Until such registration wife deemed sole proprietor for separate use.

S.A. 380 of 1886, s. 190.

97. Whenever any mortgage encumbrance or lease is transmitted in consequence of the death of the registered proprietor thereof probate of the will of the deceased proprietor or in case he shall have died intestate letters of administration or order of the Central Court⁽⁴⁾ authorizing the Curator of Intestate Estates to administer the estate of the deceased registered proprietor of such estate or interest or an office copy of the probate letters of administration or order as the case may be accompanied by an application in writing from the executor administrator or curator claiming to be registered as proprietor of such estate or interest shall be produced and left with the Registrar who shall thereupon enter in the register book and upon the lease or other instrument evidencing title to the estate or interest transmitted the date of the will and of the probate the letters of administration or order of the court as aforesaid and the day and hour of the production of the same to him and the names of the executor or administrator 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; and upon such entry being made such executor or administrator or Curator of Intestate Estates as the case may be shall be deemed to be registered proprietor of such mortgage encumbrance or lease.

Transmission of mortgage encumbrance or lease.

Q. 25 Vic. No. 14, s. 88.

Q. 41 Vic. No. 24, s. 25.

98.—(1.) An executor or administrator with or without the will annexed of a deceased registered proprietor or the Curator of Intestate Estates where the court shall make an order authorizing the Curator to administer the estate of a deceased registered proprietor may apply in writing to the Registrar to be registered as proprietor of any estate of freehold in the land of any such deceased registered proprietor.

Transmission of freehold estates.

Cf. Q. 25 Vic. No. 14, s. 89.

Cf. Q. 41 Vic. No. 18, s. 32.

Cf. N.S.W. No. 25 of 1900, s. 94.

Cf. S.A. *ib.* s. 176.

(2.) Such applicant shall deposit with the Registrar the certificate of the death together with the probate of the will of the deceased proprietor or letters of administration of his estate or order of the court authorizing the Curator of Intestate Estates to administer as aforesaid or an office copy of the probate letters of administration or order as the case may be.

(3.) The Registrar may if he thinks fit dispense with such certificate of death on production of such other evidence of death as appears to him sufficient.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

LAND—

(4.) Such application shall state the estate or interest in such land claimed by the applicant and the nature of every estate or interest held by other persons at law or in equity in such land within the applicant's knowledge and that he verily believes himself to be entitled to the estate or interest in such land in respect of which he applies to be registered; and the statement made in such application shall be verified by the statutory declaration of such applicant.

(5.) The applicant shall produce the existing grant or certificate or other instrument of title of the land in respect to which he applies to be registered prior to his being entered in the register book as hereinafter mentioned unless the production of such grant or certificate or other instrument of title be duly dispensed with.

Application to
be considered.
N.S.W. No. 25
of 1900, s. 95.
Cf. Q. 41 Vic.
No. 14, s. 33.

Notices may
be given.

99.—(1.) The Registrar shall take such application into consideration and thereafter he may—

(a) reject such application altogether; or

(b) cause notice thereof to be published once in the *Gazette* and twice in some newspaper published in the Territory and give such further publicity to such application as he thinks fit whether by advertisement or the serving or posting of notices; or

(c) if so advised or he thinks fit so to do dispense with the publication of all or any such notices.

Unless dispensed
with.

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

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

Registration
how effected.

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

Real Property Ordinance, 1913-1939.

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

Fresh certificate may be issued.

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

Trusts protected.
N.S.W. No. 25 of 1900, s. 96.
Cf. Q. 41 Vic. No. 14, s. 89.

101. Whenever an executor or administrator or the Curator of Intestate Estates is registered as the proprietor of any land and shall refuse or after tender of a transfer unnecessarily delay to transfer such land to the devisee next-of-kin or other person entitled thereto the person entitled to the land may by motion or summons before the court apply for an order that the executor or administrator or Curator of Intestate Estates shall transfer the land to him.

Proceedings where an executor refuses to transfer.
S.A. 380 of 1886, s. 181.

102. The court may either refuse such application with or without costs to be paid by the applicant or may make an order for the transfer and may direct the transferor to pay all the costs of such application and any damages the person aggrieved may have sustained or may order such costs to be paid out of the estate of the deceased registered proprietor or in such other manner as the court shall think proper.

Court may order transfer to the person entitled.
S.A. *Ib.* s. 182.

103. The court may on any such application decide on questions relating to the title of any person party to the application or proceeding and generally may decide any question that it may be necessary or expedient to decide for the purpose of ordering the land to be transferred or may direct an action to be brought in which the rights of the parties may be decided or any question of law settled.

And may decide questions of title &c.
S.A. *Ib.* s. 183.

104.—(1.) If any person entitled to be registered as the proprietor of any land estate or interest under the provisions of this Ordinance shall die before becoming registered such land estate or interest shall be transmitted in like manner as if such deceased person had actually been registered as the proprietor thereof.

Provision for transmission of land of deceased proprietor and dealing with unregistered instruments and other documents.
Q. *Ib.* s. 49.

(2.) Any person claiming an estate or interest in land under the provisions of this Ordinance by virtue of unregistered instruments or other documents purporting to pass such estate or interest shall be deemed a person entitled to be registered within the meaning

of this section; and the Registrar upon application to register an estate or interest so claimed may either reject such application altogether or register the applicant as proprietor of the land estate interest or security forthwith or at the expiration of some defined period of time and may further direct such other entries to be made and notices to be published as may be in his opinion necessary.

(3.) No such registration or entry as last aforesaid which would interfere with the right of any person claiming under any instrument previously registered under this Ordinance shall be made except subject thereto.

PART X.—POWERS OF ATTORNEY.

105.--(1.) The proprietor of any land under the provisions of this Ordinance 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 of the Tenth Schedule hereto authorize and appoint any person to act for him or on his behalf in respect to the leasing of such land or the transfer 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 Ordinance.

(2.) An original or an attested copy of every such power of attorney shall be deposited with the Registrar.

(3.) A separate register of powers of attorney affecting lands under the provisions of this Ordinance shall be kept.

(4.) Upon any such power being brought to the Registrar of Titles he shall enter a memorial of the same in the separate register and from and after such entry no further or other entry of such memorial shall be necessary and 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.

(5.) Every such power bearing endorsement that the memorial of the same has been so entered signed by the Registrar shall be received in evidence as sufficient proof that the person to whom such power has been granted is duly authorized to make all contracts to sign all instruments and to perform all other lawful acts in accordance with the powers therein limited and appointed.

(6.) It shall not be necessary for the Registrar to require proof that at the time of the execution of any instrument executed under any such power and tendered to him for registration such power was unrevoked.

Power of attorney.

Tenth Schedule.
Q. 25 Vic.
No. 15, s. 104.
Q. 41 Vic.
No. 18, s. 13.

Original or attested copy to be deposited.

Separate register.

Entry of memorial thereon and effect.

Endorsement of memorial on power proof of authority of donee.

Registrar not to require proof of revocation.

106. The following rules shall be observed as to powers of attorney:—

General rules applicable to powers of attorney.
Q. 25 Vic.
No. 14, s. 107.

