

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 1 of 1925.

AN ORDINANCE

Relating to the Declaration of Titles to Land and the Facilitation of its Transfer.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909* and the *Seat of Government (Administration) Act 1910*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Real Property Ordinance* Short title. 1925.

2.—(1.) This Ordinance, except Part VII. thereof, shall come into operation forthwith. Commencement.

(2.) Part VII. of this Ordinance shall commence on a date to be fixed by proclamation.

3.—(1.) The *Real Property Act 1900* of the State of New South Wales, in its application to the Territory, is hereby repealed. Repeal.

(2.) Any reference in any other Act of the State of New South Wales, which continues in force in the Territory, to the Act repealed by this section shall be read as a reference to this Ordinance:

Provided that, in relation to land which at the commencement of this section is under the provisions of that Act, this section shall not apply until the commencement of Part VII. of this Ordinance.

4. This Ordinance is divided into Parts, as follows:—

Parts.

PART I.—Preliminary.

PART II.—Administration.

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- PART VI.—Issue of Certificates of Title and Grants.
 PART VII.—Land registered under the *Real Property Act* 1900 of the State of New South Wales.
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 PART XVIII.—Practice and Procedure.
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Saving as to
married
women's
property.

5. Nothing in this Ordinance shall be deemed to affect or control the provisions of any law in force in the Territory which deal with married women's property.

Definitions

6.—(1.) In this Ordinance, unless the contrary intention appears—

- (a) "Caveator" means the person by whom or on whose behalf a caveat has been lodged under this Ordinance;
 "Commission" means the Federal Capital Commission appointed under the *Seat of Government (Administration) Act* 1924;
 "Crown land" includes all land belonging to the Commonwealth;
 "Crown lease" includes any lease of land granted by or in the name of the Commonwealth;
 "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 proprietor of any land or of any estate or interest in land subject to an encumbrance;
 "Encumbrancee" means the proprietor of an encumbrance;
 "Grant" means the grant by the Crown of land for an estate of freehold or for a life or lives or for a term of years, and includes a grant by or in the name of the Commonwealth for any such estate;

- “ Instrument ” includes a transfer, lease, sub-lease, mortgage, encumbrance and creation of an easement, but does not include a Crown lease;
 - “ Justice ” means any Justice or Judge of the Court;
 - “ Land ” includes land, messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description, or any estate or interest therein, together with all paths, passages, ways, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals, and quarries, and all trees and timber thereon or thereunder lying or being unless any such are specially excepted;
 - “ Mortgage ” means any charge on land created merely for securing a debt;
 - “ Mortgagor ” means the proprietor of land or of any estate or interest in land pledged as security for a debt;
 - “ Mortgagee ” means the proprietor of a mortgage;
 - “ Proprietor ” means the owner, whether in possession, remainder, reversion or otherwise of land or of a lease, mortgage, encumbrance or charge, whose name appears or is entered as the proprietor thereof in the Register Book, and includes the donee of a power to appoint or dispose of the land, lease, mortgage, encumbrance or charge;
 - “ Public Trustee ” means the person for the time being appointed Public Trustee for the Territory;
 - “ Registrar ” means the Registrar of Titles, and includes any Deputy Registrar of Titles appointed under this Ordinance;
 - “ 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, will, intestacy, bankruptcy, insolvency or marriage of a proprietor;
 - “ The Court ” means the High Court of Australia, or any other Court having jurisdiction in respect of the matters referred to in this Ordinance; and
- (b) The describing of any person as a proprietor, transferor, transferee, mortgagor, mortgagee, encumbrancer, encumbrancee, lessor or lessee, or as a trustee, or as seised of having or taking any estate or interest in any land shall be deemed to include the heirs, executors, administrators and assigns of that person; and
 - (c) Any reference to a schedule shall be read as a reference to a schedule to this Ordinance.

(2.) Expressions used in any document or instrument purporting to be made or executed under this Ordinance shall, unless the contrary intention appears, have the same meanings as in this Ordinance.

PART II.—ADMINISTRATION.

Registrar and
Deputy
Registrars, &c.

7.—(1.) For the purposes of this Ordinance there shall be—

- (a) a Registrar of Titles; and
- (b) such Deputy Registrars of Titles and other officers as are necessary for carrying out this Ordinance.

(2.) The Registrar shall be an officer under the *Commonwealth Public Service Act 1922-1924*, and shall have the qualifications of a barrister or solicitor of the High Court of Australia, or of the Supreme Court of a State.

(3.) The Chairman of the Commission shall have all the powers and functions of a Permanent Head under the *Commonwealth Public Service Act 1922-1924* in relation to permanent officers employed for the purposes of this Ordinance.

(4.) The Commission may appoint any person who is eligible for appointment as Registrar to be Acting Registrar until the appointment of a Registrar or during any temporary vacancy in the office of Registrar, and the Acting Registrar shall have all the powers and perform all the duties of the Registrar

Registrar's
seal of office.

8.—(1.) The Registrar shall have and use a seal of office the design of which shall be notified by the Commission in the *Gazette*.

(2.) Every certificate of title or instrument bearing the imprint of that seal and purporting to be signed or issued by the Registrar or by any Acting Registrar or by any Deputy Registrar shall be received in evidence, and shall, in the absence of proof to the contrary, be deemed to be signed or issued by or under the direction of the Registrar or Acting Registrar.

Functions of
Acting Registrar
and Deputy
Registrar.

9. Whenever by any law anything is appointed to be done by the Registrar, it may be lawfully done by any Acting Registrar or by any Deputy Registrar.

Oath of office.

10.—(1.) Every Registrar, Acting Registrar and Deputy Registrar appointed under this Ordinance shall, before entering upon the execution of his office under this Ordinance, take an oath or make an affirmation in the following form:—

OATH.

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 for the Seat of Government of the Commonwealth. So help me, God.

AFFIRMATION.

I, A.B., do solemnly and sincerely affirm and declare 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 for the Seat of Government of the Commonwealth.

(2.) The oath or affirmation may be taken before a Justice of the Peace or a Commissioner for taking declarations under the *Statutory Declarations Act 1911-1922*.

11.—(1.) The Commission may appoint persons to value land for the purposes of this Ordinance. Sworn valuers;

(2.) Every person so appointed shall be styled a sworn valuator.

(3.) Every sworn valuator shall, within fourteen days of the date of his appointment, and before performing any duties under this Ordinance, take an oath or make an affirmation in the following form:—

OATH.

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 1925*. So help me, God.

AFFIRMATION.

I, , do solemnly and sincerely affirm and declare 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 1925*.

(4.) The oath or affirmation shall be taken or made before the Registrar, who is hereby authorized to administer the oath or affirmation.

12. Where the Registrar or any Acting Registrar or any Deputy Registrar acting or purporting to act under the authority of this Ordinance has issued, signed or made any instrument, document or writing, the instrument, document or writing shall not be deemed to have been or to be invalid by reason only of any informality in the manner or time of affixing, impressing or printing any seal on the instrument, document or writing, or of the omission to affix, impress or print any seal on the instrument, document or writing. Certain information and omissions not to invalidate documents.

13. No person shall be permitted to practise as a surveyor under the provisions of this Ordinance unless specially licensed for that purpose by the Commission. Surveyors to be licensed.

PART III.—GENERAL POWERS OF REGISTRAR.

Powers of
Registrar.

14.—(1.) The Registrar may exercise the following powers, that is to say:—

- (a) He may require the proprietor or other person making application to have any land brought under the provisions of this Ordinance, or the proprietor or mortgagee or other person interested in any 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 transacted, or in respect of which any transmission is about to be registered, to produce any grant, certificate of title, conveyance, deed, mortgage, lease, will or other document or instrument in his possession or within his control affecting the land or the title thereto;
- (b) He may summon any such proprietor, mortgagee or other person mentioned in the last preceding paragraph to appear and give any explanation respecting the land or the documents or instruments affecting the title thereto;
- (c) He may administer oaths or may take a statutory declaration in lieu of administering an oath;
- (d) He may, upon such evidence as appears to him sufficient, correct errors in grants, certificates of title or in the Register Book, or in entries made therein respectively, and may supply entries omitted to be made under the provisions of this Ordinance:

Provided that in the correction of any such error he shall not erase or render illegible the original words, and shall affix the date on which the correction was made or entry supplied with his initials;

- (e) He may enter a caveat on behalf of any person under the disability of infancy, coverture, lunacy, unsoundness of mind or absence from the Commonwealth, or on behalf of the Commonwealth, to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person, and also to prohibit the dealing with any land in any case in which it appears to him that an error has been made by misdescription of the land or otherwise in any certificate of title or other document or instrument, or for the prevention of any fraud or improper dealing.

(2.) Every grant or certificate of title corrected, and every entry corrected or supplied, in pursuance of paragraph (d) of the last preceding sub-section shall have the like validity and effect as if the error had not been made or the entry omitted except as regards any entry made in the Register Book prior to the actual time of correcting the error or supplying the omitted entry.

15.—(1.) If any person upon requisition in writing made by the Registrar in pursuance of the provisions of paragraph (a) or (b) of the last preceding section—

Penalty for obstructing Registrar.

- (a) refuses or neglects to produce any document or instrument or to allow it to be inspected; or
- (b) refuses or neglects to give any explanation; or
- (c) knowingly misleads or deceives any person authorized to demand any such explanation,

he shall be guilty of an offence.

Penalty: One hundred pounds.

(2.) The Registrar, if any document or instrument so withheld appears to him to be material, shall not be bound to proceed with the bringing of the land under the provisions of this Ordinance, or with the registration of the transfer or other dealing, as the case may be.

16. A statutory declaration may be made before the Registrar or before any Acting Registrar or before any Deputy Registrar, and, when so made, shall have the same effect as if made before any person specified in section five of the *Statutory Declarations Act 1911-1922*.

Registrar may take statutory declaration.

PART IV.—FUTURE GRANTS OF FREEHOLD AND OF CERTAIN CROWN LEASEHOLDS.

17.—(1.) Each grant of freehold and each grant for a term exceeding five years granted by or in the name of the Commonwealth after the commencement of this Ordinance shall be in duplicate, and, in addition to proper words, shall refer to a map of the land.

Crown grants and certain Crown leases to be subject to the provisions of this Ordinance.

(2.) Both parts of the grant shall be delivered to the Registrar, who, after registration under this Ordinance, and after payment of the fee for the grant and the sum payable upon first bringing land under this Ordinance, shall deliver one part to the grantee.

(3.) The registration shall be deemed to be an enrolment of record of the grant, and the enrolment shall relate back to the date of the grant, and either part of the grant when registered under this Ordinance shall be sufficient evidence of a duly enrolled grant of the land therein described to the person therein named on the date hereof.

PART V.—APPLICATIONS TO BRING LAND UNDER THE ORDINANCE AND PROCEEDINGS THEREON.

Division 1.—Requirements of Applications.

18.—(1.) Land not subject to the provisions of this Ordinance may be brought under its provisions.

Land may be brought under the Ordinance.

(2.) The Registrar shall receive applications for that purpose in the form of the First Schedule, if made by—

- (a) any person in the Commonwealth claiming to be the person in whom the fee-simple is vested in possession either at law or in equity:

Provided that in any case where trustees, seised in fee-simple, have no express power to sell the land which they seek to bring under the operation of this Ordinance, the person claiming to be beneficially entitled for the first life estate, or other greater estate than a life estate in the land, shall join in the application;

- (b) any person in the Commonwealth claiming a life estate in possession, or a leasehold for a life or lives, or having a term of not less than twenty-five years then current, and any person in the Commonwealth claiming a leasehold estate under a Crown lease having a term not less than five years then current:

Provided that all persons claiming to be beneficially entitled in reversion or remainder shall join in the application:

Provided further that nothing in the preceding proviso shall be construed as requiring the concurrence of a lessor in an application by a lessee;

- (c) Any person in the Commonwealth who has the power of appointing or disposing of the fee-simple of any land absolutely;
- (d) the attorney in the Territory, under a power of attorney, of a corporation having the power to hold or dispose of land in fee-simple:

Provided that—

- (i) the power of attorney shall be under the common seal of the corporation, and shall authorize the attorney to apply;
 - (ii) the application shall be made for and on behalf of the corporation;
 - (iii) the requisite declaration shall be made by him to the best of his knowledge, information and belief;
 - (iv) the application shall be subscribed in his own name as such attorney; and
 - (v) the certificate shall be issued in the name of the corporation;
- (e) the attorney in the Territory of any person absent from the Commonwealth who would be entitled to apply if resident in the Commonwealth, provided that

the attorney is constituted such by an instrument under seal authorizing him, at his absolute discretion—

(a) to sell and convey land for an absolute estate in fee-simple, and to give effectual discharges to purchasers; or

(b) as regards applications in respect of a life estate or a leasehold, to deal with life estates and leaseholds respectively,

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

(f) the father in the Territory or, if the father be dead, by the mother or other guardian in the Territory of an infant, in the name of the infant; or

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

(3.) No such application shall be received—

(a) from a person who has contracted to purchase any land unless either the vendor consents to or joins in the application or the whole of the purchase money has been paid to the vendor or his authorized attorney or agent; or

(b) from a person claiming to be entitled to an undivided share of any land unless the person who appears to be entitled to the other undivided share joins in the application with the view of bringing the entirety under the provisions of this Ordinance; or

(c) from the mortgagor of any land unless the mortgagee joins in the application; or

(d) from the mortgagee of any land except in the exercise of a power of sale contained in the mortgage deed; or

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

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

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

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

(5.) The bringing of any leasehold under the provisions of this Ordinance shall not be held to extinguish the reversion expectant thereon.

(6.) In the event of land being brought under the provisions of this Ordinance pursuant to an application by any person mentioned in paragraph (c) of sub-section (2.) of this section, the application shall be deemed, both at law and in equity, to be an exercise of the power vested in that person.

Justice may order production of deeds for purpose of application.

19.—(1.) Any Justice of the Court may, on the application of any person seeking to bring land under this Ordinance, order any specified person who has in his possession or under his control any deed, document, instrument or evidence of title relating to or affecting the land, to produce, at the office of the Registrar, on a day to be named in the order, the deed, document, instrument or evidence for the perusal of the Registrar.

(2.) Any order under the last-preceding sub-section shall be upon such terms and subject to such conditions as to costs or otherwise as the Justice deems fit.

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

20.—(1.) Every applicant to bring land under this Ordinance shall, when making his application—

- (a) deposit with the Registrar all documents in his possession or under his control constituting or in any way affecting his title, and in the case of a leasehold a duplicate or certified copy of the lease, and of any other document under which the applicant claims title, and furnish a schedule of those documents, and also, if required, an abstract of his title;
- (b) state in his application the nature of his estate or interest, and of every estate or interest held therein by any other person whether at law or in equity, in possession, or in futurity or expectancy, and whether the land be occupied or unoccupied (and, if occupied, the name and description of the occupant and the nature of his occupancy, and whether the occupancy be adverse or otherwise), and the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect to which application is made far as known to him, and that the schedule so furnished includes all documents of title to the land in his possession or under his control; and
- (c) make and subscribe a declaration to the truth of the statement.

(2.) The applicant may in his application require the Registrar, at the expense of the applicant, to cause notice of his application to be served upon any person whose name and address is for the purpose therein stated.

Division 2.—Procedure on Applications.

21.—(1.) Upon the receipt of an application, the Registrar shall cause the title of the applicant, for such period as he considers sufficient, to be examined, and shall thereafter himself take the case into his consideration.

Applications to be considered by Registrar.

(2.) If it appears to the Registrar that the applicant is the original grantee from the Crown of the land in respect of which the application is made, and that no sale, mortgage, or other encumbrance or transaction affecting the title of the land has at any time been registered in the State of New South Wales or in the Territory, and that the applicant has not required notice of his application to be served upon any person, the Registrar may bring the land under the provisions of this Ordinance forthwith by issuing to the applicant, or to such person as he or the person applying in his behalf by writing under his hand directs a certificate of title for the land as described in the succeeding provisions of this Ordinance.

22. If it appears to the Registrar that the land in respect of which application has been made is held by the applicant for the estate or interest described in the application free from mortgage, encumbrance or other beneficial interest affecting the title thereto, or, if any such mortgage, encumbrance or interest remain unsatisfied, that the parties interested therein are also parties to the application, and that the applicant has not required notice of his application to be served on any person, the Registrar shall require notice of the application to be advertised in the *Gazette*, and in such newspapers as he thinks fit, and shall further limit and appoint a time not less than one month nor more than twelve months from the date of the advertisement in the *Gazette* upon or after the expiration of which the Registrar may, unless he has in the interval received a caveat forbidding him so to do, proceed to bring the land under the provisions of this Ordinance.

When applicant is not original grantee or any transactions registered.

23. If it appears to the Registrar that any parties interested in any unsatisfied mortgage or encumbrance affecting the title to the land or beneficially interested therein are not parties to the application, or that the evidence of title set forth by the applicant is imperfect or that the applicant has required notice of his application to be served personally upon any person, the Registrar may reject the application altogether, or require notice of the application to be served upon all persons who appear to him to have any interest in the land the subject of the application, and to be advertised in such newspapers as he thinks fit, and to be published in the *Gazette*, and in the *London Gazette*, and in the official *Gazettes* of each of the States, or in any one or more of those *Gazettes*, and the Registrar shall determine the number of times and at what intervals the advertisements shall be published in each or any of the newspapers and *Gazettes*, and shall also limit and appoint a time, not less than two months nor more than two years from the date of the

When evidence of title is imperfect.

first of the advertisements in the *Gazette*, upon or after the expiration of which he may bring the land under the provisions of this Ordinance, unless he has in the interval received a caveat forbidding him to do so:

Provided that the Registrar may, in his discretion, notwithstanding that certain persons are not parties to the application, or that the evidence of title set forth by the applicant is imperfect, take the steps provided in the last preceding section, and may bring the land under the provisions of this Ordinance; but in that case he may, notwithstanding the provisions of section one hundred and forty of this Ordinance, require payment to him of such special fee as he considers adequate in addition to that provided in the Eighteenth Schedule.

