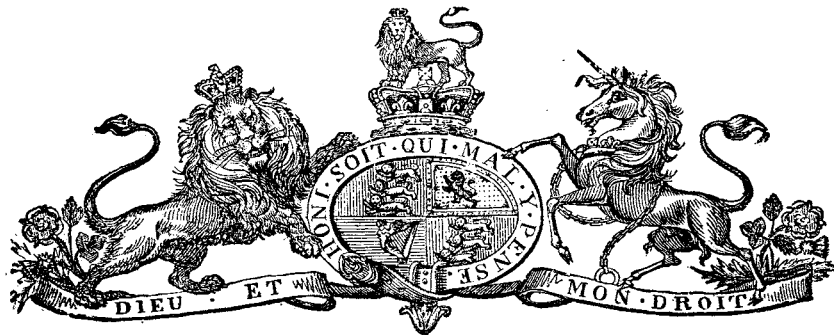


T A S M A N I A.



1 8 6 1.

ANNO VICESIMO-QUINTO

VICTORIÆ REGINÆ,

No. 16.



AN ACT to simplify the Laws relating to the Transfer and Encumbrance of Freehold and other Interests in Land. [1 February, 1862.]

WHEREAS it is expedient to amend the Laws relating to the Transfer and Encumbrance of Freehold and other Interests in Land in the Colony of *Tasmania*: Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows; that is to say,—

PREAMBLE.

1 All Laws, Statutes, Acts, Ordinances, Rules, Regulations, and Practice whatsoever, relating to Freehold and other Interests in Land, so far as inconsistent with the provisions of this Act, are hereby repealed so far as regards their application to Land under the provisions of this Act, or the bringing of Land under the provisions of this Act.

Repeal of previous Acts.

2 This Act may be cited for all purposes as *The Real Property Act*.

Short Title.

3 In the construction and for the purposes of this Act, and in all Instruments purporting to be made or executed thereunder (if not

Interpretation of certain Terms.

inconsistent with the context and subject matter), the following terms shall have the respective meanings hereinafter assigned to them; that is to say,—

- “Land.” The word “Land” shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every kind and description (whatever may be the estate or interest therein), together with all paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals, and quarries, and all trees and timber thereon or thereunder lying or being, unless the same are specially excepted :
- “Grant.” “Grant” shall mean the Land Grant of any Land of the Crown :
- “Proprietor.” “Proprietor” shall mean any person seised or possessed of any estate or interest in Land at Law or in Equity, in possession, in futurity, or expectancy :
- “Transfer.” “Transfer” shall mean the passing of any estate or interest in Land under this Act, whether for valuable consideration or otherwise :
- “Transmission.” “Transmission” shall mean the acquirement of title to, or interest in Land, consequent on the death, will, intestacy, bankruptcy, insolvency, or marriage of a Proprietor :
- “Mortgage.” “Mortgage” shall mean any charge on Land created merely for securing a debt :
- “Mortgagor.” “Mortgagor” shall mean the borrower of money on the security of any estate or interest in Land :
- “Mortgagee.” “Mortgagee” shall mean the proprietor of a Mortgage :
- “Encumbrance.” “Encumbrance” shall mean any charge on Land created for the purpose of securing the payment of an annuity or sum of money other than a debt :
- “Encumbrancer.” “Encumbrancer” shall mean the proprietor of any Land, who shall have charged any estate or interest in Land with any annuity or sum of money :
- “Encumbrancee.” “Encumbrancee” shall mean the proprietor of an Encumbrance :
- “Lunatic.” “Lunatic” shall mean any person who shall have been found to be a Lunatic upon inquiry by the Supreme Court, or by any Judge thereof, or upon a Commission of Inquiry issuing out of the Supreme Court in the nature of a Writ *de lunatico inquirendo* :
- “Person of Unsound Mind.” “Person of Unsound Mind” shall mean any person, not an infant, who, not having been found to be a Lunatic, shall be incapable from infirmity of mind to manage his own affairs :
- “Consular Officer.” “Consular Officer” shall include Consul-General, Consul, and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul, or Vice-Consul :
- “Instrument.” “Instrument” shall mean and include any grant, certificate of title, conveyance, assurance deed, map, plan, will, probate, or exemplification of will, or any other document in writing relating to the transfer or other dealing with Land or ~~evidence~~ *evidence* in title thereto :
- “Person.” “Person” shall include a female as well as a male, and shall include a body corporate :
- The describing any person as Proprietor, Transferrer, Transferee, Mortgagor, Mortgagee, Encumbrancer, Encumbrancee, Lessor

*By the Hon. Secy.*

or Lessee, or as Trustee, <sup>or #.</sup> ~~as~~ seized of or having or taking any estate or interest in any Land, shall be deemed to include the Heirs, Executors, Administrators, and Assigns of such person :

*by 26 Vict. Act (Sec 2)*

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

**4** It shall be lawful for the Governor in Council, from time to time, to appoint a fit and proper person to be Recorder of Titles, who shall hold office during pleasure. Office of Recorder of Titles.

**5** It shall be lawful for the Governor in Council to appoint <sup>two</sup> ~~one~~ or more fit and proper persons, who, together with the Recorder of Titles, shall be Commissioners for investigating and dealing with applications for the bringing of land under this Act, and that the style of such Commissioners shall be "The Land Titles Commissioners," and in like manner it shall be lawful for the Governor, if he deem it necessary, to appoint one or more Solicitors to advise and assist the said Commissioners in carrying out the provisions of this Act, and such Commissioner or such Commissioners other than the Recorder of Titles shall be remunerated by fees, as specified in the Schedule hereto marked P.

*by 26 Vict. Act (Sec 2)*  
Lands Titles Commissioners.

**6** It shall be lawful for the Governor in Council to appoint a Deputy Recorder, together with such Officers and Clerks as may be required for carrying into operation the provisions of this Act, and to remove from office any such Deputy Recorder, Officer, or Clerk, and upon such removal, or upon the death or resignation of any such Deputy Recorder, Officer, or Clerk, to appoint another in his stead. Appointment of Deputy Recorder and other Officers.

**7** The Oath following shall be taken before one of the Judges of the Supreme Court by the Recorder of Titles, and by every Deputy Recorder, before entering upon the execution of his office:— Oaths of Office.

I, *A.B.*, do solemnly swear that I will faithfully, and to the best of my ability, execute and perform the office and duties of Recorder of Titles or Deputy Recorder for the Colony of *Tasmania*, according to the provisions of *The Real Property Act*. So help me God.

**8** All documents, whether purporting to be issued or written by or under the direction of the Recorder of Titles, and purporting either to be sealed with his Seal of Office or signed by him or by his Deputy, shall be received in evidence, and shall be deemed to be issued or written by or under the direction of the Recorder of Titles, without further proof, unless the contrary be shown; and whenever by this Act, or by any Law for the time being in force in the said Colony, anything is appointed to be done by the Recorder of Titles, the same may be lawfully done by Deputy Recorder. Certificates and Documents purporting to be signed and sealed in a given manner to be received as evidence.

Recorder or  
Deputy Recorder  
not to engage in  
any other  
employment.

Lands Titles  
Commissioners.

**9** It shall not be lawful for any person, whilst holding the Office of Recorder of Titles or Deputy Recorder of Titles under this Act, to engage in any other occupation or employment.

**10** It shall not be lawful for any person, whilst holding the Office of Land Title Commissioner or of Solicitor under this Act, to engage in private practice as an Attorney, Solicitor, or Conveyancer.

Powers of Re-  
corder of Titles.

To inspect  
Documents.

To summon and  
examine Wit-  
nesses.

To administer  
Oaths.

To correct errors.

To enter Caveats.

**11** The Recorder of Titles may exercise the following powers; that is to say,—

1. He may require the Proprietor or other person making application to have any Land brought under the provisions of this Act, or the Proprietor or Mortgagee or other person interested in any Land under the provisions of this Act 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 or Registration Abstract granted under this Act, to produce any Grant, Certificate of Title, Conveyance, Deed, Mortgage, Lease, Will, or other Instrument in his possession or within his control affecting such Land or the Title thereto.
2. He may summon any such Proprietor, Mortgagee, or other person as aforesaid, to appear and give any explanation respecting such Land or the Instruments affecting the Title thereto; and if, upon requisition in writing made by the Recorder of Titles, such Proprietor, Mortgagee, or other person refuses or neglects to produce any such Instrument or to allow the same to be inspected, or refuses or neglects to give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives any person hereinbefore authorised to demand any such explanation, he shall, for each such offence, incur a penalty not exceeding One hundred Pounds; and the Recorder of Titles, if the Instrument or Information so withheld appears to him material, shall not be bound to proceed with the bringing of such Land under the provisions of this Act, or with the Registration of such Mortgage or Transfer, or with the issuing of such Registration Abstract, as the case may be.
3. He may administer Oaths, or take a Statutory Declaration in lieu of administering an Oath.
4. He may, upon such evidence as shall appear to him sufficient in that behalf, correct errors in Certificates of Title, or in the Register Book, or in entries made therein respectively, and may supply entries omitted to be made under the provisions of this Act: Provided always, that in the correction of any such error, he shall not erase or render illegible the original words, and shall fix the date on which such correction was made or entry supplied, with his initials; and every Certificate of Title so corrected, and every entry so corrected or supplied, shall have the like validity and effect as if such error had not been made, or such entry omitted, except as regards any entry made in the Register Book prior to the actual time of correcting the error or supplying the omitted entry.
5. He may enter Caveat on behalf of any person who shall be under the disability of infancy, coverture, lunacy, unsound-

ness of mind, or absence from the said Colony, or on behalf of Her Majesty, Her Heirs or Successors, to prohibit the transfer or dealing with any Land belonging or supposed to belong to any such persons as hereinbefore mentioned, and also to prohibit the dealing with any Land in any case in which it shall appear to him that an error has been made by misdescription of such Land, or otherwise in any Certificate of Title or other Instrument, or for the prevention of any fraud or improper dealing.

**12** Whenever, by any Law for the time being in force in the said Colony, anything is appointed or authorised to be done by the Recorder of Titles, the same may be lawfully done by the Deputy-Recorder: Provided, that nothing herein contained shall be interpreted to authorise any Deputy-Recorder, as such, to act as a Land Title Commissioner.

Deputy Recorder may act for Recorder in certain cases.

**13** All Waste Land and all Land set apart for public purposes not being Roads remaining unalienated from the Crown, not being the subject of a subsisting contract with the Crown for the alienation thereof, on the day appointed for this Act to come into operation shall (when alienated in fee), be subject to the provisions of this Act, and all Lands set apart as Roads shall when so alienated be subjected to the provisions of this Act, and upon the issue of a Grant for the same such Grant shall be delivered to the Recorder of Titles, who shall thereupon register the title of the Grantee, and deliver to such Grantee a Certificate of Title in the Form provided in Schedule C.

Land alienated after this Act to be subject to provisions of this Act.

**14** Land in the said Colony alienated or contracted to be alienated from the Crown in fee prior to the day appointed for this Act to come into operation (whether such Land shall constitute the entire or only part of the Land included in any grant) may be brought under the provisions of this Act in the following manner; that is to say:—The Recorder of Titles shall receive applications in form A of the Schedule hereto, or in words to the like effect, for bringing Land under the provisions of this Act, if made by any of the following persons; that is to say:—

Lands granted prior to the day on which this Act comes into operation may be brought under the operation of this Act.

By any person (claiming to be the person) in whom the fee simple of the Land is vested in possession, either at Law or in Equity: Provided, that wherever Trustees seised in fee simple have no express power to sell the Land which they may seek to bring under the operation of this Act, the person claiming to be beneficially entitled for the first life estate, or other greater estate than a life estate in the said Land, shall consent in such application:

By any person claiming a life estate in possession, not being a lease for life or lives: Provided, that all persons claiming to be beneficially entitled in reversion or remainder shall join in such application:

By the father, or if the father be dead the mother or other guardian of any infant, or the committee or guardian of any lunatic or person of unsound mind, and any agent holding power of attorney authorising the sale of a freehold estate in any land of an absent proprietor in the name of such proprietor, unless such power shall expressly prohibit his so doing.

Provided always, that no such application shall be received from any person claiming to be entitled to an undivided share of any Land, unless the person who shall appear to be entitled to the other undivided shares of the said Land shall join in such application with a view to bringing the entirety under the provisions of this Act, from the Mort-

Undivided Shares and mortgaged Lands not brought under Act except on conditions.

*referred*  
 gagee of any Land unless the Mortgagee shall consent in such application, nor from the Mortgagee of any Land except in the exercise of a power of sale contained in the Mortgage Deed, nor from a married woman, unless her husband shall consent in such application.

Applicant to surrender Instruments of Title, and to furnish Abstracts if required.

**15** Every such applicant shall, when making his application, leave with the Recorder of Titles all Instruments in his possession, or under his control, constituting, or in any way affecting his title, and also, if required, an abstract of his title; and shall, in his application, state the nature of the 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 such occupancy be adverse or otherwise; and shall state the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect to which application is made, so far as known to him, and that the Schedule so furnished includes all instruments of title to such land in his possession, or under his control, and shall make and subscribe a declaration to the truth of such statement; and such applicant may, if he thinks fit, in his application, require the Recorder of Titles, at the expense of such applicant, to cause personal notice of his application to be served upon any person whose name and address shall, for that purpose, be therein stated.

Lands granted when Applicant Proprietor is original Grantee, and no transactions have taken place.

*referred*  
**16** Upon the receipt of such application, the Recorder of Titles shall refer the same to the Solicitors or Commissioners to examine and report upon the applicant's title to the land, and, if upon the coming in of such report it shall appear that the applicant is the original Grantee from the Crown of the Land in respect of which such application is made, and that the same is not encumbered by Mortgages, Judgments or otherwise, and that such Applicant has not required notice of his application to be served personally on any person, then, and in such case, it shall be lawful for such Commissioners to direct the Recorder of Titles to bring such Land under the provisions of this Act forthwith, by issuing to the Applicant Proprietor, or to such person as he or the person applying on his behalf may by writing under his hand direct, a Certificate of Title for the same as hereinafter described.

Lands alienated when applicant Proprietor is not original Grantee,

**17** If upon the coming in of such report it shall appear to the satisfaction of the said Commissioners that the land in respect of which such application is made, is held by the applicant for the Estate or Interest described in such application free from Mortgages, Judgments or other encumbrance affecting the title thereto, or if any such mortgage, encumbrances, or interest remains unsatisfied that the parties interested therein are also parties to such application, and that the Applicant has not required notice of his application to be served personally on any person, then, and in any such case, the said Commissioners shall direct the Recorder of Titles to cause notice of such application to be advertised once in the *Hobart Town Gazette*, and three times at least in one paper published in the City of *Hobart Town* and in one paper published in the Town of *Launceston*; 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 Recorder of Titles shall, unless he shall in the interval have received a Caveat forbidding him so to do, proceed to bring such Land under the provisions of this Act. No Lands shall be brought under the provisions of this Act until the Quit Rent, (if any) due to the Crown, and all arrears and redemption thereof shall have been duly paid and satisfied.

**18** But if it shall appear to the satisfaction of the said Commissioners that any parties interested in any unsatisfied mortgage or encumbrance affecting the title to such Land, or beneficially interested therein otherwise than as lessees, are not parties to such application, or that the evidence of title set forth by the Applicant is imperfect, or that the Applicant has required notice of his application to be served personally upon any person, then in such case it shall be lawful for such Commissioners to reject such application altogether, or at their discretion to direct the Recorder of Titles to cause notice of such application to be served in accordance with such requirement, and upon all persons, other than the Applicant, who shall appear to them to have any interest in the Land which is the subject of such application, and to be advertised Three times in at least One newspaper published in the City of *Hobart Town*, and in at least One newspaper published in the Town of *Launceston*, and in such newspapers published elsewhere as to such Commissioners may seem fit, and to be published in the *Hobart Town Gazette* and in such other official Gazettes out of the said Colony or in any one or more of such Gazettes as to such Commissioner shall seem fit, and that the said Commissioners shall specify the number of times and at what intervals such advertisements shall be published in each or any of such Gazettes, and shall also limit and appoint a time not less than Two months or more than Twelve months from the date of such advertisement in the *Hobart Town Gazette*, upon or after the expiration of which it shall be lawful for the Recorder of Titles to bring such Land under the provisions of this Act unless he shall in the interval have received a Caveat forbidding him so to do.

When evidence of title is imperfect, or parties interested in unsatisfied Mortgages are not parties to the Application.