- (1) the power shall be exercised in conformity with the directions contained therein;
- (2) no transfer mortgage lease or encumbrance *bonâ 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;
- (3) no transfer mortgage lease or encumbrance *bonâ fide* made to a purchaser mortgagee lessee or encumbrancee without notice shall be impeached by reason of the insolvency of the person by whom the power was given;
- (4) upon proof at any time to the satisfaction of the Registrar of Titles that any power of attorney 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 of Titles as circumstances may require either to issue a new power of attorney 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.

107. The registered proprietor 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 of the Eleventh Schedule hereto and the Registrar of Titles shall enter the particulars thereof in the register of powers of attorney and shall record thereon the day and hour in which such entry was made and shall file the same in his office; and from and after the date of such entry the Registrar 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 on conviction be liable to a penalty not exceeding the sum of One hundred pounds unless it appears to the satisfaction of the court before whom the case is tried that the powers given therein had been exercised prior to the presentation of such revocation order.

Revocation of power of attorney.
Q. *Ib.* s. 108.

Eleventh Schedule.

PART XI.—GENERAL.

Persons registered as joint proprietors to be joint tenants.

Tenants in common to receive separate certificates.
Q. 25 Vic. No. 14, s. 40.

Registration of remainderman &c. entitled to an estate in possession.
Q. *Ib.* s. 38.
Cf. N.S.W. No. 25 of 1900, s. 101(d).

Remainderman or reversioner may be registered as such.
Q. *Ib.* s. 36.
N.S.W. *Ib.* s. 102.

Name of remainderman to be endorsed on certificate of title.

108. Two or more persons who may be registered as joint proprietors of an estate or interest in land under the provisions of this Ordinance 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 an estate of freehold in any land such persons may receive one certificate of title for the entirety describing them as tenants in common or each may receive a separate certificate for his undivided share.

109.—(1.) Upon proof to the satisfaction of the Registrar 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 upon the application of the person entitled to register such person as the proprietor of such estate or interest in manner hereinbefore prescribed for the registration of a like estate or interest upon a transfer or transmission.

(2.) Previous to such registration the Registrar may require the title of the applicant to be investigated and may cause advertisements to be published as hereinbefore provided in the case of applications for transmission of an estate of freehold in land 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 for such transmission.

110.—(1.) Whenever a certificate of title shall have been issued in respect of a life estate or any other estate less than an estate in fee-simple the person entitled in reversion or remainder may apply to be entered in the register book as so entitled and the Registrar shall thereupon 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 may cause advertisements to be published in manner hereinbefore provided in the case of transmission of estates of freehold and thereafter may reject such application altogether or proceed to enter the name of such applicant in the register book as for the estate or interest to which he 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 court.

(2.) The Registrar 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 or reversioner as the case may be with the day and hour in which such entry had been made.

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

Partition of coparcenership or joint tenancy or tenancy in common.
Q. 25 Vic.
No. 14, s. 92.

112.—(1.) No writ of execution issued in pursuance of any 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 Ordinance or any estate or interest therein as to purchasers mortgagees or creditors unless and until a memorial of the said writ shall have been entered in 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.

No writ of execution binding until a memorial shall have been entered in the register book and also upon the instrument evidencing title.
Q. 1b, s. 91.

(2.) Upon proof to his satisfaction that any such writ of execution has been discharged or satisfied the Registrar 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 writ of execution to which such entry relates shall be deemed to be discharged or satisfied.

(3.) No writ of execution although duly entered in the register book as aforesaid shall affect any land under the provisions of this Ordinance 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.

(4.) Whenever any land under the provisions of this Ordinance or any estate or interest therein or security thereon is sold under any writ of execution so registered the officer or person appointed to execute such writ shall execute a transfer thereof to the purchaser in form of the Twelfth Schedule hereto.

Sales under writ of execution.
Q. 41 Vic.
No. 18, s. 35.

Twelfth Schedule.

(5.) Such transfer shall be subject to all equitable mortgages and liens notified by any caveat lodged with the Registrar prior to the date of the registration of the writ of execution and to all other encumbrances liens and interests notified by memorandum entered on the register; and the Registrar shall on receiving such transfer make an entry thereof in the register book and on the making of such entry the purchaser shall subject as aforesaid be deemed the transferee or owner of such land estate interest or security.

Seal of corporation substituted for signature.

Q. 25 Vic. No. 14, s. 114.

113. A corporation for the purpose of transferring or otherwise dealing with land under the provisions of this Ordinance 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.

Before whom instruments may be executed.

S.A. 380 of 1886, s. 267.

Cf. Q. 1b. ss. 115, 116.

Cf. Q. 41 Vic. No. 18, s. 5.

114. Instruments executed subject to the provisions of this Ordinance shall be attested by one witness who if the person executing the instrument be personally known to such witness may be—

- (a) if the parties executing the same are resident within the Territory before the Registrar a notary public justice of the peace or a commissioner for taking affidavits;
- (b) if the said parties are resident in the United Kingdom then before the mayor or other chief officer of any corporation or before a notary public;
- (c) if the said parties are resident in any other British Possession then before the Chief Justice or judge of any superior court thereof the Governor Government Resident or Chief Secretary thereof or before a notary public justice of the peace or commissioner for taking affidavits;
- (d) if the said parties are resident at any foreign place then before the British Consular Officer resident at such place.

Attestation how proved in other cases.

Cf. Q. 25 Vic. No. 14, ss. 115, 116.

115. Such witness whether the instrument be executed within or without the Territory may also be any other person but in such case the execution of the instrument shall be proved before one of the officers or persons specified in the last preceding section by the witness acknowledging his signature to the instrument and declaring that the party executing the same was personally known to him that the signature thereto is in the handwriting of such party and that such party did freely and voluntarily sign the same; and such officer or other authorized person shall thereupon endorse upon the instrument a certificate in the form of the Thirteenth Schedule hereto.

Thirteenth Schedule.

Acknowledgment of married women how taken.

Q. 1b. s. 112.

Pap. No. 2 of 1889, s. 6.

Cf. S.A. 1b. s. 255.

116.—(1.) In all cases where a married woman is registered as proprietor jointly with her husband in her right in land under the provisions of this Ordinance the Registrar of Titles or a judge of the Central Court⁽⁴⁾ commissioner for taking affidavits in the Central Court⁽⁴⁾ 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

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

transfer or other dealing shall embrace or relate solely to land under the provisions of this Ordinance or shall embrace or relate both to land under the provisions of this Ordinance and also to land not under its provisions shall 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 deed of any married woman is now required to 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.

(2.) The Registrar judge commissioner or any other authorized person taking such acknowledgment and examination shall sign a memorandum to be endorsed on such instrument in form of the Fourteenth 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.

Mode of acknowledgment.

Fourteenth Schedule.

117. The benefits and liabilities in respect to any covenants or powers under the provisions of this Ordinance shall in case of a married woman whose husband is registered as co-proprietor with her in her right extend to and be implied against such married woman and her husband conjointly during coverture.

Rights and liabilities during coverture.

Q. 25 Vic. No. 14, s. 113.

118.—(1.) 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 the Registrar may 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⁽⁹⁾ 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 Ordinance required to be delineated on such certificate of title.

Upon surrender of existing grants or certificates of title the proprietor may obtain a single certificate for all the land included therein.