Notice of
application
to be published;

24. The Registrar shall, of his own motion or under any order of the Court, require notice to be published, in such manner as he determines or as the order prescribes, that application has been made for bringing the land therein referred to under the provisions of this Ordinance, and shall also cause a copy of the notice to be posted in a conspicuous place in his office and in such other places as he deems necessary, and shall forward by registered letter through the post office, a copy of the notice addressed to the persons (if any) who he thinks ought to be served with the notice, and to the persons (if any) stated in the declaration by the applicant to be in occupation of the land or to be occupiers or proprietors of land contiguous thereto, so far as his knowledge of the addresses of those persons may enable him, and, if the applicant has required any such notice to be personally served upon any person named in his application, the Registrar shall require a copy of the notice to be so served upon that person.

Land brought
under
Ordinance.

25. If, within the time limited by the Registrar or under any order of the Court, any notice forwarded by registered letter in accordance with the last preceding section is not returned by the Postmaster-General, and if within the time so limited the Registrar has not received a caveat as described in the succeeding provisions of this Ordinance forbidding him so to do, and, in any case in which personal notice has been required as aforesaid, if he has received proof to his satisfaction that the notice has been served, the Registrar shall bring the land described in the application under the provisions of this Ordinance by issuing to the applicant, or to such person as he or the person applying in his behalf by any writing under his hand directs, a certificate of title for the land as described in the succeeding provisions of this Ordinance.

On a return
of notices
or failure
of personal
service,
Registrar
may proceed
or give further
directions.

26.—(1.) Whenever the Registrar is made aware that any notice required by any applicant to be served personally has failed to be or cannot be so served, he shall notify that fact to the applicant, who may, by writing under his hand, withdraw the requisition.

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

27. Any applicant may withdraw his application at any time prior to the issuing of the certificate of title, and the Registrar shall in that case, upon request in writing signed by the applicant, return to him or the person (if any) notified in the application as having a lien upon the documents, the abstract and all documents of title deposited by the applicant for the purpose of supporting his application.

Applicant may withdraw his application.

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

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

29. On an application to bring land under the provisions of this Ordinance by a description different from that in the documents of title or for the issue of an amended certificate of title or for the amendment of a grant or certificate of title, the Registrar may grant the application as to the land occupied by or under the applicant if the discrepancy between the land as so occupied and as described in the documents of title or grant or certificate of title appears to be due to the inaccuracy of any survey or plan or description on the sale of the land by the Crown or on any subsequent dealing therewith or to any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented or mentioned in any plan or description.

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

Division 3.—Caveats against Original Applications.

30.—(1.) Any person having or claiming an interest in any land advertised as provided in the last preceding Division, or the solicitor agent or attorney in the Territory of any such person, may within the time limited by the Registrar for that purpose lodge a caveat with the Registrar in the form of the Second Schedule, forbidding the bringing of the land under the provisions of this Ordinance, and every such caveat shall particularize the estate, interest, lien or charge claimed by the caveator.

Parties interested may enter caveat.

(2.) No such caveat shall be received by the Registrar unless some address within the Territory is appointed therein as the place at which notices and proceedings relating to the caveat may be served.

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

If caveat be received within time limited proceedings stayed.

31. Upon receipt of any such caveat within the time limited by him for the purpose, the Registrar shall notify the receipt thereof to the applicant, and shall suspend further action in the matter, and the lands in respect of which the caveat is lodged shall not be brought under the provisions of this Ordinance until the caveat has been withdrawn or has lapsed from any of the causes provided in the next succeeding section, or until a decision has been obtained from the Court.

Caveats lapse unless proceedings taken within three months.

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

- (a) taken proceedings in the Court to establish his title to the estate, interest, lien or charge therein specified, and given written notice thereof to the Registrar; or
- (b) obtained from the Court an order or injunction restraining the Registrar from bringing the land therein referred to under the provisions of this Ordinance, either absolutely or until the further order of the Court.

Special case.

33.—(1.) Where a caveat against an application to bring land under the provisions of this Ordinance has been lodged by a caveator claiming the land or a portion thereof or an interest therein adversely to the applicant, the applicant may state a case for the opinion and direction of the Court upon the matter, and the caveator may under the last preceding section apply for an injunction until the further order of the Court, and the Court may direct the caveator to lodge in the Court, on or before a certain day, a case on his own behalf, stating whether he claims in his own right or under another person, together with such other particulars (if any) as the Court thinks fit to order.

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

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

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

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

Where caveator fails to prosecute proceedings.

PART VI.—ISSUE OF CERTIFICATES OF TITLE AND GRANTS.

35.—(1.) Upon issuing a certificate of title bringing land under the provisions of this Ordinance, the Registrar shall stamp as cancelled every document of title deposited by the applicant when making his application, and in the case of a leasehold shall indorse upon the lease so deposited a memorandum stating that the lease has been brought under the provisions of this Ordinance, and shall certify the memorandum under his hand and seal, and shall, in the case of a Crown lease, file the lease in his office, and, in other cases, return the lease to the applicant annexing thereto the certificate of title, and shall file in his office the duplicate or certified copy of such lease directed by section twenty of this Ordinance to be furnished by the applicant.

Documents of title how to be dealt with.

(2.) If any such document relates to or includes any property, whether personal or real, other than the land included in the certificate of title, the Registrar shall indorse thereon a memorandum cancelling the document in so far only as relates to the land included in the certificate of title, and shall return the document to the applicant.

(3.) The Registrar shall retain in his office all documents so stamped, except such documents as he is by this section directed to return to the applicant, and no person shall be entitled to the production of any such document so stamped except upon the written order of the applicant or of some person claiming through or under him or upon the order of a Justice of the Court.

36. Where any applicant or the person to whom an applicant has directed a certificate of title to be issued dies in the interval between the date of his application and the date appointed for the certificate of title to issue in accordance with the preceding provisions of this Ordinance, the certificate of title shall be issued in the name of the applicant or in the name of the person to whom he

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

has directed it to be issued, as the case requires, and the land shall devolve in like manner as if the certificate of title had been issued prior to the death of the applicant or person so named by him.

Crown grants.

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

PART VII.—LAND REGISTERED UNDER THE REAL PROPERTY ACT 1900 OF THE STATE OF NEW SOUTH WALES.

Land registered under *Real Property Act* 1900 of New South Wales brought under this Ordinance.

38. All land in the Territory which, at the date of the commencement of this Part of this Ordinance, is under the provisions of the *Real Property Act* 1900 of the State of New South Wales shall be under the provisions of this Ordinance.

Transfer of records.

39. The Governor-General may arrange with the Governor of the State of New South Wales for the handing over to the Commission of all duplicate grants and certificates of title, and other documents registered or lodged with the Registrar-General of that State in respect of land in the Territory, which, at the date of the commencement of this Part of this Ordinance, is under the provisions of the *Real Property Act* 1900 of the State, or for the delivery to the Commission of copies of those grants, certificates of title and documents duly certified by the Registrar-General of the State as correct copies.

Recognition of transferred records.

40. The duplicate grants and certificates of title and other documents or the certified copies thereof, as the case may be, handed over or delivered to the Commission pursuant to the last preceding section, shall be deemed for all purposes thereafter to be duplicate grants and certificates of title and other documents duly registered and authenticated by the Registrar or lodged with the Registrar under this Ordinance.

Duplicate grant, &c., handed over to be deemed original grant.

41.—(1.) The original of any duplicate grant or certificate of title which, or a certified copy of which, is handed over or delivered to the Commission pursuant to section thirty-nine of this Ordinance shall, as from the date of the handing over or delivery, be deemed to be an original grant or certificate of title delivered under this Ordinance to the proprietor entitled to the land described therein.

(2.) Any instrument or document relating to land included in a grant or certificate of title (the duplicate or a certified copy of the duplicate of which is handed over or delivered to the Commission pursuant to section thirty-nine of this Ordinance) which—

- (a) was executed prior to the date of the commencement of this Part of this Ordinance; and
- (b) would have been entitled to registration under the *Real Property Act* 1900 of the State of New South Wales if the land were under the provisions of that Act,

may be registered under the provisions of this Ordinance notwithstanding that the instrument or document is not in the form prescribed by this Ordinance.

42. All land referred to in this Part of this Ordinance which is subject to any reservation, exception, easement, obligation, trust, encumbrance, hypothec or charge at the time when this Part commences shall continue subject thereto until it is lawfully removed or discharged.

Land referred to in this Part to be subject to certain reservations, &c.

PART VIII.—REGISTER BOOK AND REGISTRATION.

43.—(1.) The Registrar shall keep a book, to be called the "Register Book", and shall bind up therein the duplicates of all grants of freehold and certificates of title.

Registrar to keep Register Book.

(2.) Each grant and each certificate of title shall constitute a separate folium of the Register Book, and the Registrar shall record thereon the particulars of all instruments, dealings and other matters by this Ordinance required to be registered or entered on the Register Book affecting the land included under each such grant or certificate of title distinct and apart.

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

Certificate of title to be in duplicate and bound up in register.

(2.) The Registrar shall note thereon in such manner as to preserve their priority the particulars of all unsatisfied mortgages or other encumbrances, and of any dower, lease or rent charge to which the land is subject, and if the certificate of title be issued to an infant or to a person otherwise under disability he shall state the age of the infant or the nature of the disability so far as known to him, and shall cause one original of each certificate of title to be bound up in the Register Book, and deliver the other to the proprietor entitled to the land described therein.

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

45.—(1.) One certificate of title may be issued for several parcels of land, though they are not contiguous, if in the opinion of the Registrar their relative positions can be sufficiently and conveniently shown upon the plan on the certificate of title.

One certificate may be issued for lands not contiguous.

(2.) In any case in which it is inconvenient to draw the plan in the margin of a certificate of title it may be drawn upon the back thereof, or upon a sheet annexed thereto.

(3.) It shall not be necessary to mention the area of any parcel of land included in a certificate of title where the area of the parcel is less than one acre.

(4.) The omission to refer to the area of the land comprised in a certificate of title shall not in any case invalidate the certificate of title.

C.2639.—2

Registration
where certificate
of leasehold
issued.

46. Before bringing under the provisions of this Ordinance an estate in fee-simple or in fee-tail in any land in respect of which a certificate of title has been issued for any leasehold estate or interest, the Registrar shall close the folium of the Register Book constituted by the certificate of title of the leasehold, and shall carry forward, upon the certificate of title issued in respect of the estate in fee, memorials of the leasehold estate or interest, and of all mortgages or other interests affecting the leasehold then registered and still current, and the memorials of all future dealings with the leasehold estate or interest, directed in the succeeding provisions of this Ordinance to be registered, shall be entered upon the folium of the Register Book constituted by the certificate of title representing the fee.

Grants and
certificates
when deemed
to be registered.

47. Every grant and every certificate of title shall be deemed to be registered under the provisions and for the purposes of this Ordinance, so soon as it has been marked by the Registrar with the folium and volume as embodied in the Register Book, and every memorandum of transfer or other instrument purporting to transfer or in any way to affect land under the provisions of this Ordinance, shall be deemed to be so registered so soon as a memorial thereof, in accordance with the provisions of section forty-nine of this Ordinance, has been entered in the Register Book upon the folium constituted by the existing grant or certificate of title of the land, and the person named in any grant, certificate of title or instrument so registered as seised of or taking any estate or interest shall be deemed to be the registered proprietor thereof.

Instruments
entitled to
priority
according to
date of
registration.

48.—(1.) Except as is otherwise provided in the succeeding provisions of this Ordinance, every grant or instrument presented for registration shall be in duplicate, and shall, except in the case of a grant, be attested by a witness, and shall be registered in the order of time in which it is produced for that purpose.

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

(3.) Instruments registered in respect of, or affecting the same estate or interest shall, notwithstanding any express, implied or constructive notice, be entitled in priority the one over the other, according to the date of registration, and not according to the date of each instrument itself, and the Registrar upon registration thereof shall file one or the one original in his office, and shall deliver the other (if any) to the person entitled thereto.

(4.) Upon registration, every instrument drawn in any of the several forms in the Schedules, or in any form which, for the same purpose, may be authorized in conformity with the provisions of this Ordinance shall be deemed to be embodied in the Register Book as part and parcel thereof, and that instrument when so constructively embodied and stamped with the seal of the Registrar, shall have the effect of a deed duly executed by the parties signing the instrument.

49. Every memorial entered in the Register Book shall state the nature of the instrument to which it relates, the day and hour of the production of the instrument for registration, and the names of the parties thereto, and shall refer by number or symbol to the instrument, and shall be signed by the Registrar.

Form of memorial.

50.—(1.) Whenever a memorial of any instrument has been entered in the Register Book, the Registrar shall, except in the case of a dealing indorsed upon any grant, certificate of title or instrument as provided in the succeeding provisions of this Ordinance, record the like memorial on any duplicate grant, certificate of title or instrument evidencing title to the estate or interest intended to be dealt with or in any way affected, unless the Registrar, pursuant to the next succeeding sub-section, dispenses with the production of the grant, certificate of title or instrument.

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

(2.) The Registrar may dispense with the production of any grant, certificate of title or instrument for the purpose of recording the memorial thereon, and shall in that case notify in the memorial in the Register Book that no entry of the memorial has been made on the duplicate grant, certificate of title or instrument.

(3.) Before so dispensing with production, the Registrar shall require the party dealing to make a statutory declaration that the grant, certificate of title or instrument has not been deposited as security for any loan, and shall require notice of his intention to register the dealing to be advertised in the *Gazette*, and in such newspapers as the Registrar thinks fit.

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

(5.) The certificate shall be received in all Courts as conclusive evidence that the instrument has been duly registered.

51. The Registrar shall not, except in cases mentioned in section forty-one of this Ordinance, register any instrument purporting to transfer or otherwise to deal with or affect any estate or interest in land under the provisions of this Ordinance, except in the manner provided in this Ordinance, nor unless the instrument is in accordance with the provisions of this Ordinance.

Instruments not to be registered unless in accordance with prescribed forms.

52.—(1.) Every certificate of title, duly authenticated under the hand and seal of the Registrar, shall be received in all Courts 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 the certificate of title, or in any entry thereon, as seised of or as taking estate or interest in the land therein described, is seised or possessed of or entitled to the land for the estate or interest therein specified, and that the property comprised in the certificate of title has been duly brought under the provisions of this Ordinance.

Certificate to be conclusive evidence of title, and that the land has been duly brought under the Ordinance.

(2.) No certificate of title shall be impeached or defeasible on the ground of want of notice or of insufficient notice of the application to bring the land therein described under the provisions of this Ordinance, or on account of any error, omission or informality in the application, or in the proceedings pursuant thereto, by the Registrar.

(3.) The person named in any certificate of title as entitled to the land therein described shall be held in every Court to be seised of the reversion expectant upon any lease that is noted by memorial thereon, and to have all powers, rights and remedies to which a reversioner is by law entitled, and shall be subject to all covenants and conditions therein expressed to be performed on the part of the lessor.

Grant or certificate conclusive evidence as to title to easements.

53.—(1.) Where any grant or certificate of title contains a statement to the effect that the person named therein is entitled to any easement therein specified, the statement shall be conclusive evidence that he is so entitled.

(2.) Where any grant of certificate of title contains the words "Together with a right of carriage-way over the road delineated and coloured brown on the said map" or words to the like effect, those words shall have the same effect as if the words contained in the Seventh Schedule had been in their stead.

Registered joint proprietors or tenants in common.

54.—(1.) 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 estate or interest as joint tenants, and shall each receive a separate and distinct certificate of title in respect of the joint estate marked respectively with the name of the owner to whom the certificate of title is delivered.

(2.) In all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land those persons shall also receive separate and distinct certificates of title or other documents evidencing title to the undivided shares.

Registration of survivor of joint proprietors.

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

- (a) when any person is registered as joint proprietor with his wife of an estate in fee-simple in right of his wife, and that person dies in the lifetime of his wife and before any transfer of the estate; or
- (b) when a person is registered as joint proprietor with his wife of an estate in fee-simple in right of his wife, and the wife dies in the lifetime of her husband, and the husband is entitled as tenant by the courtesy; or
- (c) upon the death of any person registered together with any other person as joint proprietor of the same estate or interest in any land; or

- (d) when the life estate in respect of which any certificate of title has been issued has determined, and the estate next registered in remainder or reversion has become vested in possession or the person to whom the certificate of title has been issued or a purchaser has become entitled to the land for an estate in fee-simple in possession.

the Registrar may, upon the application of the person entitled and proof to his satisfaction of any such occurrence as mentioned in this section, register that person as proprietor of the estate or interest in manner prescribed by this Ordinance for the registration of a like estate or interest upon a transfer or transmission.

56. Whenever a certificate of title has been issued in respect of a life estate in any land, any person entitled in reversion or remainder to the land may apply to be registered as so entitled, and the Registrar shall cause the title of the applicant to be investigated, and thereafter, upon consideration of the case, may, unless otherwise directed by the Court, either reject the application altogether or direct that the applicant be registered forthwith or be so registered unless a caveat is lodged after the notice or advertisement and within such period as he thinks fit.

Remainderman
or reversioner
may be
registered as
such.

57.—(1.) No instrument entitled by this Ordinance to be registered shall, until registered in manner prescribed in the preceding provisions of this Ordinance, be effectual to pass any estate or interest in any land under the provisions of this Ordinance or to render the land liable as security for the payment of money; but upon the registration of any instrument in manner prescribed in the preceding provisions of this Ordinance, the estate or interest specified in the instrument shall pass, or as the case may be, the land shall become liable as security in manner and subject to the covenants, conditions and contingencies set forth and specified in the instrument, or by this Ordinance declared to be implied in instruments of a like nature.

Instruments
not effectual
until entry
in Register
Book.

(2.) Should two or more instruments executed by the same proprietor and purporting to transfer or encumber the same estate or interest in any land be at the same time presented to the Registrar for registration and endorsement, he shall register and endorse that instrument under which the person claims property, who shall present to him the grant or certificate of title of the land for that purpose.

58. 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 to have priority, a person becoming registered as proprietor of land or of any estate or interest in land under the provisions of this Ordinance shall, except in case of fraud, hold the land, estate or interest, subject to such encumbrances, liens, estates

Estate of
registered
proprietor
paramount.

or interests as are notified on the folium of the Register Book constituted by the grant or certificate of title of the land, but absolutely free from all other encumbrances, liens, estates or interests whatsoever except as to—

- (a) the estate or interest of a proprietor claiming the same land under a prior certificate of title or under a prior grant registered under the provisions of this Ordinance; and
- (b) any right of way or other easement created in or existing upon the same land which is not described, or is misdescribed in the relative certificate of title; and
- (c) any portion of land that may by wrong description of parcels or of boundaries be included in the grant, certificate of title, lease or other document or instrument evidencing the title of the registered proprietor, not being a purchaser or mortgagee thereof for value, or deriving from or through a purchaser or mortgagee thereof for value; and
- (d) any prior tenancy from year to year or for any term not exceeding three years; and
- (e) any leases, licences or other authorities granted by the Commonwealth and in respect of which no provision for registration is made; and
- (f) any unpaid rates, taxes or other moneys which are expressly declared by any Ordinance or law to be a charge upon land:

Provided that the land which is included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any) contained in the grant thereof.

