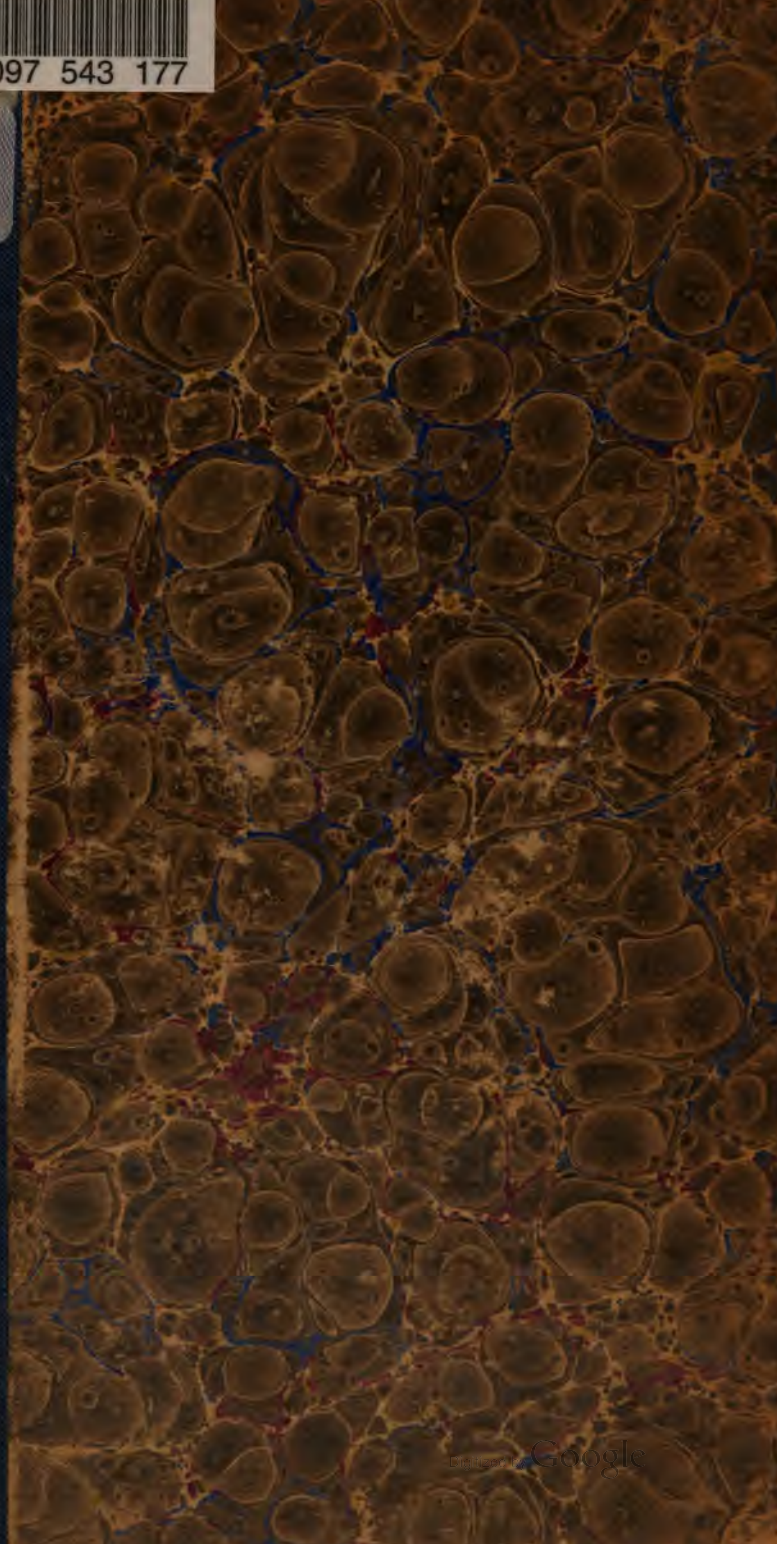
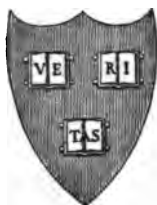


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THE
SOUTH AUSTRALIAN SYSTEM OF CONVEYANCING BY
REGISTRATION OF TITLE,

WITH
INSTRUCTIONS FOR THE GUIDANCE OF PARTIES DEALING,

ILLUSTRATED BY COPIES OF THE BOOKS AND FORMS IN USE IN THE
LANDS TITLES OFFICE,

BY
ROBERT R. TORRENS,

TO WHICH IS ADDED, THE

South Australian Real Property Act

AS AMENDED IN THE SESSIONS OF 1858,

WITH A COPIOUS INDEX

BY

HENRY GAWLER, ESQ., BARRISTER,

SOLICITOR TO THE LANDS TITLES COMMISSIONERS.



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TO HIS EXCELLENCY

SIR RICHARD GRAVES MACDONNELL, C.B.,

GOVERNOR-IN-CHIEF OF HER MAJESTY'S PROVINCE OF
SOUTH AUSTRALIA.

DEAR SIR RICHARD—

It has occurred that during your administration the two most important measures of our colonial history have been initiated and successfully developed. I allude to Constitutional Government and Reform of the Law of Real Property.

The manner in which you have borne yourself during the progress of events fraught with so much importance, as well as the support and countenance which you have afforded my efforts to perfect a measure of the merits of which your early professional education enables you to judge authoritatively, naturally induce me to dedicate to you the present work.

I confess, however, that it would more accord with my sentiments could the dedication be received irrespective of the official relations that have subsisted between us, as testifying friendship and esteem for your character in the relations of private life and as an English gentleman.

Faithfully yours,

R. R. TORRENS.

P R E F A C E.

AWARE that the critical reader will detect defects both in the composition and subject-matter of the following pages, I plead in extenuation that they have been written under circumstances not propitious for brilliant composition—during hours snatched from the period usually devoted to rest, after the exhaustions of the day spent in the performance of arduous duties.

If the outline sketch of the history of English Property Law affords nothing of novelty to the law student, it can hardly fail to interest and instruct the Yeomen proprietors of the Australian Colonies, for whom especially it was written.

The Law Reformer will detect in the measure of which I claim the authorship a similarity, amounting almost to identity, with that recommended in the report presented to the House of Commons by the Commissioners on Registration of Title on the 15th of May, 1857; and as I have already been accused of plagiarism on this score, and it is painful to rest under the imputation of having borrowed, without acknowledgment, from the labour and genius of others, I may be pardoned in referring to matters affecting myself, which otherwise I should not have obtruded on public notice, feeling that the reputation of having carried into successful operation the suggestions of men so eminent as the Commissioners referred to may well suffer for my ambition.

I am further induced to note these matters in the belief that information respecting the origin and progress of a reform so important as that treated of will not be without interest to the general reader.

Twenty-two years have now elapsed since my attention was painfully drawn to the grievous injury and injustice inflicted under the English Law of Real Property by the misery and ruin which fell upon a relation and dear friend who was drawn into the

maelstrom of the Court of Chancery, and I then resolved some day to strike a blow at that iniquitous institution.

My official employment in the Customs Service during seventeen years made me conversant with the Law of Shipping; and having just so much acquaintance with the principles of our Constitution and Law as ordinarily forms part of the education of an English gentleman, I was enabled to perceive that my object might be attained by applying to land the principles which regulate the transfer of shipping property. I at that time introduced the proposition to the consideration of my friends, the present Chief Justice, Sir Charles Cooper, and Mr. W. Belt, since one of the Solicitors to the Lands Titles Commission, and their reasoning against it convinced me that it was both feasible and effectual.

Appointed to the office of Registrar-General of Deeds in 1853, I gained some insight into the details of conveyancing, which tended to strengthen my convictions; and, having a seat in the Legislature in right of my office, the hour for action seemed to have arrived. I therefore communicated the outline of my long-cherished design to certain friends, who, whilst cordially approving the suggestion, persuaded me that I overrated my strength, and that I should assuredly be overborne by the power and influence of the legal profession. Under their advice the design was laid aside, but only for a time, until I should gather the requisite strength.

The citizens of Adelaide called upon me to represent them in the first Parliament under the New Constitution; and the leading journal of the colony about the same time, in a series of telling articles, drew public attention to the subject of law reform. These things indicated that the hour had in truth arrived. I therefore submitted my scheme in the form of a draft Bill to the Hon. A. Forster, Editor of the journal referred to, and to several other gentlemen on whose judgment I placed reliance. From these gentlemen I received some valuable suggestions, which are embodied in the measure as it now stands. To them I am further indebted for powerful and unwavering support throughout the struggle now so successfully terminated.

On the last day of January, 1857, I explained the proposed measure to the citizens of Adelaide, by whom it was received

with applause. The yeomen farmers of Yatala greeted its exposition with the like enthusiasm at a meeting in Salisbury on the 30th May following; and on the 4th of June in the same year the Bill was read a first time with acclamation in the Legislative Assembly. The second reading was carried without division on the 11th of November, the cause being much strengthened by the report on Registration of Titles presented to the House of Commons on the 15th May, which reached my hands most opportunely on the eve of the day appointed for the second reading. The third reading was carried by a majority of 19 to 7, notwithstanding the opposition of the Government. The measure passed the Legislative Council, and was assented to by His Excellency the Governor-in-Chief, on behalf of Her Majesty, the 27th of January, 1858.

At the request of the Government, backed by the persuasions of numerous friends of the cause in New Zealand and in the adjacent Australian Colonies, I abandoned a political career in order to devote undivided attention to the working details of the measure, which came into operation on the 2nd of July, 1858.

It is incumbent on me to acknowledge the able assistance afforded by Mr. Belt in preparing the Amending Bill of last Session, and to express my grateful sense of the high compliment implied in the almost unlimited confidence reposed in me throughout this struggle by a large majority of the South Australian Legislature.

R. R. TORRENS.

INTRODUCTION.

CHAPTER I.

ON THE ORIGIN AND GROWTH OF THE ENGLISH LAW OF REAL PROPERTY.

In the reign of James the First letters patent passed the Great Seal for establishing "An Office of General Remembrance of Matters of Record," the recital of which describes the laws relating to real property as "manifold, intricate, chargeable, tedious, and uncertain." This complaint has been repeated throughout succeeding ages until its most remote echo in time as well as in place is heard in the preamble to the South Australian Real Property Act, thus — "Whereas the inhabitants of South Australia are subjected to losses, heavy costs, and much perplexity, by reason that the laws relating to the transfer and encumbrance of freehold and other interests in land are complex, cumbrous, and unsuited to the requirements of the said inhabitants; it is therefore expedient to amend the said laws."

If there be any person who, having had experience in dealing with landed property under the English law, has arrived at conclusions opposite to those above set forth, this treatise is not addressed to him.

Leaving that individual (if such there be) undisturbed in his contentment with things as they are, and persuaded that after having traced out the origin and progress of a complicated evil we shall be more competent to judge of the appropriateness of the proposed remedy, I proceed, as a preliminary step, to lay before the rest of Her Majesty's lieges in Australia a brief sketch of the history of the English law of real property.

Meagre as are the records handed down from our Saxon forefathers, they, nevertheless, suffice to establish the fact that the lands of England were held in their time under free allodial tenures, and transferred from hand to hand, by public acknowledgment, before the folkmote or shiremote, which acknowledgments in those unlearned ages constituted a registration unwritten, but recorded in the memory of living witnesses, whereby title indefeasible was secured to the purchaser or grantee of any estate or interest in land.

Origin of uses.

In substitution for this liberal tenure, and simple yet effectual method of dealing, feudalism was imposed by our Norman conquerors, who, as Blackstone informs us, "Thereupon took a handle, not only to introduce the rigorous doctrines which prevailed in the Duchy of Normandy, but also such fruits and dependencies, such hardships and services, as were never known to other nations. This fiction of feudal tenures drew after it a numerous and oppressive train of servile fruits and appendages, such as aids, reliefs, premier seizin, wardships, marriages, escheats, and fines on alienation." The Statute of Mortmain claims especial notice here, because to the subtle and ingenious devices resorted to at that early date by the monastic body to evade this statute may be traced the more perplexing and costly complications of our present law, whilst to the usurpation of power by the Ecclesiastical Courts in maintaining these devices and contrivances in defiance of the will of the Legislature expressed in the Statute of Uses may be traced the origin of the power exercised at this day by our Courts of Chancery, and the distinction between Law and Equity, with conflicting jurisdictions, which constitutes a monstrous feature in our system of jurisprudence, and one not recognisable in any part of the world except Great Britain and certain of her colonies, into which it has been introduced in ignorance, or through infatuated adhesion to ancient institutions.

The procedure was on this wise:—The Statutes of Mortmain were designed to restrain ecclesiastical cupidity from preying upon superstitious weakness, enervated by the terrors of approaching dissolution, by which means the fairest lands of the realm appeared likely to be absorbed in the domains of the Church.

Uses were devised by the monks to evade these statutes. It was held that lands bequeathed to be held in trust by a layman for the use of the monastic body were not bequeathed to that monastic body; and under cover of this fiction the proprietors of that day were still at liberty to barter the succession to those earthly possessions which they were so soon to leave behind, for masses, requiems, and benedictions, by which an easier passage to another world might be secured.