Q. 1b. s. 94.

(2.) Upon issuing any such certificate of title the Registrar shall cancel the grant or previous certificate of title so delivered up and shall endorse thereon 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.

(9) No regulations have been made.

Provision in
case of lost
grant.

Cf. Q. 25 Vic.
No. 14, s. 117.

Section 119
substituted by
No. 8 of 1917,
s. 3.

119.—(1.) In the event of the grant or certificate of title of land under the provisions of this Ordinance or a Crown Lease being lost, mislaid or destroyed, the proprietor of such land, or of the land comprised in such Crown Lease together with any other persons having knowledge of the circumstances, may make a declaration before the Registrar 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 description 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.

(2.) The Registrar, if satisfied as to the truth of such declaration and the bona fides of the transaction, may issue to such proprietor a provisional certificate of title, or an official copy of such Crown Lease as the case may require, which provisional certificate or official copy of Crown Lease shall contain an exact copy of the original grant or certificate of title bound up in the register book or of the Crown Lease bound up in the Register of Crown Leases 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 or official copy of Crown Lease is issued.

(3.) The Registrar shall at the same time enter in the register book or register of Crown Leases as the case may require notice of the issuing of such provisional certificate or official copy of Crown Lease and the date thereof, and the circumstances under which it was issued; and such provisional certificate or official copy of Crown Lease shall be available for all purposes and uses for which the grant or certificate of title or Crown Lease so lost, mislaid or destroyed would have been available, and as valid to all intents and purposes as such grant, certificate or Crown Lease.

(4.) The Registrar, before issuing such provisional certificate or official copy of Crown Lease, shall, by advertisement in the *Gazette* and in at least one newspaper published in the Territory, give not less than thirty clear days notice of his intention so to do.

(5.) When a grant or certificate of title of land or a Crown Lease is so damaged as to be virtually destroyed but such damaged instrument is delivered to the Registrar with a request for the issue of an official copy the Registrar may issue one under the provisions of this section but dispense with the advertisements referred to herein.

(6.) The fee for the issue of an official copy under this section shall be One pound.

Sub-section (5)
added by
No. 17 of
1939, s. 2.

Sub-section (6)
added by
No. 17 of
1939, s. 2.

119A.—(1.) Whenever a Crown Lease cannot conveniently contain further endorsements the Registrar may require the registered proprietor to deposit his copy of the lease together with a fee of One pound whereupon the Registrar may issue an official copy of the Crown Lease and the lessee's copy thereof. Each such official copy shall contain a note of the circumstances under which it was issued and it shall only be necessary for it to contain the memorials which are operative at the time of such issue.

Official copies when no space available.

Section 119A inserted by No. 17 of 1939, s. 3.

(2.) The Registrar shall also cause a notation that an official copy has been issued under this section to be endorsed upon the face of the original Crown Lease and the original lessee's copy thereof which shall be retained by the Registrar in his records.

119B. When it appears to the Registrar that an instrument of title bound up in his register book is in a dilapidated condition he may without fee issue an official copy of it noting both upon such copy and the original instrument that an official copy has been issued pursuant to this section. Upon the issue of a copy pursuant to this section the Registrar shall clearly cancel the dilapidated instrument but retain it in his records.

Official copy when Crown copy damaged. Inserted by No. 17 of 1939, s. 3.

119C. An official copy issued pursuant to either Sections 119A or 119B of this Ordinance shall be available for all purposes and uses for which the original instrument of title would have been available and as valid to all intents and purposes as such original.

Validity. Inserted by No. 17 of 1939, s. 3.

120. Any proprietor subdividing any land under the provisions of this Ordinance for the purpose of selling the same in allotments as a township shall deposit with the Registrar 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 or a justice of the peace.

Proprietor shall deposit map. Q. 25 Vic. No. 14, s. 119.

121.—(1.) The Registrar may require the proprietor desiring to transfer or otherwise to deal with land under the provisions of this Ordinance or any portion thereof to deposit at the office of the Registrar of Titles a map or plan of such land certified by a licensed surveyor in manner aforesaid.

Registrar may require map to be deposited. Q. 1b, s. 120.

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

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

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

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

(6.) If such proprietor shall neglect or refuse to comply with such requirement it shall not be incumbent on the Registrar to proceed with the registration of such transfer or other dealing.

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

Certified copies signed and sealed to be furnished and to be received in evidence.
Q. 25 Vic. No. 14, s. 122.
Fifteenth Schedule.

122. The Registrar upon payment of the fee specified in the Fifteenth Schedule hereto shall furnish to any person applying at a reasonable time for the same a certified copy of any registered instrument affecting land under the provisions of this Ordinance and every such certified copy signed by him and sealed with his seal shall be received in evidence in any court of justice or before any person having by law or by consent of parties authority to receive evidence as *primâ facie* proof of all the matters contained or recited in or endorsed on the original instrument.

Search allowed.
Q. *Ib.* s. 121.
Fifteenth Schedule.

123. Any person may upon payment of the fee specified in the Fifteenth 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.

Searches and copies of registered instruments.
Q. 41 Vic. No. 18, s. 50.
Fifteenth Schedule.

124. Any person shall upon payment of the fees prescribed by the said Fifteenth Schedule hereto be entitled to search for demand and obtain copies of any instrument affecting land under the provisions of this Ordinance which shall have been lodged or deposited in the office of the Registrar whether the same shall have been cancelled or not.

Authority to register.
Q. 25 Vic. No. 14, s. 139.

125.—(1.) The Registrar shall not receive any instruments purporting to deal with or affecting any land under the provisions of this Ordinance unless there shall be endorsed thereon a cer-

Real Property Ordinance, 1913-1939.

tificate that the same is correct for the purposes of this Ordinance signed by the applicant or party claiming under or in respect of such instrument or by his solicitor.

(2.) The Registrar shall not be required to compare the said instrument with the duplicate (if any) 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 be liable to a penalty not exceeding Fifty pounds.

Penalty for registering incorrect instruments.

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

126.—(1.) Every instrument signed by a proprietor or by others claiming through or under him purporting to pass an estate or interest in or security upon land for the registration of which provision is made by this Ordinance shall until registered be deemed to confer upon the person intended to take under such instrument or other person claiming through or under him a right or claim to the registration of such estate interest or security.

Unregistered instrument to confer claim to registration.
Q. 41 Vic.
No. 18, s. 48.

(2.) The Registrar upon application made for that purpose by any person other than the person immediately claiming under or in respect of the instrument signed by a proprietor may either reject such application altogether or register the applicant as proprietor of the land estate interest or security forthwith or at the expiration of some defined period of time and may further direct such other entries to be made as may be in his opinion necessary.

(3.) No such registration or entry as last aforesaid which would interfere with the right of any person claiming under any instrument previously registered under this Ordinance shall be made except subject thereto.

126A.—(1.) When any lease has been granted by the Lieutenant-Governor⁽⁴⁾ under the provisions of any Ordinance relating to land now or at any time heretofore in force in the Territory and has been executed by the Lieutenant-Governor⁽⁴⁾ but has not been executed by the lessee to whom the same was granted the Registrar may upon the application of the Commissioner of Lands register the lease either forthwith or at the expiration of some defined period of time and may cause such advertisements to be published in the *Gazette* as he may deem necessary.