**19** The Recorder of Titles shall, under such directions as aforesaid, or under any Order of the Supreme Court, cause notice to be published, in such manner as by such direction or order may be prescribed, that application had been made for bringing the Land therein referred to under the provisions of this Act, and shall also cause a copy of such notice to be posted in a conspicuous place in his office, and in such other places as he may deem necessary, and shall forward through the Post Office copies of such notice addressed to the persons, if any, stated in the Declaration by the Applicant Proprietor to be in occupation of such Land or to be Occupiers or Proprietors of Land contiguous thereto, so far as his knowledge of the addresses of such persons may enable him and in case such Applicant shall have required such notice to be personally served upon any person named in his application, then and in such case the Recorder of Titles shall cause copy of such notice to be so served upon such person, so far as his knowledge of the addresses of such persons may enable him.

Notice of Application to be published.

**20** If, within the time limited in such direction, or under any Order of the Supreme Court, any Notice forwarded by registered letter as aforesaid shall not be returned to ~~him~~ <sup>the Recorder of Titles</sup> by the Postmaster-General; and if, within the time so limited, he shall not have received a Caveat as hereinafter described, forbidding him so to do; and in any case in which personal notice may be required as aforesaid, if he shall have received proof to his satisfaction that such notice has been served the Recorder of Titles, shall, pursuant to such direction of the Land Titles Commissioners, bring the land described in such application under the provisions of this Act, by issuing to the applicant, proprietor, or to such person as he or the person applying in his behalf may, by any writing under his hand, ~~may~~ direct, a Certificate of Title for the same, as hereinafter described.

Lands brought under the Act.

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On return of Notices, or failure of personal service, Recorder of Titles to apply to Lands Titles Commissioners.

**21** The Recorder of Titles, whenever any letter containing any Notice shall be returned to him by the Postmaster-General, shall refer the case to the Lands Titles Commissioners for their further direction, and whenever he shall be 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 the same to such applicant who, if he thinks ~~fit~~ <sup>it</sup> by writing under his hand, withdraw such requirement, and the Recorder of Titles shall thereupon report the case to the Lands Commissioners who, in either such case, may reject the application altogether, or direct the Recorder of Titles to bring the land therein described under the provisions of this Act forthwith, or, after such further interval, notification, or advertisement as they may deem fit.

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Parties interested may enter Caveat.

**22** Any person having or claiming any interest in any Land so advertised as aforesaid, or the Attorney of any such person, may, within the time by any direction of the Lands Titles Commissioners for that purpose limited, lodge a Caveat with the Recorder of Titles in the Form B of the Schedule hereto, forbidding the bringing of such Land under the provisions of this Act; and every such Caveat shall particularise the Estate, Interest, Lien, or Charge claimed by the person lodging the same.

If Caveat be received within time limited, Proceedings stayed.

**23** The Recorder of Titles, upon receipt of such Caveat within the time limited as aforesaid, shall notify the same to such Applicant Proprietor, and shall suspend further action in the matter, and the Lands in respect of which such Caveat may have been lodged, shall not be brought under the provisions of this Act, until such Caveat shall have been withdrawn, or shall have lapsed from any of the causes hereinafter provided, or until a decision shall have been obtained from the Court having jurisdiction in the matter.

Caveats lapse unless Proceedings taken within Three Months.

**24** After the expiration of Three Calendar Months from the receipt thereof, such Caveat shall be deemed to have lapsed, unless the person by whom, or on whose behalf, the same was lodged, shall within that time have taken proceedings in any court of competent jurisdiction, to establish his Title to the Estate, Interest, Lien or Charge therein specified, and thereof shall have given written notice to the Recorder of Titles, or shall have obtained from the Supreme Court an order or injunction restraining the Recorder of Titles from bringing the land therein referred to under the provisions of this Act.

Applicant Proprietor may withdraw application.

**25** Any Applicant Proprietor may withdraw his application at any time prior to the issuing of the Certificate of Title; and the Recorder of Titles shall, in such case, upon request in writing, signed by such Applicant Proprietor, return to him the Abstract and all Instruments of Title deposited by such Proprietor for the purpose of supporting his application.

Instruments of Title, if they include other property, to be returned to Applicant Proprietor.

**26** Upon issuing a Certificate of Title bringing Land under the provisions of this Act, the Recorder of Titles shall stamp as cancelled every Instrument of Title surrendered by the Proprietor when making his application: Provided, that if any such Instrument shall relate to, or include any property, whether personal or real, other than the land included in such Certificate of Title, then the Recorder of Titles shall endorse thereon a memorandum cancelling the same in so far only as relates to the land included in such Certificate of Title, and shall return such Instrument to such Proprietor, otherwise he shall retain the same in his office: and no person shall be entitled to the production of such



Instrument so stamped, except upon the written order of the Applicant Proprietor, or of some person claiming through or under him, or upon the Order of the Supreme Court or of a Judge thereof.

**27** In case an Applicant Proprietor, or the person to whom an Applicant Proprietor may have directed Certificate of Title to be issued, shall die in the interval between the date of his application and the date appointed for the Certificate of Title to issue, in accordance with the provisions hereinbefore contained, the Certificate of Title shall be issued in the name of such Applicant Proprietor, or in the name of the person to whom he may have directed it to be issued, as the case may require, and such Land shall devolve in like manner as if the Certificate of Title had been issued prior to the death of such Applicant Proprietor or person so named by him.

Certificate of Title to issue in name of deceased Applicant Proprietor.

**28** Upon the first bringing of Land under the provisions of this Act whether by the alienation thereof in fee from the Crown, or consequent upon the application of the proprietor as hereinbefore provided; and also upon the registration of the title to an estate of freehold in possession in land, under the provisions of this Act, derived through the will or intestacy of a previous proprietor, or under any settlement, there shall be paid to the Recorder of Titles the sum specified in the Schedule hereto marked P; and in the case of land brought under the provisions of this Act by the alienation in fee from the Crown, the price paid for such land shall be deemed and taken to be the value thereof, for the purpose of levying such sum, and in all other cases as aforesaid, such value shall be ascertained by the Oath or solemn affirmation of the Applicant Proprietor or person, deriving such land by transmission: Provided always, that if the Recorder of Titles shall not be satisfied as to the correctness of the value so declared or sworn to, it shall be lawful for him to require such Applicant Proprietor, or person deriving such land by transmission, to produce a Certificate of such value, under the hand of a sworn valuator, which Certificate shall be received as conclusive evidence of such value, for the purpose aforesaid.

Per centage in the pound to be levied for assurance of Title.

**29** All sums of money so received as aforesaid shall be paid to the Treasurer of the said Colony, who shall, from time to time, invest such sums, together with all interest and profits which may have accrued thereon, in the Tasmanian Government Securities to constitute an assurance fund for the purposes hereinafter provided.

Assurance Fund to be invested in Government Securities.

**30** The reversion expectant upon any lease shall not be deemed to have been extinguished in consequence of the land whereof such lease has been granted having been brought under the provisions of this Act, or under the provisions of the hereinbefore recited Acts, or any of them, and the person named in any Certificate of Title as seised of the land therein described shall be held in every Court of Law and Equity to be seised of the reversion expectant upon any ~~such~~ lease that may be 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.

Reversion expectant on lease not to be extinguished.

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Section 2,

**31** The Recorder of Titles shall keep a book to be called the "Register Book," and shall bind up therein the duplicates of all Grants and of all Certificates of Title; and each Grant and Certificate of Title shall constitute a separate *folium* of such book; and the

Recorder of Titles to keep Register Book.

Recorder of Titles shall record thereon the particulars of all Instruments, dealings, and other matters by this Act 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.

Certificate of Title to be in Duplicate, and to be bound up in Register.

**32** The registered proprietor of an estate of freehold in possession in land under the provisions of this Act, not being a lease for a life or lives, shall be entitled to receive a Certificate of Title for the same, which Certificate of Title shall be in duplicate, in the form C. of the Schedule hereto, and shall set forth the nature of the estate of freehold in respect to which it is issued, <sup>and of any power, rights or disabilities therein,</sup> and the Recorder of Titles 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 may be subject, and if such Certificate of Title be issued to a minor or to a person otherwise under disabilities, he shall state the age of such minor, or the nature of the disability, so far as known to him, and shall cause one 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.

Certificate to be conclusive evidence of the Title, and that the Land has been duly brought under the Act.

**33** Every Certificate of Title duly authenticated under the hand and seal of the Recorder of Titles, shall be received in all Courts of Law and Equity as evidence of the particulars therein set forth, and of their being entered in the Register Book, and shall, except in any of the cases hereinafter otherwise provided, be conclusive evidence that the person named in such Certificate of Title or in any entry thereon, as seised of or as taking estate or interest in the land therein described, is seised or possessed of such land for the estate or interest therein specified, and that the property comprised in such Certificate of Title has been duly brought under the provisions of this Act; and no Certificate of Title shall be impeached or defeasible on the ground of want of notice or of insufficient notice of the application to bring the land therein described under the provisions of this Act, or on account of any error, omission, or informality in such application or in the proceedings pursuant thereto, by the Lands Titles Commissioners or by the Recorder of Titles.

Grants and Certificates of Title registered when embodied in Register Book.

Instruments registered when memorial thereof has been entered in Register-book.  
Definition of Registered Proprietor.

**34** Every Land Grant and Certificate of Title shall be deemed and taken to be registered under the provisions and for the purposes of this Act, so soon as the same shall have been marked by the Recorder of Titles 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 Act shall be deemed to be so registered so soon as a Memorial thereof, as hereinafter described, shall have been entered in the Register Book upon the *folium* constituted by the existing Grant or Certificate of Title of such Land; and the person named in any Grant, Certificate of Title, or other Instrument so registered as seised of or taking any estate or interest shall be deemed to be the registered Proprietor thereof.

Instruments to be in duplicate.  
Instruments entitled to priority according to date of registration;

**35** Except as is hereinafter otherwise provided, every Grant or other Instrument presented for registration shall be in duplicate, and shall be attested by a witness; and shall be registered in the order of time in which the same is produced for that purpose; and Instruments registered in respect to 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 Recorder

of Titles, upon registration thereof, shall file one original in his office, and shall deliver the other to the person entitled thereto; and so soon as registered every Instrument drawn in any of the several forms provided in the Schedule hereto, or in any form which for the same purpose may be authorised, in conformity with the provisions of this Act, shall, for the purposes of this Act, be deemed and taken to be embodied in the Register Book as part and parcel thereof, and such Instrument, when so constructively embodied, and stamped with the Seal of the Recorder of Titles, shall have the effect of a deed duly executed by the parties signing the same.

and, when registered, to be deemed to be embodied in Register-book, and to have the effect of a Deed.

**36** In every Instrument charging, creating, or transferring, any estate or interest in land under the provisions of this Act, there shall be implied the following covenant by the party charging, creating, or transferring such estate or interest, that is to say—That he will do such acts and execute such Instruments, as in accordance with the provisions of this Act ~~in accordance with the provisions of this Act~~ may be necessary to give effect to all Covenants, Conditions, and purposes expressly set forth in such Instruments, or by this Act declared to be implied against such party in Instruments of a like nature.

General covenants to be implied in Instruments.

*By 26 Vic. No. 1  
Sec. 2*

**37** 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 such Instrument for registration, and the names of the parties thereto, and shall refer by number or symbol to such Instrument and shall be signed by the Recorder of Titles.

Memorial defined.

**38** Whenever a Memorial of any Instrument has been entered in the Register Book, the Recorder of Titles shall, except in the case of a transfer or other dealing endorsed on a Memorandum of Lease or of Mortgage or of Incumbrance as hereinafter provided, record the like Memorial on the Duplicate Grant, Certificate of Title, Lease, or other Instrument evidencing Title to the Estate or Interest intended to be dealt with, or in any way affected, unless the Recorder of Titles shall, as hereinafter provided, dispense with the production of the same; and the Recorder of Titles shall endorse on every Instrument so registered a Certificate of the date and hour on which the said Memorial was entered in the Register Book, and shall authenticate each such Certificate by signing his name and affixing his seal thereto; and such Certificate shall be received in all Courts of Law and Equity as conclusive evidence that such Instrument has been duly registered.

Memorial to be recorded on duplicate Grant or other Instrument.

Certificate of Registration to be evidence.

**39** No Instrument shall be effectual to pass any estate or interest in any Land under the provisions of this Act, or to render such Land liable as security for the payment of money; but upon the registration of any Instrument in manner hereinbefore prescribed the Estate or Interest specified in such 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 such Instrument, or by this Act declared to be implied in Instruments of a like nature; and 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 Recorder of Titles 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 such Land for that purpose.

Instruments not effectual until entry in Registry-book.

Estate of Registered Proprietor paramount.

**40** Notwithstanding the existence in any other person of any Estate or Interest, whether derived by Grant from the Crown or otherwise, which, but for this Act, might be held to be paramount, or to have priority, the registered Proprietor of Land, or of any Estate or Interest in Land under the provisions of this Act, shall, except in case of fraud, hold the same subject to such encumbrances, Liens, Estates, or Interests, as may be notified on the *folium* of the Register Book, constituted by the Grant or Certificate of Title of such Land, but absolutely free from all other Encumbrances, Liens, Estates, or Interests whatsoever, except 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 Act, and except so far as regards the omission or misdescription of any right of way or other easement created in or existing upon any Land, and except so far as regards any portion of Land that may be erroneously included in the Grant, Certificate of Title, Lease, or other Instrument evidencing the Title of such registered Proprietor by a wrong description of parcels or boundaries.

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

**41** The Recorder of Titles shall not register any Instrument purporting to transfer or otherwise to deal with or affect any Estate or Interest in Land under the provisions of this Act, except in the manner herein provided, nor unless such Instrument be in accordance with the provisions hereof.

Transfer.

**42** When Land under the provisions of this Act is intended to be transferred, or any right of way or other easement is intended to be created or transferred, the registered Proprietor shall execute a Memorandum of Transfer in Form D. of the Schedule hereto, which Memorandum shall, for description of the Land intended to be dealt with, refer to the Grant or Certificate of Title of such Land, or shall give such description as may be sufficient to identify the same, and shall contain an accurate statement of the Estate, Interest, or Easement intended to be transferred or created, and a Memorandum of all Leases, Mortgages, and other encumbrances to which the same may be subject.

Easements and Incorporeal Rights to be registered.

**43** Whenever any Easement, or any Incorporeal Right other than an annuity or rent charge, in or over any Land under the provisions of this Act, is created for the purpose of being annexed to or used and enjoyed together with other Land under the provisions of this Act, the Recorder of Titles shall enter a Memorial of the Instrument creating such Easement or Incorporeal Right upon the *folium* of the Register Book constituted by the existing Grant or Certificate of Title of such other Land.

If Estate of Freehold be transferred, Certificate of Title to be delivered up and cancelled, so far as regards the portion of Land transferred.

**44** If the Memorandum of Transfer purports to transfer an Estate of freehold in possession not being a lease for a life or lives in the whole or in part of the Land mentioned in any Grant or Certificate of Title, the Transferrer shall deliver up the Grant or Certificate of Title of the said Land; and the Recorder of Titles shall, after registering the Transfer, enter on such Grant or Certificate of Title a Memorandum cancelling the same, either wholly or partially, according as the Memorandum of Transfer purports to transfer the whole, or part only, of the Land mentioned in such Grant or Certificate of Title, and setting forth the particulars of the Transfer.

Fresh Certificate to be issued to Purchaser.

**45** The Recorder of Titles upon cancelling any Grant or Certificate of Title, either wholly or partially, pursuant to any such Transfer,

shall make out, to the Transferee, a Certificate of Title to the Land mentioned in such Memorandum of Transfer; and every such Certificate of Title shall refer to the original Grant of such Land, and to the Memorandum, or other Instrument of Transfer; and the Recorder of Titles shall retain every such 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 such portion or of any part thereof, shall make out to such Proprietor, or Transferee, a Certificate of Title for such portion, or for any part thereof, of which he is the Proprietor or Transferee.

A Certificate for the balance, if any, untransferred, to be issued to Proprietor when demanded, or to a registered Transferee thereof.

**46** In every Instrument transferring an Estate or Interest in Land under the provisions of this Act, subject to Mortgage or Encumbrance, there shall be implied the following Covenant by the Transferee; that is to say,—That such Transferee will pay the Interest or Annuity secured by such Mortgage or Encumbrance, after the rate and at the times specified in the Instrument creating the same, and will indemnify and keep harmless the Transferrer from and against the Principal Sum secured by such Instrument, and from and against all liability in respect of any of the Covenants therein contained, or by this Act implied, on the part of the Transferrer.

Transferee of Land subject to Mortgage or Encumbrance to indemnify Transferrer.