That the Statute of Mortmain might not be set at nought in this manner, the Statute of Uses ordained that the bequest or transfer of land to one person in charge for the use of another should thenceforth be to all intents a bequest or transfer to that other person of the absolute ownership of the land itself.

The same device which sufficed to nullify the Statute of Mortmain was resorted to to evade this Statute of Uses, the fiction being merely carried one step further. It was maintained that if A conveyed to B in trust for C for the use of D, the statute would not apply.

The great Barons supported a doctrine in which they perceived a means of evading wardships, premier seizin, and other exactions incident to feudal tenures, The Ecclesiastical Court, by its decrees, confirmed it, and the law was set at nought.

Secret conveyancing grew out of "Statute of Uses."

This Statute of Uses—a failure as regards the ends sought to be attained—was adroitly availed of by the conveyancers for purposes never contemplated by its authors, namely, to substitute a system of private or secret conveyancing for the encroaching by delivery of corporeal possession of the land in presence of neighbours and witnesses which had prevailed up to that time.

As the Statute of Uses declared that every person entitled to the uses or profits of land should be in law the actual owner of the land itself, the conveyancers immediately perceived that they had only to make the seller or mortgagor of the land agree to hold it for the use of the buyer or mortgagee, and that the statute would instantly make the latter the actual owner. Hence arose the practice of transferring the legal estate to a mortgagee, when in reality the land is only intended to be hypothecated or pledged as security for the repayment of a loan. The instrument by which these transfers were effected, called a deed of bargain and sale, was required to be enrolled so as to be accessible to those who would be at the trouble of searching.

Perfect secrecy not being obtainable under this instrument, the conveyancers invented a means of accomplishing the transfer by two instruments called a lease and release, which transferred the ownership of the land without the necessity of enrolment; and this roundabout process of conveyancing by two instruments instead of one was that usually adopted in England and in these colonies until within the last twelve years, when the method of conveying the freehold or feudal seizin of all land by deed of grant prescribed in 8 and 9 Victoria, cap. 106, came to be generally used.

Opinions of eminent Jurists.

A few brief extracts from the works of eminent jurists and philosophers will suffice to characterize the system of law which has resulted to us from the conflict between arbitrary power and the subtlety of priests and lawyers, exercised (it must be admitted) somewhat unscrupulously in devising means for evading the tyrannical exactions of that power.

Lord Bacon describes the Statute of Uses as "A law whereupon the inheritances of this realm are tossed at this day like a ship upon the sea, in such sort that it is hard to say which bark will sink and which get to the haven."

Blackstone describes the law of real property in his day as "Frittered into logical distinctions and drawn out into metaphysical subtleties with a skill most amazingly artificial, but which serves no other purpose than to show the vast powers of the human intellect, however vainly or preposterously employed. Hence law, which, being intended for universal reception, ought to be a plain rule of action, became a science of the greatest intricacy when blended with the refinements engrafted on feudal property, which refinements were from time to time gradually introduced by the Norman practitioners with a view to supersede, as they did in great measure, the more homely but more intelligible maxims of distributive justice among the Saxons."

I will conclude these extracts by a quotation from the most recent work o

authority upon this subject—"The Handy-Book of Lord St. Leonards"—because the admissions of so zealous an admirer of existing institutions, of so stern an opponent of radical change, must be accepted by all with implicit confidence.

His Lordship informs us that "It is peculiar to the Constitution of this country that the law on the same case is frequently administered differently by different Courts, and that not from a contrary exposition of the same rules. It must sound oddly to a foreigner that, on one side of Westminster Hall, a man shall recover an estate without argument, on account of the clearness of his title; and that on the other side of the Hall, his adversary shall, with equal facility, recover back the estate." The above words, emanating from the man most profoundly learned in all the subtleties and involutions of the law constitute perhaps the most pungent sarcasm ever unconsciously uttered.

Such are the sentiments of the highest legal authorities. The public who have had experience in dealing in land, or who peruse the reports of law proceedings in our public journals, are in a position to decide whether Lord Brougham is correct in describing the law of real property as "*attended with many evils, giving birth to great vexations, involving the affairs of the community in lamentable uncertainty, and imposing upon the citizens who live under it a heavy burden;*" or whether Lord St. Leonard's is nearer the truth when he speaks of the same law as "*exhibiting a splendid code of jurisprudence.*"

Possibly, some of those who hold to the latter opinion may concur with me in regarding it as altogether too splendid and ingenious a work of art to suit either our means or our requirements in these colonies; that, like those exquisite carvings in ivory which we see marshalled in order in some recess or cabinet of a lady's boudoir, but never drawn out when the game of chess is really to be played, the proper place for this "*splendid code*" is the cabinet of the antiquary, where those who have leisure and a taste for that sort of thing, may admire this "*proof of the vast powers of the human intellect, however vainly or preposterously employed.*" In playing out the game of life in this work-a-day part of the globe, we require something less costly, something less artificial, something which we may handle with more freedom and rapidity.

CHAPTER II.

CAUSES WHICH HAVE THROUGH SO MANY AGES DEFEATED ALL ATTEMPTS AT LAW REFORM IN ENGLAND HAVE BUT LITTLE WEIGHT IN THE AUSTRALIAN COLONIES.

Power acquired by the legal profession.

When under a system, the history of which we have just traced out, a circuitous, involved, and secret method of conducting dealings in land came to be substituted for the simple and open procedure previously in use, the legal profession acquired a position of great influence and power.

Thenceforth no man could convert his property or conduct the most ordinary and simple transaction except through the instrumentality of a legal adviser. The complexities and intricacies introduced gave occasion for innumerable defects in title, which, if made public, would involve the proprietor in heavy law costs or ruinous losses; hence some member of the profession became to each proprietor, not only the indispensable agent, but also the secret confidential adviser.

This fiducial position was necessarily lucrative. The younger sons of the great proprietary families were attracted to enter a profession so honourable, and which held out such prizes to industry and genius.

A profession thus associated with the landed aristocracy of England, and from whose ranks the peerage was constantly being recruited by a succession of eminent statesmen, could not fail to become what we now see it, scarcely so much "an institution of the country" as "an estate of the realm," so intimately is the history of the profession incorporated with that of the nation.

It is not to be wondered at that non-professional men, whilst with one consent acknowledging that the law of real property "imposes upon the community a grievous burden," have shrunk from undertaking the task of reform which would place them in immediate antagonism with the most powerful body in the kingdom, impose upon them an oppressive responsibility, involve them in an almost Herculean labour, and (not the least deterring consequence) interrupt cordial friendly intercourse with men highly esteemed, whose interests are incompatible with the success of that enterprise.

Professional bias incapacitates for the work of reform.

Hence it is that the work of law reform has been left in the hands of lawyers; and without adopting the ancient proverb, "Hawks dinna paik out hawks' een," and without attributing any sordid motive, there are other influences no less powerful which operate to deter the professional mind from realizing the idea of thorough radical reform of the law. As Lord Brougham says—"They love and revere the mysteries which they have spent so much time in learning, and cannot bear the rude hand which would wipe away the cobwebs, in spinning which they have spent their zeal and their days for

perhaps half a century." The effect of education may be such as to prevent men seeing clearly or judging impartially. How else can we account for the fact that in the most important affair that can occupy the mind of men here below—"religion"—we find men adhering to that creed, be it what it may, in which they have been brought up?

It would seem as though the mind, confined for a length of time to run in grooves, loses the power to draw out from the deep-worn track. Hence, upon examining the projects of law reform emanating from legal men, even the most learned, we find them to be little better than palliatives, and are forcibly reminded of the language of Blackstone:—"To say the truth, these scholastic reformers have transmitted their dialect and finesse to posterity so interwoven with the body of our legal polity that they cannot now be taken out without a manifest injury to the substance. Statute after statute has been made to pare off these troublesome excrescences and to restore the law to its pristine simplicity and vigour; but still the scars are deep and visible, and the liberality of our modern courts of justice is obliged to have recourse to unaccountable fictions and circuities in order to recover that equitable and substantial justice which for a long time was totally buried under the narrow rules and painful niceties of a metaphysical and Norman jurisprudence."

Palliatives substituted for reform.

Since the above was written considerable improvement has been effected. The "circuities" have been curtailed somewhat, and many of the "unaccountable fictions" laid aside. The redundant verbiage in our Courts of Equity has been diminished. The fiction of "fines and recoveries" has been abolished, and those ancient marionettes, John Doe and Richard Roe, who were wont to figure as clown and pantaloons in the legal pantomime of dividing the oyster, bringing amazed bewilderment upon the litigants, and much gain to the profession, have been consigned to the tomb of all the Capulets.

Still, those improvements are but "*palliatives*"—but "*paring off of excrescences*." None have had the hardihood to contemplate clearing away the vast heap of rubbish which has accumulated in the course of so many centuries in order to reach the solid primitive foundation.

Continuing to consider this question, "How it comes to pass that the landed proprietors of England remain oppressed by this grievance so many ages after the conditions of tenure which gave rise to it have passed away?" the point which next strikes the mind is that in England law reform has not yet become a *people's question*.

In England the grievance affects a class; in Australia the people.

The lands of England are held by a comparatively small number of proprietors, and are handed down in the same family from father to son for generations, so that transfers are rare, and when they do occur are for amounts so considerable that the costs of conveyancing, great though they be, amounting on the average to two and a-half per cent. on the purchase-money

(as shown by the evidence taken by the late Parliamentary Commission), does not constitute a very heavy percentage upon the value of the property transferred. The class immediately affected (the landed gentry of England) are proverbially averse to changes in existing institutions; the genius of conservatism is opposed to any such radical reform as would lead to diminish obstructions which tend to preserve the hereditary acres in the old lines of descent.

While such obstacles render radical reform in the law of property all but hopeless in England, in the Australian colonies the case is altogether different. Here feudal tenures—the source of all the complication—never had existence. The colonists have from the commencement held their lands under free allodial tenure by grant from the Crown, and it is only through ignorance or lamentable oversight that the Imperial Government, when planting these settlements, did not with clear titles and free tenures re-establish also the simple and effectual methods of dealing in use amongst our Saxon forefathers, the principles of which are found preserved to this day in the Hanse Towns and other States of Germany.

Due care was taken that our lands should be held free from the onerous and invidious exactions of "tithe;" but, setting aside the religious sentiment involved, and regarding only the economic side of the question, the otherwise free lands of Australia, subjected to the English law of property, are thereby encumbered with a burden less than tithe in actual amount, but far more grievous in its ulterior consequences.

In Australia, as in England, in endeavouring to shake off this grievous yoke, we shall have to contend with those whose interests are incompatible with thorough law reform; but the legal profession, great as its influence and power undoubtedly are, does not in Australia occupy the position almost impregnable in which in England it is entrenched. In Australia the great mass of the people are, or confidently look to become, landed proprietors. In Australia, therefore, "thorough law reform" is essentially "the people's question." This it is which affords conviction of ultimate success if only the correct principle be adopted, and the labour of instructing the public mind be zealously undertaken and pursued through good report and evil report with patient endurance.

CHAPTER III.

THE FIVE PRINCIPAL GRIEVANCES WHICH RESULT FROM THE ENGLISH LAW OF REAL PROPERTY HAVING A COMMON ORIGIN IN DEPENDENT OR DERIVATIVE TITLE, MAY BE REMEDIED BY RENDERING TITLES INDEFEASIBLE ON REGISTRATION, THUS CUTTING OFF THE NECESSITY FOR RETROSPECTION.

Five grievances.

The grievances practically imposed upon the Australian colonists by the English law of real property may be classed under five counts :—

1st. By reason of the “complexity” thereof this community is held and firmly bound unto the conveyancers in such sort that no man may venture to deal with his own land except he use the hands of some member of that learned body.

This yoke might be borne if it were a mere abstract principle of villanage, but, like other monopolies, this of the conveyancers has induced that which constitutes the next count of this indictment, viz. :—

2ndly. “Heavy costs” are thereby imposed upon all manner of transactions in land, however ordinary or simple in their nature.

This, also, might be tolerated if security were attained by the expenditure, but the shortcoming in that respect constitutes the next count.

3rdly. “Losses and much perplexity” are entailed upon purchasers and mortgagees by reason of the uncertainty which in a greater or less degree hangs upon the validity of every title acquired under the English law of property.

4thly. In aggravation of these grievances, that law “is unsuited to the requirements of a progressing community,” by reason of the tardiness of the process of conveyancing thereunder.

These defects in the aggregate have brought it to pass that—

5thly. Through the operation of this law, the value of land as a secure and convenient basis of credit is greatly diminished.

Any substituted process to secure immunity from these grievances must be simple, inexpensive, invariably certain, and expeditious.

The South Australian Real Property Act, based upon the principle that title is conveyed by “registration,” not by execution of instruments, realizes all these requirements.

Dependent title the source of mischief.

The defects objected above have all a common source—“*The dependent nature of titles.*”

When title has to be traced back through successive proprietors, each instrument examined, each transaction scrutinized, to ascertain that all necessary for-

malities have been observed, and that no equitable interest or claim remains outstanding, "*No man may venture to deal with his own land*;" the experienced skill of the conveyancer must be had recourse to.

An enquiry which can only be conducted efficiently by men specially trained to the investigation of such intricacies, and which must be gone over afresh *ab initio* each time the property is dealt with, is necessarily attended with *heavy costs*.