When Crown lease unexecuted by the lessee may be registered.
Section 126A inserted by No. 13 of 1914, s. 2.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(2.) Upon such registration the lease shall for all purposes be deemed to have been duly executed by the lessee.

(3.) The Registrar shall endorse a memorial on the lease to the effect that the lease was registered though unexecuted by the lessee in pursuance of this section.

Informal documents may be registered.

Cf. S.A. No. 380 of 1886, s. 247.

Section 126B inserted by No. 13 of 1914, s. 2.

126B.—(1.) The Registrar may in the event of great loss or inconvenience being likely to arise register any document signed by a registered proprietor or by any person claiming through or under a registered proprietor notwithstanding that such document be not in any of the forms prescribed by this Ordinance nor otherwise in accordance with the provisions thereof: Provided that such document purports to create an estate or interest in land for the registration of which estate or interest provision is made in this Ordinance and would in equity apart from the provisions of this Ordinance be regarded as vesting such estate or interest in the person intended to take under such document.

(2.) The Registrar upon application for such registration may reject the same altogether or may register the applicant as proprietor of the estate or interest either forthwith or at the expiration of some defined period of time and may direct such other entries to be made in the register book and such advertisements to be published as he may deem necessary.

Powers of court under statute of the 6th Queen Anne applicable to registration under this Ordinance.

Q. 25 Vic. No. 14, s. 90.

127. For the purpose of registration of an estate or interest in land under the provisions of this Ordinance or on any application for the issuing by the Registrar of a certificate of title under the provisions of this Ordinance it shall be lawful for the court or a judge thereof 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."

Vendor to have no equitable lien by reason of balance of purchase-money unpaid.

Q. 17. s. 97.

128. No vendor of any land under the provisions of this Ordinance 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.

Consent may be given by endorsement.

Q. 17. s. 110.

129. 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 Ordinance or any estate or interest therein such consent or direction may be endorsed upon the transfer or other instrument executed for the purpose of transferring or otherwise dealing with such land or estate or interest therein in the words

"I consent hereto" which consent or direction when signed by such consenting or directing party and attested in manner hereinbefore prescribed shall have full validity and effect.

130. If any person interested in any land or in any estate or interest in land under the provisions of this Ordinance is by reason of infancy lunacy or other disability incapable of making any declaration or doing anything required or permitted by this Ordinance 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.

Provision for cases of infancy or other incapacity.
Q. 25 Vic.
No. 14, s. 111.

131. Upon the application of any person producing a certificate of competency signed by the Chief Government Surveyor or other officer who may be appointed for that purpose by the Lieutenant-Governor⁽⁴⁾ the Registrar shall license such person as a surveyor for the purposes of this Ordinance.

Surveyors may be licensed.
Q. *Ib.* s. 118.

132. The Registrar shall prepare and cause to be published before the end of February in each year in the *Gazette* a list containing the names and addresses of all surveyors so licensed.

List of surveyors to be published annually.
Q. 41 Vic.
No. 18, s. 41.

133. Every person licensed as a surveyor for the purposes of this Ordinance who shall make an error in any work intrusted to him to be executed and which in compliance with the provisions of this Ordinance is necessary to be done by such surveyor shall be liable at the request of the person so intrusting him or of the Registrar to correct such error at his own expense.

Surveyors to correct errors at own expense.
Q. *Ib.* s. 42.

134. The licences of persons licensed as surveyors for the purposes of this Ordinance may be suspended or cancelled by the Registrar for negligence want of skill untrustworthiness or inability to perform their duties; and no person whose licence shall be cancelled shall be eligible to receive a fresh licence at any time thereafter.

Surveyors' licences may be suspended or revoked.
Q. *Ib.* s. 43.

135. The Lieutenant-Governor⁽⁴⁾ may appoint a Board consisting of not more than three persons to whom an appeal shall lie by any person aggrieved by any action of the Registrar under the last preceding section; and the decision of such Board shall be final.

Board of Appeal.
Q. *Ib.* s. 44.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

LAND—

Regulations.
Q. 41 Vic.
No. 18, s. 45.

136. The Registrar may subject to the approval of the Lieutenant-Governor⁽⁴⁾ make such regulations⁽¹⁰⁾ as may be necessary to carry out the provisions of the last four preceding sections.

Sworn appraisers
to be appointed.
Q. Ib. s. 6.

137. The Registrar may from time to time subject to the approval of the Lieutenant-Governor⁽⁴⁾ 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 Ordinance.

Oath of sworn
appraiser.
Q. Ib. s. 7.

138. Every appraiser shall before performing any duties under this Ordinance take the following oath before the Registrar or some justice of the peace who are hereby respectively authorized to administer the same:—

I do solemnly swear that I will faithfully and honestly and to the best of my skill and ability make any valuation required of me under the provisions of the *Real Property Ordinance, 1912.*⁽¹¹⁾

PART XII.—FEES AND ASSURANCE FUND.

Fees to be
charged.
Q. 25 Vic.
No. 14, s. 140.

139. The Registrar shall charge and recover such fees as shall be appointed⁽¹²⁾ by the Lieutenant-Governor⁽⁴⁾ with the advice of the Executive Council not in any case exceeding the several fees specified in the Fifteenth Schedule hereto.

Fifteenth
Schedule.

Percentage to
be levied for
assurance of
title.
Q. Ib. s. 41.

140.—(1.) Upon the registration of the title to an estate of freehold or to an estate of leasehold under any Crown lease originally granted for any term not less than twenty-five years in any land under the provisions of this Ordinance derived through the will or intestacy of a previous proprietor there shall be paid to the Registrar the sum specified in the Fifteenth Schedule hereto and for the purpose of levying such sum the value of such land shall be ascertained by the statutory declaration of the applicant or person deriving such land by transmission.

Fifteenth
Schedule.

(2.) If the Registrar shall not be satisfied as to the correctness of the value so declared to he may 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.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(10) No regulations have been made.

(11) The figures "1912" appeared in the original Ordinance. They have now been omitted and the figures "1913" inserted in their stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

(12) A notification (undated) of an Order in Council prescribing the fees to be charged under the repealed *The Real Property Act of 1861* (Queensland, adopted) and *The Real Property Act of 1877* (Queensland, adopted) was published in *British N.G. Govt. Gaz.* of 4.6.1892. This Order was continued in force by the present Section 4(2) but was superseded by an Order in Council (made pursuant to Section 139) dated 8.6.1917, published in *Papua Govt. Gaz.* of 4.7.1917, and printed on p. 2661.

Real Property Ordinance, 1913-1939.

141.—(1.) All sums of money so received under the last preceding section shall be paid to the Treasurer who shall from time to time invest the same in Government securities of the Commonwealth of Australia or of any State thereof 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 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 Ordinance failing recovery from the person who derived benefit thereby.

Assurance
Fund.
Q. 25 Vic.
No. 14, s. 42.

(2.) 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 Public Revenue of the Territory and shall be repaid to the Public Revenue from the Assurance Fund as the same may thereafter accrue.

Insufficiency
of fund to be
made good.
Q. Ib. s. 42.
N.S.W. No. 25
of 1900, s. 29
(2).