Purchaser from registered proprietor not to be affected by notice.

59. Except in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which the registered proprietor or any previous registered proprietor of the estate or interest in question is or was registered or to see to the application of the purchase money or any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

Registered proprietor suing for specific performance.

60. In any suit for specific performance brought by a registered proprietor of any land under the provisions of this Ordinance against a person who has contracted to purchase the land not having notice of any fraud or other circumstances which according to the provisions of this Ordinance would affect the right of the vendor, the certificate of title of the registered proprietor shall be

held in every Court to be conclusive evidence that the registered proprietor has a good and valid title to the land and for the estate or interest therein mentioned or described, and shall entitle the registered proprietor to a decree for the specific performance of the contract.

61.—(1.) Upon the application of any registered proprietor of land held under separate grants or certificates of title or under one grant or certificate, and the delivering up of the grant or grants, certificate or certificates of title, the Registrar may issue to the proprietor a single certificate of title for the whole of the land or several certificates, each containing portion of the land in accordance with the application, and as far as that may be done consistently with any regulations at the time in force respecting the parcels of land that is included in one certificate of title.

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

(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 thereupon a memorandum setting forth the occasion of the cancellation and referring to the certificate of title so issued.

62.—(1.) In the event of the grant or certificate of title of land under the provisions of this Ordinance being lost, mislaid or destroyed, the proprietor of the land together with other persons (if any) having knowledge of the circumstances may make a declaration before the Registrar or before any of the persons mentioned in section one hundred and seventy-three of this Ordinance as persons before whom the execution of instruments may be proved, stating the facts of the case, the names and descriptions of the registered owners, and the particulars of all mortgages, encumbrances or other matters affecting the land and the title thereto to the best of declarant's knowledge and belief, and the Registrar, if satisfied as to the truth of the declaration and the *bona fides* of the transaction, may issue to the applicant a provisional certificate of title of the land, which provisional certificate shall contain an exact copy of the original grant or certificate of title bound up in the Register Book, and of every memorandum and endorsement thereon, and shall also contain a statement of the circumstances under which the provisional certificate is issued, and the Registrar shall at the same time enter in the Register Book notice of the issuing of the provisional certificate and the date thereof, and the circumstances under which it was issued.

Provision in case of lost grant.

(2.) The provisional certificate shall be available for all purposes and uses for which the grant or certificate of title so lost or mislaid would have been available, and shall be as valid to all intents as the lost grant or certificate.

(3.) Before issuing the provisional certificate the Registrar shall, at the expense of the applicant, require at least fourteen days' notice of his intention so to do to be given in the *Gazette* and in such other newspapers as he thinks fit.

Dealings may
be registered
prior to the
issue of grant
from the Crown.

63. Upon the production of the official receipt in full for the purchase money of any lands alienated in fee from the Crown, together with a memorandum of transfer, mortgage or lease, duly executed by the purchaser from the Crown of the land, the Registrar shall endorse upon the receipt such memorial as he is, in accordance with the preceding provisions of this Ordinance, required to enter in the Register Book upon the registration of any dealing of a like nature with land in respect of which a grant or certificate of title has been registered, and shall sign the endorsement and stamp it with his seal, and the document shall thereupon be held to be duly registered in accordance with the provisions of this Ordinance, and the Registrar shall file the receipt and the documents in his office, and upon the registration of the grant of the land the Registrar shall enter thereon a memorial of the dealing, and shall endorse the document with the certificate of registration as prescribed in the preceding provisions of this Ordinance for the registration of documents and instruments generally.

Registrar
may require
map to be
deposited.

64.—(1.) The Registrar may require the proprietor applying to have any land brought under the provisions of this Ordinance, or desiring to transfer or otherwise to deal with the land or any portion thereof, to deposit at the registry office a map or plan of the land, certified by a licensed surveyor.

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

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

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

(5.) If the land or the portion thereof proposed to be transferred or dealt with is of greater area than eighty acres, the map or plan shall be upon a scale of one inch to twenty chains.

(6.) If the proprietor neglects or refuses to comply with the requirement as to the deposit of a map or plan it shall not be incumbent on the Registrar to proceed with the bringing of the land under the provisions of this Ordinance or with the registration of the transfer or lease.

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

(8.) The maps or plans shall, if required by the Registrar, be in duplicate.

65.—(1.) The Registrar, upon payment of the fee specified in the Eighteenth Schedule, shall furnish, to any person applying therefor, a certified copy of any registered grant, certificate of title or instrument affecting land under the provisions of this Ordinance.

Certified copies to be furnished by Registrar and to be evidence.

(2.) Every such certified copy signed by him and sealed with his seal shall be received in evidence in any Court or before any person having, by law or by consent of parties, authority to receive evidence as *prima facie* proof of all the matters contained or recited in or endorsed on the original grant, certificate of title or instrument.

66. Any person may, upon payment of the fee specified in the Eighteenth Schedule, have access to the Register Book for the purpose of inspection during the hours and upon the days appointed for search.

Searches.

67.—(1.) The Registrar shall not receive any application for bringing land under the provisions of this Ordinance, or any instrument purporting to deal with or affect any land under the provisions of this Ordinance, unless there is endorsed thereon a certificate that the application or instrument is correct for the purposes of this Ordinance, signed by the applicant or party claiming under or in respect of the instrument, or by his solicitor within the Territory.

Authority to register.

(2.) Any person who falsely or negligently certifies to the correctness of any such application or other instrument shall be guilty of an offence.

Penalty: Fifty pounds.

(3.) The imposition of any penalty in pursuance of the last preceding sub-section shall not prevent the person who has sustained any damage or loss in consequence of error or mistake in any such certified instrument, or any duplicate thereof, from recovering damages against the person who has certified the instrument.

68. Whenever—

- (a) by the operation of any law or Ordinance either directly or by reason of anything done in pursuance thereof; or
- (b) by the defeasance of any estate of any person registered as proprietor under the provisions of this Ordinance,

Registrar may register as proprietor person entitled to land by operation of statute or by defeasance of estate.

any land under the provisions of this Ordinance has become or becomes vested in some person other than the registered proprietor either alone or jointly or in common with the registered

proprietor, or some such person has become or becomes entitled to have any such land so vested, or the site or any part of the site of any closed road whether belonging to the Commonwealth or to any person has become or becomes vested in the person registered as proprietor under this Ordinance of adjoining land, the Registrar may, at the written request of a person in whom there has been such a vesting or who has become so entitled, on such evidence as appears to the Registrar to be sufficient, and after such notice (if any) to such person as the Registrar deems proper, register the person in whom any such land or site or part thereof is vested or who has become so entitled, as the proprietor of the estate therein as is appropriate, and for that purpose may make every such entry, cancellation and correction in the Register Book and issue every such certificate of title as appears to the Registrar to be necessary or proper:

Provided that this section shall not apply to any case for which express provision is made in this Ordinance or any other law or Ordinance, and that such stamp duty and fees shall be payable on every request under this section as would have been payable on a transfer, conveyance or grant, as the case may be, of the land or site or part thereof so vested.

Statute of limitations not to run against land under the Ordinance.

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

PART IX.—CROWN LEASES.

Registration of Crown leases.

70. The Registrar shall register in the Register Book every Crown lease for a term exceeding five years granted by or in the name of the Commonwealth after the date of the commencement of this Part of this Ordinance by binding one copy therein, and shall mark on both copies the volume and folium as appearing in the Register.

Dealings with Crown leases.

71.—(1.) Every Crown lease, upon registration, shall be subject to the provisions of this Ordinance, and (subject to the provisions of the Ordinance in pursuance of which the Crown lease was granted and to the provisions of the Crown lease) may be transferred, mortgaged and dealt with for the same purposes, and in like manner, as if it had been granted by a proprietor of land under this Ordinance and registered in the Register Book.

(2.) Any entries which, in the case of a lease granted by a proprietor of land under this Ordinance, would require to be made in the Register Book shall, in the case of a registered Crown lease, be made in the Register Book on the folium constituted by the Crown lease.

Application of Ordinance to registered Crown leases.

72. Except where the context is inconsistent therewith, the provisions of this Ordinance shall, where applicable, apply to registered Crown leases.

PART X.—DEALINGS.

Division 1.—Transfers.

73. When land under the provisions of this Ordinance or any Transfers. estate or interest in the land is intended to be transferred or any right-of-way or other easement is intended to be created or transferred, the registered proprietor may execute a memorandum of transfer in the form of the Fourth, Fifth or Sixth Schedule, which memorandum 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 description as is sufficient to identify the land, and shall contain an accurate statement of the estate, interest or easement intended to be transferred or created, and of the true consideration, and a memorandum of all leases, mortgages and other encumbrances to which the land is subject.

74. Whenever any easement or any incorporeal right other than Easements and
incorporeal
rights to
be registered. an annuity or rent charge in or over 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 the easement or incorporeal right upon the folium of the Register Book, constituted by the existing grant or certificate of title of the other land.

75.—(1.) If the memorandum of transfer purports to transfer If estate of
freehold be
transferred,
certificate of
title to be
delivered up
and cancelled
unless the
whole land
in the
certificate is
transferred. 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 land, and the Registrar shall, after registering the transfer, enter on the grant or certificate of title a memorandum cancelling the grant or certificate of title partially and setting forth the particulars of the transfer.

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

- (a) take out a certificate of title in his own name, in which case the Registrar shall, after registering the transfer, enter on the grant or certificate of title of the transferor a memorandum cancelling the grant or certificate of title; 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 title of the mortgagor, with a memorial of the transfer in each case endorsed thereon.

(3.) Each successive transferee (if any) of the whole of the land may in the manner provided in the last preceding sub-section, 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 in accordance with this section:

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.

Issue of fresh certificate upon cancellation of grant or certificate.

76.—(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 the memorandum of transfer, and every such certificate of title shall refer to the original grant of the land and to the memorandum or other instrument of transfer.

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

Interest and rights of transferor pass to transferee.

77. Upon the registration of any transfer, the estate or interest of the transferor as set forth in the transfer, with all rights, powers and privileges thereto belonging or appertaining, shall pass to the transferee, and, if the transfer is a transfer of a mortgage, encumbrance or lease, the 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 the mortgage, encumbrance or lease originally as mortgagee, encumbrancee or lessee of the land, estate, or interest.

Transfer of mortgage or lease transfers right to sue.

78.—(1.) By virtue of every transfer of a mortgage, encumbrance or lease, the right to sue upon the memorandum of mortgage, encumbrance or lease, and to recover any debt, sum of money, annuity or damages thereunder (notwithstanding that the right 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 it at law as well as in equity in the transferee thereof.

(2.) Nothing in this section shall prevent the Court from giving effect to any trusts affecting the debt, sum of money, annuity or damages, in case the transferee holds it as a trustee for any other person.

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

79. The registered proprietor of any land or of any estate or interest in land, under the provisions of this Ordinance, 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 is necessary, transfer the land, estate or interest, or any part thereof, to his wife, or, if the registered proprietor be a married woman, she may make the transfer to her husband, or the registered proprietor may make the transfer to himself jointly with

any other person, or create or execute any powers of appointment, or limit any estates whether by remainder or otherwise, without limiting any use or without any re-assignment being executed; but upon the registration of the transfer, the land, estate or interest shall vest in the registered proprietor jointly with any other person, or in the person taking under the limitation, or in whose favour any power has been executed, or otherwise according to the intent and meaning appearing in the instrument and thereby expressed.

80. Upon any land under the provisions of this Ordinance becoming Crown land, the Registrar shall cause a notification in the form or to the effect of the Nineteenth Schedule to be made or endorsed on the duplicate in the Register Book of the grant or certificate of title of the land, and (except where the production of the grant or certificate of title is dispensed with under the provisions of this Ordinance) shall also make the endorsement on the grant or certificate of title.

Endorsement on grant or certificate of title of land which has become Crown lands.

81. In any transfer or lease the words—"Together with a right of carriage-way over the road delineated and coloured brown on the said map", or words to the like effect, shall have the same effect as if the words contained in the Seventh Schedule had been used instead thereof.

Short words for creation of right-of-way.

Division 2.—Leases.

82.—(1.) When any land under the provisions of this Ordinance is intended to be leased for a life or lives or for any term of years exceeding three years, the registered proprietor may execute a lease in the form in the Eighth Schedule.

Land, how leased.

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

83.—(1.) In any lease other than a lease from the Commonwealth a right to purchase the fee-simple of the land thereby demised may be granted to the lessee, or a covenant to purchase the fee-simple of the land may be entered into by the lessee.

Right of purchase or covenant to purchase may be inserted.

(2.) The true amount of the purchase money to be paid, the period within which the right may be exercised or within which the covenant is to be performed, and any other particulars necessary to explain the terms of the right or covenant, shall be stated in the lease.

(3.) If the lessee pays the purchase money stipulated and otherwise observes his covenants expressed and implied in a registered lease, the lessor shall execute a transfer to the lessee of the fee-simple, and perform all acts required by this Ordinance to be done for the purpose of transferring the fee-simple of the land.

Mortgagee, &c.
not bound by
lease unless
he consents.

84. No lease of land subject to a mortgage or encumbrance executed after the registration of the mortgage or encumbrance shall be valid or binding against the mortgagee or encumbrancee unless he has consented to the lease before it is registered.

Certain
unregistered
leases valid,
but not rights
of purchase or
renewal
thereunder.

85.—(1.) Every registered dealing with land shall be subject to any prior unregistered lease or any agreement for a lease or for letting from year to year or for a term not exceeding three years affecting the land.

(2.) No right or covenant to purchase the freehold or to assign the reversionary interest of the lessor contained in any lease or agreement, and no right or covenant to or for the renewal of any lease or agreement, shall be valid as against any subsequent purchaser of the reversion, lessee, mortgagee or encumbrancee unless the lease or agreement is registered.

Lease may be
surrendered by
endorsement
signed by
lessee and
lessor.

86.—(1.) Where any registered lease is intended to be surrendered and the surrender is effected otherwise than through the operation of a surrender in law or than under the provisions of any law for the time being in force relating to insolvent or bankrupt estates, there may be endorsed upon the lease or on the counterpart thereof the word "Surrendered" with the date of the surrender.

(2.) The endorsement shall be signed by the lessee and by the lessor as evidence of the acceptance of the surrender, and shall be attested by a witness.

(3.) The Registrar shall, upon production to him of the endorsement, enter in the Register Book a memorandum recording the date of the surrender, and shall endorse upon the duplicate lease a memorandum recording the fact of the entry having been made in the Register Book.

(4.) Upon the making of the entry required by the last preceding sub-section the estate or interest of the lessee in the land shall revert in the lessor or in the person in whom, having regard to intervening circumstances (if any), the land would have vested if the lease had not been executed.

(5.) The production of the lease or counterpart bearing the endorsement and memorandum mentioned in sub-section (3.) of this section shall be sufficient evidence that the lease has been surrendered.

(6.) No lease subject to a registered mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.

Registration
of re-entry
by lessor.

87.—(1.) The Registrar, upon proof to his satisfaction of re-entry by the lessor under any power in that behalf contained in the lease or declared by this Ordinance to be implied, or of recovery of possession by the lessor by any proceeding in law or of determination, cancellation or forfeiture of a Crown lease, shall note the re-entry, recovery of possession, determination, cancellation or forfeiture by entry in the Register Book, and the estate of the lessee in the land shall thereupon determine.

(2.) The determination shall not release the lessee from his liability in respect of the breach of any covenant expressed or implied in the lease.

(3.) The Registrar shall cancel the lease if delivered up to him for that purpose.

88.—(1.) The proprietor of any registered lease may, subject to any provisions in his lease or to any Ordinance affecting his right to do so, sub-let for a term not less than three years by signing a sub-lease in the form of the Eighth Schedule with such modification as the difference between a lease and a sub-lease requires. Lessee may sub-let.

(2.) No sub-lease of any land subject to a mortgage or encumbrance shall be valid or binding against the mortgagee or encumbrancee unless he has consented to the sub-lease before it is registered.

89. The provisions of this Ordinance affecting leases, lessors and lessees shall apply to sub-leases, sub-lessors and sub-lessees with such modifications and exceptions as the difference between a lease and a sub-lease requires. Provisions as to leases to apply to sub-leases.

90. If a registered lease is determined from any cause whatever, the determination shall determine any sub-lease thereunder. Determination of lease to determine sub-lease.

91. In addition to the covenants declared by this Ordinance to be implied in every registered lease, there shall be implied in every registered sub-lease the following covenant with the sub-lessee by the sub-lessor, that is to say:— Covenants to be implied in sub-leases.

That he will during the term thereby granted pay the rent reserved by, and perform and observe the covenants and agreements contained in, the head lease, and on his part to be paid, performed and observed.

Division 3.—Mortgages and Encumbrances.

92.—(1.) Whenever any land or 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 may execute a memorandum of mortgage in the form of the Ninth Schedule. Lands under this Ordinance, how mortgaged or encumbered.

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

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

(4.) In a memorandum of mortgage or memorandum of encumbrance there may be expressed to be included as appurtenant to the land mortgaged or encumbered any easement over other land of which the mortgagor or encumbrancer is the registered proprietor and the grant or certificate of title of which is specified in the memorandum of mortgage or memorandum of encumbrance.

(5.) When an easement is so expressed to be included, the Registrar shall on registration of the memorandum of mortgage or memorandum of encumbrance enter a memorial of the instrument in which the easement is expressed to be included upon the folium of the Register Book constituted by the existing grant or certificate of title of the land over which the easement is expressed to be included.

(6.) The easement so expressed to be included shall, when the memorandum of mortgage or memorandum of encumbrance is registered, be deemed to be an easement appurtenant to the land mortgaged or encumbered for the purpose of enjoyment, leasing or transfer by the mortgagee or encumbrancee, or of foreclosure, and so that, upon foreclosure in favour of, or lease or transfer by, the mortgagee or encumbrancee, the easement shall, unless expressly excluded, be created by the order or decree for foreclosure or the lease or transfer and entry or registration thereof.

mortgage or
encumbrance
not to operate
as transfer.