A "dependent title" is a chain no stronger than its weakest link. Each transaction adds a fresh link, increasing the *perplexity and the risk of loss*.

Such retrospect as is indispensable when dealing with a "dependent title" must necessarily be a *tardy process*.

The cumbrous machinery required to be set in motion, the attendant risks, the time necessarily occupied in effecting mortgage, the costliness of the transaction and of the subsequent release when the title is "dependent," render land an *inconvenient basis of credit*.

Hence, as a first principle, the South Australian Real Property Act creates "independent titles;" retrospective investigation is cut off; each proprietor of the fee holds direct from the Crown subject to such mortgages, charges, leasehold or other lesser estates as may exist or be created affecting the land.

Indefeasibility of title.

Indefeasibility of the title created by registration follows of necessity as a corollary to the principle of "independent title," and out of this again arises the necessity of providing a fund from which rightful heirs and others may be compensated for the value of land which they are debarred from reclaiming against persons who have acquired title by registration as purchasers, mortgagees, or otherwise through the operation of the law.

These requirements are provided for in the Act referred to.

Advantage of prescribed forms.

A principle next in importance is, "that plain and simple forms be prescribed and provided, by use of which persons purposing to deal may be enabled to express distinctly the intention to which effect is to be given by registration."

Without this provision proprietors would remain under the necessity of calling in the conveyancer upon the most ordinary transaction. It affords the best guarantee that the monopoly of business secured to the legal profession, whenever agency is employed in conducting transfers and other dealings, may not be availed of for the exaction of excessive charges, or the revival of circuitous and perplexing methods.

The South Australian system has been considered experimental only in that it applies to land, methods of dealing which abundant experience has shown to be effectual and completely satisfactory when applied to property in shipping and in the funds. The procedure itself is confessedly no novelty.

Registration of title applied to land.

Mercantile men repeatedly ask—"How comes it that I can, and do constantly, transfer property to the extent of many thousands in the funds and in shipping with safety, at a trifling cost and with great rapidity and ease; yet when I desire

to purchase a rood of land not worth £50 I am at once involved in uncertainty, put to considerable expense and trouble, and delayed for months before the paltry transaction can be completed ?

Professional men as often reply—"There are essential attributes inherent in the nature of landed property which do not attach to movable property ; hence it is impossible to apply to land the methods with which you are conversant in dealing with shipping and funded property."

Upon this "Mercator" incontinently "shuts up;" but if allowed time for a little careful consideration, he could not fail to perceive that in this reply a false conclusion is franked under cover of a proposition incontrovertibly true.

No person attempts to deny that landed property in certain of its attributes differs from property in movables ; the logical inference from which is "that methods of dealing which are suitable and advantageous when applied to the latter may *possibly* be found inapplicable to dealings in land." The advocate, however, pushes the inference beyond this legitimate conclusion, affirming that "in consequence of these inherent differences the methods referred to are *necessarily* inapplicable." This the premises will not warrant ; and, upon analyzing these attributes, the converse of that conclusion is found to be nearer the truth. Thus—1st. Funded property may be said to be infinitely divisible without reducing the intrinsic value of each fractional part. This can hardly be said of land or house property. 2nd. There is an individuality attaching to landed property which practically does not belong to funded property. A man purchases some indicated block of land or house, and that identical block or house must be conveyed to him ; whereas stock is transferred without any necessity for discriminating or identifying any particular parcel. A Thousand Pounds Consols is £1,000 Consols whoever may have been the original creditor of the Crown for that sum. 3rd. Occupancy and possession are circumstances which demand special attention in purchasing land, else the purchaser may acquire a lawsuit as part of his bargain. This characteristic does not complicate transactions in the funds.

These are the essential differences between landed and funded property. They necessitate a minute and accurate description to identify the property intended to be dealt with, and a careful enquiry that the actual possession is the possession of the vendor, but they by no means operate to render a system of transfer by the act of registration inapplicable or inexpedient ; on the contrary nothing could more facilitate accurate identification or conduce to knowledge of the true occupancy than a well-organized system of registration.

This objection on the score of difference in essential attributes disappears like mirage upon investigating closely the nature of property in shipping. If the comparative indivisibility, in land constitutes a difficulty, it exists in a yet greater degree in a ship. Here also we find the characteristic of individuality. We must identify the particular ship to be transferred by a long description in the register. Here again the contingency of adverse possession requires to be guarded against. Finally, the attribute of immobility in land renders transfer

by registration more suitable for that description of property than for shipping which may be removed beyond the ken and jurisdiction of the registering officer; yet the transfer and encumbrance of shipping property through the instrumentality of registration has given universal satisfaction, ensuring certainty, simplicity, and economy.

The practicability and advantage of applying this method to dealings in land was not, even prior to the operation of the South Australian Act, a speculative question, dependent for solution upon argument. In many countries on the continent of Europe it was a realized fact. Instance the Hanse Towns, Prussia, and Holland; also, the dependencies of the latter State, and the several British possessions acquired by conquest from her.

There is, however, no necessity for wandering beyond the soil of England herself for the practical demonstration of this problem. The old copyhold tenures afford an admirable illustration of the security and economy attending transfer by registration. Lord Brougham, in a recently-published letter addressed to the Earl of Radnor, as President of the Law Amendment Society, speaking of his friend Mr. Faust, says:—"The experience to which I refer is as steward to many of our Cumberland copyhold and customary manors during a period of 30 years. Thus in one he has never found an instance of disputed title in all the 500 estates of the manor; they have every one been repeatedly passed by sale, mortgage, and devise or descent, and the cost of the conveyance never exceeds a few shillings and the length of the deed 100 words."

It may not be out of place here to explain that the various forms of tenure which grew out of the feudal system have long since been reduced to two species—common socage and copyhold. The one freed, it is true, from all the servile conditions and exactions of feudalism, but encumbered by the involved, costly, and uncertain forms of transfer, originating, as described in a previous chapter, from contrivances resorted to to evade those exactions. The other (copyhold) subject to some remains of these inconvenient exactions, such as heriots, customary services, interest of the lord in the timber, game, &c., but preserved free from the more oppressive exactions of the conveyancer, through the instrumentality of a method of transfer by surrender to the lord and issue of fresh title to the purchaser, such title being dependent on registry on the roll of the Manor Court, and evidenced by copy of that roll. This is the system referred to by Lord Brougham in the above quotation, and is, in principle, identical with the South Australian Act.

It is difficult of belief, but nevertheless a fact, that the most recent attempt to assimilate tenures (the 15th and 16th Vic., c. 51), instead of relieving the copyhold tenures from the oppressive and inconvenient conditions of a past age, and applying its simple, cheap, and secure method of dealing to all the lands of England, proceeds on the opposite principle of abolishing copyholds, and subjecting all lands to the grievous exactions of the conveyancers.

Assuredly this should be a warning to the Australian colonists against leaving the cause of law reform in the hands of professional men.

CHAPTER IV.

POLICY OF REGISTRATION—VARIOUS METHODS CONSIDERED.

Registration being the basis of the South Australian Real Property Law, the key to the entire position, it seems expedient, even at the risk of being tedious, to discuss at some length this part of the subject, especially as some of the most able and learned lawyers of the present day have pronounced very decided opinions condemnatory of such systems of registration as they were acquainted with.

Foremost amongst these stands Lord St. Leonards, who in the work referred to in a previous chapter condemns registration on the plea that "it wantonly exposes the affairs of all mankind." Registration proceeds upon the principle that without going the length of advertising or giving unnecessary publicity to transactions, it is nevertheless expedient that creditors and others interested should be enabled to ascertain the amount of debts or encumbrances secured upon the estates of those with whom they have dealings; and this policy has ever been recognised by the English Legislature, though opposed and set at naught by the lawyers.

Chief Baron Gilbert informs us that "the policy of the Statute of Enrolments (passed so long back as the 27th Henry VIII.) was to remedy the effect of the Statute of Uses, which, by executing all uses raised, introduced a secret way of conveyance, contrary to the policy of the common law. Accordingly the Statute provides that deeds when enrolled shall remain in the custody of the Custos Rotulorum, amongst the other records of the counties, to the intent that every party that hath to do therewith may resort, and see the effect of every such writing so enrolled." An Act of 4th and 5th William and Mary runs thus:—"Whereas great mischiefs and damages happen and come, as well to persons in their lifetimes, but more often to their heirs, executors, and administrators, and also to purchasers and mortgagees, by judgments entered upon record in their Majesties' Courts at Westminster against persons, the defendants, *by reason of the difficulty there is in finding out such judgments.*"

A more recent Act contains the following recital:—"Injustice is frequently done to creditors by frequent warrants of attorney to confess judgments for securing the payment of money, whereby persons in a state of insolvency are enabled to keep up the appearance of being in good circumstances, and the persons holding such warrants of attorney have the power of taking the property of such insolvents in execution at any time to the exclusion of the rest of the creditors." This policy was again endorsed by the Legislature during the present reign in 6 and 7 Vic., to enlarge the provisions of the previous Act, and is identical with that set forth in the Bills of Sale Registration Act. Thus—"Frauds are frequently committed upon creditors by secret bills

of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors."

Supported by so much legislative wisdom we may venture to maintain an opinion opposed to that of even a lawyer so eminent as Lord St. Leonards, and though the registration of assurances (the system of which His Lordship speaks) had secured that which it is supposed and intended to effect, we might yet hold that His Lordship, in denouncing that system as a "*wanton exposure*," used language which the occasion does not warrant. The validity given by Courts of Equity to secret mortgages by deposit of title-deeds and the length to which the doctrine of notice has been pushed, have, however, rendered registration of assurances a dead letter in this important particular, defeating the so often declared policy of the Legislature.

Index by maps impracticable.

His Lordship next objects that "a register would not work well without maps, and they would cost at least two millions." Passing for the present the objection that "registration would not work well without maps," it is very certain that registration would not work well with them; that is to say, if the method of indexing by maps is here referred to. This idea has captivated many, but, like numerous other theories, it will not stand the test of experiment. Any person may satisfy himself of this by taking a map of some settled district drawn to such a scale as would admit of a number or symbol being placed for the purpose of reference on each section or allotment; let him then divide these allotments, placing a number on each division, and again subdivide, numbering the subdivisions. Let him next attempt to indicate a recombination of some of these into one estate, and a fresh subdivision in lots of various sizes, each bearing its appropriate reference, number, or letter, and the result will be dire confusion if he keeps to the original map; or if he resorts to the expedient of fresh maps, he will find that the necessity for reference from one to the other, the vast number that would speedily accumulate, the difficulty of keeping them arranged in order for constant reference, would render the machinery so cumbersome and intricate as to be totally unworkable. Lord St. Leonards has referred to the cost of making these maps as prohibitory; but the cost of renewing them every five or six years as they are worn out or obliterated by handling, and the expense of the offices that would be required for their orderly arrangement, must also be considered.

The Parliamentary Commission of 1857, after taking evidence on this subject reports as follows:—"One of the witnesses has observed in his evidence that A map is a good servant but a bad master; very useful as an auxiliary, but very mischievous if made indispensable." In this opinion we concur." If this objection has such weight in England, where the boundaries of estates and farms remain unaltered for centuries, how fatal must it be in those new colonies where subdivisions and fresh combinations of landed estates are of daily occurrence.

In fact, maps are not available as material in "registration of assurances," though valuable, if not indispensable, aids in conveyancing, for the purpose of shortening or facilitating the description of parcels. It is for the latter purpose only they are availed of in the South Australian Act, under which conveyancing and registration are one and the same thing.

I have been induced to go into details upon this subject, because I find that a draft Bill for establishing a system of registration dependent upon maps has been recommended for adoption by a Select Committee of the Legislative Council of Victoria.

Objection to registration of assurance fatal.

The remaining objections urged against registration by Lord St. Leonards are—that under its operation, "by the negligence of an agent a purchaser or mortgagee may lose an estate if the seller or mortgagor fraudulently sell or mortgage to another person whose deed is the first registered;" and finally, that "the number of deeds requiring registry would destroy the plan by its own weight."

These are valid, insuperable, and fatal objections against "*registration of assurances*." In a subsequent chapter I will explain at length the South Australian system of *registration of title*, which is not obnoxious to either of them; but it is desirable first to discuss a point of very considerable moment, and which has been the subject of much controversy—Whether the requirement would be more effectively supplied by one central registry-office or by a system of district or country registers controlled by the central office in the capital?

Metropolitan or district registers.

The first consideration that suggests itself is, that though this, which remains a moot-point, had been decided and proved by the test of actual experiment in an old-established country like England, in favour of the district system, it would yet by no means follow that that method would be best adapted for a recently-settled country, where the centres of population can scarcely be said to be as yet finally determined. In connection with this view the consideration will suggest itself to the practical mind that an expansion of the system from metropolitan to district registration would not be difficult, whilst a concentration would be attended with so much difficulty as to be nearly impossible; and, therefore, that whilst the experiment has yet to be tried, it will be safe to commence with the metropolitan system, except in such colonies as New Zealand, where communication between the different settlements is so difficult that they are, for the purposes of fiscal regulations, practically as separate States.