**47** When any Land under the provisions of this Act is intended to be leased or demised for a life or lives, or for any term of years exceeding Three years, the Proprietor shall execute a Memorandum of Lease in Form E. of the Schedule hereto; and every such Instrument shall, for description of the Land intended to be dealt with refer to the Grant or Certificate of Title of the Land, or shall give such other description as may be necessary to identify such Land; and a right for or Covenant by the Lessee to purchase the Land therein described, may be stipulated in such Instrument; and in case the Lessee shall pay the purchase money stipulated and otherwise observe his Covenants expressed and implied in such Instrument, the Lessor shall be bound to execute a Memorandum of Transfer to such Lessee of the said Land, and the fee simple thereof, and to perform all necessary acts by this Act prescribed for the purpose of transferring to a Purchaser the said Land, and the fee simple thereof: Provided always, that no Lease of mortgaged or encumbered Land, shall be valid and binding against the Mortgagee or Encumbrancee, unless such Mortgagee or Encumbrancee shall have consented to such Lease prior to the same being registered.

Lands under the provisions of this Act how leased.

**48** Whenever any Lease or Demise, which is required to be registered by the provisions of this Act, is intended to be surrendered, and the surrender thereof is effected otherwise than through the operation of a Surrender in Law, or than under the provisions of any Law at the time being in force in the said Colony, relating to Insolvent Estates, there shall be endorsed upon such Lease, or on the counterpart thereof, the word “surrendered,” with the date of such Surrender; and such Endorsement shall be signed by the Lessee, and by the Lessor, as evidence of the acceptance thereof, and shall be attested by a Witness; and the Recorder of Titles thereupon shall enter in the Register Book a Memorandum recording the date of such Surrender, and shall likewise endorse upon the Lease a Memorandum recording the fact of such Entry having been made in the Register Book; and upon such Entry being so made in the Register Book, the Estate or Interest of the Lessee in such Land shall revert in the Lessor, or in the person in whom, having regard to intervening circumstances, (if

Lease may be surrendered by Endorsement by Lessee, with concurrence of Lessor.

any) the said Land would have vested if no such Lease had ever been executed; and production of such Lease or counterpart bearing such Endorsement and Memorandum shall be sufficient evidence that such Lease had been so surrendered: Provided that no Lease subject to Mortgage or Encumbrance shall be so surrendered with the consent of the Mortgagee or Encumbrancee.

Covenants to be implied in every Lease against the Lessee.

**49** In every Memorandum of Lease there shall be implied the following Covenants against the Lessee, unless otherwise provided in such Memorandum; that is to say,—

1. That he will pay the Rent thereby reserved, at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property during the continuance of the Lease.

2. That he will keep and yield up the demised property in good and tenantable repair, *damages by fire storm, repairs not of the Lessor's premises, and reasonable wear and tear excepted.*

*by 2<sup>nd</sup> vic not.*  
*Sec 50*  
Powers to be implied in Lessor.

**50** In every Memorandum of Lease there shall also be implied the following powers in the Lessor, unless otherwise provided in such Memorandum; that is to say,—

1. That he may, by himself or his Agents, at all reasonable times, enter upon the demised property, and view the state of repair thereof, and may serve upon the Lessee, or leave at his last or usual place of abode, in this Colony, or upon the demised property, a notice in writing of any defect, requiring him, within a reasonable time to be therein prescribed, to repair the same.

2. That in case the Rent, or any part thereof, shall be in arrear for the space of Six Calendar Months, or in case default shall be made in the fulfilment of any Covenant, whether expressed or implied in such Lease, on the part of the Lessee, and shall be continued for the space of Six Calendar Months, or in case the repairs required by such notice as aforesaid shall not have been completed within the time therein specified, it shall be lawful for such Lessor to re-enter upon and take possession of such demised Premises.

Recorder of Titles to note particulars of re-entry in Register Book.

**51** In any such case the Recorder of Titles, upon proof to his satisfaction of re-entry and recovery of possession by a Lessor, by any proceeding in Law, shall note the same by Entry in the Register Book; and the Estate of the Lessee in such Land shall thereupon determine, but without releasing him from his liability in respect of the breach of any Covenant in such Lease expressed or implied; and the Recorder of Titles shall cancel such Lease if delivered up to him for that purpose.

Lands under this Act how mortgaged or encumbered.

**52** Whenever any Land or Estate, or Interest in Land under the provisions of this Act is intended to be charged or made security in favor of any Mortgagee, the Mortgagor shall execute a Memorandum of Mortgage in Form F. of the Schedule hereto; and whenever any such Land, Estate, or Interest as aforesaid is intended to be charged with or made security for the payment of an annuity, rent charge, or sum of money, in favor of any Encumbrancee, the Encumbrancer shall execute a Memorandum of Encumbrance, in Form G. of the Schedule hereto; and 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 such Estate or Interest is held, or shall give such other description as may be necessary to identify such Land, together with a statement of all Mortgages and other Encumbrances affecting the same, (if any).

**53** Mortgage and Encumbrance under this Act shall have effect as Security, but shall not operate as a Transfer of the Land thereby charged; and in case default be made in payment of the principal Sum, Interest, Annuity, or Rent Charge, or any part thereof thereby secured, or in the observance of any Covenant expressed in any Memorandum of Mortgage or of Encumbrance registered under this Act, or that is hereinafter declared to be implied in such Instrument, and such default be continued for the space of One Calendar Month, or for such other period of time as may therein for that purpose be expressly limited, the Mortgagee or Encumbrancee may give to the Mortgagor or Encumbrancer notice, in writing, to pay the money then due or owing on such Memorandum of Mortgage, or of Encumbrance, or to observe the Covenants therein expressed or implied, as the case may be, and that the sale will be effected if such default be continued, or may leave such notice on the mortgaged or encumbered land, or at the usual or last known place of abode in *Tasmania* of the Mortgagor or Encumbrancer, or other person claiming to be then entitled to the said land.

Mortgage or encumbrance not to operate as Transfer.  
Procedure in case of default.

**54** After such default in payment, or in observance of Covenants continuing for the further space of One Calendar Month from the date of such notice, or for such other period as may in such Instrument be for that purpose limited, such Mortgagee or Encumbrancee is hereby authorized and empowered to sell the Land so mortgaged or encumbered, or any part thereof, and all the Estate and Interest therein of the Mortgagor or Encumbrancer, and either altogether or in lots, by public Auction or by private Contract, or both such modes of sale, and subject to such conditions as he may think fit, and to buy in and re-sell the same without being liable for any loss occasioned thereby, and to make and execute all such Instruments as shall be necessary for effecting the sale thereof, all which sales, contracts, matters, and things hereby authorized shall be as valid and effectual as if the Mortgagor or Encumbrancer had made, done, or executed the same; and the receipt or receipts in writing of the Mortgagee or Encumbrancee shall be a sufficient discharge to the Purchaser of such Land, Estate, or Interest, or of any portion thereof, for so much of his Purchase Money as may be thereby expressed to be received; and no such Purchaser shall be answerable for the loss, misapplication or non-application, or be obliged to see to the application of the Purchase Money by him paid, nor shall he be concerned to inquire as to the fact of any default or notice having been made or given as aforesaid; and the Purchase Money to arise from the sale of any such Land, Estate, or Interest shall be applied,—First, in payment of the Expenses occasioned by such sale,—Secondly, in payment of the Moneys which may then be due or owing to the Mortgagee or Encumbrancee, and the surplus (if any) shall be paid to the Mortgagor or Encumbrancer as the case may be.

Power to sell.

Appropriation of Proceeds.

*By 26th Dec.*  
*no. 1 - 5000*

**55** Upon the Registration of any Memorandum or Instrument of Transfer executed by a Mortgagee or Encumbrancee for the purpose of such Sale as aforesaid, the Estate or Interest of the Mortgagor or Encumbrancer therein described as to be conveyed shall pass to and vest in the Purchaser, freed and discharged from all liability on account of such Mortgage or Encumbrance, or of any Mortgage or Encum-

Recorder of Titles to give effect to Sale by Mortgagee or Encumbrancee.

brance registered subsequent thereto; and if such Memorandum of Transfer purports to pass an Estate of Freehold in possession, the Purchaser shall be entitled to receive a Certificate of Title for the same.

In case of default Mortgagee or Encumbrancee may enter and take possession, or may distrain.

May bring Action for Ejectment, or may foreclose Right of Redemption.

Mortgagee or Encumbrancee may distrain on Tenant or Occupier for arrears not exceeding the amount of rent due by such Tenant or Occupier.

No Lessee liable for greater sum than the amount of Rent actually owing by him.

Mortgagee or Encumbrancee of Leasehold entering into possession of rent and profits becomes liable to Lessor.

Discharge of Mortgages and Encumbrances.

**56** 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 enter into possession of the mortgaged or encumbered land by receiving the Rents and Profits thereof, or may distrain upon the occupier or tenant of the said land under the power to distrain hereinafter contained; or may pursue the remedy hereinafter provided to obtain possession of the said land either before or after entering into the receipt of the rents and profits thereof, or making any distress as aforesaid, and either before or after any sale of such land shall be effected under the power of sale given or implied in his Memorandum of Mortgage or of Encumbrance, and any such registered Mortgagee shall be entitled to foreclose the right of the Mortgagor to redeem the said mortgaged or encumbered lands in manner hereinafter provided.

**57** Besides his remedy against the Mortgagor or Encumbrancer every Mortgagee or Encumbrancee, shall be entitled, after the Principal Sum, Interest, Annuity, or Rent Charge shall have become in arrear for Twenty-one days, and after seven days have elapsed from the date of application for the payment thereof to the Occupier or Tenant to enter upon the mortgaged or encumbered Land, and distrain and sell the Goods and Chattels of such Occupier or Tenant, and to retain thereout the Moneys which shall be so in arrear, and all Costs and Expenses occasioned by such Distress and Sale: Provided that no Occupier or Tenant occupying such Land shall be liable to pay to any Mortgagee or Encumbrancee, a greater sum than the amount of Rent which at the time of making such Distress may be then due from such Occupier or Tenant to the Mortgagor or Encumbrancer, or to the person claiming the said Land under the Mortgagor or Encumbrancer, and any amount so paid shall be held to be *pro tanto* in satisfaction of such rent.

**58** Any Mortgagee or Encumbrancee of Leasehold Land under the provisions of this Act, or any person claiming the said Land as a Purchaser or otherwise, from or under such Mortgagee or Encumbrancee, after entering into possession of the said Land, or the Rents and Profits thereof, shall, during such 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 said Land, or the person for the time being entitled to the said Lessor's Estate or Interest in the said Land, to the same extent as the Lessee or Tenant was subject to and liable for prior to such Mortgagee, Encumbrancee, or other person entering into possession of the said Land, or the Rents and Profits thereof.

**59** 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 such Instrument from the whole of such Principal Sum or Annuity, the Recorder of Titles shall make an Entry in the Register Book, noting that such Mortgage or Encumbrance is discharged wholly or partially, or that part of the Land is discharged as aforesaid (as the case may require),



and, upon such Entry being so made, the Estate or Interest, or the portion of Land mentioned or referred to in such Endorsement as aforesaid, shall cease to be subject to or liable for such Principal Sum or Annuity, or (as the case may be), for the part thereof noted in such Entry as discharged.

**60** 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 shall cease to be payable, and, upon proof that all arrears of the said Annuity and Interest or Money have been paid, satisfied, or discharged, the Recorder of Titles shall make an Entry in the Register Book, noting that such Annuity or sum of Money is satisfied and discharged, and shall cancel such Instrument ; and, upon such Entry being made, the Land, Estate, or Interest shall cease to be subject to or liable for such Annuity or sum of Money ; and the Recorder of Titles shall, in any or either such case as aforesaid, endorse on the Grant, Certificate of Title, or other Instrument evidencing the Title of the Mortgagor or Encumbrancer to the Land, Estate, or Interest, mortgaged or encumbered, a Memorandum of the date on which such Entry as aforesaid was made by him in the Register Book, whenever such Grant, Certificate of Title, or other Instrument, shall be presented to him for that purpose.

Entry of satisfaction of annuity.

**61** In case the registered Mortgagee shall be absent from the said Colony, and there be no person authorized to give a Receipt to the Mortgagor for the Mortgage Money at or after the date appointed for the redemption of any Mortgage, it shall be lawful for the Treasurer of the said Colony to receive such Mortgage Money, with all arrears of Interest then due thereon, in trust for the Mortgagee or other person entitled thereto ; and thereupon the interest upon such Mortgage shall cease to run or accrue ; and the Recorder of Titles shall, upon the receipt of the said Treasurer for the amount of the said Mortgage Money and Interest, make an Entry in the Register Book discharging such Mortgage, stating the day and hour on which such Entry is made ; and such Entry shall be a valid discharge for such Mortgage, and shall have the same force and effect as is hereinbefore given to a like Entry when made upon production of the Memorandum of Mortgage, with the receipt of the Mortgagee ; and the Recorder of Titles shall endorse on the Grant, Certificate of Title, or other Instrument as aforesaid, and also on the Memorandum of Mortgage, whenever those Instruments shall be brought to him for that purpose, the several particulars hereinbefore directed to be endorsed upon each of such Instruments, respectively.

Mortgage Money may be paid to Treasurer if Mortgagee be absent from the Colony, and Mortgage discharged.

**62** In every Memorandum of Mortgage there shall be implied against the Mortgagor a Covenant that he will repair and keep in repair all buildings or other improvements erected and made upon such Land ; and that the Mortgagee may at all convenient times, until such Mortgage be redeemed, be at liberty, with or without Surveyors or others, to enter into and upon such Land, to view and inspect the state of repair of such buildings or improvements.

Covenants to be implied in every Memorandum of Mortgage.

**63** A registered Mortgage, a registered Lease, or the Interest of a registered Encumbrance may be transferred to any person by Memorandum of Transfer as aforesaid, or by an Instrument in the Form H. of the Schedule hereto, which Instrument may be endorsed upon the Memorandum of Mortgage, Encumbrance, or Lease ; and, upon such

Transfer of Mortgage, and of Encumbrance, and of Lease.

Memorandum of Transfer or other Instrument being registered, the Estate or Interest of the Transferor, as set forth in such Instrument, with all rights, powers, and privileges thereto belonging or appertaining, shall pass to the Transferee, and such Transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in such Instrument originally as Mortgagee, Encumbrancee, or Lessee of such Land, Estate, or Interest.

Transfer of Mortgage or Lease includes Transfer of Right to sue thereunder.

**64** By virtue of every such Transfer, as is hereinbefore mentioned, the right to sue upon any Memorandum of Mortgage, or other Instrument, and to recover any Debt, sum of Money, Annuity, or Damages thereunder (notwithstanding the same may be deemed or held to constitute a chose in action); and all Interest in any such Debt, sum of Money, Annuity, or Damages shall be transferred so as to vest the same at Law as well as in Equity in the Transferee thereof: Provided always, that nothing herein contained shall prevent a Court of Equity from giving effect to any Trusts affecting the said Debt, sum of Money, Annuity, or Damages, in case the Transferee shall hold the same as a Trustee for any other person.

Saving Powers to Courts of Equity to give effect to Trusts.

Abbreviated form of words for expressing Covenants to be as effectual as if such Covenants were set forth in words at length.

**65** Such of the Covenants hereinafter set forth as shall be expressed in any Memorandum of Lease or Mortgage as to be implied shall, if expressed in the form of words hereinafter appointed and prescribed for the case of each such Covenant respectively, be so implied as fully and effectually as if such Covenants were set forth fully and in words at length in such Instrument; that is to say,—

“ Insure.”

The words “ will insure ” shall imply as follows :—That the Lessee or Mortgagor will insure, and, so long as the term expressed in the said Mortgage or Lease shall not have expired, will keep insured in some public Insurance Office, to be approved by such Mortgagee or Lessor, against loss or damage by fire to the full amount specified in such Instrument, or if no amount be specified, then to their full value, all buildings, tenements, or premises erected on such Land, which shall be of a nature or kind capable of being insured against loss or damage by fire; and that the Mortgagor or Lessee will, at the request of the Mortgagee or Lessor, hand over to and deposit with him the Policy of every such Insurance, and produce to him the receipt or receipts for the annual or other premiums payable on account thereof: 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 also, that if default shall be made in the observance or performance of the Covenant last above mentioned, it shall be lawful for the Mortgagee or Lessor, without prejudice nevertheless to and concurrently with the powers granted him by his Memorandum of Mortgage or Lease, or by this Act provided, to insure such building; and the costs and charges of such Insurance shall, until such Mortgage be redeemed or such Lease shall have expired, be a charge upon the said Land :

“ Paint outside.”