93.—(1.) Any mortgage or encumbrance under this Ordinance shall, when registered under this Ordinance, have effect as a security but shall not operate as a transfer of the land thereby charged.

(2.) If default is made in the payment of the principal sum, interest, annuity or rent-charge, or any part thereof, secured by the mortgage or encumbrance, or in the observance of any covenant expressed in any memorandum of mortgage or of encumbrance registered under this Ordinance, or that is in the succeeding provisions of this Ordinance declared to be implied in the instrument, and the default is continued for the space of one month or for such other period of time as is therein for that purpose expressly limited, the mortgagee or encumbrancee may—

- (a) give to the mortgagor or encumbrancer notice in writing to pay the money then due or owing on the memorandum of mortgage or of encumbrance, or to observe the covenants therein expressed or implied, as the case may be, and that sale will be effected unless the default be remedied; or
- (b) leave the 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 land or with his agent in the Territory.

Power to sell.

94.—(1.) If the default in payment or in observance of covenants continues for the further period of one month after the service of the notice, or for such other period as is in the instrument for

that purpose limited, the mortgagee or encumbrancee may sell all the estate and interest of the mortgagor or encumbrancer in the land so mortgaged or encumbered, or any part thereof, and either altogether or in lots by public auction or by private contract, or both those modes of sale, and subject to such conditions as he thinks fit, and may buy in and re-sell the estate and interest without being liable for any loss occasioned thereby, and may make and execute all such instruments and documents as are necessary for effecting the sale thereof.

(2.) All sales, contracts, matters and things made, done or executed in pursuance of the last preceding sub-section shall be as valid and effectual as if the mortgagor or encumbrancer had made, done or executed them, and the receipt or receipts in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of the land, estate or interest, or of any portion thereof, for so much of his purchase money as is thereby expressed to be received.

(3.) No such purchaser shall be answerable for the loss, mis-application or non-application, or be obliged to see to the application, of the purchase money paid by him, nor shall he be concerned to inquire as to the fact of any default or notice having been made or given as provided in the last preceding section.

(4.) The purchase money to arise from any sale under this section shall be applied, first, in payment of the expenses occasioned by the sale; secondly, in payment of the moneys which are owing to the mortgagee or encumbrancee; thirdly, in payment of subsequent mortgages or encumbrances (if any) in the order of their priority; and the surplus (if any) shall be paid to the mortgagor or encumbrancer, as the case may be.

(5.) Where a transfer is made in professed exercise of the power of sale conferred by this Ordinance, the title of the transferee shall not be impeachable on the ground that no case has arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damaged by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(6.) An instrument of transfer by a mortgagee or encumbrancee in exercise of the power of sale conferred by this Ordinance made in the form of the Eleventh Schedule shall be accepted by the Registrar as sufficient evidence that the power has been duly exercised, and he shall not be bound or required to call for proof thereof.

95. Upon the registration of any transfer executed by a mortgagee or encumbrancee in pursuance of any sale under the last preceding section, the estate or interest of the mortgagor or encumbrancer, as therein described to be conveyed, shall pass to and vest in the purchaser, freed and discharged from all liability on account

Vesting in
purchaser from
mortgagee.

of the mortgage or encumbrance, or of any mortgage or encumbrance registered subsequent thereto, and if the memorandum of transfer purports to pass an estate of freehold in possession (not being a life leasehold), the purchaser shall be entitled to receive a certificate of title therefor.

In case of
default, entry
and possession,
distress
ejectment.

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

- (a) enter into possession of the mortgaged or encumbered land by receiving the rents and profits therefor; or
- (b) distrain upon the occupier or tenant of the land for the rent then due; or
- (c) bring an action of ejectment to recover the land, either before or after entering into the receipt of the rents and profits thereof or making any distress as provided in the last two preceding paragraphs, and either before or after any sale of the land effected under the power of sale given or implied in his memorandum of mortgage or of encumbrance,

in the same manner in which he might have made the entry or distress or brought the action if the principal sum or annuity were secured to him by a conveyance of the legal estate in the land so mortgaged or encumbered.

In case of
default, order
for foreclosure.

97.—(1.) When default has been made in the payment of the interest or principal sum secured by memorandum of mortgage for six months, a registered mortgagee or his solicitor or attorney in the Territory may make application in writing to the Registrar for an order for foreclosure.

(2.) The application shall state that the default has been so made, and that the land, estate or interest mortgaged has been offered for sale at public auction by a licensed auctioneer, after notice given to the mortgagor, as in this Ordinance provided, and that the amount of the highest bid at the sale was not sufficient to satisfy the money secured by the mortgage, together with the expenses occasioned by the sale, and that notice in writing of the intention of the mortgagee to make the application has been given to the mortgagor by leaving the notice at his usual or last known place of abode, if that place is within three miles of the residence of the mortgagee, or by forwarding the notice by registered letter through the post office, if that place is beyond that distance.

(3.) The application shall be accompanied by a certificate of the auctioneer by whom the land was put up for sale, and such other proof of the matters stated by the applicant, as the Registrar requires.

(4.) The statements made in the application shall be verified by the oath or statutory declaration of the applicant or other person applying on his behalf.

98.—(1.) The Registrar may require notice to be published once in the *Gazette* and in such newspapers as the Registrar thinks fit, offering the land for sale, and shall limit and appoint a time, not less than one month from the date of the publication in the *Gazette*, upon or after which the Registrar may issue to the applicant an order for foreclosure, unless in the interval a sufficient amount has been realized by the sale of the land to satisfy the principal and interest moneys due, and all expenses occasioned by the sale.

Application,
how made
effective.

(2.) Every such order for foreclosure under the hand of the Registrar, and entered in the Register Book, shall have the effect of vesting in the mortgagee all the estate and interest of the mortgagor in the land mentioned in the order free from all right and equity of redemption on the part of the mortgagor or of any person claiming through or under him.

99.—(1.) Whenever a mortgagee or encumbrancee gives notice of his demanding to enter into receipt of the rents and profits of the mortgaged or encumbered land to the tenant or occupier or other person liable to pay or account for the rents and profits thereof, all the powers and remedies of the mortgagor or encumbrancer in regard to receipt and recovery of, and giving discharges for, the rents and profits, shall be suspended and transferred to the mortgagee or encumbrancee until the notice is withdrawn, or the mortgage or encumbrance is satisfied, and a discharge thereof duly registered.

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

(2.) In every such case, the receipt in writing of the mortgagee or encumbrancee shall be a sufficient discharge for any rents and profits therein expressed to be received, and no person paying the rents and profits shall be bound to inquire concerning any default or other circumstance affecting the right of the person giving the notice beyond the fact of his being duly registered as mortgagee or encumbrancee of the land.

(3.) Nothing herein contained shall interfere with the effect of any rule, order or judgment of the Court in regard to the payment of rent under the special circumstances of any case, or prejudice any remedy of the mortgagor or encumbrancer against the mortgagee or encumbrancee for wrongful entry or for an account.

100. Any mortgagee or encumbrancee of leasehold land under the provisions of this Ordinance, or any person claiming the land as a purchaser or otherwise from or under the mortgagee or encumbrancee after entering into possession of the land or the rents and profits thereof shall, during the possession and to the extent of any rents and profits which may be received by him, become and be subject and liable to the lessor of the land or the person for the time being entitled to the lessor's estate or interest in the land to the same extent as the lessee or tenant was subject to and liable for prior to the mortgagee, encumbrancee or other person entering into possession of the land or the rents and profits thereof.

Mortgagee
of leasehold
entering into
possession
liable to
lessor.

Discharge of
mortgages and
encumbrances.

101.—(1.) Upon the production of any memorandum of mortgage or of encumbrance having thereon an endorsement signed by the mortgagee or encumbrancee and attested by a witness discharging the land, estate or interest from the whole or part of the principal sum or annuity secured, or discharging any part of the land comprised in the instrument from the whole of the principal sum or annuity, the Registrar shall make an entry in the Register Book, noting that the mortgage or encumbrance is discharged wholly or partially, or that part of the land is discharged wholly, as the case requires.

(2.) Upon the entry being so made, the estate or interest, or the portion of land mentioned or referred to in the endorsement, shall cease to be subject to, or liable for, the principal sum or annuity, or, as the case may be, for the part thereof noted in the entry as discharged.

Entry of
satisfaction of
annuity.

102.—(1.) Upon proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any memorandum of encumbrance, the annuity or sum of money thereby secured ceases to be payable, and upon proof that all arrears of the annuity and interest or money have been paid, satisfied or discharged, the Registrar shall make an entry in the Register Book noting that the annuity or sum of money is satisfied or discharged, and shall cancel the instrument.

(2.) Upon the entry being made, the land, estate or interest shall cease to be subject to, or liable for, the annuity or sum of money.

(3.) The Registrar shall in any such case endorse on the grant, certificate of title or 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 the entry was made by him in the Register Book whenever the grant, certificate of title or instrument is presented to him for that purpose.

Facilitation
of redemption
in case of
absent or
unknown
mortgagees.

103.—(1.) When any person entitled to receive payment of any money secured by memorandum of mortgage is out of the jurisdiction, cannot be found, or is unknown, or it is uncertain who is so entitled, the Court, upon the application of the person entitled to redeem the mortgaged premises, may order the amount of the debt to be ascertained in such manner as the Court thinks fit, and direct the amount so ascertained to be paid into Court.

(2.) The Court shall order the amount so paid into Court to be paid to the person entitled, upon the application of that person, and on proof that the memorandum of mortgage and all deeds or documents evidencing title which were delivered by the mortgagor to the mortgagee on executing the memorandum of mortgage, or in connexion therewith, have been delivered up to the person by whom the amount was so paid into Court, or his executors, administrators or assigns, or have been otherwise satisfactorily accounted for.

(3.) Upon production to the Registrar of the certificate of a Registrar of the Court that the payment was directed as provided in sub-section (1.) of this section and has been made—

- (a) he shall on payment of the prescribed fee make an entry in the Register Book discharging the mortgage, stating the day and hour on which the entry is made;
- (b) the entry shall be a discharge of the land from the mortgage:

Provided that as between the mortgagor and the person entitled to receive payment, any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due or payable over and above the amount so paid, shall continue to be a specialty debt due under the mortgage; and

- (c) the Registrar shall endorse on the relevant certificate of title or other document of title, and also on the memorandum of mortgage, whenever those instruments are brought to him for that purpose, particulars of the entry.

Division 4.—Caveats Against Dealings.

104.—(1.) Any settlor of land under the provisions of this Ordinance transferring the land to be held by the transferee as trustee, or any person claiming any estate or interest in the land under any unregistered instrument, or by devolution in law or otherwise, may by caveat in the form of the Fifteenth Schedule forbid the registration of any instrument affecting the land, estate or interest, either absolutely or until after notice of the intended dealing given to the caveator as is required and enjoined in the caveat. Caveat may be lodged.

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

(3.) No such caveat shall be received unless some address or place within the Territory is appointed therein as the place at which notices and proceedings relating to the caveat may be served.

(4.) Every notice relating to the caveat or to any proceedings in respect thereof if served at the address or place mentioned in the caveat shall be deemed to be duly served.

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

105.—(1.) Upon the receipt of any such caveat, the Registrar shall notify the receipt to the person against whose application to be registered as proprietor, or, as the case may be, to the registered proprietor against whose title to deal with land under the provisions of this Ordinance the caveat has been lodged. Notice of caveat.

(2.) The applicant or registered proprietor may, if he thinks fit, summon the caveator to attend before the Court or a Justice thereof to show cause why the caveat should not be removed.

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

When caveat
to lapse.

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

No dealing to
be registered
while caveat in
force.

107. So long as any caveat remains in force prohibiting the transfer or other dealing with land, the Registrar shall not enter in the Register Book any memorial of any memorandum of transfer or other instrument purporting to transfer or otherwise deal with or affect the land, estate or interest in respect of which the caveat is lodged.

Compensation
for lodging
caveat without
reasonable
cause.

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

PART XI.—IMPLIED COVENANTS AND SHORT FORMS OF COVENANTS.

Effect of
covenant.

109.—(1.) A covenant whether expressly contained in any instrument or implied therein under this Ordinance shall be deemed to be made with the covenantee, his heirs, executors, administrators and assigns, and shall have effect accordingly.

(2.) A covenant whether express or implied under this Ordinance made with two or more jointly to pay money or to do any other act to them or for their benefit shall be deemed to include, and shall by virtue of this Ordinance imply, an obligation to do the act to or for the benefit of the survivor or survivors of them and to or for the benefit of any other person to whom the right to sue on the covenant devolves.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument and shall have effect subject to the provisions of the instrument.

110. A covenant mentioned in the last preceding section made by a person with himself and another or others shall be construed and be capable of being enforced in like manner as if the covenant had been made with the other or others.

Covenants by a person with himself and another or others.

111. Where a covenant is implied under this Ordinance and more persons than one are covenantors such covenant shall be deemed to bind the covenantors and any two or greater number of them jointly and each of them severally.

Implied covenants to be joint and several.

112.—(1.) Every covenant and power to be implied in any instrument by virtue of this Ordinance may be negatived, varied or extended by express declaration in the instrument or endorsed thereon.

Implied covenants may be modified or negatived.

(2.) Any such covenant or power so varied or extended shall, so far as may be, operate in the like manner and with all the like incidents, effects and consequences as if the variations or extensions were implied under this Ordinance.

(3.) In any pleading in an action for a supposed breach of any such covenant, the covenant alleged to be broken may be set forth, and it shall be lawful to allege that the party against whom the action is brought did so covenant precisely in the same manner as if the covenant had been expressed in words in the memorandum of transfer or other instrument, any law or practice to the contrary notwithstanding.

(4.) Every such implied covenant or power shall have the same force and effect, and may be enforced in the same manner as if it had been set out at length in the instrument.

113. The benefit of a covenant implied under this Ordinance shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is for the whole or any part thereof from time to time vested.

Benefit of implied covenants.

114. In the construction of a covenant or proviso or other provision implied by virtue of this Ordinance, words importing the singular or plural number or the masculine gender shall be read as also importing the plural or singular number or as extending to females as the case requires.

Construction of implied covenants and provisions.

115. In any memorandum of mortgage and in any memorandum of transfer of mortgage where there are more mortgagees or transferees than one, any implied covenant with them shall be deemed to be a covenant with them jointly in equity as well as at

Implied covenants with mortgagees.

law, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

General
covenants to
be implied in
instruments.

116. In every instrument creating or transferring any estate or interest in land under the provisions of this Ordinance there shall be implied a covenant by the party creating or transferring the estate or interest that he will do such acts and execute such instruments as, in accordance with the provisions of this Ordinance, are necessary to give effect to all covenants, conditions and purposes expressly set forth in the instrument, or by this Ordinance declared to be implied against the party in instruments of a like nature.

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

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

That the transferee will pay the interest, or annuity, or rent-charge secured by the mortgage or encumbrance after the rate and at the times specified in the instrument creating the mortgage or encumbrance, and will indemnify and keep harmless the transferor from and against the principal sum secured by the instrument, and from and against all liability in respect of any of the covenants therein contained, or by this Ordinance implied on the part of the transferor.

Covenant
implied in
mortgage.

118. In every memorandum of mortgage there shall be implied against the mortgagor a covenant that he will keep all buildings or other improvements erected and made upon the land in as good and substantial repair as they were in at the date of the mortgage, and that the mortgagee may, at all convenient times, until the mortgage is discharged, be at liberty, with or without surveyors or others, to enter into, and upon, the land to view and inspect the state of repair of the buildings and improvements.

Covenants of
lessees.

119. In every memorandum of lease there shall be implied the following covenants by the lessee with the lessor:—

(a) That he will pay the rent thereby reserved at the time therein mentioned:

Provided, however, that in case the leased premises or any part thereof are at any time during the continuance of the lease destroyed or damaged by fire, flood, lightning, storm or tempest so as to render the premises unfit for the occupation and use of the lessee, then and so often as the premises or any part thereof are so destroyed or damaged, the rent thereby reserved, or a proportionate part thereof, according to the nature and extent of the damage sustained shall

abate, and all or any remedies for recovery of the rent or such proportionate part thereof shall be suspended until the premises have been rebuilt or made fit for the occupation and use of the lessee, and in case of any dispute arising under this proviso the dispute shall be referred to arbitration under the provisions of the laws in force in the Territory relating to arbitration; and

- (b) That he will at all times during the continuance of the lease, keep and, at the termination thereof, yield up the premises in good and tenantable repair, having regard to their condition at the commencement of the lease, accidents and damage from fire, flood, lightning, storm and tempest, and reasonable wear and tear excepted.

120. In every memorandum of lease there shall be implied the following powers in the lessor:— Powers in lessor.

- (a) That he may by himself or his agents, twice in every year during the term at a reasonable time of the day upon giving to the lessee two days' previous notice, enter upon the leased premises 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 premises, a notice in writing of any defect, requiring him within a reasonable time, to repair the premises in accordance with any covenant expressed or implied in the lease;
- (b) That in default of the lessee repairing any defect according to notice he may from time to time enter the premises and execute the required repairs;
- (c) That he may, by himself or his agents, at all reasonable times during the term, with workmen and others and all necessary materials and appliances, enter upon the premises or any part thereof, for the purpose of complying with the terms of any present or future legislation affecting the premises, and of any notices served upon the lessor or lessee by any competent authority involving the destruction of noxious weeds or animals, or the carrying out of any repairs, alterations or works of a structural character, which the lessee is not bound, or, if bound, neglects to do, and also for the purpose of exercising the powers and authorities of the lessor under the lease:

Provided that the destruction, repairs, alterations and works shall be carried out by the lessor without undue interference with the occupation and use of the premises by the lessee;

- (d) That in case the rent or any part thereof is in arrear for the space of one month (although no formal demand therefor has been made), or in case default is made in the fulfilment of any covenant, condition or stipulation, whether expressed or implied in the lease, and on the part of the lessee to be performed or observed, and the default is continued for the space of two months, or in case the repairs required by a notice served or left in pursuance of paragraph (a) of this section, are not completed within the time therein specified, he may re-enter upon the premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee therein, but without releasing him from liability in respect of the breach or non-observance of any such covenant, condition or stipulation.

Abbreviated
forms of
words for
covenants in
leases.