The great difference in the expense of the two methods is the next consideration. Even in England the advocates of district registration recommended is as an addition to, not a substitution for, a central metropolitan registry. It would be a great error to conclude from this that the expense would be doubled only by this addition. Considering the nature of the buildings that would be required for district registration, and the economy of managing an extensive business by one establishment, I am of opinion, after more than

twenty years' experience in departmental management, that the expense would be increased fourfold by the adoption of the district system.

The advantages to be derived from district registration have been exaggerated. The metropolitan system applied even to registration of assurances would suit the convenience of a proprietary, probably greater in amount—if not numerically—than that which would be best accommodated by the district system, owing to the circumstance that large proprietors habitually reside and transact their affairs in the capital; but when applied to registration of title, the advantages of district registration in point of convenience become altogether insignificant.

Experience in South Australia.

The advantage referred to consists in saving to proprietors in remote districts the expense and delay attendant on communication between the resident solicitor and his correspondent in the metropolis, with occasionally risk attendant on the transmission of deeds. Under the system of registration of title in operation in South Australia, parties dealing in land fill up (for the most part without the aid of solicitors) the printed forms supplied for expressing their intentions. These, when signed and witnessed, are proved or acknowledged before the nearest Justice of the Peace, and transmitted through the post to the office in Adelaide, when effect is given by registration to the intention expressed, or the form is returned for amendment if the intention be not clearly expressed. Under that system the instrument which evidences the ownership of the estate or interest to be dealt with, be it grant, mortgage, or lease, is in effect an extract from the register book, and invariably bears upon it memoranda equivalent to memorials of all liens or interests affecting that estate or interest. The production of it immediately affords to the parties dealing all necessary information, except as regards caveats lodged, and this is obtained upon application to the Registrar-General through the post or by telegram.

South Australian system free from the objection on plea of facilitating fraud.

The risk of fraud by procuring priority in registration for a subsequent dealing, dwelt upon by Lord St. Leonards, is effectually guarded against by the law, which requires the surrender of the existing instrument of title for the purpose of endorsement as an essential part of the act of registration.

In questions of practice such as that now treated of, actual experience is the only certain guide; and in South Australia the metropolitan method, an outline of which is given above, has been extensively tested with most satisfactory results.

Transactions have been conducted through the post by persons residing 200 miles and upwards from the capital, and in some instances by persons residing in the adjacent colonies of Victoria and New South Wales, with safety, facility, economy, and dispatch.

CHAPTER V.

ON INDEXING, SEARCH, AND ACCUMULATION OF RECORDS.

Problem to be solved.

In the last chapter the accumulation of records was adverted to as rendering registration of assurances too unwieldy for beneficial use, even should it not involve the breaking down of that system of its own weight, as predicated by Lord St. Leonards. No system can meet the requirement, unless it be capable of indefinite expansion without becoming complex or too cumbrous for rapid and facile action. Hence the difficulty next in importance is to find a system of registration which shall work without an index, or a method of indexing so simple as to reduce to the minimum, liability to error or omission; which shall be comprised within moderate compass, yet so full and clear that searches may be attended with satisfying assurance of certainty, and conducted with ease and expedition.

Defects of existing methods.

The Parliamentary Commission on Registration of Titles reported to Her Majesty in May, 1857, the failure of existing systems in this essential in the following language:—"These registers are signally defective in not presenting at one view all the documentary evidence which a party investigating a title may have occasion to see. There is no guide to the searches which on a sale ought to be made in the register, except a previous investigation of the documents which may happen to be included in the vendor's abstract of title. When the names of former granters or owners of the land have been ascertained from the documents to which the purchaser obtains access, then (but not till then) he can search the register in the names of those former owners for any assurances that may have been executed by them. These searches must be repeated in new names as new light is from time to time thrown upon the title; whereas a register of deeds ought in our opinion itself to furnish consecutive information of the dealings with the land which have taken place, when once a reference to the proper head in the index has been obtained." The Real Property Commissioners had previously reported in the following language:—"We may here mention, as an important inconvenience belonging to the existing registers, and from which a system founded on classification would be exempt, that when registered deeds are indexed by names, several searches of the register at successive times are often necessary." And again—"The purpose of a repertory of documents of title is not answered in a perfect manner by any of the existing registers in this country. It is obvious that a register framed upon the principle of indexes by the names of parties could never be relied on for the discovery of the title anterior to the earliest deed to which the purchase may have access."

The Commissioners might have added that such a register could as little be relied on, "for discovery of the title," *subsequent* "to the earliest deed," as is proved by the following case within the experience of the writer. A, the proprietor under a registered deed, sells to B, who omits to register the conveyance: B then sells to C, who registers; A sells the land a second time to D, who sells to E. Upon search made by E's mortgagee, the title appears perfectly clear traced up to A through E and D, no clue being afforded either in deed or abstract by which the conveyance to C can be traced; and this being the first registered takes precedence unless complicity or fraud can be brought home to C, which would be extremely difficult.

Cause of failure, the want of practical experience.

These extracts are equally applicable to the laws for registration of assurances in operation in these colonies, and the failure therein pointed out may be accounted for by the circumstance that the authors of these systems, however learned in the law, lacked that practical knowledge which can only be attained by experience, and without which success in a purely mechanical process such as registration is rarely if ever attained. They were careful, moreover, to limit narrowly the discretionary power of the officers to whom the carrying out of their systems was entrusted—a principle excellent in itself, but which should not be applied until after the best method has been ascertained by actual experiment.

The New Zealand method.

A case in point is afforded in the colony of New Zealand, where the Registrar-General, experiencing the defects of the system instituted by law, has devised and brought into successful operation a method of indexing closely resembling that known as Duval's method, and this, though destitute of legal sanction, has entirely superseded the index prescribed by the Registration Act. Mr. Kelly had the advantage of starting his index simultaneously with the first issue of Crown grants, and it must be acknowledged that the introduction of his method under any other circumstances would be extremely difficult, if not impossible. As applied to registration of assurances, it remains open to most of the objections which caused the cognate system of Mr. Duval to be condemned by the Commission of 1850 on "Registration and Conveyancing," and the failure of repeated attempts to carry the Bill embodying that principle through the Imperial Parliament. Notwithstanding this it probably approaches perfection as nearly as is attainable when the principle of registration of assurances is adopted. Mr. Kelly's zealous exertions have secured for the colonists of New Zealand this important advantage—that their titles are preserved in the state most favourable to the introduction of the system of transfer by registration of title with ease and economy.

Separate indexes, or one index in common for all descriptions of instruments, or no index at all.

A consideration of great importance is, whether there should be set up several indexes, each referring to a distinct class of transactions, or one index

referring to instruments of all classes ; or, finally, whether registration may not be more advantageously conducted without any index at all ?

When it is considered that each instrument requires to be entered as many times as there are parties thereto, it will be admitted that the index will be sufficiently cumbrous without that classification, which entails the necessity of repeating the same names again and again in separate volumes, and opens a fresh liability to error by entry under a wrong class.

When introducing this branch of the subject it was laid down as the first requirement, and to which other considerations must be postponed that "*registration should be capable of indefinite expansion, without becoming so cumbrous as to interfere with certainty and rapidity in making search.*" Aiming at completeness, the framers of the various systems of which we have been treating have lost sight of this principle, and prescribed the keeping of separate indexes for the several classes of transactions. Under these systems search not unfrequently occupies three weeks or more, at an expenditure of twenty pounds and upwards, and the result after all is far from satisfactory.

No advantage in separate index.

That nothing is, in reality, gained even in completeness by these methods will be perceived on reference to the appendix, where an example is exhibited of the index under names in use in the South Australian Lands Titles Office. This is posted periodically from the journal ; each name is entered once only, and under it are several lines on which the nature of each transaction is indicated by a letter prefixed to the description of the parcel of land affected thereby, and this effectually answers all the objects aimed at by the advocates of separate indexes.

Recently proposed methods objectionable.

The report by the Commission of 1857 on "Registration of Titles" recommends three sets of indexes—"1st, an index of registered owners ; 2nd, an index of encumbrancers ; 3rd, an index of lessees." The effect of this would simply be to multiply the number of volumes and the liability to error threefold.

The draft Bill recommended by the Committee of the Legislative Council of Victoria for adoption prescribes two sets of indexes for each county—"No. 1 of lands, No. 2 of tenures, each having its map numbered in allotments." It is not shown how the system is to be worked ; but if ever brought into actual practice it will probably be discovered that two sets of maps will not suffice, as different portions of the same allotment shown on the map may be made respectively the subject of lease, mortgage, or settlement, and the attempt by cross lines to indicate those portions, placing on each a letter or number for reference, would in a short space result in confusion.

Registration without index feasible and advantageous.

The feasibility of conducting registration without an index will be perceived upon examining the Register-book and Journal of the South Australian system, examples of which are exhibited in the Appendix. The register book is comprised of the duplicates of grants from the Crown and of certificates of

title issued to proprietors of the fee-simple or other the greatest estate, in exchange for deeds of title surrendered to the Crown and cancelled. Each of these, representing the fee of a distinct property, constitutes a separate folium of the register-book; and as often as the fee of the entire or of any portion of the land comprised under an existing grant or certificate is transferred, that grant or certificate is cancelled wholly or in part, as the case may require, and a fresh certificate issued to the transferee. The grant or certificate contains a diagram of the land, drawn accurately to scale, and a verbal description of the parcels and of the parties entitled. It also recites easements and rights attached to the property or to which the same may be subject. The remainder of the folium is reserved for the entry of memorials of lesser estates existing, or that may be thereafter created, affecting the same land, such as leases, hypothecs (substituted for the old mode of mortgaging by transfer of the legal estate), encumbrances, &c. So soon as the prescribed form for intimating the desire of the proprietor to create, transfer, or extinguish any of these lesser estates, duly executed, is presented at the Lands Titles Office, a memorial of it is entered on the appropriate folium, under the grant or certificate representing the fee of the parcel of land affected thereby. A certificate of the day and hour of the entry of this memorial in the register book, with the volume and folium of the register-book in which it is entered, is endorsed upon the form, which, by such entry and endorsement, *becomes an instrument evidencing title to the estate or interest therein described*. The duplicates of all grants and certificates of title delivered to proprietors of the fee likewise bear upon them the volume and folium of the register book, constituted by their counterparts. The instruments evidencing title to lesser estates are numbered in a consecutive series. A counterpart of each is deposited in the strong room so arranged as to be immediately accessible; and the duplicate delivered to the party entitled. Thus each proprietor, whether of the fee or of any lesser estate or interest, holds one instrument, and one instrument only, evidencing his title, and this bears upon it the number of the volume and folium of the register book, whereon memorials of all existing interests that can affect the title of the parcel of land in which that estate or interest exists are exhibited together in the order of time in which each such interest was created.

Search made in person, through the post, or by telegram.

When therefore search is required to be made by a proprietor or person intending to deal, the instrument evidencing title in possession of the former is referred to to ascertain the appropriate volume and folium of the register-book, and upon payment of 2s. that volume is opened for perusal, or a certificate of search forwarded through the post or per telegram. If the party requiring search is not satisfied with the amount of information given in the memorials, the instrument itself is produced to him upon calling its number, which is prefixed to each memorial, or a certified copy of that instrument is forwarded to him through the post, at a cost of a couple or three shillings. A search thus

conducted, *without the assistance of an index*, rarely occupies ten minutes, and never exceeds half an hour.

Use of the Journal.

In the journal all transactions are entered in the order in which they take place. The first column gives the date and hour, the second the name of the proprietor, the third the name of the transferee, the fourth the letter indicating the nature of the transaction—thus S. L. M. E. indicate respectively sale, lease, mortgage, encumbrance—the fifth gives the number of the instrument, and the sixth, the volume and folium of the register book, where the history of the parcel of land affected is recorded. The journal may be resorted to to recover the clue necessary for making search whenever the party dealing has lost his duplicate of the instrument of title, but remembers some date on or about which any transaction affecting the land had taken place.

The method without index commends itself to the advocates of secret conveyancing.

Those who, with Lord St. Leonards, object to registration as a “wanton exposure of the affairs of all mankind,” will find in the above a method suited to their views, as no person, not even the registering officer, would be in a position to pursue enquiry, unless furnished with the clue to the folium of the register by a proprietor. Those who differ from His Lordship will object that in the case of a proprietor, losing the instrument evidencing his title, and also losing all memory of the approximate date of any transaction affecting the property, it would be extremely difficult, perhaps impossible, to recover the clue to the registry of the property. The reply is that such a case is probably 1 in 10,000; that the 9,999 would have the benefit of registration without publicity, and the 1 in 10,000 would be no worse off than proprietors similarly circumstanced in countries where no registration exists.

South Australian Index described.

The South Australian colonists have decided this question the other way, and an index, under names alphabetically arranged, example of which will be found in the Appendix, is provided. This will very rarely come into use for the purposes of search by parties dealing in land. Its utility will be to enable persons to ascertain how far the estates of those to whom they give credit are encumbered; also to enable a proprietor, who has lost the evidence of his title, together with his memory, to recover the clue to the history of his estate; likewise to enable heirs or assignees to ascertain with facility what land an intestate or insolvent proprietor had dealt in, and how he had disposed of his interest. An abuse of which this index is susceptible is, that it enables prying curiosity to get a knowledge of the affairs of landed proprietors, at a trifling expense in money and time.

It must here be added that the posting of this index, and the checking of it with that minute attention which is requisite in such a work, entail expense.