The words “ paint outside every [alternate] year ” shall imply as follows; viz. :—And also will, in every alternate year, during the currency of such Lease, paint all the outside wood-work and iron-work belonging to the hereditaments and premises mentioned in such Lease, with two coats of proper oil colors in a workmanlike manner :

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

"Paint and paper inside."

The words "will fence" shall imply as follows; viz. :—And also will, during the continuance of the said 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:

"Fence."

The word "cultivate" shall imply as follows; viz. :—And will at all times during the said Lease cultivate, use, and manage all such parts of the Land therein mentioned as are or shall be broken up or converted into tillage in a proper and husband-like manner, and will not impoverish or waste the same:

"Cultivate."

The words "that the Lessee will not use the said Premises as a Shop" shall imply as follows; viz. :—And also that the said Lessee will not convert, use, or occupy the said hereditaments and premises mentioned in such Lease, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or permit or suffer the said hereditaments and premises or any part thereof to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said Lessor:

"Not use as a Shop."

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

"Offensive Trades."

The words "will not without leave assign or sublet" shall imply as follows; viz. :—And also that the said Lessee shall not nor will, during the term of such Lease, assign, transfer, demise, sublet, or set over or otherwise, by any act or deed, procure the lands or premises therein mentioned, or any of them, or any part thereof, to be assigned, transferred, demised, sublet, or set over unto any person whomsoever without the consent in writing of the said Lessor first had and obtained:

"Assign or Sublet."

The words "will not cut timber" shall imply as follows:— And also that the said Lessee shall not nor will cut down, fell, injure or destroy any growing or living timber, or timber-like trees, standing and being upon the said hereditaments and premises above mentioned, without the consent in writing of the said Lessor:

"Cut Timber."

The words "will carry on the business of a Publican, and conduct the same in an orderly manner" shall imply as follows; viz. :—And also that the said Lessee will at all times, during the currency of such Lease, use, exercise, and carry on, in and upon the premises therein mentioned, the trade or busi-

"Business of Publican in orderly manner."

ness of a Licensed Victualler or Publican and retailer of spirits, wines, ale, beer, and porter, and keep open and use the messuage, tenement, or Inn, and buildings standing and being upon the said land, as and for an Inn or Public-house for the reception, accommodation, entertainment of travellers, guests, and other persons resorting thereto or frequenting the same, and manage and conduct such trade or business in a quiet and orderly manner, and will not do, commit, or permit, or suffer to be done or committed, any act matter, or thing whatsoever, whereby or by means whereof any Licence shall or may be forfeited, or become void, or liable to be taken away, suppressed, or suspended in any manner howsoever :

“ Apply for Renewal of Licence.”

The words “ will apply for renewal of Licence” shall imply as follows ; viz :—And also shall and will from time to time, during the continuance of the said term, at the proper times for that purpose, apply for and endeavour to obtain, at his own expense, all such Licences as are or may be necessary for carrying on the said trade or business of a Licensed Victualler or Publican in and upon the said hereditaments and premises, and keeping the said messuage, tenement, or Inn open as and for an Inn or Public-house as aforesaid :

“ Facilitate the Transfer of Licence.”

The words “ will facilitate the Transfer of Licence” shall imply as follows ; viz :—And also shall and will, at the expiration or other sooner determination of the said Lease, sign and give such notice or notices and allow such notice or notices of a renewal or transfer of any Licence as may be required by Law to be affixed to the said messuage, tenement, or Inn, to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf, and generally to do and perform all such further acts, matters, and things as shall be necessary to enable the said Lessor or any other person authorized by him to obtain the renewal of any Licence, or any new Licence, or the transfer of any Licence then existing and in force.

No notice of Trusts to be entered in Register Book.

**66** The Recorder of Titles shall not make any entry in the Register Book of any notice of trusts, whether expressed, implied, or constructive; but trusts may be declared by any instrument or deed, which instrument or deed may include, as well lands under the provisions of this Act, as land which is not under the provisions thereof: Provided that the description of the several parcels of land contained in such instrument or deed shall sufficiently distinguish the land which is under the provisions of this Act from the land which is not under the provisions thereof; and a duplicate or an attested copy of such instrument may be deposited with the Recorder of Titles for safe custody and reference ; but shall not be registered.

Instrument declaring Trusts to be deposited, but not registered.

Recorder of Titles may be made a Trustee.

**67** Whenever the Registered Proprietor of any land, or of any estate or interest in the said land, which is either wholly or in part registered under the provisions of this Act or desirous of transferring the same to two or more persons in trust, it shall be lawful for such proprietor, in the instrument or deed declaring such trust, to nominate and appoint the Recorder of Titles, by the style of his office, to be one of such Trustees, and it shall thereupon be the duty of the Recorder of Titles for the time being to act as such Trustee so far as relates to the transfer of such land, estate, or interest.

**68** Upon the transfer of any Land, Estate, or Interest under the provisions of this Act, to two or more persons, as Joint Proprietors, to be held by them as trustees, it shall be lawful for the transferrer to insert in the memorandum of transfer, or other instrument, the words "no survivorship;" and the Recorder of Titles shall in such case include such words in the memorial of such instrument to be entered by him in the Register Book as hereinbefore directed; and shall also enter the said words upon any Certificate of Title issued to such Joint Proprietors, pursuant to such Memorandum of Transfer: And any two or more persons registered as Joint Proprietors of any Land, Estate, or Interest under the provisions of this Act, held by them as Trustees, may, by writing under their hand, authorize the Recorder of Titles to enter the words "no survivorship" upon the Grant, Certificate of Title, or other Instrument evidencing their Title to such Estate or Interest, and also upon the duplicate of such Instrument in the Register Book or file in his office, and after such entry has been made and signed by the Recorder of Titles in either such case as aforesaid, it shall not be lawful for any less number of Joint Proprietors than the number then registered to transfer or otherwise deal with the said Land, Estate, or Interest, without obtaining the sanction of the Supreme Court or a Judge thereof, by an order on motion or petition.

Insertion of the words "No Survivorship" in Instrument of appointment of Trustees to operate to prevent a less number of Trustees than those registered dealing with the Land without Order of Court.

**69** Before making any such order as aforesaid the Court or Judge shall, if it seem requisite, cause notice of intention so to do to be advertised once in the *Government Gazette* and three times in at least one newspaper published in the City of *Hobart Town* and Town of *Launceston*, and shall appoint a period of time within which it shall be lawful for any person interested to show cause why such order should not be issued, and thereupon it shall be lawful for the said Court or Judge in such order to give directions for the transfer of such Land, Estate, or Interest to any new Proprietor or Proprietors, solely or jointly with or in the place of any of the existing Proprietor or Proprietors, or to make such order in the premises as the Court thinks just for the protection of the persons beneficially interested in such Land, Estate, or Interest, or in the proceeds thereof; and upon such order being deposited with the Recorder of Titles, he shall make such entries and perform such acts as in accordance with the provisions of this Act may be necessary for the purpose of giving effect to such order.

Notice to be published before effect is given to Order.

**70** The Registered Proprietor of any land, estate, or interest, under the provisions of this Act, may authorize and appoint any person to act for him, or on his behalf, in respect to the transfer or other dealing with such land, estate or interest, in accordance with the provisions of this Act, by executing a power in any form heretofore in use for the like purpose, or in Form (I) of the Schedule hereto, and a duplicate or an attested copy thereof shall be deposited with the Recorder of Titles, who, after comparing the same, shall enter in the Register Book, a memorandum of the particulars therein contained, and of the date and hour of its deposit with him.

Powers of Attorney.

**71** The Recorder of Titles upon the application of any Registered Proprietor of Land under the provisions of this Act, shall grant to such Proprietor a Registration Abstract in the Form K. in the Schedule hereto, enabling him to transfer, or otherwise deal with his Estate or Interest in such Land, at any place without the limits of the said Colony, and shall, at the same time, enter in the Register Book a Memorandum recording the issue of such Registration Abstract, and shall endorse on the Grant, Certificate of Title, or other Instrument

Registration Abstract for registering dealings without the limits of the Colony.

evidencing the Title of such Applicant Proprietor, a like Memorandum, and from and after the issuing of any such Registration Abstract no transfer or other dealing in any way affecting the Estate or Interest in respect of which such Registration Abstract is issued shall be entered in the Register Book until such Abstract shall have been surrendered to the Recorder of Titles to be cancelled, or the loss or destruction of such Abstract proved to his satisfaction.

Mode of Procedure under Registration Abstract.

**72** Whenever any Transfer, or other dealing, is intended to be transacted under any such Registration Abstract, a Memorandum of Transfer, or such other Instrument as the case may require, shall be prepared in duplicate in form hereinbefore appointed, and shall be produced to some one of the persons hereinafter appointed as persons before whom the execution of Instruments without the limits of the said Colony may be proved; and upon Memorial of such Instrument being entered upon the Registration Abstract, and authenticated by the Signature of such authorized person as aforesaid, in manner hereinbefore directed for the Entry of Memorials in the Register Book, such Instrument shall be held to be registered, and such transfer or other dealing shall be as valid and binding to all intents as if the same had been entered in the Register Book by the Recorder of Titles, and whenever a Memorial of any Instrument which has not been endorsed upon the Instrument evidencing title to the estate or interest intended to be dealt with has been entered upon the Registration Abstract, such authorized person as aforesaid, shall record the like Memorial on the Duplicate Grant, Certificate of Title, Lease, or other Instrument, evidencing Title as aforesaid, and the Certificate of Registration endorsed on the Instrument of which the Memorial has been so entered, and signed by such authorized person, and sealed with his seal, shall be received in all Courts of Law or Equity as conclusive evidence that such Instrument has been duly registered.

Proceeding upon delivery of Registration Abstract to the Recorder of Titles.

**73** Upon the delivery of any Registration Abstract to the Registrar-General, he shall record in the Register Book, in such manner as to preserve their priority, the particulars of every Transfer or other dealing recorded thereon, and shall file in his office the duplicates of every Memorandum of Transfer or other Instrument executed thereunder, which may for that purpose be delivered to him, and shall cancel such abstract, and note the fact of such cancellation in the Register Book; and if a Freehold Estate in such land, or in any part thereof, be transferred, the Grant or Certificate of Title shall be delivered up to the Recorder of Titles, who shall thereupon proceed as is hereinbefore directed for the case of the transfer of an Estate of Freehold.

Proceeding where Registration Abstract is lost.

**74** Upon proof, at any time, to the satisfaction of the Recorder of Titles, that any Registration Abstract is lost, or so obliterated as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised, then upon proof of the several matters and things that have been done thereunder, it shall be lawful for the Recorder of Titles, as circumstances may require, either to issue a new Registration Abstract, as the case may be, or to direct such entries to be made in the Register Book, or such other matter or thing to be done as might have been made or done if no such loss or obliteration had taken place.

Revocation of Power of Attorney.

**75** The Registered Proprietor of any Land in respect of which a Power of Attorney has been issued may, for the purpose of revoking such power, execute an Instrument in the Form L. of the Schedule hereto, and the Recorder of Titles shall, except in any case where a Registration

Abstract is outstanding, enter the particulars thereof in the Register Book, and shall record thereon the date and hour in which such entry was made, and from and after the date of such entry the Recorder of Titles shall not give effect to any Memorandum of Transfer, or other Instrument executed pursuant to such Power of Attorney, and if the holder of such power shall neglect or refuse to surrender the same to such Proprietor or his Agent exhibiting such Revocation Order, he shall be guilty of a Misdemeanor, and on conviction thereof shall forfeit and pay a sum not exceeding One hundred Pounds, unless it shall be made to appear to the satisfaction of the Court before whom the case may be tried, that the powers given therein had been exercised prior to the presentation of such Revocation Order.

**76** Upon the bankruptcy or insolvency of the Registered Proprietor of any Land, Estate, or Interest under the provisions of this Act, the Assignees of such bankrupt or insolvent shall be entitled to be registered as Proprietors in respect of the same; and the Recorder of Titles, upon the receipt of an Office Copy of the appointment of such Assignees, accompanied by an application in writing under their hand to be so registered in respect to any Land, Estate, or Interest of such 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 such Land, a Memorandum notifying the appointment of such Assignees, and upon such entry being made such Assignees shall be deemed and taken to be Registered Proprietors of the Estate or Interest of such bankrupt or insolvent in such Land, and shall hold the same subject to the equities upon and subject to which the bankrupt or insolvent held the same; but for the purpose of any dealings with such Land, Estate, or Interest under the provisions of this Act, such Assignees shall be deemed to be absolute Proprietors thereof.

Transmission by  
Bankruptcy or  
Insolvency.

Upon Entry of  
Appointment,  
Assignees to be  
deemed Regis-  
tered Proprietors.

But to hold sub-  
ject to Equities.

**77** Upon the bankruptcy or insolvency of the Registered Proprietor of any Lease subject to Mortgage under the provisions of this Act, the Recorder of Titles, upon the application in writing of the Mortgagee, accompanied by a statement in writing signed by the Assignees of such bankrupt or insolvent certifying their refusal to accept such Lease, shall enter in the Register Book the particulars of such refusal, and such Entry shall operate as a foreclosure, and the interest of the Insolvent in such Lease shall thereupon vest in such Mortgagee; and if such Mortgagee shall neglect or decline to make such application as aforesaid, the Recorder of Titles, upon application by the Lessor, and proof of such neglect or refusal and of the matters aforesaid, shall enter in the Register Book notice of the refusal of such Assignees to accept such Lease, and such entry shall operate as a surrender of such Lease.

Mortgagee of the  
leasehold interest  
of an insolvent  
Lessee may apply  
to be entered as  
Transferee of the  
Lease.

**78** The Recorder of Titles, 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 Act, accompanied by an application signed by such female Proprietor to that effect, shall enter on the Register Book, and also upon the Certificate of Title or other Instrument evidencing the title of such female Proprietor, when produced to him for that purpose, the name and description of her husband, the date of the marriage, and where solemnized, the date and hour of the production to him of the Register or other sufficient evidence of such marriage; and the husband of such female Proprietor shall, unless such Land be held for her separate use, be entitled to be registered as co-Proprietor of such Land in right of his wife; and the Recorder of Titles, upon application to that effect, and surrender of the existing Certificate of Title, shall comply with such application.

Marriage of  
female Proprietor  
to be certified to  
the Recorder of  
Titles.

Particulars to be  
entered in Regis-  
ter Book, and on  
the Instrument  
evidencing Title.

Transmission of personal estate of deceased Proprietor.

Will or Probate, or Letters of Administration or Order of Court, to be produced.

Heir-at-law or Devisee may apply to Recorder of Titles to be registered as Proprietor.

Application to be referred to Lands Titles Commissioners.

Notice thereof to be published in *Gazette*.

Upon the expiration of the time limited by Commissioners, Applicant to be entered in Register Book;

**79** Whenever any Mortgage, Encumbrance, or Lease affecting Land under the provisions of this Act, shall be transmitted in consequence of the will or intestacy of the registered Proprietor thereof, probate, or an Office Copy of the Will of the deceased Proprietor, or Letters of Administration, or the order of the Supreme Court authorizing the Curator of Intestate Estates to administer the personal Estate of the deceased Proprietor of such Estate or Interest, as the case may be, accompanied by an application in writing from the Executor, Administrator, or Curator, claiming to be registered as Proprietor in respect of such Estate or Interest, shall be produced to the Recorder of Titles, who shall thereupon enter in the Register Book and on the Lease or other Instrument 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 Supreme Court as aforesaid, the date and hour of the production of the same to him, the date of the death of such Proprietor, when the same can be ascertained, with such other particulars as he may deem necessary; and upon such Entry being made the Executors or Administrators, or the Curator of Intestate Estates, as the case may be, shall be deemed to be registered Proprietors, or Proprietor of such Mortgage, Encumbrance, or Lease, and the Recorder of Titles shall note the fact of such registration by Memorandum under his hand on the Letters of Administration, Probate, or other Instrument as aforesaid.

**80** The Heir-at Law, Devisee, Tenant by the curtesy, or other person claiming any Estate of freehold in the land of a deceased Proprietor, may make application in writing to the Recorder of Titles, to be registered as proprietor of such Estate; and shall deposit with him the certificate of the death, the will, or an office copy or probate of the Will of the deceased Proprietor, or any settlement under which such applicant claims; or in the case of intestacy, such evidence of heirship as he may be enabled to produce; and such application shall state the nature of every estate or interest held by other persons at law or in equity in such land within the Applicant's knowledge, and that he verily believes himself to be entitled to the estate in such land, in respect to which he applies to be registered; and the statements made in such application shall be verified by the oath or statutory declaration of such Applicant: Provided always, that the heir-at-law, devisee, or other person making such application, shall surrender the existing Grant or Certificate of Title of the land, in respect to which he claims to be registered as Proprietor, prior to his being entered in the Register Book, as hereinafter mentioned.