121. Such of the covenants set forth in this section as are expressed in any memorandum of lease as to be implied shall, if expressed in the form of words in this section appointed and prescribed for the case of each such covenant respectively, be so implied as fully and effectually as if those covenants were set forth fully and in words at length in the instrument, that is to say:—

- (a) The words “will insure” shall imply as follows:—

Will insure, and, so long as the term expressed in the lease has not expired, will keep insured, in the name of the lessor, in some public insurance office, to be approved by the lessor, against loss or damage by fire, to the full amounts specified in the lease, or, if no amount be specified, then to their full value, all buildings, tenements or premises erected on the land which are of a nature or kind capable of being insured against loss or damage by fire, and that the lessee will at the request of the lessor hand over to and deposit with him the policy of every such insurance and produce to him the receipt and receipts for the annual or other premiums payable on account thereof, and also that all moneys to be received under or by virtue of any such insurance shall in the event of loss or damage by fire be laid out and expended in making good the loss or damage:

Provided that if default is made in the observance or performance of the covenant last above mentioned, the lessor may without prejudice to and concurrently with the powers granted him by his memorandum of lease or by this Ordinance provided, insure the building; and the costs and charges of the insurance shall, until the lease expires, be a charge upon the land recoverable in like manner as rent in arrear;

- (b) The words " will paint outside every alternate year " shall imply as follows:—will in every alternate year during the currency of the lease, paint all the outside woodwork and ironwork belonging to the hereditaments and premises mentioned in the lease with two coats of proper oil-colours in a workmanlike manner;
- (c) The words " will paint and paper inside every third year " shall imply as follows:—will in every third year during the currency of the lease paint the inside, wood, iron and other works, now or usually painted with two coats of proper oil-colours in a workmanlike manner, and also repaper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten or colour such parts of the premises as are now washed, stopped, whitened or coloured respectively;
- (d) The words " will fence " shall imply as follows:—will, during the continuance of the lease, erect and put up on the boundaries of the land therein mentioned, or upon such boundaries upon which no substantial fence now exists, a good and substantial fence;
- (e) The words " will cultivate " shall imply as follows:—will, at all times during the 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 land;
- (f) The words " that the lessee will not use the premises as a shop " shall imply as follows:—that the lessee will not convert, use or occupy the hereditaments and premises mentioned in the 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 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 lessor;
- (g) The words " that he will not carry on offensive trades " shall imply as follows:—that no noxious noisome or offensive art, trade, business, occupation or calling shall, at any time during the term of the lease, be used, exercised, carried on, permitted or suffered in or upon the hereditaments and premises above-mentioned, and that no act, matter or thing whatsoever shall, at any time during the term of the lease, be done in or upon the hereditaments and premises or

any part thereof which shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the occupiers or owners of the adjoining lands and hereditaments;

(h) The words "will not without leave assign or sublet" shall imply as follows:—will not, during the term of the 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 lessor first had and obtained;

(i) The words "will not cut timber" shall imply as follows:—will not cut down, fell, injure or destroy any growing or living timber or timberlike trees standing and being upon the hereditaments and premises abovementioned without the consent in writing of the lessor.

Abbreviated
form in
mortgage.

122. Whenever in any memorandum of mortgage the mortgagor employs the following form of words, namely, "that the mortgagor will insure" that form of words shall imply the following covenant by the mortgagor:—

"That the mortgagor will insure, and, so long as the principal money and interest secured by the mortgage or any part thereof remains unpaid or the term expressed in the mortgage has not expired, will keep insured, in the name of the mortgagee, in some public insurance office to be approved by the mortgagee, against loss or damage by fire, to the full amount specified in the mortgage, or, if no amount be specified, then to their full value, all buildings tenements or premises erected on the land which are of a nature or kind capable of being insured against loss or damage by fire, and that the mortgagor will at the request of the mortgagee hand over and deposit with the mortgagee the policy of every such insurance, and produce to the mortgagee receipt and receipts for the annual or other premiums payable on account thereof, and also 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 that if default is made in the observance or performance of the covenants last abovementioned, the mortgagee may, without prejudice to and concurrently with the powers granted him by his memorandum of mortgage or by this Ordinance provided, insure the building; and the costs and charges of the insurance shall, until the mortgage is discharged, be a charge upon the land recoverable in like manner as interest in arrear."

123. This Part of this Ordinance shall not apply to Crown leases but shall apply to mortgages and sub-leases of Crown leases.

This part not to apply to Crown leases.

PART XII.—TRUSTS.

124.—(1.) The Registrar shall not make any entry in the Register Book of any notice of trust, whether express, implied or constructive.

No notice of trusts to be entered in register-book.

(2.) Trusts may be declared by any document, which document may include as well lands under the provisions of this Ordinance as land which is not under the provisions thereof:

Provided that the description of the several parcels of lands contained in the document shall sufficiently distinguish the land which is under the provisions of this Ordinance from the land which is not under the provisions thereof, and a duplicate or an attested copy of the document may be deposited with the Registrar for safe custody and reference, but shall not be registered.

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

(4.) The caveat may be removed on the application of the same person and in the same manner as is provided in section one hundred and five of this Ordinance.

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

Grants may be registered although trusts declared.

126.—(1.) Upon the transfer of any land, estate or interest under the provisions of this Ordinance to two or more persons as joint proprietors, to be held by them as trustees, the transferor may insert in the memorandum of transfer or other instrument the words “no survivorship”; and the Registrar shall in that case include such words in the memorial of the instrument to be entered by him in the Register Book as directed in section seventy-five of this Ordinance, and shall also enter those words upon any certificate of title issued to the joint proprietors pursuant to the memorandum of transfer.

How survivorship among trustees may be barred except on order of a Justice.

(2.) Any two or more persons registered as joint proprietors of any land, estate or interest under the provisions of this Ordinance, held by them as trustees, may by writing under their hand authorize the Registrar to enter the words “no survivorship” upon the grant, certificate of title or instrument evidencing their title to the

estate or interest, and also upon the duplicate of the grant, certificate or instrument in the Register Book or filed in his office, and, after the entry has been made and signed by the Registrar in either such case, any less number of joint proprietors than the number then registered shall not transfer or otherwise deal with the land, estate or interest without obtaining the sanction of the Court or a Justice thereof.

Notice to be published before order.

127.—(1.) Before making any order granting the sanction mentioned in the last preceding section the Court or Justice shall, if it seem requisite, require notice of intention so to do to be advertised in the *Gazette*, and in such newspapers as the Court or Justice directs, and shall appoint a period of time within which any person interested may show cause why the order should not be issued, and thereupon the Court or Justice in the order may give directions for the transfer of the land, estate or interest to any new proprietor or proprietors, solely or jointly with or in the place of any existing proprietor, or make such order in the premises as the Court thinks just for the protection of the persons beneficially interested in the land, estate or interest, or in the proceeds thereof.

(2.) Upon the order being deposited with the Registrar he shall make such entries and perform such acts as in accordance with the provisions of this Ordinance are necessary for the purpose of giving effect to the order.

Registrar to carry out order of Court vesting trust estate.

128.—(1.) Whenever any person interested in land under the provisions of this Ordinance, appears to the Court to be a trustee of the land within the intent and meaning of any Act or Ordinance relating to trustees then in force in the Territory, and any order is made in the premises by the Court or a Justice thereof, the Registrar on being served with an office copy of the order shall enter in the Register Book, and on the grant, certificate of title or instrument evidencing title to the land, the date of the order, the date and hour of its production to him, and the name, residence and description of the person in whom the order purports to vest the land, and that person shall thereupon be deemed to be the registered proprietor of the land.

(2.) Unless and until that entry is made, the order shall have no effect or operation in transferring or otherwise vesting the land.

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

129.—(1.) Whenever a person entitled to or interested in land as a trustee would be entitled to bring or defend any action of ejectment in his own name for recovering the possession of land under the provisions of this Ordinance, that person shall be bound to allow his name to be used as a plaintiff or defendant in the action of ejectment by any beneficiary or person claiming an estate or interest in the land.

(2.) The person entitled to or interested in the land as a trustee shall in every such case be entitled to be indemnified in like manner as a trustee would before the passing of the Act 26th Victoria

number nine of the State of New South Wales have been entitled to be indemnified in a similar case of his name being used in any such action or proceeding by his *cestui que* trust.

PART XIII.—POWERS OF ATTORNEY.

130.—(1.) The registered proprietor of any land, estate or interest under the provisions of this Ordinance may authorize and appoint any person within the Territory to act for him or on his behalf in respect of the transfer or other dealing with the land, estate or interest in accordance with the provisions of this Ordinance, by executing a power of attorney in any form in use before the commencement of this Ordinance for the like purpose, or in the form of the Twelfth or Thirteenth Schedule, and the power of attorney may be registered by depositing it or a duplicate or certified copy thereof in the office of the Registrar who shall enter in the Register Book a memorandum of the particulars therein contained, and the date and hour when it was so deposited. Powers of attorney.

(2.) An instrument executed under a power of attorney shall not be registered under this Ordinance, unless the power of attorney has been registered in accordance with this section.

131.—(1.) The registered proprietor of any land in respect of which any power of attorney has been executed may, for the purpose of revoking the power, execute a document in the form of the Fourteenth Schedule or in any form in use before the commencement of this Ordinance for the like purpose, and may register the revocation by depositing it or a notice thereof with the Registrar. Revocation of power of attorney.

(2.) After the date of the registration of revocation the Registrar shall not give effect to any memorandum of transfer or other instrument executed pursuant to the power of attorney.

PART XIV.—TRANSMISSIONS.

132.—(1.) Upon the bankruptcy or insolvency of the registered proprietor of any land, estate or interest under the provisions of this Ordinance, the assignee or trustee of the bankrupt or insolvent shall be entitled to be registered as proprietor in respect of the land, estate or interest. Transmission by bankruptcy or insolvency.

(2.) The Registrar, upon the receipt of an office copy of the appointment of the assignee or trustee, accompanied by an application in writing under his hand to be so registered in respect of any land, estate or interest of the bankrupt or insolvent therein specified and described, shall enter in the Register Book, upon the folium constituted by the grant or certificate of title of the land affected, a memorandum notifying the appointment of the assignee or trustee.

(3.) Upon the entry being made, the assignee or trustee shall be deemed and taken to be the registered proprietor of the estate or interest of the bankrupt or insolvent in the land, and shall hold the

land, estate or interest subject to the equities upon and subject to which the bankrupt or insolvent held the land, estate or interest, but for the purpose of any dealings with the land, estate or interest under the provisions of this Ordinance the assignee or trustee shall be deemed to be the absolute proprietor thereof.

Mortgagee of the leasehold interest of a bankrupt may be entered as transferee of lease.

133.—(1.) Upon the bankruptcy or insolvency of the registered proprietor of any lease subject to mortgage under the provisions of this Ordinance, the Registrar, upon the application in writing of the mortgagee accompanied by a statement in writing signed by the assignee or trustee of the bankrupt or insolvent certifying his refusal to accept the lease, shall enter in the Register Book the particulars of the refusal, and the entry shall operate as a foreclosure, and the interest of the bankrupt or insolvent in the lease shall thereupon vest in the mortgagee.

(2.) If the mortgagee neglects or declines to make the application mentioned in the last preceding sub-section, the Registrar, upon application by the lessor, and proof of the neglect or refusal and of the matters mentioned in the last preceding sub-section, shall enter in the Register Book notice of the neglect or refusal of the assignee or trustee to accept the lease, and the entry shall operate as a surrender of the lease.

Marriage of female proprietor to be certified to the Registrar.

134. The Registrar, upon the production of the register or other sufficient proof of the marriage of a female registered proprietor of any land, estate or interest under the provisions of this Ordinance, accompanied by an application in writing signed by the female proprietor to that effect shall enter in the Register Book, and also upon the grant, certificate of title or instrument evidencing the title of the female proprietor, when produced to him for that purpose, the name and description of her husband, the date of the marriage and where solemnized, and the day and hour of the production to him of the register or other sufficient evidence of the marriage.

Transmission of mortgage or lease on death of proprietor.

135.—(1.) Whenever any mortgage, encumbrance or lease affecting land under the provisions of this Ordinance is transmitted in consequence of the will or intestacy of the registered proprietor thereof, the probate or an office copy of the will of the deceased proprietor, or the letters of administration, or the order of the Court authorizing the Public Trustee to collect the estate of the deceased proprietor of the estate or interest, as the case may be, accompanied by an application in writing from the executor, administrator or Public Trustee, claiming to be registered as proprietor in respect of the estate or interest, shall be produced to the Registrar who shall thereupon enter in the Register Book, and on the mortgage, encumbrance or lease evidencing title to the estate or interest transmitted, the date of the will and of the probate, or of the letters of administration, or order of the Court, the date and

hour of the production of the probate or office copy of the will or the letters of administration or the order of the Court to him, the date of the death of the proprietor when that date can be ascertained, with such other particulars as he deems necessary.

(2.) Upon the entry being made, the executor or administrator, or the Public Trustee, as the case may be, shall be deemed to be registered proprietor of the mortgage, encumbrance or lease, and the Registrar shall note the fact of the registration by memorandum under his hand on the letters of administration, probate or other instrument.

136.—(1.) Executors or administrators, or other persons claiming any estate of freehold in the land of a deceased proprietor or a leasehold estate under a Crown lease, or any person having a power of disposition over the fee-simple of any such land, may apply in writing to the Registrar in the form of the Sixteenth Schedule, to be registered as proprietor of the estate.

Registration
of executors,
administrators,
&c., by
transmission.

(2.) The applicant shall deposit with the Registrar the certificate of the death together with the will, or an office copy, or the probate of the will of the deceased proprietor, or the letters of administration, or the order of the Court authorizing the Public Trustee to collect the estate of the deceased proprietor, or any settlement under which the applicant claims, or such evidence of his title as the applicant is able to produce.

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

(4.) The application shall state the nature of every estate or interest held by other persons at law or in equity in the land within the applicant's knowledge (except such estates or interests as arise or are supposed to arise out of matters anterior to the date of the instrument in respect of which he applies to be registered), unless the estates or interests have been disclosed by or referred to in some instrument or declaration of trust deposited under this Ordinance, or have been protected by caveat entered pursuant to the provisions of this Ordinance.

(5.) The Registrar shall not be concerned in or take notice of any such prior estates or interests unless they have been disclosed or referred to or protected as mentioned in the last preceding subsection.

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

(7.) The application may be made by, and the statements in the application shall be verified upon the oath or statutory declaration of, the applicant, or, in case of his absence from the Commonwealth, his agent in the Territory duly constituted by power of attorney.

(8.) The applicant shall surrender the existing grant or certificate of title of the land in respect of which he claims to be registered as proprietor prior to his being entered in the Register Book as mentioned in the next succeeding section, unless the Registrar sees fit to dispense with the surrender.

(9.) Before dispensing with the surrender the Registrar shall require the person deriving to make a statutory declaration that the grant or certificate of title has not been deposited as security for any loan, and shall, at the expense of that person, give, in the *Gazette* and in such newspapers as he thinks fit, fourteen days' notice of his intention to register the transmission.

Powers of
Registrar in
dealing with
applications of
executors and
administrators.

137.—(1.) The Registrar may—

- (a) reject the application altogether; or
- (b) require notice thereof by advertisement, or the serving or posting of notices, to be given as he thinks fit; or
- (c) dispense with the giving of any such notice.

(2.) Any such notice shall limit and appoint a time to be fixed by the Registrar upon or after which he may, unless he has in the interval received a caveat forbidding him so to do, register the applicant as proprietor of the 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.

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

(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.

Trusts
protected.

138. The person so registered in respect of any mortgage, encumbrance or lease, or of any estate of freehold, shall hold the 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 the land, estate or interest, under the provisions of this Ordinance, he shall be deemed to be absolute proprietor thereof.

PART XV.—FEES.

139. The Commission may recover the several fees specified in Fees. the Eighteenth Schedule and such additional fees as are prescribed.

140.—(1.) Upon the first bringing of land under the provisions of this Ordinance, whether upon a grant by the Crown or consequent upon the application of the proprietor as provided in this Ordinance, and also upon the registration of the title to an estate of freehold in possession in land under the provisions of this Ordinance derived through the will or intestacy of a previous proprietor or under any settlement, there shall be paid to the Commission the sum specified in the Eighteenth Schedule.

Percentage to be levied upon first bringing land under provisions of ordinance, &c.

(2.) In the case of land brought under the provisions of this Ordinance by alienation in fee from the Crown, the price paid for the land shall be deemed and taken to be the value thereof for the purpose of levying the sum specified in the Eighteenth Schedule, and in all other cases mentioned in the last preceding sub-section, except in the cases mentioned in sub-sections (4.) and (5.) of this section, the value shall be ascertained by the statutory declaration, produced to the Registrar, of the applicant or person deriving the land by transmission.

(3.) If the Registrar is not satisfied as to the correctness of the value so declared, he may require the applicant or person deriving the land to produce a certificate of the value, under the hand of a sworn valuator, which certificate shall be received as conclusive evidence of the value for the purpose of levying the sum specified in the Eighteenth Schedule.

(4.) In the case of land brought under the provisions of this Ordinance by the grant of a Crown lease, a sum equal to twenty times the amount of the annual rent for the first year of the term of the Crown lease shall be taken to be the value thereof for the purpose of levying the sum specified in the Eighteenth Schedule.

(5.) In the case of other leasehold land brought under the provisions of this Ordinance, a sum equal to twenty times the amount of the annual rent thereof for the year during which the application to bring the land under the provisions of this Ordinance is made shall be taken to be the value thereof for the purpose of levying the sum specified in the Eighteenth Schedule.

141.—(1.) For the registration of a memorandum of transfer under the provisions of this Ordinance, there shall be paid to the Commission, the sum specified in the Eighteenth Schedule.

Percentage to be levied for the registration of a transfer.

(2.) In the case of a transfer made on sale of any land but subject to the provisions of the next succeeding subsection, the amount or value of the consideration for the sale shall be deemed and taken to be the value of the land for the purpose of levying the sum specified in the Eighteenth Schedule.

(3.) The Registrar may in any case require the transferee to make a statutory declaration as to the amount or value of the consideration for the sale.

(4.) In addition to his powers under the last preceding subsection, the Registrar may in any case require the transferee to produce a certificate of the value of the land under the hand of a sworn valuator, which certificate shall be received as conclusive evidence of the value for the purpose of levying the sum specified in the Eighteenth Schedule.