I have endeavoured to state both sides of this question fairly, though my views favour open registration. The utmost deference is due to the opinions

of such men as Lord St. Leonards, and the question is one which each community must decide for itself.

How cumbrous accumulation of records is prevented.

Concluding this branch of the subject I would remark—1st. That the grants and certificates of title cancelled in consequence of the transfer of the fee will be withdrawn from the register-book as the volumes require fresh binding. 2nd. That the single instrument representing each lesser estate or interest will be cancelled and withdrawn upon the expiration of that estate or interest.

The bulk of the register will therefore be one page or folium for each separate property held in fee simple at the time, and the number of instruments to be kept in order for reference will never exceed one for each lesser estate or interest.

Under other systems the register becomes in time swollen by an overwhelming number of volumes of memorials, enrolments, and index, each separate estate or interest being represented on an average by a dozen deeds essential to title.

Advantages of the South Australian method.

We have therefore warranty for claiming for the South Australian system of transfer by registration of title that it offers to the advocates of open conveyancing *with an index*, and to the advocates of secret conveyancing *without an index*, a method capable of indefinite expansion without becoming so cumbrous as to impede rapid and facile action—clear and comprehensive, that search may be conducted with ease and rapidity, and attended with satisfying certainty.

CHAPTER VI.

REGISTRATION OF TITLE, HOW APPLIED.

First introduction, the great difficulty.

Of those who concur in the opinion of Lord Bacon, that the English Property Law is "manifold, intricate, changeable, tedious, and uncertain, nine-tenths, perceiving the disease to be organic, confess no effectual remedy short of complete abolition of the English methods of conveyancing, followed by the establishment of registration of title, thereby to an extent reviving ancient Saxon institutions. Some nevertheless hesitate, deterred by the difficulties attending the application of this remedy. "There can be no question," say they, "that had this system been adopted at the planting of these colonies when lands were first granted from the Crown all would have gone well; our titles would have been preserved clear and susceptible of being transferred with certainty, facility, and economy, as those of the Hanse Towns have, under a similar institution, been preserved for centuries. As the case stands we see nothing to prevent the application of this system to all lands that may hereafter be granted from the Crown, but we see great difficulties standing in the way of its application to titles which, owing to the frequent trafficking in land prevalent in new countries, are already involved in complications as intricate as those which clog the average of English estates."

It is altogether vain to contemplate entering upon such a work as that of law reform ignoring the truth that, "when a great advantage is to be attained, a great abuse removed, difficulties commensurate must be encountered." The only considerations that can avail are—1st. Are the advantages sought really so great as to compensate for what must be sacrificed for their attainment? 2ndly. Will the means proposed certainly secure the objects sought? These questions settled, when a difficulty or obstruction presents itself it only remains to consider whether we shall go over it, round it, or through it; for it is a fact that obstacles which appear formidable in the distance generally cease to be so when encountered in a steady, "I-am-going-to-do-it" frame of mind.

There is, confessedly, difficulty in applying the system of registration of titles when frequent dealings under the involved and uncertain methods of the old law have perplexed the question of ownership; and our business is to consider how this difficulty may, with most advantage, be encountered. The methods urged for consideration with any authority or show of reason are—

Various proposals considered—First, that by the intervention of special tribunal.

1st. The establishment of a judicial tribunal, with powers resembling those of the Irish Insolvent Estates Courts, to investigate and decide finally and without appeal who shall be registered in respect of each property, as having estate or interest therein, upon the first bringing of the same upon the register. This

would be, as it were, "*going over the obstruction.*" The objections urged against it are the risk of injustice to absent or incapable persons who may have had no opportunity of preferring their claims. 2ndly. That the expense of the machinery to be set in motion would be prohibitory as regards the small estates held by the yeomanry and labouring classes comprehending a numerical majority of the titles in these colonies.

Secondly, by registration of claim established through the operation of the statute of limitations.

Another proposition is, that the person in possession should be registered in the first instance simply as such, and without warranty of title, until, through the effluxion of time, possession establishes title under the Statute of Limitations. This may be termed "*going round the obstruction.*"

The objections on the score of costliness and injustice urged as fatal to the previous proposition do not lie in this case, but they are avoided only by deferring for twenty years the benefits accruing from registration of title.

The men who have subdued the Australian wilderness will scarcely pause in their course to consider a measure the advantages of which are postponed to be reaped by the next generation; yet this is the idea embodied in the draft Bill recommended for adoption by the Committee of the Legislative Council of Victoria.

Thirdly, by transferring liability to claim from the land to the person recognised as proprietor, supplementing the personal security by an assurance fund.

It remains to consider the method in successful operation in South Australia. This proceeds upon the principle of transferring the liability to claim by a rightful owner from the land itself to the person of the individual to whom certificate of title may be granted in error, the personal security being supplemented by an assurance fund with Government guarantee. This method may be described as "*going through the obstruction.*" The Assurance Fund is created by a small percentage levied upon the value of all lands brought under the operation of the Real Property Act. From this fund, failing recovery from the person on whose application the first certificate of title is granted, compensation to the value of the land at the time of its being brought under the Act, and also the costs incurred in prosecuting the claim, are secured to rightful owners, who by the operation of the Act may be deprived of the remedy by action of ejectment.

The remedy by ejectment still lies against persons obtaining certificates of title by fraud; but purchasers, mortgagees, and others deriving estate or interest, *bonâ fide* for valuable consideration, from or through a person wrongfully registered in respect of the property, whether through fraud or error, are borne harmless both from ejectment and liability for compensation.

The value, for the purpose of compensation, is decided by the award of a Jury; and in case of the decease, insolvency, or absconding of the party liable, the claim may be preferred against the Registrar-General as nominal defendant, and liquidated from the Assurance Fund.

Procedure in Lands Titles Office of South Australia.

An account of the procedure in detail, with examples illustrative, will be found in the Appendix, under the head "Applications." It may suffice in this place to explain that claims to bring land under the Real Property Act with the deed and other evidence of title, are referred for examination to solicitors permanently retained for that purpose, who report upon each case to a Board constituted by the Registrar-General and two Commissioners. The sole function devolved upon this Board is that of deciding the extent, and manner in which each claim shall be advertised, and the period to be allowed after advertisement for parties interested to enter caveats forbidding the issue of certificate conferring indefeasible title on the applicant. The Board may, upon the advice of the solicitors, reject the application when the evidence is insufficient to establish at least a good holding title in the applicant. This Board exercises no judicial functions. If caveat be entered or adverse claim set up, all proceeding is stayed pending the decision of the Supreme Court. Applicants dissatisfied with the decision of the Board may bring the Registrar-General before the Supreme Court to show cause why certificate should not be granted, and the Registrar-General must, in such case, obey the direction of the Judges.

Benefits immediate and costs trifling.

The expense of resort to judicial tribunal is avoided by this method except on the occasions referred to, which, according to present experience in South Australia, do not occur oftener than once in three hundred and seventy cases, fully bearing out the opinions on this head expressed by His Honor Chief Justice Sir W. F. Stawell, in his evidence before the Committee of the Legislative Council of Victoria, in 1858. The South Australian Act likewise gives effect to views expressed by His Honor on the same occasion, in that it enables those who bring their land under its provisions "to derive all the advantages immediately which are to be derived only prospectively by the measure" recommended by that Committee.

The expense entailed upon the applicant proprietor bringing land under the Act, exclusive of contribution to the Assurance Fund, varies from one to three guineas, according to the nature of the title; yet this moderate charge covers the expense incurred by Government.

Feasibility not a problem, but a fact.

It may therefore be asserted, not as a proposition, but as a matter of fact, that the difficulty objected against the application of "registration of title" to estates of long standing has been successfully encountered in South Australia, and that the method adopted is free from defects which have been urged as fatal to other methods brought forward elsewhere.

Objections considered.

The sole objection raised against this method is "that there are cases in which money cannot compensate for privation of the land itself." This objection, if it had application at all, could only be in the rare and exceptional

cases in which the locality affords special advantages for conducting the trade or business of the party deprived, or in which the sentiment of affection for lands that had been handed down in families for generations would be outraged. Now, however strong this objection may appear when applied to the conditions existing in old countries, it has no application in colonies in which attachment to hereditary acres is a sentiment as yet practically non-existent, and one which, when developed in a future generation, will be protected from outrage by the operation of the very measure against which the objection is urged. Again, with regard to the class of cases first referred to, considering that the title of every applicant is carefully investigated by solicitors expressly selected for the work, and that, even when the evidence is satisfactory, parties interested are warned by public advertisement to come in and claim, the contingency of a rightful owner, actually in possession, being dispossessed through error (he would not be in case of fraud) is barely within the limits of possibility. The case, therefore, should it ever occur, would be one of *privation*, not of *deprivation*, and no established business could be interfered with. In truth, this objection lies in its full force, not against the South Australian Act, but against the English Property Law, under which the injury, nay, the ruin, of a purchaser *bonâ fide* for valuable consideration, deprived of the site on which he had established a business and expended capital, is a contingency of constant occurrence.

South Australian system consistent with principles of natural justice.

The position here taken startles, perhaps shocks, by its very novelty; but, contrasted with the English Law, it will be found infinitely the more consistent with the principles of natural justice.

If there be injustice in the rule which would compel a rightful heir to accept cash for his patrimony in the land itself, assuredly there is beyond measure a greater injustice in the old rule, which, in putting the rightful heir in possession of the land itself, bestows upon him therewith the patrimony of others invested thereon, it may be to ten times its value. Instances of this kind are but too familiar to persons conversant with dealings in land. In the mother-country they are comparatively rare in their occurrence and less glaring in their injuriousness. In England, in ninety-nine cases out of one hundred, the property is in a highly improved state when possession is taken, and its value far exceeds the sum expended in improvements by the existing occupier. In the colonies, all this is reversed; the improvements are in nine cases out of ten effected with capital of the party in possession, or with capital advanced upon the security of the property by others equally unconscious of wrong, and the land itself is of little value compared with the sum invested on it in improvements. Hence a rule of law sufficiently grievous in the old country inflicts an amount of wrong positively outrageous when applied to countries still in the course of settlement, and is in itself sufficient to justify the preamble to the South Australian Act in denouncing the English property law as "unsuited to our requirements."

The point under consideration constitutes an essential principle in the South

Australian system, and is of sufficient importance to warrant illustration by the narration of actual occurrences, even at the risk of prolixity.

Certain lands in South Australia passed through the assignees of an insolvent in India to purchasers. Of this a block of 184 acres, value £150, was subsequently sold off in allotments as a township, and houses and improvements placed upon it by the purchasers to the value of £5,000. Upon other portions of the estate situated in the City of Adelaide, and worth from £1,200 to £1,500, a bishop's palace, a chapel, and schoolhouse, also dwelling-houses of superior class, were erected, to the value of £7,000 to £8,000, when a question was raised as to the validity of the title given by the Indian Insolvent Court, and the Supreme Court of South Australia declared the heir-at-law of the insolvent, then deceased, to be entitled to the entire property.

Here the English law, as administered by the Supreme Court, in restoring to the rightful heir his patrimony, worth some sixteen hundred pounds, would bestow upon him therewith the patrimony of persons innocent of any fraudulent intention, amounting to at least twelve thousand pounds. Instances of this kind are more frequent than is generally imagined. They do not always obtain the notoriety attaching to proceedings in the courts of law, because the parties frequently surrender without litigation, aware that the expenses of a chancery suit would swallow up the entire property. Three such cases are at this moment pending in this colony within the knowledge of the writer.

To conclude this argument, as we cannot give the land to one and the improvements to another, there is no way of avoiding injustice other than that adopted in the South Australian Act, giving compensation in money to the rightful proprietor; and the plea of grievance on the score of privation of the land itself is purely imaginary in countries in which land is regarded as so much merchandize, prized just at what it will fetch in the market.

Economic aspect of the question.

Viewed as a question of general policy, the subject wears a most important aspect. Throughout these colonies, but especially in the cities of Sydney, Melbourne, and Adelaide, a very considerable extent of land which, but for doubts, for the most part upon mere technical points, affecting the title, would possess peculiar value as building sites, lie waste, receptacles of the offensive refuse of towns. If, by the operation of law, these defects could be cured, or the capitalist be assured against deprivation of the wealth expended upon the land, the vacant blocks which now disfigure the rising streets would immediately become available as building sites, and the wealth of the community be increased by the value restored to them as such.

I have been assured by a gentleman, whose information on this subject gives weight to his opinion, that the value of the property lying in this predicament in and adjacent to the cities of Sydney and Melbourne alone, exceeds half a million.

Herein assuredly we find grounds sufficient to urge our Legislatures to prompt action in eradicating a system of law which, like a noxious fungus, swells by absorbing into itself vital elements essential to the production of wealth.

CHAPTER VII.

SHOULD REGISTRATION OF TITLE BE COMPULSOBY OR
OPTIONAL?

A question of importance, and upon which considerable diversity of opinion exists, is, whether the system of registration of title should be made compulsory, or whether proprietors should be allowed free discretion to bring their lands under that system or to continue to transact their dealings as heretofore under the old law.

Before entering upon the discussion of this point it is necessary to explain that the compulsion here treated of goes the length of declaring all dealings in land, after a certain date, void unless they be transacted in accordance with the new system, but does not extend to compel persons to bring their lands under that system until they have occasion to transfer, mortgage, lease, or otherwise deal with them.