**81** The Recorder of Titles shall refer such application to the solicitors for examination and report, and thereafter shall submit the same for the consideration of the Lands Titles Commissioners, who may either reject such application altogether, or direct the Recorder of Titles to cause notice thereof to be published once in the *Hobart Town Gazette*, and three times in at least one newspaper published in the City of Hobart Town and Town of Launceston, and to give such further publicity to such application as they may direct, whether by advertisement or the serving or posting of notices, and shall limit and appoint a time not less than one month from the date of the advertisement in such *Gazette*, upon or after which the Recorder of Titles may, unless he shall in the interval have received a Caveat forbidding him so to do, register such Applicant as Proprietor of such land, by entering in the Register Book, the particulars of the transmission through which such Applicant claims, and by issuing to such Applicant a Certificate of Title for the land so transmitted; and the Lands Titles Commissioners may direct any Caveat



to be entered by the Recorder of Titles for the protection of the interests of such other persons (if any) as may be interested in such land: Provided always, that the person registered, consequent on such direction of the Lands Titles Commissioners, or any Executor or Administrator, or the Curator of Intestate Estates, when registered in respect of any Mortgage, Encumbrance, or Lease, shall hold such land, estate, or interest in trust for the persons and purposes to which it is applicable by Law, but for the purposes of any dealing with such land, estate, or interest under the provisions of this Act, he shall be deemed to be absolute Proprietor thereof.

but to hold subject to the Trusts to which the Land is liable by Law.

**82** Any settlor of land under the provisions of this Act, transferring such land to be held by the Transferee as Trustee, or any beneficiary, or other person, claiming estate or Interest in any such land under any unregistered instrument, or by devolution in law or otherwise may, by Caveat, in the Form (M) of the Schedule hereto, or as near thereto as circumstances will permit, forbid the registration of any Instrument affecting such Land, Estate, or Interest, either absolutely or until after notice of the intended dealing given to the Caveator as may be required and enjoined in such Caveat; and every such Caveat shall state the name and address of the person by whom or on whose behalf the same is lodged, and shall contain a sufficient description to identify the land and the estate or interest therein, claimed by the Caveator, or by the person on whose behalf the Caveat is lodged; and, except in case of Caveats lodged by order of the Supreme Court, or by the Recorder of Titles as hereinbefore provided, shall be signed by the Caveator, or by his Solicitor, known Agent, or Attorney; and every notice relating to such Caveat, or to any proceedings in respect thereof, if served at the address mentioned in such Caveat, or at the office of the Solicitor, known Agent, or Attorney who may have signed the same, shall be deemed to be duly served; and every such Caveat may be withdrawn by the Caveator.

Caveat may be lodged.

**83** Upon the receipt of any Caveat, the Recorder of Titles shall notify the same to the person against whose application to bring land under the provisions of this Act, or 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 Act, such Caveat has been lodged; and such Applicant Proprietor or Registered Proprietor may, if he think fit, summon the Caveator, or the person on whose behalf such Caveat has been lodged, to attend before the Supreme Court or a Judge thereof, to show cause why such Caveat should not be removed; and it shall be lawful for such Court or Judge, upon proof that such person has been summoned, to make such order in the premises, either *ex parte* or otherwise, as to such Court or Judge may seem fit; and, 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 Recorder of Titles for the protection of incapable persons, or for the prevention of fraud, as hereinbefore prescribed, every such Caveat lodged against a Registered Proprietor shall, unless an order to the contrary be made by the Supreme Court, or a Judge thereof, be deemed to have lapsed upon the expiration of Fourteen days after notice given to the Caveator that such Registered Proprietor has applied for the registration of any Transfer or other dealing with such Land, Estate, or Interest.

Notice of Caveat to be given.

Caveator may be summoned to show cause.

Except in certain cases, Caveat to lapse after 14 days' notice given to Caveator.

**84** So long as any Caveat shall remain in force prohibiting the transfer or other dealing with land, the Recorder of Titles shall not enter

No entry to be made in Registry Book affecting

Lands in respect to which Caveat continues in force.

in the Register Book any Memorandum of Transfer or other Instrument purporting to transfer or otherwise deal with or affect the Land, Estate, or Interest, in respect to which such Caveat may be lodged.

Compensation for lodging Caveat without reasonable cause.

**85** Any person lodging any Caveat with the Recorder of Titles without reasonable cause, shall be liable to make to any person who may have sustained damage thereby such compensation as may be just, and such compensation shall be recoverable in an Action at Law by the person who has sustained damage from the person who lodged the Caveat.

Proprietor may vest Estate jointly in himself and others, without limiting any use, or executing any assignment.

**86** The registered Proprietor of any Land, or of any Estate or Interest in Land under the provisions of this Act, whether of the nature of real or personal property, may, by any of the forms of the Instruments of Transfer provided by this Act, modified as may be necessary, transfer such Land, Estate, or Interest, or any part thereof, to his wife, or if such registered Proprietor be a married woman, it shall be lawful for her to make such transfer to her husband, or it shall be lawful for such Registered Proprietor to make such transfer to himself jointly with any other person or persons, or to create or execute any powers of appointment, or to limit any Estates whether by remainder or otherwise, without limiting any use, or executing any re-assignment; but upon the registration of such Transfer, the said Land, Estate, or Interest, shall vest in such Registered Proprietor jointly with any other person or persons, or in the person taking under such limitation, or in whose favor any power may have been executed, or otherwise, according to the intent and meaning appearing in such Instrument, and thereby expressed.

Persons registered as Joint Proprietors to be Joint Tenants.

Tenants in common to receive each a distinct Certificate of Title.

**87** Two or more persons who may be registered as Joint Proprietors of an Estate or Interest in Land under the provisions of this Act shall be deemed to be entitled to the same as Joint Tenants, and in all cases where two or more persons are entitled as Tenants in common to undivided shares of or in any Land, such persons shall be bound to receive separate and distinct Certificates of Title or other Instrument evidencing title to such undivided shares.

Registration of survivor of Joint Proprietors.

**88** When any person is registered as Joint Proprietor with his wife of an Estate in fee simple in right of his wife, if such person die in the lifetime of his wife, and before any transfer of such Estate, or if such wife die in the lifetime of her husband, and the said husband is entitled as Tenant by the curtesy, or 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 when the Life Estate, in respect to 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 such Certificate of Title has been issued, has become entitled to the said Land for an Estate in fee simple in possession, the Recorder of Titles may, upon the application of the person entitled, and proof to his satisfaction of any such occurrence as aforesaid, register such person as Proprietor of such Estate or Interest, in manner hereinbefore prescribed for the registration of a like Estate or Interest upon a Transfer or Transmission.

Remainderman or Reversioner may apply to be registered as such on the Certificate

**89** 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 such Land may apply to be registered as so entitled; and the Recorder of Titles shall cause the title of such applicant to be investigated

by the Solicitors, and shall thereafter submit the same for consideration by the Lands Titles Commissioners, who may either reject such application altogether, or direct the Applicant to be registered in accordance therewith either immediately, or, unless Caveat be lodged, after such notice or advertisement, and within such period as they may appoint; and the Recorder of Titles shall obey such direction or any order of the Supreme Court in the premises.

of Title of the Tenant for life. Application to be referred to Lands Titles Commissioners.

**90** Every Covenant and Power to be implied in any Instrument by virtue of this Act, may be negatived or modified by express declaration in the Instrument, or endorsed thereon; and in any declaration 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 such action is brought did so Covenant precisely in the same manner as if such Covenant had been expressed in words in such Memorandum of Transfer or other Instrument, any law or practice to the contrary notwithstanding; and every such implied Covenant shall have the same force and effect and be enforced in the same manner as if it had been set out at length in such Instrument; and where any Memorandum of Transfer or other Instrument in accordance with the provisions of this Act, is executed by more parties than one, such Covenants as are by this Act declared to be implied in Instruments of the like nature, shall be construed to be several and not to bind the parties jointly.

Implied covenants may be modified or negatived.

Implied covenants to be several and not joint.

**91** The Recorder of Titles shall have and use a Seal of Office, bearing the impression of the Royal Arms of England, and having inscribed in the margin thereof the words "Recorder of Titles, Tasmania;" and every Instrument bearing the imprint of such Seal, and purporting to be signed or issued by the Recorder of Titles, or by one of his Deputies, shall be received in evidence, and shall be deemed to be signed or issued by or under the direction of the Recorder of Titles without further proof, unless the contrary be shown.

Seal of Office to be received in evidence.

**92** The Recorder of Titles may, with the consent of the Governor of the said Colony, from time to time, make such alterations in the several forms of Instruments prescribed in the Schedule hereto as he may deem requisite; and shall cause every such Form to be stamped with his Seal, and to be supplied at the General Registry Office free of charge, or at such moderate prices as he may from time to time fix, or may license any person to print and sell the same; and every such Form, if made in a Form purporting to be a proper Form, and to be sealed as aforesaid, shall be taken to be made in the legally authorized Form, unless the contrary is proved.

Recorder of Titles, with sanction of Governor, to alter forms of Instruments, &c.

**93** The Recorder of Titles, with the consent of the other Lands Titles Commissioners, in case they shall see reasonable cause for so doing, may dispense with the production of any Grant, Certificate of Title, Lease, or other Instrument, for the purpose of entering the Memorial by this Act required to be entered upon the transfer or other dealing with Land under the provisions of this Act; and upon the registration of such Transfer or other dealing the Recorder of Titles shall notify in the Memorial in the Register Book, that no entry of such Memorial has been made on the duplicate Grant, or other Instrument; and such Transfer or other dealing shall thereupon be as valid and effectual as if such Memorial had been so entered: Provided always, that, before registering such Transfer or other dealing, the Recorder of Titles shall, in such case, require the Transferrer or other

Recorder of Titles may dispense with duplicates of Certificates of Title and other Instruments in certain cases.

But notice to be given before registering any dealing.

dealing, to make an Affidavit that such Grant or Instrument has not been deposited as security for any loan, and shall give at least Fourteen days' notice of his intention to register such dealing in the *Hobart Town Gazette*, and in at least one newspaper published in the City of *Hobart Town* and Town of *Launceston*.

Sales by Sheriff, or under Order of Supreme Court.

**94** Whenever any Estate or Interest in Land, under the provisions of this Act, shall be sold by the Sheriff under any Writ or shall be sold under any direction, decree, or Order of the Supreme Court, or whenever any Order of such Court shall be made, authorising the Curator of Inestate Estates to take the charge of the Real Estate of a deceased Proprietor, the Recorder of Titles, 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 Instrument evidencing Title to the said Estate or Interest, <sup>and produce for that purpose</sup> the date of the said Writ, Direction, Decree, or Order, and the date and hour of the production thereof; and after such Entry as aforesaid the Sheriff or person authorised by the Supreme Court shall do such acts and execute such Instruments as under the provisions of this Act may be necessary to transfer or otherwise to deal with the said Estate or Interest: Provided always, that unless and until such Entry has been made as aforesaid no such Writ shall bind or affect any Land under the provisions of this Act or any Estate or Interest therein, nor shall any sale or transfer by the Sheriff be valid as against a Purchaser or Mortgagee, notwithstanding such Writ may have been actually in the hands of the Sheriff at the time of any Purchase or Mortgage, or notwithstanding such Purchaser or Mortgagee may have had actual or constructive notice of the issue of such Writ.

Seal of Corporation substituted for signature.

**95** A Corporation, for the purpose of transferring or otherwise dealing with Land under the provisions of this Act, in lieu of signing the proper Instrument for such purpose prescribed, may affix thereto the common Seal of such Corporation, with a Certificate that such Seal was affixed by the proper Officer, verified by his signature.

Attestation of Instruments.  
Execution of Instruments before whom to be proved.

**96** Instruments executed pursuant to the provisions of this Act, if attested by one witness, shall be held to be duly attested, and the execution thereof may be proved, if the parties executing the same be resident within the said Colony then before the Recorder of Titles or before a Notary Public, or a <sup>Justice of the Peace</sup> Commissioner for taking Affidavits; if the said parties be resident in the United Kingdom of *Great Britain* and *Ireland* then before the Mayor or other Chief Officer of any Corporation, or before a Notary Public; if the said parties be resident in any British possession then before the Chief Justice, Judge of any Superior Court having jurisdiction in such possession, or before the Governor, Government Resident, or Chief Secretary thereof; if the said parties be resident at any Foreign place then before the British Consular Officer resident at such place.

Mode of proving Instruments.

**97** The execution of any such Instrument may be proved before any such person as aforesaid by the Oath or Statutory Declaration of the parties executing the same, or of a Witness attesting the signing thereof; and if such Witness shall answer in the affirmative each of the questions following; that is to say,—

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

*By 20th Dec. 1881  
Section 2*

Do you personally know \_\_\_\_\_ the person signing this Instrument, and whose signature you attested ?

Is the name purporting to be his signature his own handwriting ; is he of sound mind ; and did he freely and voluntarily sign the same ?

Then the Recorder of Titles, or other person before whom such witness shall prove such signature as aforesaid, shall endorse upon such Instrument, a Certificate in Form N. of the Schedule hereto : and if the person executing such Instrument be personally known to the Recorder of Titles, or other person, as aforesaid, he may attend and appear before such Recorder of Titles, or other person, and acknowledge that he did freely and voluntarily sign such Instrument ; and, upon such acknowledgment, the Recorder of Titles or other person shall endorse on such Instrument a Certificate in Form O of the Schedule hereto : Provided that such questions as aforesaid may be varied as circumstances may require, in case any person shall sign such Instrument by his mark.

**98** The Recorder of Titles shall not register any Instrument signed by any married woman, purporting to transfer or otherwise to deal with any Land under the provisions of this Act in respect to which she may be registered as Proprietor, either solely or jointly with her husband in her right, until such married woman shall have been examined, apart from her husband, by the Recorder of Titles or other person legally authorised to take the acknowledgments of married women, and has assented to such proposed dealing, after full explanation of her rights in the Land, and of the effect of the proposed dealing ; and the Recorder of Titles, or other person taking such acknowledgment, shall endorse on the Instrument of Transfer or other dealing a Certificate of such acknowledgment and examination and the date and hour thereof.

Acknowledgement of married women to be taken before Recorder of Titles or person legally authorized.

**99** 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 such Grant or Grants, Certificate or Certificates of Title, it shall be lawful for the Recorder of Titles to issue to such proprietor a single Certificate of Title for the whole of such Land, or several Certificates, each containing portion of such Land in accordance with such application, and as far as the same may be done consistently with any regulations at the time being in force respecting the parcels of Land that may be included in one Certificate of Title ; and upon issuing any such Certificate of Title, the Recorder of Titles shall cancel the Grant or previous Certificate of Title of such Land so delivered up, and shall endorse thereupon a memorandum setting forth the occasion of such cancellation, and referring to the Certificate of Title so issued.

Upon surrender of existing Grants or Certificates of Title, the Proprietor may obtain a single Certificate for all the Land included therein.

**100** In the event of the Grant or Certificate of Title of Land under the provisions of this Act, being lost, mislaid, or destroyed, the Proprietor of such Land, together with other persons, if any, having knowledge of the circumstances, may make a Declaration before the Recorder of Titles or before any of the persons hereinbefore appointed, as persons before whom the execution of Instruments may be proved, stating the facts of the case, the names and description of the registered Owners, and the particulars of all Mortgages, Encumbrances, or other matters affecting such Land, and the Title thereto, to the best of declarant's knowledge and belief ; and the Recorder of Titles, if satisfied as to the truth of such

Provision in case of lost Grant.

Declaration, and the *bona fides* of the transaction, may, with the consent of the other Lands Titles Commissioners, issue to such Applicant a Provisional Certificate of Title of such 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 such Provisional Certificate is issued; and the Recorder of Titles shall at the same time enter in the Register Book notice of the issuing of such Provisional Certificate, and the date thereof, and the circumstances under which it was issued, and such Provisional Certificate shall be available for all purposes and uses for which the Grant or Certificate of Title so lost or mislaid would have been available, and as valid to all intents as such lost Grant or Certificate: Provided always, that the Recorder of Titles before issuing such Provisional Certificate, shall give at least Fourteen days' notice of his intention so to do, in the *Hobart Town Gazette*, and at least in one newspaper published in the City of *Hobart Town* and Town of *Launceston*.