(5.) The Registrar shall not be required to register any transfer until the transferee has complied to the satisfaction of the Registrar with any requirement of the Registrar under this section.

Fines, fees,
&c. to be paid
to Commission.

142. All fines, fees and sums of money recoverable or payable under this Ordinance shall be paid to the Commission.

PART XVI.—CIVIL RIGHTS AND REMEDIES.

Damages in
certain cases.

143. In any case where a person against whom proceedings have been taken under section one hundred and fifty-four of this Ordinance—

- (a) ceases, in pursuance of sub-section (5.) of that section, to be liable for the payment of damages; or
- (b) being liable for damages under that section, is dead, bankrupt or insolvent, or cannot be found within the jurisdiction,

the damages with costs of action may be recovered by action against the Commission.

Damages and
costs to be
paid by the
Commission.

144. If in any action under section one hundred and forty-three or section one hundred and fifty-five of this Ordinance the plaintiff recovers final judgment against the Commission, the Court or Justice before whom the action is tried shall certify the fact of the judgment and the amount of damages and costs recovered, and the amount of the damages and costs shall be paid to the person recovering them by the Commission.

Moneys paid
by the
Commission
may be
recovered
against estate
of deceased
or bankrupt
person.

145.—(1.) Whenever any amount has been paid by the Commission on account of any person who is dead, that amount may be recovered by the Commission from the estate of that person by action against his personal representatives.

(2.) Whenever any such amount has been paid on account of a person who is insolvent or bankrupt, the amount so paid shall be considered to be a debt due from the estate of the insolvent or bankrupt and a certificate signed by the prescribed officer of the Commission certifying the fact of the payment and delivered to the official assignee or trustee of the insolvent or bankrupt shall be sufficient proof of the debt.

146.—(1.) Whenever any amount has been paid by the Commission, on account of any person who has absconded or who cannot be found within the jurisdiction and has left any real or personal estate within the jurisdiction the Court or a Justice thereof, upon the application of the Commission and upon the production of a certificate signed by the prescribed officer of the Commission certifying that the amount has been paid in satisfaction of a judgment against the Commission, may allow the Commission to sign judgment against that person forthwith for the amount so paid together with the costs of the application.

Where person
liable is out
of the
jurisdiction.

(2.) The judgment shall be final and signed in like manner as a final judgment by confession or default in an adverse suit, and execution may issue immediately.

(3.) If the person against whom judgment has been signed has not left real or personal estate within the jurisdiction sufficient to satisfy the amount for which execution has been issued in pursuance of the last preceding sub-section, the Commission may recover the amount or the unrecovered balance thereof by action against that person at any time thereafter when he is within the jurisdiction.

147. The Commission shall not, under any circumstances, be liable for compensation for any loss, damage or deprivation occasioned—

Commission
only liable
in certain
cases.

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

(b) by any land being included in the same certificate of title with other land through misdescription of boundaries or parcels of any land, unless it is proved that the person liable for compensation and damages is dead or has absconded or is insolvent or bankrupt, or the proper officer of the Court certifies that that person is unable to pay the full amount awarded in any action for recovery of the compensation and damages.

148.—(1.) If, upon the application of any proprietor to have land brought under the provisions of this Ordinance, or to have any dealing or transmission registered or recorded, or to have any certificate of title, foreclosure, order, instrument or document issued, or to have any act or duty done or performed which, by this Ordinance or any regulations thereunder, is required 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 as in the foregoing provisions of this Ordinance provided, the proprietor may require the Registrar to set forth in writing under his hand the grounds of his refusal or the grounds upon which the direction was given, and the proprietor may, if he think fit, summon the Registrar to appear before the Court to substantiate and uphold the grounds of his refusal or of the direction, as the case may be.

Proprietor may
summon
Registrar to
show cause if
dissatisfied.

(2.) The summons shall be issued under the hand or a Justice of the Court and served upon the Registrar six clear days at least before the day appointed for hearing the complaint of the proprietor, and upon the hearing the Registrar or his counsel shall have the right of reply.

(3.) The Court shall, if any question of fact be involved, direct an issue to be tried to decide the fact, and the Court shall thereupon make such order in the premises as in its judgment the circumstances of the case require, and the Registrar shall obey the order.

Special case when applicant dissatisfied with objection of Registrar.

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

(2.) The decision of the Court shall be binding upon the Registrar, but shall not affect the claim of any person under section one hundred and forty-three or section one hundred and fifty-five of this Ordinance, or the right of the applicant to proceed under the last preceding section of this Ordinance.

(3.) To every such case there shall be annexed such observations as the Registrar thinks proper to make.

Registrar may state a case for Court.

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

Costs of proceedings under last three preceding sections.

151. The Court may make such order as it thinks just as to the costs and expenses of and attendant upon any summons or proceeding under any of the last three preceding sections, and all costs and expenses to be paid by the Registrar under the order shall be paid by the Commission.

Registered proprietor protected against ejectment except in certain cases.

152.—(1.) No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Ordinance, except in any of the following cases, that is to say:—

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

- (e) The case of a person deprived of, or claiming, any land included in any grant or certificate of title of other land by misdescription of that other land, or of its boundaries, as against the registered proprietor of that other land not being a transferee thereof *bona fide* for value;
- (f) The case of a registered proprietor claiming under a title prior in date of registration under the provisions of this Ordinance, in any case in which two or more grants or two or more certificates of a title or a grant and a certificate of title may be registered under provisions of this Ordinance in respect of the same land.

(2.) In any case, other than those mentioned in the last preceding sub-section, the production of the registered grant, certificate of title or lease, shall be held in every Court to be an absolute bar and estoppel to any such action against the person named in the document or instrument as seised of or as registered proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding.

153.—(1.) Whenever an action is brought against a registered proprietor or person holding a grant or certificate of title in either of the last two cases excepted in the last preceding section; if the defendant or any person through whom he claims has made improvements on the land since obtaining a registered title thereto, then, whether he admits or denies the plaintiff's title, he may plead the fact of the improvements being made, and may set a value thereon, and also on the land as distinct therefrom, and also give evidence thereof at the trial.

In case of
ejectment of
defendant
who has made
improvements
their value
may be
assessed.

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

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

(4.) If the plaintiff fails to make that payment within three months after verdict, the judgment to which he is entitled shall thereafter be limited to the sum separately assessed, as the value of the land together with costs of suit, and the defendant shall upon satisfaction thereof be entitled to retain the land and improvements.

(5.) In either case the Registrar shall be entitled, under the power conferred by Part XVII. of this Ordinance of cancelling erroneous certificates, to require to be delivered up any grant or certificate of title which is held by the party whose right to the land has determined.

(6.) In every case in which the defendant is entitled to indemnity from the Commission, the Commission shall be made a co-defendant, and may defend the action either severally or jointly, or may leave the defence wholly to his co-defendant, as he thinks fit.

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

Compensation
for party
deprived of
land.

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

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

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

(2.) The action shall, in any case in which the land has been included in two or more grants, be brought and prosecuted against the Commission.

(3.) The action shall in any other case, but subject to the provisions of sub-sections (4.) and (5.) of this section, be brought and prosecuted against the person—

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

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

(5.) Except in the case of fraud or of error occasioned by any omission, misrepresentation or misdescription in his application, or in any instrument executed by him, the person upon whose application the land was brought under the provisions of this Ordinance, or the erroneous registration was made, shall, upon a transfer of the land *bona fide* for value, cease to be liable for the payment of any damages which might have been recovered from him under this section.

When actions
may lie against
the Registrar
as nominal
defendant.

155. Any person sustaining loss or damages through any omission, mistake or misfeasance of the Registrar or any of his officers or clerks in the execution of their respective duties under the provisions of this Ordinance, or by the registration of any other person as proprietor of land, or by any error, omission or misdescription in any grant, certificate of title or any entry or memorial in

the Register Book, and who by the provisions of this Ordinance is barred from bringing an action of ejectment or other action for the recovery of the land, estate or interest may, in any case in which the remedy by action for recovery of damages as provided in this Part is inapplicable, bring an action against the Commission for recovery of damages.

156.—(1.) In any case in which an action for recovery of damages is permitted to be brought against the Commission as provided in sections one hundred and forty-three and one hundred and fifty-five of this Ordinance, notice in writing of the action and of the cause thereof shall be served upon the defendant one calendar month at least before the commencement of the action. Notice of action.

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

157.—(1.) No action for recovery of damages sustained through deprivation of land, or of any estate or interest in land, as described in the foregoing provisions of this Part, shall lie or be sustained against the Commission, or against the person upon whose application the land was brought under the provisions of this Ordinance, or against the person who applied to be registered as proprietor in respect of the land, or against the person certifying any instrument in accordance with the foregoing provisions of this Ordinance unless the action is commenced within the period of six years from the date of the deprivation. Limitation of actions.

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

(3.) Any such action, at whatever time it is brought, or any action for the recovery of land, shall be dismissed in any case in which the deprivation complained of was occasioned through the bringing of land under the provisions of this Ordinance, if it is proved to the Court that the plaintiff or any person through or under whom he claims title had notice, by personal service or otherwise, or was aware, that application had been made to bring the land under the provisions of this Ordinance, and had wilfully or collusively omitted to lodge a caveat forbidding the bringing of the land under the provisions of this Ordinance, or had allowed the caveat to lapse.

158. The Commission or the Registrar shall not, nor shall any person acting under its or his authority, be liable to any action, suit or proceeding for or in respect of any act or matter *bona fide* done or omitted to be done under this Ordinance. Registrar not to be liable for acts done bona fide.

Purchasers and mortgagees protected.

159. Nothing in this Ordinance contained shall be so interpreted as to leave subject to action for recovery of damages, as provided in this Part, or to action of ejectment, or to deprivation of the estate or interest in respect of which he is registered proprietor, any purchaser or mortgagee *bona fide* for valuable consideration of land under the provisions of this Ordinance on the plea that his vendor or mortgagor was registered as proprietor, or procured the registration of the transfer or mortgage to the purchaser or mortgagee, through fraud or error, or has derived from or through a person registered as proprietor through fraud or error, and this whether the fraud or error consists in wrong description of the boundaries or of the parcels of any land or otherwise howsoever.

PART XVII.—CANCELLATION AND CORRECTION OF INSTRUMENTS.

Holder of certificate or other document of title issued in error or wrongfully retained to show cause to Court against cancellation or correction.

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

- (a) any grant, certificate of title or 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 instrument; or
- (c) any such grant, certificate of title, instrument, entry or endorsement has been fraudulently or wrongfully obtained; or
- (d) any such grant, certificate of title or instrument is fraudulently or wrongfully retained,

he may summon the person, to whom the grant, certificate of title or instrument has been so issued or by whom it has been so obtained or is retained, to deliver up the grant, certificate of title or instrument for the purpose of being cancelled or corrected, and, upon it being delivered up to him, the Registrar may cancel or correct the grant, certificate of title or instrument, as the case requires.

(2.) If the person refuses or neglects to comply with the summons, or cannot be found, the Registrar may apply to a Justice of the Court to issue a summons for the person to appear before the Court or Justice and show cause why the grant, certificate of title or instrument should not be delivered up to be cancelled or corrected.

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

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

161.—(1.) Upon the appearance before the Court or Justice of any person summoned or brought up by virtue of a warrant issued in pursuance of the last preceding section, the Court or

Justice may examine that person upon oath, and may order that person to deliver up the grant, certificate of title or instrument in respect of which the summons was issued.

(2.) Upon refusal or neglect by the person to deliver up the grant, certificate of title or instrument pursuant to the order, the Court or Justice may commit the person to prison.

(3.) Upon any such refusal or neglect, as is mentioned in the last preceding sub-section, or in case the person has absconded so that the summons cannot be served upon him in pursuance of the last preceding section, the Registrar shall, if the circumstances of the case require it, issue to the proprietor of the land the certificate of title, instrument or document as is by this Ordinance provided to be issued in the case of any grant or certificate of title being lost, mislaid or destroyed, and shall enter in the Register Book notice of the issuing of the certificate of title, instrument or document and the circumstances under which it was issued, and such other particulars as he deems necessary.

162. Upon the recovery of any land, estate or interest by any proceeding in the Court from the person registered as proprietor thereof, the Court or Justice in any case in which the proceeding is not by this Ordinance expressly barred, may direct the Registrar to cancel any grant, certificate of title or instrument, or any entry or memorial in the Register Book relating to the land, and to substitute such certificate of title or entry as the circumstances of the case require, and the Registrar shall give effect to the order.

Court may direct cancellation of certificate or entry.

PART XVIII.—PRACTICE AND PROCEDURE.

163. In the conduct of proceedings under this Ordinance the same rules of procedure and practice shall apply, and there shall be the same rights of appeal, as are in force or exist for the time being in respect of ordinary proceedings in the Court in which the proceedings are instituted.

Rule of Court to apply and same right of appeal.

164. The Justices of the Court, or any three of them, shall have power from time to time to make rules and orders for regulating proceedings in the Court under this Ordinance.

Court may make rules, &c.

PART XIX.—MISCELLANEOUS.

165.—(1.) If any person—

- (a) fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procuring of any certificate of title or other instrument, or of any entry in the Register Book, or of any erasure or alteration in any entry in the Register Book, or in any certificate of title, instrument or form issued by the Registrar;
 - (b) fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar;
- Certain fraudulent acts to be deemed misdemeanours.

(c) knowingly misleads or deceives any person authorized by this Ordinance to demand explanation or information in respect of any land or the title to any land which is the subject of any application to bring the land under the provisions of this Ordinance, or in respect of which any dealing or transmission is proposed to be registered or recorded; or

(d) knowingly makes any false statement in any document produced to the Registrar,

he shall be guilty of an offence:

Penalty: Five hundred pounds, or imprisonment for three years.

(2.) Any certificate of title, entry, erasure or alteration so procured or made by fraud, shall be void as between all parties or privies to the fraud.

Conviction not to affect civil remedy.

166. No proceeding in respect of or conviction of any offence under this Ordinance shall affect any remedy to which any person aggrieved or injured by the offence may be entitled against the person who has committed the offence, or against his estate.

Prosecutions and recovery of penalties.

167. Except where otherwise expressly provided in this Ordinance, 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 this Ordinance may be sued for and recovered, in the name of the Registrar before any Court having jurisdiction for punishment of offences of the like nature or for the recovery of penalties or sums of money of the like amount.

Prescribed forms to be used.

168.—(1.) Unless the contrary intention appears from the context, whenever a form in a schedule to this Ordinance is directed to be used, the direction shall apply equally to any form to the like effect signed by the Registrar or stamped with his seal, or which for the same purpose may be authorized in conformity with the provisions of this Ordinance.

(2.) Any variation from a prescribed form, not being in matter of substance, shall not affect its validity or regularity, but it may be used with such alterations as the character of the parties or the circumstances of the case render necessary.

Alteration of forms.

169.—(1.) The Registrar may, subject to the approval of the Commission, make such alterations in the several forms in the schedules as he deems requisite, and shall cause every such form to be stamped with his seal, and to be supplied at the office of the Registrar or at such prices as the Commission from time to time fixes.

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

170.—(1.) No writ of *fiery facias* or other writ of execution shall bind, charge or affect any land, estate or interest under the provisions of this Ordinance, but whenever any land or any estate or interest in land under the provisions of this Ordinance is seized or sold under any direction, decree or order of the Court the Registrar, on being served with an office copy of the writ, direction, decree or order, as the case may be, shall enter in the Register Book and also upon the document or instrument evidencing title to the estate or interest, if produced for that purpose, the date of the writ, direction, decree or order, and the date and hour of the production thereof.

Sales by order
of Court, &c.

(2.) After the entry the person authorized by the Court to seize or sell the land, estate or interest shall do such acts and execute such instruments as under the provisions of this Ordinance are necessary to transfer or otherwise to deal with the estate or interest.

(3.) Unless and until the entry has been made no such writ shall bind or affect any land under the provisions of this Ordinance or any estate or interest therein, nor shall any sale or transfer thereunder be valid as against a purchaser or mortgagee notwithstanding the writ was actually in the hands of the proper officer of the Court at the time of any purchase or mortgage, or notwithstanding the purchaser or mortgagee had actual or constructive notice of the issue of the writ.

(4.) Upon production to the Registrar of sufficient evidence of the satisfaction of any writ so entered, he shall enter in the Register Book a memorandum to that effect, and the writ shall be deemed to be satisfied accordingly.

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

(6.) Every such writ shall be deemed to have lapsed unless it is executed and put in force within three months from the day on which it was entered in the Register Book.

171.—(1.) Under a contract for the purchase of land under the provisions of this Ordinance the purchaser shall be entitled, at the cost of the vendor—

Conditions of
sale of land
under this
Ordinance.

- (a) to receive from the vendor sufficient particulars of title to enable him to prepare the appropriate instrument to give effect to the contract;

- (b) to receive from the vendor an abstract of any document or instrument forming part of the vendor's title in respect of which a caveat is entered upon the register;
- (c) to have the relevant certificate of title, or other document of title lodged by the vendor at the office of the Registrar, to enable the instrument to be registered; and
- (d) to have any objection to the registration of the instrument removed by the vendor:

Provided that, as to any such objection which the purchaser ought to have raised on the particulars or abstract, or upon the investigation of the title, or which arises from his own act, default or omission, he shall not be entitled to have it removed except at his own cost.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract, and to the provisions therein contained.

Seal of
corporation
substituted for
signature.

172. 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 the purpose prescribed, may affix thereto the common seal of the corporation with a certificate that the seal was affixed by the proper officer verified by his signature.

Instruments
how attested
and before
whom proved.

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

(2.) The execution of the instrument may be proved—

- (a) if the party executing the instrument is resident within the Commonwealth—before the Registrar or before a notary public or justice of the peace or a commissioner for taking affidavits of the High Court or the Supreme Court of a State or Territory, or a barrister or solicitor of any such Court, or a commissioner for declarations appointed under the *Statutory Declarations Act 1911-1922*;
- (b) if the party executing the instrument is resident in the United Kingdom—before the mayor or other chief officer of any corporation or before a notary public;
- (c) if the party executing the instrument is resident in any other British possession—before the Registrar-General, Registrar of Titles or recorder of titles of the possession or before any judge or notary public, or before the Governor, Government Resident or Chief Secretary thereof; and

- (d) if the party executing the instrument is resident at any foreign place—before the British consular officer resident at that place.