(3.) Provided also that no person shall be entitled to be indemnified out of the said Assurance Fund or Public Revenue of the Territory 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.

Fund not liable
for breach of
trust.

142.—(1.) The Registrar shall keep a correct account of all such sums of money as shall be received by him in accordance with the provisions of this Ordinance and shall pay the same into the public Treasury of the Territory at such times and shall render accounts of the same to such persons and in such manner as may be directed in any regulations⁽¹³⁾ that may for that purpose be from time to time issued by the Lieutenant-Governor in Council.⁽⁴⁾

Registrar to
pay moneys
into Treasury
and to render
accounts.
Q. Ib. s. 141.

(2.) The Registrar 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 Ordinance 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 Lieutenant-Governor.⁽⁴⁾

Parties entitled
to be paid by
Treasurer upon
proper warrant.

(3.) All fines and fees received under the provisions of this Ordinance except sums received under the two last preceding sections of this Ordinance shall be carried to account by the Treasurer as general revenue.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(13) No regulations have been made.

PART XIII.—CIVIL RIGHTS AND REMEDIES.

Proprietor may
summon
Registrar to
show cause if
dissatisfied.
N.S.W. No. 25
of 1900, s. 121.
S.A. 380 of
1886, ss. 221,
222.

143.—(1.) If upon the application of any proprietor to have any dealing or transmission registered or recorded or to have any instrument issued or to have any act or duty performed which by this Ordinance is prescribed to be done or performed by the Registrar the Registrar refuses so to do or if the proprietor is dissatisfied with the direction upon his application given by the Registrar such proprietor may require the Registrar of Titles to set forth in writing the grounds of his refusal or the grounds upon which such direction was given; and such proprietor may if he think fit at his own cost summon the Registrar to appear before the court to substantiate and uphold the grounds of his refusal or of such direction as aforesaid.

(2.) Such summons shall be issued under the hand of a judge of the Central Court⁽⁴⁾ and shall be served on the Registrar six clear days at least before the day appointed for the hearing and upon such hearing the Registrar or his counsel shall open and have the right of reply.

(3.) The court may if any issue of fact be involved direct an issue to be tried to decide such question; and the court may make such order in the premises as in their judgment the circumstances of the case may require and the Registrar shall obey such order. All expenses of and incidental to such proceedings shall be borne and paid by the person instituting the same unless the court shall certify that there were no reasonable grounds for such refusal or direction as aforesaid.

No action of
ejectment except
in certain cases.
Q. 25 Vic.
No. 14, s. 123.

144. No action of ejectment shall lie or be sustained against a registered proprietor for the recovery of land under the provisions of this Ordinance except in any of the cases following that is to say:—

- (a) the case of a mortgagee or encumbrancee against a mortgagor or encumbrancer;
- (b) the case of a lessor against a lessee or tenant;
- (c) 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 *bonâ fide* for value from or through a person registered as proprietor through fraud;
- (d) the case of a person deprived of any land by reason of a wrong description of any land or of its boundaries;
- (e) the case of a registered proprietor claiming under a prior certificate of title or under a prior grant

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

registered under the provisions of this Ordinance in any case in which two grants or two certificates or a grant and a certificate may be registered under this Ordinance in respect of the same land;

- (f) the case of a registered proprietor claiming under a prior Crown lease registered under the provisions of this Ordinance in any case in which two Crown leases may be registered under this Ordinance in respect of the same land;

and in any case other than as 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 seized of or entitled to such land.

145.—(1.) Whenever an action of ejectment shall be brought against a registered proprietor in any case (other than the case of a fraudulent proprietor) in which an action of ejectment is not barred by the last preceding section if the defendant or any person through whom he claims shall have made improvements on the land since obtaining a certificate of title thereto then whether he admit or deny the plaintiff's title he may give notice to the plaintiff of the fact of such improvements being made and may set a value thereon and also on the land as distinct therefrom and give evidence thereof at the trial.

In case of
ejectment of
defendant who
has made
improvements
their value may
be assessed.
Q. 41 Vic.
No. 18, s. 47.

(2.) If a verdict be found for the plaintiff or his title be admitted the court shall assess the value of the alleged improvements and shall also separately assess the value which the land would have possessed if the said improvements had not been made.

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

(4.) If the plaintiff fails to make such payment within three months after verdict he shall have judgment to recover the sum separately assessed as the value of the land together with costs of suit and no more; and the defendant shall upon satisfaction thereof be entitled to retain the land and improvements; and in either case the Registrar shall be entitled under the powers in this Ordinance contained to require to be delivered up any certificate of title which shall be held by the party whose right to the land shall have determined.

The plaintiff
shall either pay
for improvements
or be entitled
to damages for
the loss of the
improved land.

(5.) In every case in which the defendant is entitled to indemnity from the Assurance Fund the Registrar shall be made a co-defendant as trustee of such fund and may defend the action either severally or jointly or may leave the defence wholly to his co-defendant as he shall see fit.

Registrar to
be made a
co-defendant.

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

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

Registration as proprietor to be equivalent to possession.

Q. 25 Vic. No. 14, s. 125.

146. For the purpose of bringing an action of ejectment against any person against whom such action is not expressly barred or for the purpose 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.

Persons defrauded may bring action against fraudulent proprietor for damages.

Q. Ib. s. 126.

147. 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 certificate 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 in the Central Court⁽⁴⁾ 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.

Saving the case of a purchaser or mortgagee for valuable consideration.

Nothing in this Ordinance contained shall be interpreted to subject to any action of ejectment or for recovery of damages any purchaser or mortgagee *bonâ fide* for valuable consideration of any land under the provisions of this Ordinance 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.

If registered proprietor be dead action to be against Registrar as nominal defendant.

Q. Ib. s. 127.

148. 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 court then in such case it shall be lawful to bring an action for damages against the Registrar 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 or other proper officer 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 Territory upon receipt of a certificate of a judge of the Central Court⁽⁴⁾ and of a warrant under the hand of the Lieutenant-Governor⁽⁴⁾ as herein-after provided shall pay the amount of such damages and costs or

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

the unrecovered balance thereof as the case may be and shall charge the same to the account of the Assurance Fund.

149.—(1.) 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 or any of his officers or clerks in the execution of their duties under the provisions of this Ordinance shall be brought against the Registrar as nominal defendant; and 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 Central Court⁽⁴⁾ 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.

Actions for recovery of damages may in certain cases be brought against the Registrar as nominal defendant.
Q. 25 Vic.
No. 14, s. 128.

(2.) Thereupon or before the expiration of two calendar months after such judgment is so certified the said Treasurer upon the receipt of a warrant under the hand of the Lieutenant-Governor⁽⁴⁾ 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.

Treasurer on receipt of warrant from Lieutenant-Governor to pay amount of award.

(3.) Notice in writing of every such action and of the cause thereof shall be served upon the Treasurer and also upon the Registrar one calendar month at least before the commencement of such action.

Notice of action to be served on Registrar and Treasurer.

(4.) The Registrar 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 as aforesaid) be served upon the Registrar but all such processes and notices shall be served upon the Treasurer for the time being.

Process and notice to be served on Treasurer.

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

If action discontinued or plaintiff nonsuited the nominal defendant entitled to costs.
Q. Ib. s. 129.