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

**101** Upon the production of the receipt of the Treasurer of the said Colony, 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 such Land, the Recorder of Titles shall endorse upon such receipt such Memorial as he is hereinbefore required to enter in the Register Book upon the registration of any dealing of a like nature with Land in respect to which a Grant or Certificate of Title has been registered, and shall sign such endorsement, and stamp the same with his seal, and such Instrument shall thereupon be held to be duly registered in accordance with the provisions of this Act; and the Recorder of Titles shall file such receipt and such instrument in his Office; and upon the registration of the Grant of such Land, the Recorder of Titles shall enter thereon a Memorial of such dealing, and shall endorse such instrument with the Certificate of Registration, as hereinbefore prescribed for the registration of instruments generally.

Duplicates of future public maps to be deposited.

**102** All public maps delineating the Waste Lands of the Crown in the said Colony for the purpose of sale shall be made in duplicate, and the Surveyor-General shall sign each duplicate and shall certify the accuracy of the same, and such duplicates of such maps shall be deposited in the Registry Office, and whenever in any instrument relating to land under the provisions of this Act reference is made to the public maps of the said Colony deposited in the Office of the Surveyor-General, such reference shall be interpreted and taken to apply equally and with the same force and effect and for the same purposes to either of such duplicates.

Proprietor may deposit map.

**103** Any Proprietor sub-dividing any Land under the provisions of this Act, for the purpose of selling the same in allotments as a township, shall deposit with the Recorder of Titles a Map of such Township: Provided that such Map shall exhibit, distinctly delineated, all roads, streets, passages, thoroughfares, squares, or reserves appropriated or set apart for public use, and also all allotments into which the said Land may be divided, marked with distinct numbers or symbols; and every such Map shall be certified as accurate by declaration of a Government Surveyor before the Recorder of Titles or a Justice of the Peace

**104** The Recorder of Titles may require the Proprietor applying to have any Land brought under the provisions of this Act, or desiring to transfer or otherwise to deal with the same or any portion thereof, to deposit at the Registry Office a Map or Plan of such Land, certified by a Government Surveyor in manner aforesaid; and if the said Land, or the portion thereof proposed to be transferred or dealt with, shall be of less area than One statute Acre, then such Map or Plan shall be on a Scale not less than One inch to Two chains, and if such Land, or the portion thereof about to be transferred or dealt with, shall be of greater area than One statute Acre but not exceeding Five statute Acres, then such Map or Plan shall be upon a Scale not less than One inch to Five chains, and if such Land or the portion thereof, as aforesaid, shall be of greater area than Five statute Acres but not exceeding Eighty statute Acres, then such Map or Plan shall be upon a Scale of not less than One inch to Ten chains, and if such Land or the portion thereof as aforesaid, shall be of greater area than Eighty statute Acres, then such Map or Plan shall be upon a Scale of One inch to Twenty chains; and, if such Proprietor shall neglect or refuse to comply with such requirement, it shall not be incumbent on the Recorder of Titles to proceed with the bringing of such Land under the provisions of this Act, or with the Registration of such Transfer or Lease: Provided always, that subsequent sub-divisions of the same Land may be delineated on the Map or Plan of the same so deposited, if such Map be upon a sufficient Scale in accordance with the provisions herein contained, and the correctness of the delineation of each such sub-division shall be acknowledged in manner prescribed for the case of the deposit of an original Map.

Recorder of Titles may require map to be deposited.

**105** The Recorder of Titles, upon payment of the fee specified in the Schedule P. hereto, shall furnish to any person applying for the same, a certified copy of any Registered Instrument affecting Land under the provisions of this Act, and every such Certified copy signed by him, and sealed with his Seal, shall be received in evidence in any Court of Justice, or before any person having by Law, or by consent of parties, authority to receive evidence as *prima facie* proof of all the matters contained or recited in or endorsed on the original Instrument.

Certified copies signed and sealed to be furnished by Recorder of Titles, and to be received in evidence.

**106** Any person may, upon payment of a fee specified in Schedule P. hereto, have access to the Register Book for the purpose of inspection, during the hours and upon the days appointed for search.

Search allowed.

**107** The Recorder of Titles shall not receive any application for bringing Land under the provisions of this Act, or any Instrument purporting to deal with or affect any Land under the provisions of this Act, unless there shall be endorsed thereon a Certificate that the same is correct for the purposes of this Act, signed by the applicant or party claiming under or in respect of such Instrument, or by his Solicitor and any person who shall falsely or negligently certify to the correctness of any such Application or other Instrument, shall incur therefor a penalty not exceeding Fifty Pounds: Provided always, that such penalty shall not prevent the person who may have sustained any damage or loss in consequence of error or mistake in any such certified Instrument, or any duplicate thereof from recovering damages against the person who shall have certified the same.

Authority to register.

Penalty for registering incorrect Instruments.

**108** It shall be lawful for the Recorder of Titles to recover such Fees as shall be appointed by the Governor of the said Colony, by

Fees to be charged.

by 26th Dec. 1851  
Seal - 2

and with the consent of the Executive Council, not in any case exceeding the several Fees specified in the Schedule hereto, marked P.

Recorder of Titles to pay moneys into Treasury, and to render accounts.

**109** The Recorder of Titles shall keep a correct account of all such sums of money as shall be received by him in accordance with the provisions of this Act, and shall pay the same into the Public Treasury of the said Colony, at such times, and shall render accounts of the same to such persons, and in such manner, as may be directed in any regulations that may for that purpose be prescribed by the Governor of the said Colony by and with the advice of the Executive Council thereof; and the Recorder of Titles shall address to the said Treasurer requisitions to pay moneys received by him, or by the said Treasurer, in trust or otherwise, on account of absent Mortgagees or other persons entitled in accordance with the provisions of this Act, which requisitions, when proved and audited in manner directed by any such regulations framed as aforesaid at the time being in force in the said Colony, and accompanied by Warrant for payment of the same under the hand of the Governor, countersigned by the Colonial Secretary thereof, the said Treasurer shall be bound to obey, and all fines and fees received under the provisions of this Act, except fees payable to the Lands Titles Commissioner, ~~or to the Solicitor of such Lands Titles Commissioners~~ for the bringing of Land under the operation of this Act, shall be carried to account by the said Treasurer as General Revenue.

Parties entitled to be paid by Treasurer upon proper Warrant.

*by 26th Dec. 1851.*  
*Sec 102*

Proprietor may summon Recorder of Titles to show cause, if dissatisfied.

**110** If, upon the application of any Proprietor to have Land of which he is seised brought under the provisions of this Act, or to have any dealing or transmission registered or recorded, or to have any Certificate of Title, registration abstract, foreclosure order, or other instrument issued, or to have any act or duty done or performed which by this Act is prescribed to be done or performed by the Recorder of Titles, the Recorder of Titles shall refuse so to do, or, if such Proprietor shall be dissatisfied with the direction upon his application given by the Lands Titles Commissioners, as hereinbefore provided, it shall be lawful for such Proprietor to require the Recorder of Titles to set forth in writing under his hand, the grounds of his refusal, or the grounds upon which such direction was given, and such Proprietor may, if he think fit, at his own costs, summon the Recorder of Titles to appear before the Supreme Court to substantiate and uphold the grounds of his refusal, or of such direction as aforesaid, such summons to be issued under the hand of a Judge of the said Court, and served upon the Recorder of Titles six clear days at least before the day appointed for hearing the plaint of such Proprietor, such objections shall be heard by the said Court upon motion, and upon such hearing, the Recorder of Titles, or his counsel shall have the right of reply, and the said Court shall, if any question of fact be involved, direct an issue to be tried to decide such fact, and the said Court shall thereupon make such order in the premises as in their judgment the circumstances of the case may require, and the Recorder of Titles shall obey such order; and all expenses attendant upon any such proceedings shall be borne and paid by the Applicant or other person preferring such plaint, unless the Judge or Court shall certify that there were no probable grounds for such refusal or direction as aforesaid.

Expense to be borne by Applicant.

Power to Recorder of Titles to state case for Supreme Court or direct issue to be tried.

**111** It shall be lawful for the Recorder of Titles, by direction of the Lands Titles Commissioners, whenever any question shall arise with regard to the performance of any of the duties or the exercise of any of the functions by this Act conferred or imposed upon him, or them to



state a case for the opinion of the Supreme Court, and thereupon it shall be lawful for the said Court to give its judgment thereon, and such judgment shall be binding on the Recorder of Titles and Lands Titles Commissioners respectively.

**112** Whenever any person interested in land under the provisions of this Act shall appear to the Supreme Court to be a trustee of such land, within the intent and meaning of the "Trustee Acts," and any order shall be made in the premises by the Supreme Court, or a Judge thereof, the Recorder of Titles, on being served with an office copy of such order, shall enter in the register book, and on the grant or other instrument evidencing title to the said land, the date of the said order, the date and hour of its production to him, and the name, residence, and description of the person in whom the said order shall purport to vest the said land; and such person shall thereupon be deemed to be the registered proprietor of such land; and unless and until such entry shall be made the said order shall have no effect or operation in transferring, or otherwise vesting the said land.

Recorder of Titles to carry out Order of Supreme Court, vesting Trust Estate.

**113** Whenever a person entitled to, or interested in land as a trustee would be entitled under the last preceding clause, to bring or defend any action of ejectment in his own name, for the recovering the possession of land under the provisions of this Act, such person shall be bound to allow his name to be used as a Plaintiff or Defendant in such Action of Ejectment by any beneficiary or person claiming an Estate or Interest in the said Land: Provided nevertheless, that the person entitled or interested as such Trustee shall in every such case be entitled to be indemnified in like manner as a Trustee would before the passing of this Act have been entitled to be indemnified in a similar case of his name being used in any such Action or Proceeding by his *cestuique trust*.

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

Trustee to be indemnified.

**114** 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 such Registered Owner or any previous Registered Owner of the Estate or Interest in question is, or was registered, or to see the application of the purchase money, or of 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.

Purchaser from Registered Proprietor not to be affected by notice.

**115** In any suit for specific performance brought by a registered Proprietor of any Land under the provisions of this Act, against a person who having notice of any fraud affecting the title of the Vendor ~~who may have contracted to purchase such Land, the Certificate of Title of such registered Proprietor shall be held in every Court of Law or Equity, to be conclusive evidence that such registered Proprietor has a good and valid Title to the Land, and for the Estate or Interest therein mentioned or described, and shall entitle such registered Proprietor to a Decree for the specific performance of such Contract.~~

Registered Proprietor bringing suit for specific performance to be entitled to Decree.

*by writ. not  
Sess 2*

**116** It shall be lawful for a Mortgagee, as against a Mortgagor, either before or after obtaining an order for foreclosure as hereinafter provided, or for an Encumbrancee, as against an Encumbrancer, or for a Landlord, as against a Lessee or Tenant, whenever the term shall have

Mortgagee, Encumbrancee, or Landlord may obtain possession in certain cases.

expired or default shall have been made in the payment of the Interest, or Rent, or Annual or principal sum secured by any Memorandum of Mortgage, Encumbrance, or Lease for the time specified by this Act, in each such case, or that may be otherwise provided in any such instrument, whatever may be the value of the land or the amount of the rent payable in respect thereof; or the amount of any principal or annual sum charged thereon, and without any formal demand or re-entry to apply to the Supreme Court or a Judge thereof for an order that possession of the premises in respect of which such default as aforesaid shall have been made, shall be given up to the applicant, and thereupon it shall be lawful for the said Supreme Court or a Judge thereof to issue a summons directed to such Mortgagor, Encumbrancee or Lessee, calling upon him on a day and at a place to be named therein, to shew cause why the said Supreme Court or such Judge thereof should not order possession of such premises to be given up by such Mortgagor, Encumbrancer or Lessee to the Applicant, the service of which shall, in the case of a Landlord against a Lessee or Tenant, stand in lieu of a demand and re-entry; and in the case of a Mortgagee or Encumbrancee against a Mortgagor or Encumbrancer, shall stand in lieu of the notice by this Act required to be given in such case; and if the person entitled to redeem the said Land, or liable to the payment of such rent or annual sum shall, before the return day of such Summons, pay all the rent, interest, or annual sum in arrear or principal sum due and the costs, the said Summons shall be discharged; but if he shall not make such payment and shall not at the time named in such Summons show good cause why the Premises should not be recovered, then on proof of the service of the Summons, if the said Mortgagor, Encumbrancer, or Lessee shall not appear thereto, and of default having been made in payment of the rent, interest, or annual or principal sum for the time specified by this Act or otherwise provided as aforesaid before the plaint was entered, and in the case of a Landlord against a Lessee or Tenant that no sufficient distress was then found to be on the Premises to counteract such arrear, and of the Plaintiff's power to enter, and of the rent, interest, or annual sum being still in arrear, or principal money due, the Court, or a Judge thereof, may order that possession of the Premises mentioned in such Summons be given by the Mortgagor, Encumbrancer, or Lessee to the applicant on or before such day, not being less than Four weeks from the day of hearing, as the Court or a Judge thereof shall think fit to name, unless within that period all the rent, interest, or annual sum in arrear, or principal money due, and costs be paid; and if such Order be not obeyed, and such rent, interest, or annual or principal sum and costs be not so paid, the Court or a Judge thereof shall, at the instance of the Applicant, upon proof of the service of such Order, or that after diligent search made the party named therein cannot be found, issue a Writ authorizing and requiring the Sheriff to give possession of the Premises to the Applicant, every such Warrant to bear date on the day next after the last day named by the Court or a Judge thereof in the order for the delivery of the possession of the Premises, and to continue in force for Three Months from such date and no longer; and in the case of a Landlord against a Lessee or Tenant the Applicant shall, from the time of the execution of such Writ, except as hereinafter provided, hold the Premises discharged of the tenancy.

Right of  
Mortgagee of  
Lease not to be  
barred.

**117** Nothing herein contained shall extend to bar the right of any Mortgagee or Encumbrancee of any Lease, or any part thereof, who shall not be in possession, so as such Mortgagee or Encumbrancee shall

and do, within Six Months after the execution of such Warrant, pay all rent in arrear and all Costs and Damages sustained by such Lessor or person entitled to the remainder or reversion expectant on such Lease, and perform all the Covenants and Agreements which, on the part and behalf of the first Lessee are and ought to be performed.

**118** If the person having right to redeem any mortgaged or encumbered Land shall, within the time hereinbefore mentioned before the return day of such Summons, pay to such Mortgagee or Encumbrancee or, in case of his refusal, shall tender in the open Court and shall pay to the Treasurer of the said Colony all the principal money and interest due on such Mortgage or Encumbrance, and Costs; the moneys so paid to such Mortgagee or Encumbrancee, or to the Treasurer as aforesaid, shall be deemed and taken to be in full satisfaction and discharge of such Mortgage or Encumbrance; and the Recorder of Titles, upon the receipt of the said Treasurer, accompanied by a Certificate of the Court, or a Judge thereof, that such Sum has been tendered and refused, shall proceed to discharge such Mortgage or Encumbrance in the manner hereinbefore provided for the case of a Registered Mortgagee being absent from the Colony.

Mortgagor or Encumbrancer tendering the principal, interest, and costs in Court, and paying the same to the Treasurer, shall be deemed a full satisfaction.

**119** When the term and interest of any Lessee or Tenant shall have expired or shall have been determined either by the Landlord or the Tenant by a legal notice to quit, and such Tenant or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, it shall be lawful for the Landlord to enter a Plaint in the Court in manner aforesaid, and thereupon a Summons shall issue; and upon the hearing of such Summons the Court may order that possession of the Premises mentioned in such Summons be given by the Defendant to the Plaintiff forthwith, and to issue a Writ accordingly; and, if the Costs shall not have been sooner paid, the Court or a Judge thereof shall likewise direct execution for such Costs to issue.

Where term has expired, or been determined by notice, Court may order possession to be given forthwith.

**120** Any such Summons as aforesaid may be served by delivering the same at the house or place of business of the Defendant with some person there of the apparent age of Fourteen years; and if the Defendant cannot be found, and his place of dwelling shall either not be known, or admission thereto cannot be obtained for the purpose of serving such Summons, a copy of such Summons shall be posted on some conspicuous part of the premises sought to be recovered; and such posting shall be deemed to be a good service on the Defendant.

How Summons to be served.