And again, that the advocates of compulsion must be prepared to supplement the South Australian system, as it at present stands, by a provision warranting the Registrar-General, under certain circumstances, to issue certificates of possession only, without warranty as regards the state of the title prior to the issuing of such certificate; for it is obvious that without this provision persons in possession under titles of the class rejected by the Lands Titles Commissioners (*i.e.*, that do not appear to be at least good holding titles) would be precluded from dealing with their lands altogether. Two additional clauses and a slight alteration in the language of some others would suffice for this.

Opinions of "Parliamentary Commissioners on registration of title."

The opinions entertained in England upon this question may be gathered from the following passage, extracted from the report of the Parliamentary Commission of 1857 on registration of title, under the head "Observations, introductory to the plan about to be recommended:"—

"With reference to registration, compulsory in this sense, it has been urged—on the one hand, that by not making the original registration of title compulsory, the gradual adoption (if it shall take place) of the new system will be so far a test of its usefulness and suitableness to the condition and wishes of the country, whilst its non-adoption would render it innocuous. It is further said that, considering that the measure is novel in its character, as well as in its operation—considering the advantage of gradually introducing it, instead of encumbering the Registry Office with a mass of applications which it would be difficult to get through—considering that the main object in

establishing such a system is to obtain, if possible, a facility of transfer which many persons whose properties are kept in a course of settlement may not desire immediately to possess—considering that the change is sure to recommend itself, if it is likely to be followed by those benefits which are anticipated, it would be advisable, at least in the first instance, to make the registration purely voluntary.”

In order to render the above passages clear to the comprehension of the general reader who may not have access to the Parliamentary Paper it is necessary to explain that the report recommends the adoption simultaneously of two methods of registration of title. The one, affording no warranty of title, is in principle similar to that reported on by the Committee of the Legislative Council of Victoria in 1858; the other, giving warranty of title, is in all its leading characteristics identical with the South Australian Real Property Act.

The opinions entertained upon the same subject in Victoria may be gathered from the evidence of the Chief Justice Sir W. F. Stawell and of J. Carter, Esq., barrister, given before the same Committee, as follows:—

“Chief Justice Stawell.

“Query 13. By the Chairman—Then do I infer correctly that you would not allow any person to be registered until he had first obtained his clean bill of health, or would you allow him to register, and get his bill of health when he liked?—I would rather not have any of those measures compulsory. I prefer the community seeing the advantages and being led by degrees into adopting them. I would allow any one to register; but for the sake of the public and in order to avoid their being misled, I would draw a marked distinction between those cases where the title had been investigated and approved of, and where it had not.

“14. That might be done by a separate class of registration—a registration of certified titles, and a registration of uncertified titles?—I should wish to avoid that, not only on account of the expenses of the officers, but also because I think some confusion might afterwards ensue; at the same time the question is not without its difficulties. If it is rendered compulsory, great injury might be inflicted on absent owners; and if not compulsory, some may be disposed to incur the expense of investigation, others may not be prepared or not even disposed to do so, and others again may not be prepared with the necessary proof of a clear title. I do not, therefore, see how registration of titles enquired into and approved of, and of titles not enquired into or not approved of, can be avoided, but the registration itself will be the same in both instances; the only difference will be that in the one case the title prior to registration must be enquired into, and in the other it need not. But in any scheme great care should be taken to prevent the public being misled as to the effect of registration. Many non-professional persons attach greater importance to registration than it really deserves; and I fear that they, although men of education, might be misled, and imagine that if a title is registered it is quite right. I may, for instance, state that many persons are under the impression that every

sale under a decree of a Court confers a good title, whereas there never was a greater mistake. It generally happens that the title is investigated very accurately before the decree is made, but the Court merely sells what the defendant in the particular case has; and yet the general opinion even amongst the most educated men, not professional, and an opinion not unnaturally arrived at, is that every sale under a decree of Court confers a good title; so here I fear that many men would imagine that as the title has been registered, it must therefore have been investigated. It would, therefore, be desirable in my opinion to guard as much as possible in any legislative enactments against any such misapprehension."

Replies of J. Carter, Esq., to the Chairman:—

"Query 136. Every man should certainly show his title before he was placed on the register as owner. The advantages of the register would induce all persons who possibly could get their names placed there to have them so placed. I would not make it compulsory on every person to register his present title."

"141. I would only permit the registry of a proper title. *Deeds would not have to be registered according to my proposal.*"

"143. I would suggest that persons should be allowed, on proving a proper title, to go on the register if they pleased; but whenever they got on the register my plan would be to allow of no transfer of their estate unless it was made by an entry upon the register, and I should say, 'Until you make a transfer on the books we do not recognise the devolution.' Thus, when the owner is once placed on the books and every subsequent devolution appears on the books, that will show the title to be absolute in the last registered owner."

"145. I think allowing a man to register unless he proved his title first would give rise to great frauds upon purchasers. Practically, they would never go into the prior title."

"147. I would make every man prove his title before he came on the register at all, and then every devolution would appear on the register the same as stock in the English funds or shares in a public company; *and only in that mode, in my judgment, can you simplify the conveyancing system.*"

The opinions above expressed agree with the principle of the South Australian Act as finally passed by the Legislature; but it must be observed that an overwhelming majority of the Legislative Assembly of that colony declared in favour of making the measure compulsory after the lapse of six years. The clause embodying that principle was negatived by the Legislative Council. Of late, however, owing to causes which will be presently explained, opinion, both in the Legislative Chambers and amongst the public at large, has set decidedly in favour of the compulsory principle, insomuch that whenever it may be deemed necessary again to amend the Act, there is little or no doubt that the restoration of that clause will be insisted upon.

Argument in favour of compulsion.

The arguments adduced in South Australia by the advocates of compulsion

are—1st, the inexpediency and costliness of keeping two systems of law in operation in the same country, at the same time; 2ndly, and chiefly, that unless the measure be made compulsory, the legal profession will find means to deter their clients from availing themselves of its provisions, and thus the progress of the new system will be retarded—if, indeed, the law be not rendered altogether a dead letter, as has been the case with numerous other enactments having for their object legal reforms which involved reduction in the cost of conveyancing.

How far experience bears out this argument.

The event has in one respect proved the correctness of these views, for the legal profession in South Australia have, as a body, exhibited decided hostility to the measure, using every means, "*aut fas, aut nefas*," to deter the public from availing themselves of its provisions. The conclusion, however, is not borne out, for, despite the powerful influence excited against it, month after month exhibits a steady increase in the business transacted, insomuch that the new system, if it should continue to make progress at the present rate, will have absorbed the entire conveyancing business of the colony ere five years have expired. The law, therefore, is not rendered a dead letter by this opposition, but the result has been that many persons, who under other circumstances would never have thought of dealing in land without calling in professional aid, finding themselves under a sort of compulsion through the uncompromising character of the hostility referred to, have acquired the habit of transacting their own conveyancing business under the Real Property Act, and will in all probability continue so to do after that hostility has died out. Thus, as pigs, when they attempt swimming against stream, cut their own throats, the South Australian conveyancers, by struggling against the new system, have rendered its effect vastly more disastrous to themselves than it would have been had they complacently submitted to the inevitable necessities of progressive reform.

Argument not applicable in other colonies.

The argument from professional repugnancy has an especial application in South Australia, owing to the circumstance that in that colony the profession is not divided into the distinctive grades of barrister, attorney, &c., and consequently the interests of the entire profession are alike affected when the emoluments of conveyancing are placed in jeopardy. There is no probability that in the other colonies the professional opposition will be the same either in its character or in its amount. In New Zealand, on the contrary, there is reason to believe that the profession will cordially co-operate, if they do not lead, in introducing a system of thorough reform, for the adoption of which, as has been before remarked, the state of the titles in that colony affords facilities enjoyed in no other place. In Victoria, again we find His Honor Mr. Justice Barry in 1857, giving the following evidence before a Committee of the Legislative Council on conveyancing:—"There is a plan which would require to be judiciously matured—the surrendering the estates to the Crown, and the having new

grants issued, care being taken that all outstanding titles were introduced, and providing that they should be effectually barred." And it is impossible to peruse the evidence given before the Committee of 1858, on the Transfer of Land Bill, by His Honor the Chief Justice Sir W. F. Stawell, and by J. Carter, Esq., barrister, without being struck with the remarkable coincidence of the opinions expressed with the principles which have been matured and brought into successful operation in the South Australian Real Property Act.

Encouragement to Law Reformers in other colonies.

Backed by such authorities whoever takes up the task of introducing registration of title in that colony may with confidence encounter any opposition that may be raised against the good cause.

Benefits that have resulted from the freedom of choice allowed in South Australia.

If in South Australia the voluntary principle has retarded the general adoption of the measure, that circumstance is not without its advantages. The gradual progress of business has allowed time for training the officers of the department in the novel duties they have to perform, and for testing the sufficiency and suitableness of the new machinery set in motion. It also affords to the conveyancers' engrossing and law clerks deprived of occupation by the Real Property Act a day of grace, during which they may seek out some fresh career in which success will not, as is now the case, afford a measure of the amount of loss and anxiety entailed upon their fellow-citizens.

I have endeavoured to state fully and impartially the argument on both sides of this question. The weight of reason appears to me to incline in favour of allowing proprietors free discretion to elect the system under which they will hold their lands. Compulsion necessitates separate methods—"registration of certified titles" and "registration of uncertified titles"—a contingency which His Honor Sir W. F. Stawell "would wish to avoid, not only on account of expense, but also because some confusion might afterwards ensue." Subscribing as I do with but little reservation to the opinions expressed by His Honor on the occasion referred to, there appears to me especial force in the above remark. The double method would diminish the simplicity of the South Australian system; and whatever does that, *pro rata*, diminishes its capability of expansion without becoming cumbrous, and introduces a liability to error from which it is at present free.

The object is to relieve the large class who hold under titles subject to technical defects rather than the few who hold under positively bad titles.

In a measure of this nature the interests of the great mass of the community should be considered preferentially to that of the few. It is true that a very large proportion of titles are what are called "blistered," or unmarketable, but the evidence collected by the English Parliamentary Commission and by the Committees of the Victorian Legislative Council shows that absolutely bad titles are less numerous than is generally imagined. The experience of the South Australian Lands Titles Commissioners, so far as it extends, would place the proportion of these at less than 3 per cent.; and it would seem advisable to

leave these to be cured by the operation of the Statute of Limitations, rather than complicate the machinery by a double process.

It is believed that fully one-third (in value) of the lands in these colonies is held under titles more or less imperfect. If the general estimate, that from 10 to 50 per cent. would be added to the market value of these lands by remedying these defects, be at all near the truth, there would appear to be sufficient to induce proprietors to exchange their present titles for indefeasible certificates under the new system, without resorting to any compulsory measures.

CHAPTER VIII.

FUNCTIONS OF THE REGISTRAR.—PRINCIPLES AND POLICY OF THE METHOD OF TRANSFERRING, LEASING, AND MORTGAGING OF LAND, BY "REGISTRATION OF TITLES."

Constitution of the Department.

It has been explained in a preceding chapter that a Board consisting of the Registrar-General and two Commissioners, advised by counsel specially retained, decide upon the manner and extent to which applications for bringing land under the new system shall be advertised; that claims or disputes, when they arise, are referred to the ordinary tribunals for adjustment, the Lands Titles Commission exercising no judicial functions; and that in the event of non-claim within the time limited by the Board, and upon the production of evidence sufficient to establish at least a good holding title, or, in the event of claim, pursuant to any order of the Supreme Court, the land is brought under the Real Property Act.

Upon this step the registration of title commences; and, being purely a mechanical process, the department appointed to conduct it should, as closely as possible, be assimilated to a piece of machinery. No judicial functions should be imposed upon the Registrar—integrity, order, precision, punctuality, and, in the chief officer, the faculty of control are the qualifications requisite.

The faculty of control is a natural gift, not an acquired power; and there appears nothing in the study of law, any more than there is in the study of divinity or medicine, especially conducing to the acquirement of the other qualities enumerated. These remarks are called forth by observing a general tendency in existing Registration Acts to remove the department from the control of the Executive, and subject it to that of the Law Courts, and more particularly by the Draft Bill submitted to the Committee of the Victorian Legislative Council, which prescribes that the Registrar shall be a barrister of five years' standing. Unless it can be shown that the professional status referred to evidences especial qualification for the office of Registrar, it would seem impolitic, especially in a young community, to limit the choice of the Executive to men in that particular position. It is not likely that the services of a barrister of five years' standing, who possessed abilities at all above mediocrity and the vigour required for conducting such a department, could be obtained without additional expense, if the office be by law made a requisite of the profession.

Powers of Registrar.

The South Australian Act leaves the post of Registrar open to all classes, empowering that officer to administer oaths, to call for the production of instruments, to summon and examine witnesses, and, with the sanction of the Governor and Executive Council, to make rules for the management of the department, and to prescribe and vary the forms of books and instruments to be used in conveyancing by Registration of Title.

Transfers.