151. No action for recovery of damages sustained through deprivation of land or of any estate or interest in land as hereinbefore described shall lie or be sustained against the Registrar or against the Assurance Fund or against the person who applied to be registered as proprietor in respect to such land or against the person certifying any instrument as aforesaid unless such action is commenced within the period of six years from the date of such deprivation.

Limitation of actions.
N.S.W. No. 25 of 1900, s. 30.
Cf. Q. Ib. ss. 126, 127.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

Moneys paid out of Assurance Fund may be recovered against estate of a deceased.

N.S.W. No. 25 of 1900, s. 131 (1).

152.—(1.) Whenever any amount has been paid out of the Assurance Fund or in case of its insufficiency out of Public Revenue on account of any person who is dead such amount may be recovered from the estate of such person by action against his personal representatives in the name of the Registrar of Titles.

Or of an insolvent.

N.S.W. *Ib.* s. 131 (2).

(2.) Whenever such amount has been so paid on account of a person who is insolvent the amount so paid shall be considered to be a debt due from the estate of such insolvent and a certificate signed by the Treasurer certifying the fact of such payment and delivered to the trustee of such insolvent's estate shall be sufficient proof of such debt.

When person liable has absconded.

N.S.W. *Ib.* s. 132.

Cf. Q. 25 Vic. No. 14, s. 127.

(3.) Whenever such amount has been so paid on account of any person who has absconded and has left any real or personal estate within the Territory the Central Court⁽⁴⁾ or a judge thereof upon the application of the Registrar and upon production of a certificate signed by the Treasurer certifying that the amount has been paid in satisfaction of a judgment against the Registrar as nominal defendant may allow judgment for the Registrar to be entered up against such person forthwith for the amount so paid together with the costs of the application. Such judgment shall be final and shall be entered up in like manner as a judgment pronounced in court in an adverse action and execution may issue immediately.

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

Indemnity of Registrar.

Q. *Ib.* s. 137.

153. The Registrar 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 unless the same has happened through his wilful act or default; and the person goods or lands of the Registrar 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; but he shall be indemnified out of the Assurance Fund or out of the Public Revenue of the Territory 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 Ordinance touching or concerning any matter or thing relating to the execution of this Ordinance and the powers hereby granted.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

154. Every person summoned to attend before the Registrar as a witness in respect of any instrument required to be produced or any act matter or thing by this Ordinance authorized to be done proceeded with or inquired into by or before the Registrar 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.

Witnesses to have expenses tendered.
Q. 25 Vic.
No. 14, s. 138.

PART XIV.—CANCELLATION AND CORRECTION OF INSTRUMENTS.

155.—(1.) In case it appears to the satisfaction of the Registrar that—

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

Holder of grant certificate or instrument issued in error or wrongfully obtained or retained to show cause to court against cancellation or correction.
N.S.W. No. 25 of 1900, s. 136.
Cf. Q. *Ib.* s. 130.

he may summon the person to whom such grant certificate or instrument has been so issued or by whom it has been so obtained or is retained to deliver up the same for the purpose of being cancelled or corrected as the case may require.

(2.) If such person refuses or neglects to comply with such summons or cannot be found the Registrar may apply to a judge of the Central Court⁽⁴⁾ to issue a summons for such person to appear before such court or judge and show cause why such grant certificate or other instrument should not be delivered up to be cancelled or corrected as aforesaid.

(3.) If such person when served with such summons neglects or refuses to attend before such court or judge at the time therein appointed such judge may issue a warrant authorizing and directing the person so summoned to be apprehended and brought before a judge of the Central Court⁽⁴⁾ for examination.

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

Court or judge may order delivery up of instrument.
N.S.W. *Ib.* s. 137.
Cf. Q. *Ib.* ss. 132, 133.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

LAND—

(2.) Upon refusal or neglect by such person to deliver up the same pursuant to such order such court or judge may commit such person to prison for any period not exceeding six months unless such grant certificate or instrument is sooner delivered up.

Sub-section (3) amended by No. 8 of 1917, s. 4.

(3.) Upon such refusal or neglect or in case such person has absconded or keeps out of the way so that summons cannot be served upon him as hereinbefore directed the Registrar shall if the circumstances of the case require it issue to the proprietor of the said land such certificate of title or other instrument as is herein provided to be issued in the case of any grant or certificate of title being lost mislaid or destroyed and shall enter into the register book notice of the issuing of the said certificate of title or other instrument and the circumstances under which the same was issued and such other particulars as he may deem necessary.

Court may order the cancelling of any entry in the register book obtained through fraud and the substitution of any other entry. Q. 25 Vic. No. 14, s. 124.

157. In the event of the recovery of any land by action of ejectment from a fraudulent proprietor or from any of the persons against whom action of ejectment is not by this Ordinance expressly barred it shall be lawful for the 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 directing 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 shall give effect to any such order.

PART XV.—RECOVERY OF PENALTIES AND MONEY.

Penalties how to be recovered. Q. 17. s. 143.

158. Unless in any case herein otherwise expressly provided all offences against the provisions of this Ordinance 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 Registrar before any court in the Territory having jurisdiction for punishment of offences of the like nature or for the recovery of penalties or sums of money of the like amount.

FIRST SCHEDULE.

Sections 5, 18.

No.	TERRITORY OF PAPUA.	No.
Number of previous	Register Book Vol. [Royal Arms.]	Folio
	CERTIFICATE OF TITLE.	
of the	pursuant to day of	produced day
	No. registered the	

Real Property Ordinance, 1913-1939.

of _____, 1 _____, is now seised of an estate 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 _____ containing by admeasurement _____ more or less commencing which said piece of land is _____ of the marked _____ delineated in the public map of the said deposited in the office of the Department of Lands originally granted the day of _____, 1 _____, by Crown Grant No. _____ under the Seal of the Possession of British New Guinea and the Hand of _____ Administrator of the said Possession to _____.

Saving always to the Crown all the rights and interests reserved to it by the said Crown Grant.

In witness whereof I have hereunto signed my name and affixed my seal this _____ day of _____ One thousand nine hundred and _____

Signed sealed and delivered the _____ day }
of _____, 19 _____, in the presence of— }

Registrar of Titles.

SECOND SCHEDULE.

Section 84.

TERRITORY OF PAPUA.

TRANSFER.

I [name residence and occupation of transferor] being the registered proprietor of an estate [here state the nature of the estate or interest] subject however to such encumbrances liens and interests as are notified by memorandum endorsed hereon in all that piece of land situated in the _____ Division [or town of _____] containing [here state area] be the same more or less being [the whole or part as the case may be] of the land comprised in [Crown grant or certificate of title or Crown lease] dated _____ register volume _____ folio _____ [these references will suffice alone if the whole land in the Crown grant certificate of title or Crown lease is transferred; but if a part only (unless a plan has been deposited in which case a reference to the number of the allotment and to the plan will be sufficient) a description and plan will be required and may be inserted or annexed with this prefix: "as delineated in the plan hereon (or annexed hereto) and described as follows namely." If the plan or description be annexed the annexure should be identified as part of the instrument by a memorandum thereon referring hereto and signed by the same parties and witnesses] in consideration of the sum of [if the consideration is not pecuniary alter accordingly] paid to _____ by _____ the receipt of which sum _____ hereby acknowledge do hereby transfer to the said _____ all _____ estate and interest in the said piece of land above described.