**121** When default has been made in the payment of the interest or principal sum secured by Memorandum of Mortgage, for Six calendar Months, a registered Mortgagee may make application, in writing, to the Recorder of Titles for an Order for foreclosure; and such application shall state that such default has been made as aforesaid, and that the Land, Estate, or Interest mortgaged or encumbered has been offered for sale at public auction by a Licensed Auctioneer, after notice given to the Mortgagor, as in this Act provided, and that the amount of the highest bid at such sale was not sufficient to satisfy the money secured by such Mortgage or encumbrance, together with the expenses occasioned by such sale; and such application shall be accompanied by a Certificate of the Licensed Auctioneer by whom such Land was put up for sale, and such other proof of the matters stated by the Applicant as the Recorder of Titles may require; and

Mortgagee may apply to Recorder of Titles for an Order for foreclosure.

the statements made in such application shall be verified by the oath or statutory declaration of the Applicant.

Application to be referred to Lands Titles Commissioners.

**122** The Recorder of Titles shall refer such application to the Lands Titles Commissioners, who may direct the Recorder of Titles to cause notice to be published once in the *Hobart Town Gazette*, and once in each of three successive weeks in at least one newspaper published in the City of *Hobart Town* and Town of *Launceston*, offering such Land for sale; and shall, in such case, limit and appoint a time, not less than One month from the date of the advertisement in such *Gazette*, upon or after which the Recorder of Titles may issue to such Applicant an Order for foreclosure, unless in the interval a sufficient amount has been realized by the sale of such Land to satisfy the principal and interest moneys due, and all expenses occasioned by such sale and proceedings; and every such Order for foreclosure under the hand of the Recorder of Titles, 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 such Order, free from all right and equity of redemption on the part of the Mortgagor, or of any person claiming through or under him.

Notice to be given of intention to sign Certificate or Foreclosure Order.

**123** Before signing any Certificate of Title or Foreclosure Order pursuant to any direction of the Lands Titles Commissioners requiring advertisement to be made of intention to bring Land under the provisions of this Act, or to register any person as Devisee or Heir-at-Law or to issue a Foreclosure Order, the Recorder of Titles shall cause notice, to be posted in a conspicuous place in his Office appointing a day, not less than Seven days from the date of such notice, on which he will attend in the Public Room of the Registry Office to sign such Certificate of Title or Foreclosure Order; and it shall be lawful for any person interested in the Land referred to in such notice to attend personally, or by his Solicitor or Attorney, and, by Caveat in writing under his hand, to prohibit the signing of such Certificate of Title or Foreclosure Order; and any Caveat so lodged shall continue in force for the space of Fourteen days from the date of the presentation thereof to the Recorder of Titles, unless withdrawn by the Caveator or by order of the Supreme Court; and upon such withdrawal or order, or upon the expiration of such period, it shall be lawful for the Recorder of Titles to sign such Certificate of Title or Foreclosure Order, unless he shall have received an inquisition from the Supreme Court forbidding him so to do.

Registered Proprietor protected against ejectment except in certain cases.

**124** 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 Act, except in the following cases; that is to say:—

- (1.) The case of a Mortgagee as against a Mortgagor in default.
- (2.) The case of an encumbrancee as against an encumbrancer in default.
- (3.) The case of a lessor as against a lessee in default.
- (4.) The case of a person deprived of any land by fraud, as against the person registered as proprietor of such Land through fraud, or as against a person deriving, otherwise than as a transferee *bonâ fide* for value, from or through a person so registered through fraud.

- (5.) 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 such other Land, or of its boundaries as against the Registered Proprietor, of such other Land, not being a transferee of such other Land, or deriving from or through a transferee thereof *bonâ fide* for value.
- (6) The case of a Registered Proprietor claiming under the Instrument of Title prior in date of registration under the provisions of this Act, in any case in which two or more Grants or two more Certificates of Title, or a Grant and a Certificate of Title may be registered under provisions of this Act in respect to the same Land.

And in any case other than as aforesaid, the production of the Registered Grant, Certificate of Title, or Lease shall be held in every Court of Law or Equity to be an absolute bar and estoppel to any such Action against the person named in such 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.

**125** Any person deprived of Land, or of any estate or interest in Land, in consequence of fraud or through the bringing of such Land under the provisions of this Act, or by the registration of any other person as Proprietor of such Land, Estate, or Interest, or in consequence of any error, omission, or misdescription in any Certificate of Title, or in any entry or memorial in the Register Book, may, in any case in which such Land has been included in Two or more Grants from the Crown, bring and prosecute an Action at Law for the recovery of damages against such person as the Governor may appoint as nominal Defendant, and in any other case, against the person upon whose application such Land was brought under the provisions of this Act, or such erroneous Registration was made, or who acquired Title to the Estate or Interest in question through ~~fraud, such~~ <sup>fraud,</sup> error, omission, or misdescription: Provided always, that except in the case of fraud, or of error occasioned by any omission, misrepresentation, or misdescription in the application of such person to bring such Land under the provisions of this Act, or to be registered as Proprietor of such Land, Estate, or Interest, or in any Instrument executed by him, such person shall, upon a transfer of such Land *bonâ fide* for value, cease to be liable for the payment of any damages which but for such transfer might have been recovered from him under the provisions hereinbefore contained; and such damages, with costs of Action, may in such last-mentioned case be recovered out of the Assurance Fund against the Recorder of Titles as nominal Defendant.

Compensation of parties deprived of Land.

*by 26th Dec 1851*  
*Spencer*

**126** Nothing in this Act contained shall be so interpreted as to leave subject to Action for recovery of damages as aforesaid, or to Action of Ejectment, or to deprivation of the Estate or Interest in respect to which he is registered as Proprietor any Purchaser or Mortgagee *bonâ fide* for valuable consideration of land under the provisions of this Act on the plea that his Vendor or Mortgagor may have been registered as Proprietor through fraud or error, and this whether such fraud or error shall consist in wrong description of the boundaries or of the parcels of any land or otherwise howsoever.

Purchasers and Mortgagees protected.

**127** In case the person against whom such action for damages is directed to be brought as aforesaid shall be dead, or shall have been adjudged insolvent, or cannot be found within the jurisdiction of the

If Registered Proprietor be dead, Action to be against Recorder

of Titles as  
nominal De-  
fendant.

Supreme Court, then in such case it shall be lawful to bring such action for damages against the Recorder of Titles, as nominal Defendant, for the purpose of recovering the amount of the said damages and costs against the Assurance Fund hereinbefore described; and in any such case, if final judgment be recovered, and also in any case in which damages may be awarded in any action as aforesaid, and the Sheriff shall make a return of *nulla bona*, or shall certify that the full amount, with Costs awarded, cannot be recovered from such person, the Treasurer of the said Colony, upon receipt of a Certificate of the Court before which such Action was tried, and of a Warrant under the hand of the Governor, as hereinafter provided, shall pay the amount of such damages and costs as may be awarded, or the unrecovered balance thereof, as the case may be, and charge the same to the account of the Assurance Fund.

Action for re-  
covery of damages  
may in certain  
cases be brought  
against the Re-  
corder of Titles as  
nominal De-  
fendant.

**128** Any person sustaining loss or damage through any omission, mistake, or misfeasance of the Recorder of Titles, or any of his officers or clerks in the execution of their respective duties, under the provisions of this Act, and any person deprived of any land, or of any estate or interest in land through the bringing of the same under the provisions of this Act, or by the registration of any other person as proprietor of such land, or by any error, omission, or misdescription in any Certificate of Title, or in any Entry or Memorial in the Register Book, and who by the provisions of this Act is barred from bringing action of ejectment or other action for the recovery of such Land, Estate, or Interest, may in any case in which the remedy by action for recovery of damages as hereinbefore provided is barred, bring an action against the Recorder of Titles, as nominal defendant for recovery of damages, and in case the Plaintiff recover final judgment against such nominal defendant, then the Court or Judge before whom such action may be tried shall certify to the Treasurer of the said Colony the fact of such judgment and the amount of Damages and Costs recovered; and the said Treasurer thereupon, and upon the receipt of a Warrant under the hand of the Governor, countersigned by the Colonial Secretary of the said Colony, shall pay the amount of such Damages and Costs to the person recovering the same, and shall charge the same to the account of the Assurance Fund; Provided always that notice in writing of every such action, and of the cause thereof shall be served upon the Attorney-General of the said Colony, and also upon the Recorder of Titles one Calendar Month at least before the commencement of such action.

Treasurer, on  
receipt of Warrant  
from Governor  
to pay amount of  
award.

Notice of Action  
to be served on  
Recorder of Titles  
and Attorney-  
General.

If Action discon-  
tinued or Plaintiff  
nonsuited, the  
nominal De-  
fendant entitled to  
costs.

**129** If in any such Action judgment be given in favour of the nominal Defendant, or the Plaintiff discontinue or become nonsuit, the Plaintiff shall be liable to pay the full costs of defending such Action, and the same when taxed shall be levied in the name of the nominal Defendant by the like process of execution, as in other actions on the case.

Limitation of  
Actions.

**130** No Action for recovery of damages sustained through deprivation of land, or of any Estate or Interest in Land, as hereinbefore described, shall lie or be sustained against the Recorder of Titles, or against the Assurance Fund, or against the person upon whose application such Land was brought under the provisions of this Act, or against the person who applied to be registered as Proprietor in respect to such Land, or against the person executing any Instrument as aforesaid, unless such Action shall be commenced within the period of Six years from the date of such deprivation; Provided, nevertheless, that any

Persons having

person being under the disability of coverture, infancy, unsoundness of mind, or absence from the Colony, may bring such Action within Six years from the date on which such disability shall have ceased; and the Plaintiff in any such Action, at whatever time it may be brought, or the Plaintiff in Action for the recovery of Land, shall be nonsuited in any case in which the deprivation complained of may have been occasioned through the bringing of Land under the provisions of this Act, if it shall be made to appear to the satisfaction of the Court before which such Action shall be tried, that such Plaintiff, or the 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 such Land under the provisions of this Act, and had, wilfully or collusively, omitted to lodge Caveat forbidding the same, or had allowed such Caveat to lapse.

notice, or cognizant, neglecting to caveat, barred.

**131** All costs, charges, and expenses, which the Recorder may be put to by reason of his being made a Trustee by virtue of the provisions of this Act, shall be reimbursed to him out of the Assurance Fund, unless otherwise directed by the Supreme Court.

**132** Whenever any amount has been paid out of the Assurance Fund on account of any person who may be dead, such amount may be recovered from the Estate of such person by an action against his personal representatives, in the name of the Recorder of Titles: and whenever such amount has been paid on account of a person who shall have been adjudged insolvent, the amount so paid shall be considered to be a debt due from the Estate of such Insolvent; and a Certificate, signed by the Treasurer of the said Colony, certifying the fact of such payment out of the Assurance Fund, and delivered to the Official Assignee, shall be sufficient proof of such debt; and whenever any amount has been paid out of the Assurance Fund on account of any person who may have absconded, or who cannot be found within the jurisdiction of the Supreme Court, and may have left any real or personal estate within the said Province, it shall be lawful for the said Court, or a Judge thereof, upon the application of the Recorder of Titles, and upon the production of a Certificate, signed by the Treasurer of the said Colony, certifying that the amount has been paid in satisfaction of a Judgment against the Recorder of Titles, as nominal defendant, to allow the Recorder of Titles to sign Judgment against such person forthwith for the amount so paid out of the Assurance Fund, together with the costs of the application; and such Judgment shall be final, and signed in like manner as a final judgment by confession or default in an adverse suit, and execution may issue immediately; and if such person shall not have left real or personal Estate within the said Colony sufficient to satisfy the amount for which execution may have been issued as aforesaid, it shall be lawful for the Recorder of Titles to recover such amount, or the unrecovered balance thereof, by Action against such person at any time thereafter he may be found within the jurisdiction of the Supreme Court.

Moneys paid out of the Assurance Fund may be recovered.

**133** The Assurance Fund shall not, under any circumstances, be liable for compensation for any loss, damage, or deprivation, occasioned by the breach by a Registered Proprietor of any Trust, whether express, implied, or constructive; nor in any case in which the same Land may have been included in two or more Grants from the Crown; nor shall the Assurance Fund be liable in any case in which such loss or

Assurance Fund not liable in certain cases.

deprivation has been occasioned by any Land being included in the same Certificate of Title with other Land through misdescription of the boundaries or parcels of any Land, unless in the case last aforesaid it shall be proved that the person liable for compensation and damages is dead or has absconded, or has been adjudged insolvent, or the Sheriff shall certify that such person is unable to pay the full amount and costs awarded in any Action for recovery of such compensation; and the said Fund shall be liable for such amounts only as the Sheriff shall fail to recover from the person liable as aforesaid.

Recorder of Titles not to be liable for acts done *bonâ fide*.

**134** The Recorder of Titles shall not individually, nor shall any person acting under his authority, be liable to any Action, Suit, or Proceeding for, or in respect of any act or matter *bonâ fide* done, or omitted to be done in the exercise or supposed exercise of the powers of this Act.

Certificate of Title to be void if any person is in possession and rightfully entitled adversely to the Applicant Proprietor.

**135** Any Certificate of Title issued upon the first bringing of Land under the provisions of this Act, and every Certificate of Title issued in respect of the same Land, or any part thereof, to any person claiming or deriving Title under or through the Applicant Proprietor, shall be void, as against the Title of any person adversely in actual occupation of, and rightfully entitled to, such Land, or any part thereof, at the time when such Land was so brought under the provisions of this Act, and continuing in such occupation at the time of any subsequent Certificate of Title being issued in respect of the said Land; but every such Certificate shall be valid and effectual as against the Title of any other person whomsoever.

Person to whom Certificate or other Instrument of Title has been issued in error, or who wrongfully retains such Instrument, may be summoned.

**136** In case it shall appear to the satisfaction of the Recorder of Titles, that any Certificate of Title or other Instrument has been issued in error, or contains any misdescription of Land or of boundaries, or that any entry or endorsement has been made in error, on any Grant, Certificate of Title, or other Instrument, or that any such Grant, Certificate Instrument, Entry, or Endorsement, has been fraudulently or wrongfully obtained, or that any such Grant, Certificate, or Instrument is fraudulently <sup>or wrongfully</sup> retained, he may summon the person to whom such <sup>certificate or instrument</sup> Grant, has been so issued, or by whom it has been so obtained or is retained, to deliver up such Certificate or Instrument for the purpose of being cancelled or corrected, as the case may require; and in case such person shall refuse or neglect to comply with such summons, or cannot be found, the Recorder of Titles may apply to a Judge of the Supreme Court to issue a Summons for such person to appear before such Court or Judge, and show cause why such Grant, Certificate, or other Instrument, should not be delivered up to be cancelled or corrected, as aforesaid, and if such person, when served with such Summons, shall neglect or refuse to attend before such Judge or Court, at the time therein appointed, it shall be lawful for such Judge to issue a Warrant authorizing and directing the person so summoned to be apprehended, and brought before a Judge of the Supreme Court for examination,

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

Party appearing may be examined on oath.

Court may order the delivery of the Instrument to the Recorder of Titles.

**137** Upon the appearance before the Court or Judge of any person summoned or brought up by virtue of a Warrant as aforesaid, it shall be lawful for the Court or Judge to examine such person upon oath, and, in case the same shall seem proper, to order such person to deliver up such Grant, Certificate of Title, or other Instrument as aforesaid, and upon refusal or neglect by such person to deliver up the same pur-



suant to such order, to commit such person to any Gaol; and in such case, or in case such person shall have absconded, so that Summons cannot be served upon him as hereinbefore directed, the Recorder of Titles shall, if the circumstances of the case require it, issue to the Proprietor of the said Land such Certificate of Title, or other Instrument as is herein provided to be issued in the case of any Grant or Certificate of Title being lost, mislaid, or destroyed, and shall enter in the Register Book notice of the issuing of the said Certificate of Title, or other Instrument, and the circumstances under which the same was issued, and such other particulars as he may deem necessary.

In case of neglect or refusal, Recorder of Titles may issue a fresh Certificate or other Instrument.

**138** Upon the recovery of any Land, Estate, or Interest, by any proceeding at law or in equity, from the person registered as Proprietor thereof, it shall be lawful for the Court or Judge in any case in which such proceeding is not hereinbefore expressly barred, to direct the Recorder of Titles to cancel any Certificate of Title or other Instrument, or any Entry or Memorial, in the Register Book relating to such Land, and to substitute such Certificate of Title or Entry, as the circumstances of the case may require, and the Recorder of Titles shall give effect to such order.

Powers of Court to direct cancellation of Certificate or Entry in certain cases.