Transfers are conducted on the principle advocated by His Honor Mr. Justice Barry—(see preceding chapter)—the existing title being surrendered to the Crown, and a fresh title issued from the Crown vesting the estate in the transferee indefeasibly. The details of procedure in the case of transfers, leases, mortgages, encumbrances, and settlements, as also the mode in which transmissions in case of death or insolvency are authenticated to the Registrar, and by him recorded, are minutely described in the Appendix, and illustrated by numerous examples. In this place we are discussing principles only. That upon which the method of transferring the fee is based commends itself to the understanding of all men by its simplicity. It is unnecessary to point out to an Australian the advantages of holding land under grant direct from the Crown, instead of under title dependent for its validity on the validity of all transactions by previous proprietors for 20 years back—under a title evidenced by a single instrument of convenient size in the possession of the proprietor, instead of under title evidenced by numerous and verbose deeds, some of which are generally in the custody of others, under covenant to produce, it is true, but such production is ever attended with expense and trouble, and the covenant is not unfrequently found to be a nullity through the absence or death of the parties liable. By adhering to this, principle abstracts and costly retrospective investigations are effectually and in perpetuity got rid of, and a purchaser or mortgagee can see at a glance the precise state of the title, without having to search a register or to call in professional aid.

Leases.

Leases are stripped of verbiage and tautology by declaring certain invariable covenants to be implied, and by prescribing abbreviated forms of words, by the use of which usual covenants may be introduced if desired by the parties. This and the facile method of transferring or surrendering these lesser estates by the endorsement of half a dozen words have in South Australia encountered especial hostility from those whose remuneration was, under the former system, measured by the quantity of sheepskin spoiled.

Mortgage.

The method by which, under the South Australian Real Property Act, land is made available as security for the repayment of money borrowed, or for the payment of an annuity or sum of money, is novel to the English law, though analogous to that in general use on the Continent of Europe.

Origin of the Method by Transfer of the Legal Estate.

The man unbiassed by the effects of professional education, or whose perceptive powers have not been blunted by long familiarity with the abuse, cannot rise from the study of the system of mortgage as established by the English Law without exclaiming against the perverse ingenuity whereby a matter simple enough in itself is rendered most complex, costly, tedious, insecure, and permanently injurious. These are the sentiments invariably expressed by persons conversant with mortgage transactions in countries not subject to the

English law. But in justice to our legislators, or rather to our Equity Judges—who in the exercise of powers transmitted to them as a relique of the ancient ecclesiastical jurisdiction have been the chief artificers of the system referred to—it should be noted that mortgage, as we find it at the present day, is not the product of systematic design originating and elaborating, but a contrivance by shifts and devices to meet the requirements of modern times without repealing laws adapted to the tenure of land under the feudal system, and therefore inimical to that freedom of transfer which our advanced civilization demands. As explained in a former chapter, the practice of mortgage by absolute conveyance of the land to the mortgagee, when in reality the object is merely to pledge it as security for a loan, took its origin from the Statute of Uses.

Legislative functions usurped by Equity Courts.

The severity of a law which in case of default vested the estate absolutely and indefeasibly in the mortgagee, however much its value might exceed the sum borrowed, afforded sufficient pretext for the interference of ecclesiastical jurisdiction, and accordingly about the reign of James I. it was decided that the mortgagee, by applying to the Equity Courts within reasonable time, upon tendering the principal sum and interest, together with reasonable costs, should recover the estate which had been forfeited at law. The Judges at Common Law for a time strenuously opposed this novelty, but without success, the result being that the administration of the law of mortgage has been brought for the chief part under the jurisdiction of equity. Thus, with respect to mortgage as with other cases, instead of the Legislature being called into action to amend a law found to be injurious and unsuited to the altered state of society, we find the Equity Courts, taking upon themselves the functions of the Legislature, step in to prevent the law taking effect, and establish a precedent which immediately obtains the force of law. Whatever may be said in favour of this Judge-made law on the ground of its accordance with expediency and natural justice, the result of assumption of legislative powers by the Equity Courts, as pointed out by Lord St. Leonards, is that at the present day we “see the plaintiff on one side of the Court recovering the estate without argument on account of the clearness of his legal title, and the defendant with equal facility getting it back again at the other side of the Court in consequence of the strength of his equitable rights.” This strange anomaly peculiar to English law would be ridiculous, if it were not disastrous. That it is so is notorious to such an extent that persons whose estates have once been drawn within the meshes of the Chancery Courts are thenceforth spoken of in terms of condolence such as we use when speaking of the bankrupt and destitute.

Mischiefs resulting from the assumption of legislative powers by the Judges.

The injurious consequences resulting from allowing to those appointed to administer the law a licence by circuities and fictions to modify its provisions, so that they may be compatible with the exigencies of progressive civilization, instead of amending the law by the constitutional action of the Legislature, are exhibited in the particular case under consideration in the form of—1st,

expense and delay entailed on the mortgagor through the necessity of submitting his title for examination by the solicitor of the mortgagee—an expense that must be incurred again and again as often as the security is offered to different capitalists; 2nd, a long and expensive deed of conveyance to the mortgagee; 3rd, an expensive reconveyance to the mortgagor when the loan is paid off; 4th, it not unfrequently happens that through the absence of the mortgagee, and his being unrepresented by a person capable of giving valid reconveyance, the estate continues tied up and encumbered long after the mortgagor has expressed his desire to pay off the principal sum in terms of the mortgage, whereby great injustice and injury are inflicted, especially in cases where sale and subdivision of the property are pending.

The mortgagor is the principal victim, yet the mortgagee does not entirely escape. The tediousness of the process occasioning loss of interest is in itself a sufficient evil; but this is aggravated by the doubt which after all hangs over the security, notwithstanding the examination at the cost of the mortgagor; for, as stated by a high authority, Mr. R. Wilson, "Title under the English law cannot be ascertained as a fact, it can only be wrought out as an inference." In addition to this uncertainty, a second or other intermediate mortgagee is in danger of being ousted of his security by a dealing between the first and a subsequent mortgagee acquiring the "equity of redemption."

South Australian Act a remedy for these mischiefs.

The South Australian Act remedies all this. By making the title indefeasible, the expense and delay of retrospective investigation are cut off. By proceeding direct to the accomplishment of that which is intended, ignoring the factitious and artificial distinctions of legal and equitable estates with the circuitous of transfer and release, a saving of eighteen shillings in the pound sterling is effected, and a transaction in landed securities is completed with as much facility and in about the same time as a transaction in mercantile securities by bills of exchange. By the rule which gives priority to transactions according to the date of registration, the species of legalized fraud designated "tacking," by which an intermediate mortgagee may be deprived of his security, is effectually barred. Finally, a valid release can be obtained upon payment of the amount of the mortgage-money into the Treasury, in the event of the mortgagee being absent or unrepresented.

Mortgagee's remedies the same under both systems.

Full details of the procedure, with examples illustrative, will be found in the Appendix; and upon perusal of the mortgage clauses it will be seen that the South Australian Act secures the mortgagee in all the remedies by right of re-entry, sale, distress, &c.—provided under the old law.

This question of special importance to the landowners.

No other question is so important to the landowner as this relating to the facilities for obtaining money upon the security of his estate, and for the effectual purging of his title from all liability or complication thence arising upon repayment of the loan in terms of the contract.

Long usage has established a sort of callousness, so that many cease to be sensible of the loss and injury inflicted under the old law. The specious misrepresentations of interested parties have so dimmed and mystified the perceptive powers of others, that they believe the evils of which they are conscious to be unavoidable and inherent in the nature of things. By exhibiting the results on landed security produced by the English law of mortgage, in contrast with what takes place in other countries under a different system, and in England itself, in respect to securities over property of another description, we may awaken one class to consciousness, and dispel the mists which obscure the mental vision of the other.

Law of Mortgage occasions the excess of interest paid on money borrowed on landed security, over that paid on Government or mercantile securities.

In England, when the interest accruing from stock in the funds is at 3 per cent., the land-owner, offering as perfect security, pays to the mortgagee 4 per cent., and to the conveyancer a sum equivalent, upon the average, to 1 per cent. per annum on the amount borrowed. In the colony of South Australia, while Government debentures are purchased at rates yielding less than 6 per cent., the landowner pays from 10 to 12 per cent. to the mortgagee; and, in consequence of small loans at short dates, a sum to the conveyancer equivalent, on the average, to 2 per cent. per annum on the amount borrowed. Landed security, when not interfered with by mischievous and absurd law, is not inferior in validity to Government stock; yet the landowner pays in England 2 per cent. and in South Australia 6 to 8 per cent. more than the Government for the use of money! Nay, further; money is constantly obtained from the banking establishments in that colony on personal security at 8 per cent. by the same individual who pays 12 to 14 per cent. interest and expenses for money secured on land. Why is this? Because of the uncertainty which envelops title to land! Because of the tedious process necessary to be gone through when land is pledged as security! Because of the difficulty attending that process which necessitates the employment, at whatever cost, of men especially trained! Because of the cost and delay attending the transfer of the security!

Illustration afforded by what takes place on the continent of Europe under a different law.

That these are the true grounds of the difference is proved incontestably by experience of what takes place in other countries; and for this purpose it may suffice to quote the following passage from the statement of Mr. Vincent Scully, one of the Commissioners appointed by Her Majesty to consider the subject of registration of titles:—"In England dealings in land are a luxury which a rich man may indulge in, that a poor man cannot indulge in. In Belgium there is a class we should call stockbrokers, but they are connected with dealings in land, mortgages, and transactions in land; and any person wishing to invest a large or a small sum going to them has no greater difficulty in having the transaction arranged safely and properly than we have in buying stock and going to a broker for the purpose. It is just as simple and as easy. In Hamburg and in Frankfort all

persons such as our bankers and brokers, if they have any money which they wish to make available, instead of laying it out as our bankers would in the funds or in exchequer bills or other securities, would invest it in land, *which we according to the present state of the law do not consider an available security.* The difference is, in fact, quite reversed. A banker in Frankfort takes this investment in land, not only as the safest and best, but because it is most readily turned into money with less deductions or less influence from any circumstances. They prefer these securities to bonds, or to bills, or to any other securities that are at all available to them as men dealing in money." "In Belgium, Prussia, and other parts of the Continent there is a perfectly easy mode of lending money on land. It is an affair of an afternoon. It will be found that where the law is simple the less rate of interest there is, and the larger the quantity of capital which takes that direction the landowners are able to borrow at a less rate of interest than they are in this country. In Belgium there is no difficulty in investing money in land as the savings bank of the country; persons there invest their money usually, if they have a small saving, in land."

The South Australian system analogous to that adopted in the Hanseatic States.

The South Australian method of mortgaging resembles that of the Hanse Towns referred to. The cost of mortgage is 10s., the time occupied in the transaction is 15 minutes. The cost of transfer or release is 5s., the time occupied is five minutes; and the validity of each step is guaranteed by an assurance fund supplemented by the security of the general revenues of the colony.

Why the same results have not as yet been realized.

There can be no doubt that the benefits derived in other countries from the same institutions will, ere long, be to the full extent enjoyed by the South Australian landowners. The conveyancers, to whom mortgaging under the old system was the most lucrative branch of business, have directed their main attack against the innovations introduced by the Real Property Act in this particular. Taking advantage of the habitual faith with which the English capitalist surrenders himself in such matters to the conscience of his solicitor, and having, moreover, in their own hands as agent for others a large proportion of the moneys available for investment on mortgage, they have hitherto been enabled in a great degree to retard the beneficial action of the measure in this particular.

CHAPTER IX.

ON ENCUMBRANCES, SETTLEMENT, AND ENTAILS.

The South Australian Act provides for charging land with an annuity or sum of money on the principle discussed in the last chapter, as applied to mortgages. Full details of the mode of procedure in creating and discharging encumbrances of this nature will be found on reference to the Appendix.

Nature of Trusts not disclosed.

The principle adopted with respect to settlements and entails is indetical with that recommended by the Parliamentary Commissioners on registration of title whose report has been referred to in preceeding chapters. The Registrar does not take cognizance of the nature of the trusts which, in fact, are not even disclosed. The only instrument registered is a "Nomination of trustees" (see form in Appendix), and this vests the legal estate absolutely in the parties named therein. The proprietor is required to deposit for safe custody and reference, a deed or instrument declaring the trusts; this, however, cannot be registered, neither are parties dealing with the trustees at all concerned or at liberty to enquire into its contents, the title derived through trustees being absolute and indefeasible so soon as registered. A protection against fraud is provided by enacting that whenever the words "no survivorship" are inserted in the "Nomination of trustees," the Registrar is prohibited from giving effect to any dealing with the property until any vacancy in the number of trustees occurring through death, or otherwise, has been filled up. As a further protection, beneficiaries under the trust may, at a trifling cost, lodge caveats forbidding dealing with the property without their concurrence.

Objections answered.