In witness whereof _____ have hereunto subscribed name this _____ day of _____, 19 _____.

Signed on the day above named by the }
said _____ in the presence of— }

Signature of Vendor.

Correct for the purpose of registration.

Signature of Purchaser.

LAND—

Section 37.

THIRD SCHEDULE.

TRANSFER OF MORTGAGE LEASE OR ENCUMBRANCE TO BE ENDORSED ON ORIGINAL MORTGAGE LEASE OR ENCUMBRANCE.

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 instrument 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. transferee }
in the presence of G.H. }

Section 41.

FOURTH SCHEDULE.

LEASE.

I [*name residence occupation*] being registered as the proprietor of an estate [*here state nature of the estate or interest*] in the land hereinafter described subject however to such encumbrances liens and interests as are notified by memorandum underwritten or endorsed hereon do hereby lease unto [*name &c. of lessee*] all that piece of land containing [*acres roods and perches*] situate in the _____ Division [*or township of*] being the [*whole or part as the case may be*] of the land comprised in [Crown grant or certificate of title or Crown lease] dated _____ register volume _____ folio _____ [*these references will suffice alone if the whole land in the Crown grant certificate or Crown lease be leased; but if the lease be of a part a description and plan will be required setting forth the boundaries in chains links or feet which will then follow here with this prefix: "as delineated in the plan hereon (or hereunto annexed) and described as follows." If the plan or description be annexed the annexure should be identified as part of this instrument by a memorandum thereon referring hereto and signed by the same parties and witnesses*] to be held by the said [*name of lessee*] as tenant for the space of _____ years computed from the _____ day of _____, 19____, at the yearly rental of _____ pounds payable [*here insert terms of payment of rent*] subject to the following covenants conditions and restrictions. [*Here set out all special covenants if any and state what covenants declared by the Ordinance to be implied against a lessor and lessee respectively are intended to be barred or modified and in what manner*].

I [*name residence and occupation of lessee*] do hereby accept this lease of the above-described lands to be held by me as tenant and subject to the covenants conditions and restrictions above set forth.

Dated this _____ day of _____

Signed by the above-named _____ as lessor and by the above-named _____ as lessee this _____ day of _____ in the presence of

Lessor.

Lessee.

Sections 46 (1), 51.

FIFTH SCHEDULE.

MORTGAGE.

I [*name residence and occupation*] being registered as proprietor of an estate [*here state the nature of the estate or interest*] subject however to such encumbrances liens and interests as are notified by memoranda endorsed hereon in that piece of land situated in the _____ Division [or town

Real Property Ordinance, 1913-1939.

of [here state area] containing [here state area] be the same a little more or less [if the land to be dealt with contains all that is included in an existing grant certificate of title or Crown lease refer thereto for description of parcels and diagram; otherwise set forth the boundaries in chains links or feet and refer to plan thereof on margin of or annexed to the mortgage or deposited in the office of the Registrar of Titles].

In consideration of the sum of £ _____ this day lent to me by _____ of [here insert description] the receipt of which sum I hereby acknowledge do hereby covenant with the said _____ that I will pay to him the said _____ the above sum of £ _____ on the _____ day of _____ . Secondly that I will pay interest on the said sum at the rate of £ _____ by the £100 in the year by equal payments on the _____ day of _____ and on the _____ day of _____ in every year. Thirdly [here set forth special covenants if any are intended and state what covenants declared by the "Real Property Ordinance, 1912,"⁽¹⁴⁾ to be implied in mortgages are intended to be barred or modified and if so in what manner]. And for the better securing to the said _____ the repayment in manner aforesaid of the said principal sum and interest I hereby mortgage to the said _____ all my estate and interest in the said land above described.

In witness whereof I have hereto signed my name this _____ day of _____ A.B. Mortgagor.

Signed by the above-named A.B. as mortgagor this _____ day of _____ in the presence of G.H. _____

SIXTH SCHEDULE.

Sections 46 (2),
51.

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 hereon in that piece of land situated in [the _____ Division or town of _____] containing [here state area] be the same a little more or less [if the land to be dealt with contains all that is included in an existing grant certificate of title or Crown lease refer thereto for description of parcels and diagram; otherwise set forth the boundaries in chains links or feet and refer to plan thereof on margin of or annexed to the encumbrance or deposited in the office of the Registrar of Titles.]

And desiring to render the said land available for the purpose of securing to and for the benefit of C.D. the [sum of money annuity or rent charge] hereinafter mentioned do hereby encumber the said land for the benefit of the said C.D. with the [sum annuity or rent charge] of £ _____ to be raised and paid at the times and in the manner following that is to say— [here state the times appointed for the payment of the sum annuity or rent charge intended to be secured the interest if any and the events on which such sum annuity or rent charge shall become and cease to be payable also any special covenants or powers and any modification of the powers or remedies given to an encumbrancee by the "Real Property Ordinance, 1913."'] And subject as aforesaid the said C.D. shall be entitled to all powers and remedies given to an encumbrancee by the "Real Property Ordinance, 1913."

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

(14) The figures "1912" appeared in the original Ordinance. They have now been omitted and the figures "1913" inserted in their stead by the Second Schedule of the Ordinances Reprint and Revision Ordinance 1947 of the Territory of Papua-New Guinea.

SEVENTH SCHEDULE.

TRANSFER COMBINED WITH CREATION OF CHARGE.

This indenture made this _____ day of _____, 19____, between A.B. of _____ registered as proprietor of an estate [here describe the estate or interest] in the land herein described of the one part and C.D. of _____ of the other part witnesseth that in consideration of the sum of _____ paid by the said C.D. to the said A.B. the receipt whereof is hereby acknowledged [if there be any valuable consideration other than money it must be also specified] and in further consideration of the charge hereby created the said A.B. doth hereby release and transfer unto the said C.D. and his heirs all that piece of land situated in the Division [or town of _____] containing _____ more or less commencing [here set out description] and being the land described in the Crown grant [or certificate of title or Crown lease] register book volume _____ folio _____ and all his estate right title and interest therein to hold the same subject to such encumbrances liens and interests as are notified by memorandum endorsed hereon and subject also to the charge [or easement] intended to be hereby created as hereinafter expressed.

And this indenture further witnesseth that in consideration of the premises and to completely effectuate the agreement upon which these presents are executed the said C.D. doth hereby declare that he accepts the transfer hereinbefore contained subject to the following conditions viz.:—
(Here state the particulars of the charge or easement as in a mortgage or in a conveyance of an easement.)

Signed sealed and delivered &c.

I desire that a certificate of title in my name may issue with memorandum of encumbrance thereon accordingly.

C.D.

[or]

TRANSFER COMBINED WITH CREATION OF CHARGE.