**139** If any person fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement 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 Instrument or Form issued by the Recorder of Titles, or fraudulently uses, assists in fraudulently using, or is privy to the fraudulently using of any Form purporting to be issued or sanctioned by the Registrar-General, or knowingly misleads or deceives any person hereinbefore authorized to demand explanation or information in respect to any Land or the Title to any Land which is the subject of any application to bring the same under the provisions of this Act, or in respect to which any dealing or transmission is proposed to be registered or recorded, such person shall be guilty of a Misdemeanor, and shall incur a penalty not exceeding Five Hundred Pounds, or may, at the discretion of the Court before whom the case may be tried, be imprisoned, with or without hard labour, for any period not exceeding Three Years; and any Certificate of Title, Entry, Erasure, or Alteration so procured or made by fraud, shall be void as between all parties or privies to such fraud.

Certain fraudulent acts to be deemed Misdemeanors.

**140** If any person is guilty of the following offences, or any of them (that is to say) :—

Forgery to be a Felony.

1. If he shall forge, or procure to be forged, or assists in forging the Seal of the Recorder of Titles, or the name, signature, or handwriting of any Officer of the Registry Office in cases where such Officer is by this Act expressly or impliedly authorized to affix his signature :
2. If he stamps, or procures to be stamped, or assists in stamping, any document, with any forged seal of the Recorder of Titles :
3. If he forges, or procures to be forged, or assists in forging, the name, signature, or handwriting of any person whomsoever, to any instrument which is by this Act, or in pursuance of any power contained in this Act, expressly or impliedly authorized to be signed by such person :

4. If he uses, with an intention to defraud any person whomsoever, any document upon which any impression or part of the impression of any seal of the Recorder of Titles has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, knowing the same to have been forged :

such person shall be guilty of felony ; and if any person is guilty of making a false oath or declaration concerning any matter or procedure made or done in pursuance of this Act, such person shall be deemed guilty of perjury.

Punishment of  
Felony.

**141** Any person convicted of Felony or Perjury under this Act shall be liable to be kept in penal servitude for any term not exceeding Ten years.

Conviction not to  
affect civil remedy.

**142** No proceeding or conviction for any Act hereby declared to be a Misdemeanor or a Felony shall affect any remedy which any person aggrieved or injured by such act may be entitled to at Law or in Equity against the person who has committed such act, or against his estate.

Rules of Supreme  
Court to apply,  
and same right of  
Appeal as in  
ordinary Actions.  
Supreme Court  
may make Rules,  
&c.

**143** In the conduct of actions under this Act, the same rules of procedure and practice shall apply, and there shall be the same rights of appeal as are in force or exist for the time being in respect of ordinary actions in the Court in which such action may be tried : Provided that the Judges of the Supreme Court shall have power from time to time to make rules and orders for regulating proceedings in the Supreme Court under this Act, and from time to time to rescind, alter, or add to such rules and orders.

Jurisdiction.

**144** Unless in any case herein otherwise expressly provided, all offences against the provisions of this Act may be prosecuted, and all penalties or sums of money imposed, or declared to be due or owing by or under the provisions of the same, may be sued for and recovered in the name of the Attorney-General or of the Recorder of Titles before any Court in the said Colony having jurisdiction for punishment of offences of the like nature, or for the recovery of penalties or sums of money of the like amount.

Commencement  
of Act.

**145** This Act shall commence and take effect from and after such day as the Governor in Council may determine before the First day of July, One thousand Eight hundred and Sixty-two.

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## SCHEDULE

## A.

*APPLICATION to bring Land under the provisions of The Real Property Act.*

I, *A.B.*, of \_\_\_\_\_ do declare [that I am] or [on behalf of \_\_\_\_\_ of that he is] seized of an estate of freehold [*here state whether of inheritance, or of a life estate, and whether held in trust*] in all that piece of land situated in [*here state the situation*] containing [*here state the area*] be the same a little more or less [*exclusive of roads intersecting the same, if any*] with [*here state rights of way and other privileges or easements appertaining, and set forth a sufficient description to identify the Land*] which piece of Land is of the value of £ \_\_\_\_\_ and no more, and is [*the Town Allotment or Country Section or is part of the Town Allotment, Country Section, or reserve*] originally granted to \_\_\_\_\_ by Land Grant under the hand and seal of \_\_\_\_\_ formerly Governor of the Colony of *Tasmania*, dated the \_\_\_\_\_ day of \_\_\_\_\_ numbered \_\_\_\_\_ in the plan of the [*District Township or County*] of \_\_\_\_\_ as delineated on the public maps of the Colony deposited in the Survey Office, Hobart Town. And I do further declare that I am not aware of any mortgage, encumbrance, or claim affecting the said Land, or that any person hath any claim, estate, or interest in the said Land at Law or in Equity, in possession or in expectancy, other than is set forth and stated as follows; that is to say [*here state particulars of mortgages, encumbrances, donor, or other interest, to which the land may be subject*]. 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 [*here state name and description of Occupier, or that the Land is unoccupied*], and that [*here state the names and addresses of Owners and Occupiers of Lands contiguous, thereto*] and that there are no Deeds or Instruments of Title affecting such Land in my possession or under my control, other than those enumerated in the Schedule hereto, or at foot hereto, and I make this solemn declaration, conscientiously believing the same to be true.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18

Made and subscribed by the above-named }  
 this \_\_\_\_\_ day of }  
 in the presence of me. }

Recorder of Titles [*or Commissioner of the Supreme Court.*]

I, *A.B.*, the above Declarant, do hereby apply to have the piece of Land described in the above declaration brought under the provisions of *The Real Property Act*.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18

*A.B.*

Witness to signature—

*C.D.*

## B.

*CAVEAT forbidding Lands to be brought under The Real Property Act.*

Take notice that I \_\_\_\_\_ of \_\_\_\_\_ claiming estate or interest [*here state the nature of the estate or interest claimed, and the ground on which such claim is founded*] in Lands described as [*here state particulars of description from declaration of Applicant*] in notice dated the \_\_\_\_\_ day of \_\_\_\_\_ advertising the same as Land in respect to which claim has been made to have the same brought under the provisions of *The Real Property Act* do hereby forbid the bringing of the said Land under the provisions of the said Act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18

Signed in my presence this \_\_\_\_\_ day }  
 of \_\_\_\_\_ }

To the Recorder of Titles of the Colony of *Tasmania*.

And I appoint \_\_\_\_\_, as the place at which notices relating hereto may be served.

## C.

[Royal Arms.]

TASMANIA.

## CERTIFICATE of TITLE.

A. B., of [here insert description, and if certificate be issued pursuant to any transfer reference to Memorandum of Transfer] is now seised of an estate [here state whether in fee simple or for life] 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 [County, Hundred, or Township] of [here insert sufficient description to identify the Land referring to map or diagram] which said piece of Land is [or is part of] the [Country Section or Town Allotment] marked delineated in the public map of the said [County Hundred or Township] deposited in the office of the Surveyor-General originally granted the day of under the hand and seal of Governor of the said Colony, to C. D.

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

Recorder of Titles. [L.S.]

Signed, sealed, and delivered in presence of  
the day of

## D.

TASMANIA.

## MEMORANDUM of Transfer.

I, A. B., being registered as the proprietor of an estate [here state nature of the estate or interest,] subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon in all that piece of Land, situated in the [County, Hundred, or Township] of containing [here state area] be the same a little more or less [exclusive of roads intersecting the same, if any, (Here state rights of way privileges, or easements, if any, intended to be conveyed; and if the land to be dealt with contain all that is included in an existing grant or certificate refer thereto for description of parcels and diagrams, otherwise set forth the boundaries in chains, links, or feet, and refer to plan delineated on the margin, or annexed to the instrument, deposited in the Registry Office), in consideration of the sum of £ paid to me by E. F., the receipt of which sum I hereby acknowledge, do hereby transfer to the said E. F., [all my estate or interest, or a lesser estate or interest, describing such lesser estate] in the said piece of Land.

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

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

## E.

TASMANIA.

## MEMORANDUM of Lease.

I, A. B., being registered as the proprietor of an estate [here state nature of the estate or interest] subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon, in that piece of Land situated in the [County, Hundred, or Township] of containing [here state area] be the same a little more or less, [exclusive of roads intersecting the same, if any, (here state rights of way, privileges, or easements, if any, intended to be conveyed.) If the land to be dealt with contains all that is included in an existing grant or certificate of title or lease refer thereto for description and diagram, otherwise set forth the boundaries in chains, links, or feet, and refer to a plan thereof on margin of or annexed to the lease or deposited in the Registry Office], do hereby lease to E. F., of [here insert description] all the said Land to be held by him, the said E. F., as tenant for the space of years, at the yearly rental of £ payable [here insert terms of payment of rent] subject to the following covenants, conditions, and restrictions [here set forth all special covenants, if any.]

I, *E. F.*, of [here insert description] do hereby accept this Lease of the above-described Lands, to be held by me as Tenant and subject to the conditions, restrictions, and covenants above set forth.

Dated this                      day of

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

(Signed)                      *A. B.*, Lessor.  
*E. F.*, Lessee.

## F.

### MEMORANDUM of Mortgage.

#### TASMANIA.

I, *A. B.*, being registered as Proprietor of an estate [here state nature of the estate or interest,] subject, however, to such encumbrances, liens, and interests as are notified by memoranda underwritten or endorsed hereon, in that piece of Land situated in the [County, Hundred, or Township] of                      , containing [here state area] be the same a little more or less [exclusive of roads intersecting the same, if any (here state rights of way, privileges, or easements, if any appertaining,) and if the Land to be dealt with contains all that is included in an existing Grant or Certificate of Title, or Lease refer thereto for description of parcels and diagram; otherwise set forth the boundaries in chains, links, or feet, and refer to plan thereof on margin of or annexed to the mortgage or deposited in the Registry Office.]

In consideration of the sum of £                      this day lent to me by *E. F.* of [here insert description] the receipt of which sum I hereby acknowledge, I do hereby covenant with the said *E. F.* that I will pay to him, the said *E. F.*, the above sum of £                      on the                      day of                      : Secondly, that I will pay interest on the said sum at the rate of £                      by the £100 in the year, by equal payments on the                      day of                      and on the                      day of                      in every year: Thirdly, [here set forth special covenants, if any.] And for the better securing to the said *E. F.* the repayment in manner aforesaid of the said principal sum and interest, I hereby mortgage to the said *E. F.* all my estate and interest in the said Land above described.

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

Signed by the above-named *A. B.*, as Mortgagor, }  
this                      day of                      in presence of *G. H.* }

## G.

### MEMORANDUM of Encumbrance for securing a sum of Money.

#### TASMANIA.

I, *A. B.*, being registered as Proprietor of an estate [here state nature of the estate or interest] subject, however, to such encumbrances, liens, and interests as are notified by memoranda underwritten or endorsed hereon, in that piece of Land situated in the [County, Hundred, or Township] of                      containing [here state area] be the same a little more or less [exclusive of roads intersecting the same, if any (here also state rights of way, privileges, or easements if any appertaining) and if the Land to be dealt with contains all that is included in an existing Grant or Certificate of Title, refer thereto for description of parcels and diagram, otherwise set forth the boundaries in chains, links, or feet, and refer to plan thereof, in margin of or annexed to the Bill of Encumbrance or deposited in the Registry Office.]

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

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

## H.

*TRANSFER of Mortgage, Lease, or Encumbrance to be endorsed on Original Mortgage, Memorandum of Encumbrance, or Lease.*

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

*C. D.* Transferror.

Signed by the above-named *C. D.* in the presence of *E. F.*, the            day of

Accepted, *X. Y.* Transferree.

## I.

## TASMANIA.

*POWER of Attorney.*

I *A. B.* being registered as Proprietor of an estate [*here state nature of the estate or interest*], subject, however, to such encumbrances, liens, and interests as are notified by memoranda underwritten or endorsed hereon in [*here refer to Schedule for description and content of the several parcels of Land intended to be affected, which Schedule must contain reference to the existing Certificate of Title, or Land Grant, or lease of each parcel*] do hereby appoint *C. D.* Attorney on my behalf to [*here state the nature and extent of the powers intended to be conferred, as whether to sell, lease, mortgage, &c.*] the Lands in the said Schedule described, and to execute all such Instruments, and do all such acts, matters, and things as may be necessary for carrying out the powers hereby given, and for the recovery of all Rents, and Sums of Money that may become or are now due or owing to me in respect of the said Lands, and for the enforcement of all contracts, covenants, or conditions binding upon any Lessee or Occupier of the said Lands, or upon any other person in respect of the same and for the taking and maintaining possession of the said Lands for protecting the same from waste, damage, or trespass.

In witness whereof, I have hereunto signed my name this            day of            in the presence of

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

## K.

## TASMANIA.

*REGISTRATION Abstract.*

[*Royal Arms.*]

[*Copy of Grant or Certificate of Title.*]

Pursuant to Act of the Legislature of the said Colony, intituled *The Real Property Act*, Sections            and           , this Registration Abstract is issued for the purpose of enabling the Registered Proprietor to deal with the above described Land at places without the limits of the said Colony, and shall continue in force from the date hereof until the            day of           , or until the same be surrendered to me for cancellation.

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

*Recorder of Titles.*

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

L.

*REVOCATION Order.*

I, *A.B.*, of \_\_\_\_\_ being seised of an estate [*here state the nature of the estate,*] all that piece of land [*here describe Land, referring to the existing Grant, Certificate, or other Instrument 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 \_\_\_\_\_ 18 \_\_\_\_\_ .

*A.B.* of \_\_\_\_\_

M.

*CAVEAT forbidding Registration of Dealing with Estate or Interest.*

To the *Recorder of Titles* of Tasmania.

Take notice that I \_\_\_\_\_, claiming Estate or Interest [*here state the nature of the Estate or Interest claimed, and the grounds on which such claim is founded*] in [*here describe land*], forbid the Registration of any Memorandum of Transfer, or other Instrument affecting the said Land, until this Caveat be by me, or by the Order of the Supreme Court, or some Judge thereof, withdrawn, or until after the lapse of twenty-one days from the date of the service of notice of such intended Registration at the following address.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 186 \_\_\_\_\_ .

Witness.

N.

*CERTIFICATE of Recorder of Titles or Commissioner of the Supreme Court taking Declaration of Attesting Witness.*

Appeared before me at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ *C.D.*, of \_\_\_\_\_ a person known to me and of good repute, attesting witness to this Instrument and acknowledged his signature to the same, and did further declare that *A.B.*, the party executing the same, was personally known to him the said *C.D.*, and that the signature of this said Instrument is in the hand-writing of the said *A.B.*

(Signed) *Recorder of Titles or Commissioner.*

O.

*CERTIFICATE of Recorder of Titles or Commissioner of the Supreme Court before whom Instrument may have been executed by the parties thereto.*

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

(Signed) *Recorder of Titles or Commissioner.*

## P.

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

For the bringing Land under the provisions of this Act, to be paid to the Lands Titles Commissioners, over and above the cost of all Advertisements herein prescribed to be in such case published :—

	£	s.	d.
When the Title consists of a Grant, and none of the Land included therein has been dealt with .....	0	2	0
When the Title is of any other description, and the value exceeds £300 .....	1	0	0
Ditto, exceeds £200 and does not exceed £300 .....	0	15	0
Ditto, exceeds £100 and does not exceed £200 .....	0	10	0
Ditto, when the value does not exceed £100 .....	0	5	0
Contribution to Assurance Fund upon first bringing Land under this Act, and upon the Registration of an Estate of Freehold in possession derived by Settlement, by Will, or Intestacy; in the Pound sterling .....	0	0	0½
Other Fees :—			
For every application to bring Land under the Act .....	0	5	0
For every Certificate of Title .....	1	0	0
Registering Memorandum of Transfer, Mortgage, Encumbrance, or Lease .....	0	10	0
Registering Transfer or Discharge of Mortgage, or of Encumbrance, or the Transfer or Surrender of a Lease, .....	0	5	0
Registering Proprietor of any Estate or Interest derived by settlement or transmission .....	0	10	0
For every Power of Attorney .....	0	10	0
For every Registration Abstract .....	1	0	0
For cancelling Registration Abstract .....	0	5	0
For every Revocation Order .....	0	10	0
Noting Caveat .....	0	10	0
Cancelling or withdrawal 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 at 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 Supreme Court .....	0	10	0
Taking acknowledgment of Married Woman .....	5	0	0
Taking Declaration in case of lost Grant or other Instrument, or where production of duplicate is dispensed with .....	0	10	0
Taking Affidavit or Statutory Declaration .....	0	5	0
For the exhibition or return of any deposited Instrument, or for exhibiting or returning Deeds surrendered by applicant Proprietor .....	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 Instrument drawn on Parchment .....	0	2	6
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