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

Mode of
proving
execution.

- (a) If the person executing the instrument is personally known to the Registrar, Justice or other person before whom the instrument may be proved, and in the Commonwealth, he may attend and appear before the Registrar, Justice or other person and acknowledge that he freely and voluntarily signed the instrument, and upon that acknowledgment the Registrar, Justice or other person shall attest the instrument by his signature;
- (b) In all other cases the witness attesting the signing may appear before one of the persons named in the last preceding section, and if he answers in the affirmative each of the questions following, that is to say:—

Are you the witness who attested the signing of this instrument, and is the name or mark purporting to be your name or mark as the attesting witness your own handwriting?

Do (or did) you personally know

, the person signing this instrument, whose signature you attested?

Is the name purporting to be his signature his own handwriting; is he (or was he when he so executed) of sound mind; and did he freely and voluntarily sign the name?

then the Registrar, Justice, mayor, or other such person shall endorse upon the instrument a certificate in the form of the Seventeenth Schedule.

(2.) The questions mentioned in the last preceding sub-section may be varied as circumstances require in case any person signs the instrument by his mark.

175. It shall not be necessary to the validity of any instrument executed by a married woman that the instrument be acknowledged by her.

Acknowledgment by married woman not necessary.

176. Every person authorized by or under this Ordinance or by or under any other law in force in the Territory to attest instruments shall state truly in the attestation clause at what place the instrument was signed by the person whose signature he purports to attest.

Place of signing to be stated.

177. The signature of every person by whom any application instrument or other document is required to be attested, signed or attested shall be in ink.

Signature in ink.

Service of
notices.

178.—(1.) Any notice by this Ordinance required to be served or given to any person may be served or given by being sent in a registered letter posted to that person at his address for service.

(2.) The address of any person as entered in the Register Book shall, until amended or altered, be his address for service.

(3.) The address or place within the Territory appointed in a caveat as the place at which notices relating to the caveat may be served shall be the address for service of the caveator within this section.

(4.) The Registrar shall cause a copy of each notice so sent to be filed with a memorandum of the notice having been sent, and the memorandum shall be sufficient proof that the notice was duly sent.

(5.) The Registrar shall, on request in writing made by any person whose address is entered in the Register Book, and on production of the certificate of title or Crown grant or instrument, and on payment of the prescribed fee, amend or alter the address.

(6.) The Registrar shall, on request in writing by a caveator and on payment of the prescribed fee, amend or alter the address appointed in the caveat at which notices may be served and the additional address (if any) given by the caveator.

(7.) When a notice is sent in a registered letter posted to any person at his address for service and the letter is returned by the Postmaster-General, the Registrar may, if in the circumstances and having regard to the provisions of this Ordinance he thinks fit—

- (a) direct any further notice to be given; or
- (b) direct substituted service; or
- (c) proceed without notice.

Regulations.

179.—(1) The Commission may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for and in relation to—

- (a) the parcels of land that may be included in one certificate of title;
- (b) the quality and size of the paper to be used for applications, instruments and other documents to be lodged with the Registrar;
- (c) the preparation of applications, instruments and other documents to be lodged with the Registrar;
- (d) the forms to be used for applications, instruments and other documents to be lodged with the Registrar, but any such regulations and the forms thereunder shall be

subject to the provisions of sections one hundred and sixty-eight and one hundred and sixty-nine of this Ordinance; and

- (e) fees payable in respect of matters arising under this Ordinance additional to those set out in the Eighteenth Schedule.

(2.) All regulations made by the Commission under this Ordinance shall—

- (a) be notified in the *Gazette*; and
(b) be forwarded to the Minister forthwith.

(3.) Regulations made under this Ordinance shall be subject to disallowance by the Governor-General at any time within thirty days after their notification in the *Gazette*, and any regulation so disallowed shall cease to have effect from the date of publication of the disallowance in the *Gazette*.

(4.) Evidence of any regulations made under this Ordinance may be given in all Courts by the production of the *Gazette* purporting to contain it, or by the production of a document purporting to be a copy thereof and purporting to be printed by the Government Printer or by the authority of the Government of the Commonwealth.

THE SCHEDULES.

Section 18.

THE FIRST SCHEDULE.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

No.

Application to bring lands under the provisions of the Real Property Ordinance 1925.

I [name, residence, occupation or other designation in full], do solemnly and sincerely declare that [I am or C.D. of is, as the case may be] seised for an estate [here state nature of estate] of [here give description of the property in full] which land is [state whether "the whole" or "part"] of [insert allotment, with reference to number and section, if any, or, if not, number of acres granted]: And I further declare that I verily believe there does not exist any lease, or agreement for lease, of the said land for any term exceeding a tenancy for one year, or from year to year, except as follows:—[if there be any lease, here state particulars; if none, strike out the words "except as follows"]].

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

And I further declare that there is no person in possession or occupation of the said lands adversely to my estate or interest therein, and that the said land is now *[insert "unoccupied" or "in the occupation of", adding names and addresses of tenants in full; state also nature of tenancy, if not under some lease before mentioned]*, and that the owners and occupiers of adjacent lands are as follows: *On the north, &c. [here insert names and residences of adjacent owners and occupiers on every side].*

And I further declare that the annexed schedule, to which my signature is affixed, and which is to be taken as part of this declaration, contains a full and correct list of all settlements, deeds, documents or instruments, maps plans and papers relating to the land comprised in this application, so far as I have any means of ascertaining the same, distinguishing such as, being in my possession or under my control, are herewith lodged, and indicating where or with whom, so far as known to me, any others thereof are deposited: Also, that there does not exist any fact or circumstance whatever material to the title, which is not hereby fully and fairly disclosed to the utmost extent of my knowledge, information and belief; and that there is not, to my knowledge and belief, any action or suit pending affecting the said land, nor any person who has or claims any estate, right, title or interest therein, or in any part thereof, otherwise than by virtue and to the extent of some lease, or tenancy hereby fully disclosed, except as follows:—*[If any exception, state particulars; if none, strike out the words "except as follows"] [in the case of freehold land, here add the following:—"*And I declare that the said land, including all improvements, is of the value of and no more."].

And I make this solemn declaration by virtue of the *Statutory Declarations Act 1911-1922* conscientiously believing the statements contained therein to be true in every particular.

Declared at the day of , 19 .
Before me—

(Signature of applicant.)

N.B.—Any person who wilfully makes a false statement in a statutory declaration is guilty of an indictable offence and is liable to imprisonment with or without hard labour for four years.

[The declaration must be attested by the Registrar or deputy or a justice of the peace or a commissioner for affidavits or a commissioner for declarations.]

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

To the Registrar.

I, , the above declarant, do hereby apply to have the land described in the above declaration brought under the provisions of the *Real Property Ordinance 1925*, and request you to issue the certificate of title in the name of *[if to applicant, say "myself"; if to other person write name at full length, with address and occupation; if to two or more, state whether as joint tenants or tenants in common; if to an infant, the age should be stated, and verified by certificate of birth, or by statutory declaration; if to a married woman, the name of the husband, together with his residence and occupation, should be stated].*

Declared at the day of , 19 .
Witness to signature—

(Signature of applicant.)

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

SCHEDULE REFERRED TO.

(To be signed by applicant.)

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

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

I certify that the within application is correct for the purposes of the *Real Property Ordinance 1925* [if by solicitor, insert "and that I am the solicitor in the Territory for the Seat of Government of the within-named applicant" and add his own address to his signature].

Payment of these must accompany the application.

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

(Name)
(Occupation)
(Post town)

Section 30.

FEDERAL CAPITAL COMMISSION.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

Caveat forbidding lands to be brought under the Real Property Ordinance 1925.

Take notice that I [name of caveator in full], of [address and description in full] claiming an estate or interest [here state the nature of the estate or interest claimed, and the facts on which the claim is founded] in lands described as [here state particulars of description from declaration of applicant or advertisement] in notice dated the [insert date of notice in Gazette] day of _____, 19____, advertising the same as land in respect of which claim has been made to have the same brought under the provisions of the Real Property Ordinance 1925, do hereby forbid the bringing of the said land under the provisions of the said Ordinance; and I do appoint [state distinctly an address in the Territory at which notices relating hereto may be served] the place at which notices relating hereto may be served.

Dated this _____ day of _____, 19____.

(Signature of caveator or his attorney.)

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

To the Registrar of Titles,
Territory for the Seat of Government.

N.B.—Section sixty-seven requires that the following certificate be signed by caveator, or his solicitor in the Territory and renders liable any person falsely or negligently certifying to a penalty of Fifty pounds; also, to damages recoverable by parties injured:—

I certify that the within caveat is correct for the purposes of the *Real Property Ordinance* 1925 [if by solicitor, insert "and that I am the solicitor in the Territory for the Seat of Government of the within-named caveator" and add his own address to his signature].

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

Section 44.

THE THIRD SCHEDULE.
THE TERRITORY FOR THE SEAT OF GOVERNMENT.
FEDERAL CAPITAL COMMISSION.

Certificate of Title.

And, of [here insert description, and if certificate be issued pursuant to any transfer, reference to memorandum of transfer] is now seized of an estate [here state whether in fee-simple or leasehold for a life or lives, or for a term of years], subject, nevertheless, to such encumbrances, liens and interests as are notified by memorial underwritten or endorsed hereon in that piece of land situated in the Territory for the Seat of Government being [here insert sufficient description to identify the land, referring to map or diagram], which said piece of land is [or is part of] the [county, section, or town allotment] as delineated on [here insert appropriate map or subdivisional plan] deposited in the office of the Commission in the said Territory.

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

Signed in the presence of _____, the _____ day of _____
 (L.S.) _____
 Registrar of Titles.

Section 73.

THE FOURTH SCHEDULE.
THE TERRITORY FOR THE SEAT OF GOVERNMENT.
FEDERAL CAPITAL COMMISSION.

Memorandum of transfer (Real Property Ordinance 1925).

Freehold.

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

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

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

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

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

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

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

Transferor.

(Signed.)

[If this instrument be signed or acknowledged before the Registrar or a Deputy Registrar or a Notary Public or a Justice of the Peace or a Commissioner for Affidavits or a Barrister or Solicitor or a Commissioner for Declarations appointed under the Statutory Declarations Act 1911-1922, to whom the transferor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.]

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

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

Accepted, and I hereby certify this transfer to be correct for the purposes of the Real Property Ordinance 1925.

Transferee.

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

N.B.—Section sixty-seven requires that the above certificate be signed by transferee, or his solicitor in the Territory, and renders liable any person falsely or negligently certifying to a penalty of Fifty pounds; also, to damages recoverable by parties injured.]

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

who is

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

MEMORANDUM OF ENCUMBRANCES, ETC., REFERRED TO.

(A very short note of the particulars will suffice).

Transferor.

FORM OF DECLARATION BY ATTESTING WITNESS.

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

Signed [authorized witness]

ENDORSEMENT.

No. Memorandum of transfer of

Lodged by

Vendor.

Purchaser.

Particulars entered in the register-book, vol.

folio.

(L.S.)

Registrar of Titles.

THE FIFTH SCHEDULE.
THE TERRITORY FOR THE SEAT OF GOVERNMENT.
FEDERAL CAPITAL COMMISSION.

Memorandum of transfer of lease (Real Property Ordinance 1925).

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

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

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

Transferor.

(Signed)

[If this instrument be signed or acknowledged before the Registrar or a Deputy Registrar, or a Notary Public, or a Justice of the Peace, or a Commissioner for Affidavits, or a Barrister or Solicitor, or a Commissioner for Declarations appointed under the Statutory Declarations Act 1911-1922, to whom the transferor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.]

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

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

Accepted, and I hereby certify this transfer of lease to be correct for the purpose of the Real Property Ordinance 1925.

Transferee.

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

N.B.—Section sixty-seven requires that the above certificate be signed by transferee, or his solicitor in the Territory, and renders liable any person falsely or negligently certifying to a penalty of Fifty pounds; also, to damages recoverable by parties injured.]

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

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

MEMORANDUM OF ENCUMBRANCES, ETC., REFERRED TO.

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

Transferor.

[If the lease intended to be hereby transferred contains a covenant to the effect that the lessee (the transferor herein) shall not assign without consent of the lessor, it will be necessary to obtain his consent hereon, which may be done in the following words, viz.:—"I, the lessor described in the lease hereinbefore mentioned, hereby consent to this transfer", and his signature attested in a similar manner to that of the transferor. This note does not apply to a Crown lease. If any such consent is necessary before any Crown lease may be assigned, the transferor must procure the necessary consent in a form satisfactory to the Registrar.]

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

FORM OF DECLARATION BY ATTESTING WITNESS.

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

Signed [authorized witness]

ENDORSEMENT.

No. Transfer of Lease.
Lodged by
Transferor.
Transferee.

Particulars entered on lease, registered No.
(L.S.)

Registrar of Titles.

THE SIXTH SCHEDULE.

Section 73.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

Memorandum of transfer of mortgage (Real Property Ordinance 1925).

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

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

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

Transferor.

(Signed)

[If this instrument be signed or acknowledged before the Registrar or a Deputy Registrar, or a Notary Public, or a Justice of the Peace or a Commissioner for Affidavits, or a Barrister or Solicitor, or a Commissioner for Declarations appointed under the Statutory Declarations Act 1911-1922, to whom the transferor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.]

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

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

Accepted, and I hereby certify this transfer to be correct for the purpose of the Real Property Ordinance 1925.

Transferee.

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

N.B.—Section sixty-seven requires that the above certificate be signed by transferee, or his solicitor in the Territory, and renders liable any person falsely or negligently certifying to a penalty of Fifty pounds; also, to damages recoverable by parties injured.]

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

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

MEMORANDUM OF ENCUMBRANCES, ETC., REFERRED TO.

(A very short note of the particulars will suffice).

Transferor.

FORM OF DECLARATION BY ATTESTING WITNESS.

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

Signed [authorized witness]

ENDORSEMENT.

No.

Transfer of Mortgage.

Lodged by

Transferor.

Transferee.

Particulars in the Register Book, vol. _____, folio _____ (L.S.)

Registrar of Titles.

THE SEVENTH SCHEDULE.

Section 81.

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

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

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

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

THE EIGHTH SCHEDULE.

Section 82.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

Section 88.

FEDERAL CAPITAL COMMISSION.

Memorandum of Lease (Real Property Ordinance 1925).

(In duplicate.)

I [name, residence, occupation or other designation of lessor], being registered as the proprietor of an estate in fee-simple [if a less estate, strike out "in fee-simple", and interline required alteration], in the land hereinafter described, subject, however, to such encumbrances, liens and 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 _____, being [the "whole" or "part", as the case may be] of the land comprised in ["Crown grant" (which term includes a Crown lease) or "certificate of title"], dated _____, registered volume _____, folio _____. [These references will suffice alone if the whole land in the grant or certificate be leased; but if the lease be of a part, a surveyor's description and plan will be required, which will then follow here with this prefix—"as delineated in the plan hereon (or hereunto annexed), and described as follows:—"] Add also, if intended, any rights-of-way or other easements, and any exceptions, if intended, of mines or minerals, timber, &c. If the plan or description be annexed, the annexure should be identified as part of this instrument by a memorandum thereon referring hereto, and signed by the same parties and witnesses.] To be held by _____, the said _____, as tenant for the term of _____ years, computed from the _____ day of _____ at the yearly rent of [state both in words and figures] pounds, payable as follows [here insert times of payment], subject to the following covenants, conditions and restrictions, viz.:—1. To the covenants and powers implied in every memorandum of lease by virtue of the *Real Property Ordinance 1925*, or such of them, or so far, as not hereby expressly negatived or modified. 2. To the full effect of the covenants next hereinafter shortly noted, as the same are set forth in words at length in section one hundred and twenty-one of the said Ordinance. [Here insert any of the following suited to the case. To understand the full effect of each refer to the Ordinance:—"That the lessee will insure"; "that he will paint outside every alternate year"; "that he will paint and paper every third year"; "that he will fence"; "that he will cultivate"; "that he will not use the premises as a shop";

"that he will not carry on offensive trades"; "that he will not without leave, assign or sublet"; "that he will not cut timber".] 3. To the following special additional provisions [here add any other terms of the intended lease], viz. :—

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

Dated this _____ day of _____, One thousand nine hundred and _____

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

[If this instrument be signed or acknowledged before the Registrar or a Deputy Registrar, or a Notary Public, or a Justice of the Peace, or a Commissioner for Affidavits, or a Barrister or Solicitor, or a Commissioner for Declarations appointed under the Statutory Declarations Act 1911-1922, to whom the lessor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.]

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

If signature be by a mark, the attestation must state that the instrument was read over or fully explained to the party, and that he appeared fully to understand the same.]

Accepted, and I hereby certify this lease to be correct for the purposes of the Real Property Ordinance 1925.

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

(Signed)

[CAUTION.—Section sixty-seven, which requires the above to be signed by the lessee or his solicitor in the Territory, renders persons certifying falsely or negligently subject to a penalty of Fifty pounds, besides damages to any parties injured.]

DECLARATION BY ATTESTING WITNESS.

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

ENDORSEMENT.

No. _____ Memorandum of lease of _____
Lessor. _____
Lessee. _____
Lodged by _____

Particulars entered in the register book, vol. _____ folio _____,
the _____ day of _____, 19 _____
(L.S.) _____
Registrar of Titles.

FORM OF SURRENDER.

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

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

(Signed)

Accepted,

THE NINTH SCHEDULE.

Section 92.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

Memorandum of Mortgage (Real Property Ordinance 1925).

(Must be in duplicate, one copy to be filed and the other retained by the mortgagee.)

(The grant or certificate of title must be presented herewith, in order that this mortgage may be noted thereon.)