This indenture made this _____ day of _____, 19____, between A.B. of _____ registered as proprietor of an estate [here describe the estate or interest] in the land herein described of the first part and C.D. of _____ of the second part and E.F. of the third part witnesseth that in consideration of the sum of _____ paid by the said C.D. to the said A.B. the receipt whereof is hereby acknowledged [if there be any valuable consideration other than money it must be also specified] the said A.B. doth hereby release and transfer unto the said C.D. and his heirs all that piece of land situated in the Division [or town of _____] containing _____ more or less commencing [here set out description] and being the land described in Crown grant [or certificate of title or Crown lease] register book volume _____ folio _____ and all his estate right title and interest therein to hold the same subject to such encumbrances liens and interests as are notified by memorandum endorsed hereon and subject also to the charge [or easement] intended to be hereby created as hereinafter expressed.

And this indenture further witnesseth that in consideration that E.F. hath advanced the said C.D. £ _____ the said C.D. doth hereby declare that the land hereby transferred shall be charged and subject to the following conditions:—

(Here state the particulars of the charge or easement as in a mortgage.)

Signed sealed and delivered &c.

I desire that a certificate of title in my name may issue with memorandum of encumbrance thereon accordingly.

EIGHTH SCHEDULE.

Section 63.

CAVEAT FORBIDDING REGISTRATION OF DEALING WITH ESTATE OR INTEREST.

To the Registrar of Titles Papua.

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 Central 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 Territory as under written.

Dated this (*here insert date of caveat*) day of _____, 19 _____
A.B.

NINTH SCHEDULE.

Section 84.

NOMINATION OF TRUSTEES.

I A.B. being registered as the proprietor of an estate (*here state nature of the estate or interest*) subject however to such encumbrances liens and interests as are notified by memoranda endorsed hereon in that piece of land situated in the (_____ Division or town _____) containing (*here state area*) be the same a little more or less (*here also 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 or Crown lease refer thereto for description of parcels 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 office of the Registrar of Titles*) 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 Ordinance, 1913."

In witness whereof I have hereunto signed my name this _____ day
of _____ in the presence of _____ A.B.

Accepted—C.D. E.F. G.H. in the presence of _____

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—

TENTH SCHEDULE.

Section 105.

POWER OF ATTORNEY.

I A.B. being registered as proprietor of an estate (*here state nature of the estate or interest*) subject however to such encumbrances liens and interests as are notified by memoranda 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 certificate of title or land grant or Crown lease of each parcel*) do hereby appoint C.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 &c.*) 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

LAND—

the said lands and for the enforcement of all contracts covenants or conditions binding upon any lessee or occupier of the said lands or upon any other person in respect of the same and for the taking and maintaining possession of the said lands and for protecting the same from waste damage or trespass.

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 &c. &c.*).

I declare that this power shall not be exercised after the expiration of _____ from the date hereof.

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

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

Schedule referred to.

Section 107.

ELEVENTH SCHEDULE.

REVOCATION OF POWER OF ATTORNEY.

I A.B. of _____ being seised of an estate (*here state the nature of the estate*) in all that piece of land (*here describe land referring to the existing grant certificate Crown lease 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 _____

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

I M.M. Registrar of Titles 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 of Titles.

Section 112.

TWELFTH SCHEDULE.

TRANSFER UNDER WRIT OF EXECUTION.

I (*insert name*) as (*insert title of officer executing the transfer*) (*the person appointed to execute the writ hereinafter mentioned*) in pursuance of a writ of execution tested the _____ day of _____ and issued out of the Central Court in an action wherein _____ is the plaintiff and _____ the defendant which said _____ is registered as the proprietor of an estate (*here state nature of the estate or as the case may be*) in the land (*or as the case may be*) hereinafter described do hereby in consideration of the sum of _____ pounds paid to me by E.F. (*insert addition*) transfer to the said E.F. and his heirs all the estate and interest of the said _____ in all that piece of land situated in the (_____) Division or town of _____ containing _____ more or less commencing (*here set out description*) and being the land described in Crown grant (*or certificate of title or Crown lease*) register book volume _____ folio _____ to hold the same

Real Property Ordinance, 1913-1939.

subject to such encumbrances liens and interests as are notified by memorandum endorsed hereon.

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

Signed on the day above named by the said (officer) in the presence of Mortgages and encumbrances referred to.

THIRTEENTH SCHEDULE.

Section 115.

CERTIFICATE OF REGISTRAR OF TITLES 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 the said instrument is in the handwriting of the said A.B.

(Signed) Registrar of Titles or J.P.

FOURTEENTH SCHEDULE.

Section 116.

CERTIFICATE OF REGISTRAR OF TITLES 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 of Titles or Judge) 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

(Signed)

FIFTEENTH SCHEDULE.⁽¹²⁾

Sections 122, 123, 124, 139.

FEE PAYABLE FOR THE PERFORMANCE OF THE SEVERAL ACTS MATTERS AND THINGS HEREIN SPECIFIED.

To be paid to the Registrar of Titles over and above the cost of all advertisements by the Ordinance authorized or directed to be published:—

	£	s.	d.
Contribution to Assurance Fund upon transmission by will or intestacy—in the pound sterling	0	0	0½
Other fees—			
For every certificate of title	1	0	0
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	0	10	0
For certificates of title issued under other circumstances	1	0	0

(12) See footnote (12) printed on p. 2644.

LAND—

	£	s.	d.
Registering transfer mortgage encumbrance lease or nomination of trustees or any direction licence or order of the Central Court or any writ	0	10	0
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 writ ..	0	5	0
Registering a declaration of ownership taken by transmission	0	10	0
For every power of attorney	0	10	0
For cancelling power	0	5	0
For every revocation of power of attorney	0	10	0
Receipt and noting of caveat	0	10	0
For every search when the volume and folium is given ..	0	1	0
For every general search	0	2	6
For every map or plan deposited	0	5	0
For every deed or other instrument declaratory of trusts deposited	0	10	0
On deposit of any will or other instrument for safe custody only	0	10	0
For the exhibition or return of any instrument so deposited or for exhibiting any application or deed surrendered ..	0	10	0
For certified copy first five folios per folio of seventy-two words	0	5	0
For every folio or part folio after first five	0	0	8
For every instrument drawn on parchment (extra)	0	2	6

Sixteenth
Schedule
added by
No. 16 of
1935, s. 3.

SIXTEENTH SCHEDULE.

CERTIFICATE THAT NATIVE REGISTERED PROPRIETOR HAS DIED INTESTATE AND THAT A SPECIFIED NATIVE IS ENTITLED BY NATIVE CUSTOM.

Whereas _____, of _____, is registered as proprietor of an estate as _____, in all that piece or parcel of land situated at _____, containing _____ be the same a little more or less and being the whole of the land comprised in
No. _____ Volume _____ Folio _____ :

And whereas I hereby certify that the said registered proprietor has died intestate:

And whereas I further hereby certify that _____, of _____, is entitled as _____ (if more than one entitled specify whether as joint tenants or as tenants in common) to all the right title and interest of the said registered proprietor by virtue of native custom:

And whereas I hereby further certify that this certificate is correct for the purpose of registration:

I hereby require the Registrar of Titles to perform his duties pursuant to Section 92A of the *Real Property Ordinance*, 1913-1935, and effect the necessary entries and issue such certificates or other instruments as may be necessary to give effect to this certificate.

Dated this _____ day of _____, 19 _____.

Lieutenant-Governor
or Government Secretary.

Produced the _____ day of _____, 19 _____,
at _____ m.

Registrar of Titles.