I [name, residence, occupation or other description in full; if more than one, insert "we" and make the other alterations required throughout], being registered as the proprietor of an estate in fee-simple [if a less estate, strike out "in fee-simple" and interline the required alteration] in the land hereinafter described, subject, however, to such encumbrances, liens and interests as are notified by memoranda underwritten or endorsed hereon [all prior subsisting encumbrances must be thus noted] in consideration of _____ pounds, lent to _____ by [name, residence, &c., of mortgagee], the receipt whereof _____ hereby acknowledge, do, for the purpose of securing to _____ the payment in manner hereinafter mentioned of the said principal sum and interest thereon, hereby mortgage to the said _____ all my estate and interest, as such registered proprietor as aforesaid, in all that piece of land containing [area in acres, roods and perches], situated in the Territory for the Seat of Government, being the whole of the land comprised in ["Crown grant" (which term includes a Crown lease) or "Certificate of Title"], dated _____, registered volume _____, folio _____; also all that piece of land [when there are a number of grants or certificates of title to be dealt with, it is suggested that all the deeds, after the first, be scheduled in the annexed form, and reference made to them thus, "also all those pieces of land comprised and described in the schedule annexed hereto"; no description beyond these references is required, unless the land be subdivided, in which case a surveyor's description and plan are necessary]; and for the consideration aforesaid ["I" or "we", and name] do hereby covenant with the said _____: Firstly—That [if two or more interline (if intended) jointly and severally] will pay to _____ the above sum of _____ pounds on the _____ day of _____: Secondly—That _____ will pay interest on the said sum at the rate of _____ pounds, by the one hundred pounds in the year as follows:—: Thirdly [the mere words "I will insure", with a statement of the amount, are sufficient to imply all the usual provisions contained in covenants for insurance, except that which follows, and which is usual in mortgages; if no insurance be intended, strike the pen through this covenant]—That _____ will insure in the sum of _____ pounds, and that, in the event of loss, the sum recoverable on account of such insurance shall be applicable either in or towards repair or rebuilding, or in or towards repayment of the mortgage debt, at the option of the mortgagee: Fourthly—[here add, if intended, any special covenants or modifications of covenants or powers implied by the Real Property Ordinance 1925 in every mortgage].

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

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

(Signed)

Mortgagor.

[If this instrument be signed or acknowledged before the Registrar or a Deputy Registrar, or a Notary Public, or a Justice of the Peace or a Commissioner for Affidavits, or a Barrister or Solicitor, or a Commissioner for Declarations appointed under the Statutory Declarations Act 1911-1922, to whom the mortgagor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.]

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

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

Accepted, and I hereby certify this mortgage to be correct for the purposes of the Real Property Ordinance 1925.

Mortgages.

[Who will also sign endorsement.]

[The above may be signed by a solicitor in the Territory when signature or mortgagee cannot be procured.]

N.B.—Section sixty-seven requires that the above certificate be signed by mortgagee, or his solicitor in the Territory, and renders liable any person falsely or negligently certifying to a penalty of Fifty pounds; also, to damages recoverable by parties injured.]

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

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

MEMORANDUM OF PRIOR ENCUMBRANCES, ETC., REFERRED TO.

(A very concise note of the particulars will suffice.)

Mortgagor

FORM OF DECLARATION BY ATTESTING WITNESS

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

Signed [authorized witness]

ENDORSEMENT.

No.

Mortgage of

Lodged by

Mortgagor.

Mortgagee.

Particulars entered in the register-book, vol.

(L.S.)

, folio

Registrar of Titles.

FORM OF DISCHARGE.

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

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

Mortgagee.

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

THE TENTH SCHEDULE.

Section 92.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

Memorandum of Encumbrance (Real Property Ordinance 1925).

(In duplicate.)

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

I [name, residence, occupation or other description in full; if more than one, insert "we", and make the other alterations required throughout], being registered as the proprietor of an estate in fee-simple [if a less estate, strike out "in fee-simple", and interline the required alteration] in the land herein-after described, subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon [all prior subsisting encumbrances must be thus noted], in all that piece of land, containing [area in acres, roods and perches], situated in the Territory for the Seat of Government, being the whole of the land comprised in ["Crown grant" (which term includes a Crown lease) or "certificate of title"], dated _____, registered volume _____, folio _____; also all that piece of land [no description beyond these references is required, unless the land be subdivided, in which case a surveyor's description and plan are necessary; but if thereupon a separate certificate be obtained as above recommended, reference thereto will be sufficient, otherwise this form must be altered by striking out "the whole" and interlining "a part", followed by the full description and plan, or annexing them if requisite; but every annexure should be identified with the original instrument, by memorandum referring thereto, signed by the same contracting and attesting parties. And desiring to render the said land available for the purpose of securing to and for the benefit of [name, residence, and occupation or other designation of encumbrancee], the [annuity or other designation of intended encumbrance] hereinafter mentioned, do hereby encumber the said land for the benefit of the said _____, with the [annuity or other designation of intended encumbrance] of _____ pounds to be raised and paid at the times and in the manner following, that is to say—[set forth times and mode of payment]. To the intent that the said _____ may be entitled to the benefit of all the powers and remedies implied or given in favour of an encumbrancee by the Real Property Ordinance 1925, with the qualifications or additions following, viz.:—[insert any such, if intended; in the mortgage form there are covenants to pay, and to insure—but as these are not matters of course in encumbrances of other kinds, their insertion is left discretionary].

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

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

Encumbrancer.

(Signed)

[If this instrument be signed or acknowledged before the Registrar or a Deputy Registrar, or a notary public, or a Justice of the Peace, or a commissioner for affidavits, or a barrister or solicitor, or a commissioner for declarations appointed under the Statutory Declarations Act 1911-1922, to whom the encumbrancer is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.]

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

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

Accepted by me—

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

(Who will also sign endorsement.)

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

MEMORANDUM OF PRIOR ENCUMBRANCES, ETC., REFERRED TO.

(A very concise note of the particulars will suffice.)

Encumbrancer.

FORM OF DECLARATION BY ATTESTING WITNESS.

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

Signed [authorized witness].

[Certificate required by section sixty-seven, which must be signed by the encumbrancee, or the next form by his solicitor in the Territory]:—

I [or "we"], the within-mentioned and undersigned _____, do hereby certify that the within memorandum of encumbrance is correct for the purposes of the Real Property Ordinance 1925.

Or,

I hereby certify that I am the solicitor in the Territory for the Seat of Government of the within-named _____, and that the within instrument is correct for the purposes of the Real Property Ordinance 1925.

(Signature)

(Address)

(Date)

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

ENDORSEMENT.

No.

Encumbrance.

Encumbrancer.

Encumbrancee.

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

(L.S.)

Registrar of Titles.

DISCHARGE.

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

Encumbrancee.

THE ELEVENTH SCHEDULE.

Section 94.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

Memorandum of Transfer by Mortgagee under Power of Sale (Real Property Ordinance 1925, Section ninety-four).

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

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

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

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

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

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

Transferor.

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

(Signed)

[If this instrument be signed or acknowledged before the Registrar or a Deputy Registrar, or a notary public, or a justice of the peace, or a commissioner for affidavits, or a barrister or solicitor, or a commissioner for declarations appointed under the Statutory Declarations Act 1911-1922, to whom the transferor is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.

This applies only to instruments signed within the Commonwealth. If the parties be resident without the Commonwealth, but in any British possession, the instrument must be signed or acknowledged before the Registrar-General, Registrar of Titles, or Recorder of Titles of such possession, or before any

Judge, notary public, Governor, Government Resident or Chief Secretary of such possession. If resident in the United Kingdom, then before the mayor or chief officer of any corporation or a notary public; and if resident at any foreign place, then before the British Consular Officer at such place.

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

Accepted, and I hereby certify this transfer to be correct for the purposes of the *Real Property Ordinance 1925*.

Transferee.

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

N.B.—Section sixty-seven requires the above certificate be signed by transferee, or his solicitor in the Territory, and renders liable any person falsely or negligently certifying to a penalty of Fifty pounds, also to damages recoverable by parties injured.]

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

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

MEMORANDUM OF ENCUMBRANCES, ETC., REFERRED TO.

(A very short note of the particulars will suffice.)

Transferor.

FORM OF DECLARATION BY ATTESTING WITNESS.

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

Signed (authorized witness).

ENDORSEMENT.

No. _____ Memorandum of transfer of _____
Lodged by _____

Vendor
Purchaser

Particulars entered in the register-book, vol. _____, folio _____

(L.S.)

Registrar of Titles.

Section 130.

THE TWELFTH SCHEDULE.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

Power of Attorney (Real Property Ordinance 1925).

Limited to specific property.

I, _____ do hereby appoint *[if more than one is intended, add after names and additions, "jointly and each of them severally, my attorneys, and"]* attorney in the Territory for the Seat of Government to sell to any person all or any of the lands *[add "leases", "mortgages", or otherwise, if in accordance with the fact]* belonging to me, under or by virtue of the

Real Property Ordinance 1925, which are described or referred to in the Schedule hereunder written. Also, to mortgage or otherwise encumber the same respectively, for securing any sum at any rate of interest, or for any other purpose. Also, to lease all or any such lands as shall be of freehold tenure, or sublet such as shall be of leasehold tenure for any term for which I could myself lease or sublet the same, not exceeding twenty-one years in possession, at such rent, or for such other valuable consideration as my said [insert "attorney or" if more than one] attorney shall deem fit [here insert anything required in addition or modification]. And for me and in my name or otherwise to sign all such transfers and other instruments, and do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given, and for recovering all sums of money that are now or may become due or owing to me in respect of the premises, and for enforcing or varying my contracts, covenants or conditions binding upon any purchaser, lessee, tenant or occupier of the said lands, or upon any other person in respect of the same, and for recovering and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass. And I hereby declare that this power shall continue in force until notice of my death or of the revocation of these presents shall have been received by my said attorney [or attorneys].

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

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

[If this instrument be signed or acknowledged before the Registrar, or a Deputy Registrar, or a notary public, or a justice of the peace, or a commissioner for affidavits, or a barrister or solicitor, or a commissioner for declarations appointed under the Statutory Declarations Act 1911-1922, to whom the donor of the power is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.]

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

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

SCHEDULE REFERRED TO.

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

FORM OF DECLARATION BY ATTESTING WITNESS.

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

Signed (authorized witness).

I, the within-mentioned and undersigned , do hereby certify that the within power of attorney is correct for the purposes of the *Real Property Ordinance 1925*.

ENDORSEMENT.

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

Section 131.

THE THIRTEENTH SCHEDULE.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

Power of Attorney (Real Property Ordinance 1925).

General power.

I, , do hereby appoint [if more than one is intended, add after names and additions, "jointly, and each of them severally, my attorneys, and "] attorney, in the Territory for the Seat of Government to sell to any person all or any lands, leases, mortgages or other encumbrances or registered estates, or interests in land, whether now belonging to me, or which shall hereafter belong to me under or by virtue of the *Real Property Ordinance 1925* or of which I am now or shall hereafter be the registered owner under the said Ordinance. Also, to mortgage or otherwise encumber the same respectively for securing any sum at any rate of interest, or for any other purpose. Also, to lease all or any such lands as shall be of freehold tenure, or sublet such as shall be of leasehold tenure for any term for which I could myself lease or sublet the same, not exceeding twenty-one years in possession, at such rent, or for such other valuable consideration as my said [insert "attorneys or" if more than one] attorney shall deem fit [here insert anything required in addition or modification]. And for me and in my name or otherwise to sign all such transfers and other instruments, and do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given, and for recovering all sums of money that are now or may become due or owing to me in respect of the premises, and for enforcing or varying my contracts, covenants or conditions binding upon any purchaser, lessee, tenant or occupier of the said lands, or upon any other person in respect of the same, and for recovering and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass. And I hereby declare that this power shall continue in force until notice of my death or of the revocation of these presents shall have been received by my said attorney (or attorneys).

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

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

[If this instrument be signed or acknowledged before the Registrar, or a Deputy Registrar, or a notary public, or a justice of the peace, or a commissioner for affidavits, or a barrister or solicitor, or a commissioner for declarations appointed under the Statutory Declarations Act 1911-1922, to whom the donor of the power is known, no further authentication is required. Otherwise, the attesting witness must appear before one of the above functionaries to make a declaration in the annexed form.]

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

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

FORM OF DECLARATION BY ATTESTING WITNESS.

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

Signed (authorized witness).

I, the within-mentioned and undersigned, _____, do hereby certify that the within power of attorney is correct for the purposes of the *Real Property Ordinance 1925*.

ENDORSEMENT.

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

THE FOURTEENTH SCHEDULE.

Section 131

Revocation Order.

I, _____, 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 or other document of title], hereby revoke the power of attorney given by me to _____, dated the _____ day of _____.

In witness whereof I have hereunto subscribed my name this day of _____, in the presence of _____.

(Signed)

(Witness)

THE FIFTEENTH SCHEDULE.

Section 104.

Certificate No. _____, vol. _____, folio _____.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

Caveat Forbidding Registration of Dealing with Estate or Interest (*Real Property Ordinance 1925*).

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

Dated this _____ day of _____, One thousand nine hundred and _____.

(Signature of caveator or his attorney or solicitor in the Territory.)
Signed at _____, in my presence, _____ this
day of _____, One thousand nine hundred and _____

To the Registrar of Titles of the Territory for the Seat of Government.

[N.B.—Section sixty-seven requires the following certificate be signed by caveator or his solicitor in the Territory, and renders liable any person falsely or negligently certifying to a penalty of Fifty pounds; also, to damages recoverable by parties injured:—

I certify that the within caveat is correct for the purposes of the Real Property Ordinance 1925.

If by solicitor, insert "and that I am the solicitor in the Territory of the within-named caveator", and add his own address to his signature].

ENDORSEMENT.

No. _____, Caveat _____, land _____

Caveator. _____

Caveatee. _____

Particulars entered in register-book, vol. _____, folio _____

(L.S.)

Registrar of Titles.

Section 136.

THE SIXTEENTH SCHEDULE.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

FEDERAL CAPITAL COMMISSION.

No. _____

Application to be registered under the Real Property Ordinance 1925 (section one hundred and thirty-six), as Proprietor by Transmission.

I, [Christian name and surname in full, with residence and occupation], do solemnly and sincerely declare that I verily believe myself to be entitled for an estate (in fee simple) [if a less estate, alter to accord with the fact] to the land described in the certificate of title held by _____, deceased (vol. _____, folio _____), herewith deposited and surrendered, I having become so entitled as [executor or administrator, or as the case may be, with any required explanation of particulars]. In further verification whereof I have deposited the documents enumerated in the schedule hereto: I also declare that the said land is now of the value of [present value, inclusive of all improvements] pounds sterling; also that no other person is, within my knowledge, entitled to any estate or interest in the said land (except as follows):—[state particulars of any mortgage, lease, &c.; if none, strike out the words "except as follows"]: And I make this solemn declaration by virtue of the Statutory Declarations Act 1911-1922, conscientiously believing the statements contained therein to be true in every particular.

Declared at _____ the _____ day of _____,
One thousand nine hundred and _____

Before me—

(Signature of applicant.)

[The declaration must be attested by the Registrar, or deputy, or a justice of the peace, or a commissioner for affidavits, or a commissioner for declarations.]

N.B.—Any person who wilfully makes a false statement in a statutory declaration is guilty of an indictable offence and is liable to imprisonment with or without hard labour for four years.

SCHEDULE OF DOCUMENTS DEPOSITED.

[The following is required under section one hundred and thirty-six:—Certificate of death of deceased proprietor; if he died intestate, letters of administration; if the claim be by devisee or executor, original office copy or probate of the will; if made under settlement, the original should be deposited.]

This Schedule must be signed by the applicant.

I, the within-named and undersigned, do hereby certify that the within application is correct for the purposes of the Real Property Ordinance 1925.

(Signature of applicant or his solicitor in the Territory.)

ENDORSEMENT.

No. Application by transmission.

Deceased.

Applicant.

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

(L.S.)

Registrar of Titles.

THE SEVENTEENTH SCHEDULE.

Section 174.

Certificate of Registrar, Justice of the Peace, &c., taking Declaration of Attesting Witness.

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

Signed: (authorized witness).

THE EIGHTEENTH SCHEDULE.

Sections 23, 65,
66, 139, 140.

Fees Payable for the Performance of the Several Acts, Matters and Things herein Specified.

	£	s.	d.
Upon first bringing land under this Ordinance, and upon the registration of an estate of freehold in possession derived by settlement, will or intestacy—in the pound sterling ...	0	0	0½
Other fees—			
For every Crown grant of freehold ...	1	0	0
For every Crown grant of leasehold ...	0	5	0
For every certificate of title ...	1	0	0
For every folio of seventy-two words, or part of a folio, in a certificate of title after the first six folios, in addition to the above fee ...	0	2	0
For every diagram after the first in a certificate of title ...	0	1	0
Registering memorandum of transfer where value of the land transferred does not exceed £50 ...	0	17	6
Exceeds £50 but does not exceed £100 ...	1	5	0
For every additional £100 after the first £100 and also for any fractional part of any additional £100 of such value ...	0	15	0
Registering memorandum of lease, mortgage, encumbrance, or the transfer or discharge of a mortgage, or the transfer or surrender of a lease ...	0	10	0

	£	s.	d.
Registering proprietor of any estate or interest derived by settlement or transmission	1	0	0
For every power of attorney	0	10	0
For every revocation order	0	10	0
Noting caveat	0	10	0
Cancelling or withdrawing of caveat and service of notice to caveator or caveatee	0	5	0
Issuing order for foreclosure	1	0	0
For every search	0	2	0
For every general search	0	5	0
For every map or plan deposited	0	5	0
For every instrument declaratory of trusts, and for every will or other instrument deposited	0	10	0
For registering recovery by proceeding in law or equity, or re-entry by lessee	0	10	0
For registering vesting of lease in mortgagee consequent on refusal of assignees to accept the same	0	10	0
For entering notice of marriage or death	0	10	0
For entering notice of writ or order of court	0	10	0
Taking acknowledgment of married woman	0	5	0
Taking declaration in case of lost grant or other document, or where production of duplicate is dispensed with	0	10	0
For the exhibition or return of any deposited document or instrument, or for exhibiting or returning any deed surrendered by applicant	0	5	0
For certified copy, first five folios, per folio of seventy-two words	0	5	0
For every folio, or part folio, after first five	0	0	8
For every document drawn on parchment	0	2	6
Taking affidavit or statutory declaration	0	5	0
When any instrument purports to deal with land included in more than one grant or certificate, for each registration memorial after the first	0	2	0

Section 80.

THE NINETEENTH SCHEDULE.

By virtue of [*here state the transfer, notification or other document by virtue of which the land has become Crown land*], the land described in this grant [*or certificate of title*], has become vested in the Commonwealth of Australia as Crown lands.

Dated the nineteenth day of May, One thousand nine hundred and twenty-five.

FORSTER,
Governor-General.

By His Excellency's Command,

G. F. PEARCE,
Minister of State for Home and Territories.

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