It has been objected with great pertinacity that this exposes the beneficiaries to greater risk than they are subject to under the old system. This objection is conclusively answered by Mr. Cookson, one of the Commissioners on Registration of Title, and by Mr. Field in his examination before a Committee on the same subject, as follows:—

"It has been frequently objected that any system of transfer of land, in any degree resembling the transfer of stock, would open a door for fraud; and that under such a system, estates, when in settlement, may be lost altogether by the misconduct of the trustees. An objection of this kind must not be disposed of by a *priori* reasoning; and if it be weighed in the balance of actual experience, it will probably be found very unsubstantial. Under the present system, nearly all well-drawn settlements of landed estates in this country contain clauses empowering the trustees to sell the estate, and to invest the purchase-money in other estates to be settled to the same uses. The power is usually to be exercised with the concurrence of the tenant for life, if living, but, if dead at the sole discretion of the trustees; and in either case the purchase-money remains under the control of the trustees until reinvested in the purchase of

and. Neither must it be forgotten that there are nearly £800,000,000 of money in the funds, of which a full proportion (probably one-half) is already in the position in which it is alleged that land cannot be safely placed; and that millions on millions represented by shares in railways and canals, and docks and other public companies are similarly circumstanced. What has been found practically safe for them cannot, it is presumed, be otherwise than safe for land."

Mr. Field:—

"Practically, there is no risk whatever that injustice would follow from the scheme which Mr. Cookson has pointed out. The only true basis of all legislation is, I conceive, experience. You have no right to say, 'I can see that under such and such a given plan fraud may easily arise,' and then to conclude that therefore it would arise were the scheme enacted. If the percentage of fraud is only one in a thousand in the case of stock—(this is taken from actual experience)—you have a right to infer that it would not be more than one in ten thousand in the case of land.

"I believe so for two reasons; first, that the land is patent, and everybody is looking at it in connection with what you are doing. Nobody knows what the trustees are doing with the stock, therefore it is much easier for them to cheat with stock. That is one reason why I conceive there will be very much less fraud in the case of land than stock; and, in the second place, it is very much more difficult to sell land without its being specially and publicly advertised and known; therefore I think the percentage of what one may call frauds and improper distringases and wrongful acts that would come under the system pointed out in case it was applied to land may be very safely taken from the return that is before the Committee showing the distringases, &c., on stock."

Advantages of the method.

On the other hand, it should be considered that manifest inconvenience would result from the exposure of family arrangements consequent upon recording the trusts upon the register. Security is unquestionably increased by the method prescribed, which has, moreover, the great advantage that it does not in any appreciable degree impede freedom in dealing with the land. These considerations may be accepted as a set-off against any inconvenience resulting from proprietors being deprived of the power of creating life estates and entails otherwise than through the intervention of trustees.

Entail might conveniently be created without the intervention of Trustees, under the system
Registration of Title.

If deemed desirable, it is quite feasible to provide for the creation of entails under the system of registration of titles without complication or difficulty. For this purpose nothing more is needed than to provide that the tenant for life shall receive certificate of title as such upon which the memoranda of his dealings with his limited estate, as also the dealings of reversioners with their interest may be recorded in the same manner as is prescribed for the case of dealing with the fee simple. Every devolution of the property would

be authenticated to the Registrar, and a fresh certificate of title issued to the new tenant for life as prescribed in the case of transmission of the fee by will or intestacy. I cannot concur with those who object that this proceeding would either confuse the register or impose judicial functions on the Registrar : because, as regards the first point, I have worked out a number of the most complicated cases to test the soundness of the objection ; and as regards the second, the objection, if it have existence, may be readily met by requiring a vesting order to be issued by a competent Court upon the application of each incoming tenant for life upon proof of his title to be recognized as such, and ordaining that the Registrar should give effect to such vesting orders.

Why the South Australian Act does not contain this provision.

I am of opinion that the powers enjoyed by landed proprietors under the old law are needlessly and injuriously limited by the omission of this provision in the South Australian Real Property Act, but have abstained from pressing my views upon this outlying point in opposition to the will of the vast majority of my fellow-colonists, who regard with disfavour any measure that can tend to encourage the practice of entailing property, supported as they undoubtedly are in this view by the high authority of the Commission above referred to. I am content to have preserved intact and carried into successful operation all the great principles of the measure as originally proposed.

CHAPTER X.

SUMMARY OF THE ARGUMENT.

The English Law of Property is admitted to be insecure, costly, cumbrous, tardy, injurious, and unsuited to the requirements of the inhabitants of these colonies.

These evils have not existed in England from all time, neither do they exist in other countries at the present day. Therefore they are not inevitable ills, arising of necessity out of attributes inherent in the nature of landed property. On the contrary, THEIR ORIGIN is clearly traced to the subtle devices resorted to in feudal times in order to evade the tyrannical exactions of arbitrary power; THEIR GROWTH to the assumption of inordinate power by the Ecclesiastical Courts nullifying the decisions of the Law Courts, and by the force of precedents establishing another law with sanction superior to that of the statutes framed under the constitutional action of the Legislative power. THEIR PERPETUATION, 1st—to the maintaining power of the legal profession, the closest and most influential corporation of modern times; 2ndly—to the formidable aspect of the work, which deterred non-legal minds from assaying the task of law reform; 3rdly—to the high conservative feeling of the landowners of England tending to maintain the feudal principle of inalienability, in contradistinction to the modern principle of convertibility.

The laws regulating dealings in movable property or chattels are free from the objections urged against the laws relating to immovable property, because they have been devised in modern times to meet the exigencies of a growing civilization. These, especially the laws and usages which regulate dealings in shipping, indicate the safe and effectual procedure for amending the Real Property Law. The argument put forward so often and with such authority, "that as certain attributes attaching to land differ essentially from attributes attaching to shipping, the mode of dealing acknowledged to be effectual and convenient as applied to the latter cannot be made available for dealings in the former" is a fallacy. That essential differences, inherent in their nature, distinguish the one description of property from the other, no person denies; but as a matter of fact these distinctive characteristics are such as to render those methods which have been approved by experience in the case of shipping, still more efficacious and still more easy of application to the case of dealing in land.

The perishable nature of shipping affords no valid argument to the contrary, because dealings after the lapse of fifty years or upwards under the system of registration of title are conducted as readily and as securely as those which take place immediately after the launching of the vessel. On the other hand the removal of shipping beyond the law or jurisdiction of the Registrar, as well as the impossibility of subdividing a ship into separate properties, vesting

each proprietor with power to do with his portion whatsoever he listeth, occasion difficulties which do not lie in the way of dealing with land under the same method.

In order to bring land under this simple and efficacious law, a preliminary step must be cut off the necessity for retrospective investigation of title. By this the grand source of insecurity, of costliness, of intricacy, and of delay, is removed. Indefeasibility of title is a necessary corollary to this step, and from this again follows the necessity of providing a fund whence compensation in money may be secured to the rightful heirs and others who through the operation of the law may be barred from recovering the land itself. By transferring the liability from the land to the person of the individual deriving advantage from the error, with right to claim compensation from a guaranteed Assurance Fund, failing the personal security, this object is effected in the manner most consistent with individual rights and with principles of public expediency. For there is scarcely any appreciable hardship in compelling the acceptance of pecuniary compensation to the full value of the land; whilst grievous injury is inflicted by that law which in restoring to a rightful heir his inheritance, bestows upon him therewith the capital of innocent parties invested thereon, to an amount, it may be, far in excess of the value of the land itself.

This point conceded as a preliminary step, there is absolutely no difficulty in applying to the subsequent dealings in land that law and those methods under which shipping property has been transferred for centuries past, and to the amount of many millions, with security, economy, facility, and promptitude.

THE BENEFITS ACTUALLY REALIZED in South Australia from this policy are, 1st—Titles being indefeasible proprietors may invest capital on land secure against risk of deprivation, and the no less harrassing contingency of a Chancery suit; mortgagees also having no further occasion to look to validity of title, may confine their attention to the adequacy of the security; 2nd—A saving, amounting on the average to ninety per cent., or eighteen shillings in the pound sterling, has been effected in the cost of transfers and other dealings, irrespective of the contingent liability to further expenses resulting from suits at law and in equity, the grounds of which are cut off by the alteration of tenure; 3rd—the procedure is so simple as to be readily comprehended, so that men of ordinary education may transact their own business; 4th—dealings in land are transacted as expeditiously as dealings in merchandize or cattle, fifteen minutes being the average time occupied in filling up the forms and completing a transaction.

PROSPECTIVE ADVANTAGES, certain to be realized so soon as the Real Property Act comes into universal operation, are, 1st—the value of land, especially of such land as was previously held under blistered titles, will be enhanced in proportion to the increased security and facility of transfer; 2nd—so soon as the fact is generally understood and realized that the risks, costs, and impediments which heretofore attended the system of mortgage, and placed

landed securities without the pale of banking transactions are entirely swept away, the use of money will be obtained on landed securities in South Australia, as it is now in Frankfort and other parts of Europe, at a cost not exceeding the amount paid for the use of money advanced on government or first-class mercantile securities.

An eminent writer on political economy, Mr. J. S. Mill, has remarked that, "to make land as easily transferrable as stock would be one of the greatest economical improvements which could be bestowed upon the country." The English Law Reform Association in their publication "On Registration of Transfers of Land" remarks, "It has been estimated by persons of experience and authority in such matters that a cheap, simple, expeditious, and accurate system of transfers of land would add four or five years purchase (some will say ten) to the marketable value of land." The Commissioners appointed pursuant to resolution of the House of Commons to report upon the subject of "Registration of Title" state "the object of their enquiry to be, "By what means consistently with the preservation of existing rights can we now obtain such a system of registration as will enable owners to deal with land in a simple and easy a manner, as far as title is concerned, and the difference in the nature of the subject matter may allow, as they can now deal with movable chattels or stock?" This is no longer a PROBLEM FOR SOLUTION; it is a REALIZED FACT. The South Australian Legislature has provided means of escape from the grievous yoke of the English Property Law, and the colonists are rapidly availing themselves of those means.

South Australia.

THE REAL PROPERTY ACT.

No. 15, 1857-8.

AN ACT TO SIMPLIFY THE LAWS RELATING TO THE TRANSFER AND ENCUMBRANCE OF FREEHOLD AND OTHER INTERESTS IN LAND.

Preamble.

Whereas the inhabitants of the Province of South Australia are subjected to losses, heavy costs, and much perplexity, by reason that the laws relating to the transfer and encumbrance of freehold and other interests in land are complex, cumbrous, and unsuited to the requirements of the said inhabitants, it is therefore expedient to amend the said laws—Be it Enacted, by the Governor-in-Chief of the said Province, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:—

Repeal of previous Acts.

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 operation of this Act.

Short title.

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

Interpretation of certain terms.

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

The word "Land" shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every kind and description (whether of a greater or less description than life-estates, and whether at law or in equity), together with all paths, passages, ways, waters, watercourses, liberties, privileges, casements, plantations, gardens, mines, minerals, and quarries, and all trees and timber thereon or thereunder, lying or being, unless the same are specially excepted:

"Grant" shall mean the land grant of any land of the Crown by any Resident Commissioner or Governor of the said Province, to any person or persons:

"Proprietor" shall mean any person seised or possessed of any estate at law or in equity, in possession, in futurity, or expectancy, whether a life estate, or of a greater or less description than a life estate in any land:

"Transfer" shall mean the execution of every instrument, and the performance of every formality, including registration, required by this Act to give validity to the passing, either of the whole of the proprietor's interest in land, or of any less estate therein:

Memorandum of Sale" shall mean the instrument executed by the person having estate or interest in land under the operation of this Act, for the purpose of transferring such estate and interest in form of the Schedule hereto annexed, marked B:

- "Transmission" shall mean the acquirement of title to or interest in lands, consequent on the will, intestacy, bankruptcy, insolvency, or marriage of a proprietor :
- "Certificate of Title" shall mean the instrument executed by the Registrar-General, in form A of the Schedule hereto annexed, duplicate of which constitutes a separate page in the register book, vesting the fee simple, or any less estate (as the case may be), in land brought under the operation of this Act :
- "Mortgage" shall be applicable to every charge on, or interest in land, created merely for securing a loan :
- "Mortgagor" shall mean the borrower of money on the security of any estate or interest in land under the operation of this Act :
- "Mortgagee" shall mean the lender of money upon the security of any estate or interest in land under the operation of this Act :
- "Bill of Mortgage" shall mean the instrument in form of the Schedule hereto annexed, marked D, required under this Act to be executed by the intending mortgagor, with a view to creating such mortgage as last aforesaid :
- "Encumbrance" and "Assignment" shall mean the execution by a person of every necessary or suitable instrument, and the performance of every formality, including registration, required by this Act, for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate, in order to render such land available for securing the payment of any annuity or dower, or for the payment of any sum of money either absolutely or subject to conditions, restrictions, or contingencies ; including also the execution, by the Registrar-General, of every instrument, and the performance by him of every formality required by this Act to give validity to such encumbrance or assignment :
- "Encumbrancer" shall mean the person, not being a mortgagor, who shall have assigned any estate or interest in land under the operation of this Act for the purpose of securing any annuity, dower, or sum of money :
- "Encumbrancee" shall mean the person, not being a mortgagee, to whom or for whose benefit any estate or interest in land under the provisions of this Act shall have been encumbered or assigned :
- "Bill of Encumbrance" shall mean the instrument creating such encumbrance or assignment executed by the person having estate or interest in land under the operation of this Act in form of one or other of the Schedules hereto annexed, marked respectively E or F :
- "Estate in Fee Simple" shall mean the absolute property in land, such as is originally vested by a "Grant" in the meaning of this Act :
- "Registration Abstract" shall mean the instrument under the hand and seal of the Registrar-General, executed in form of the Schedule hereto marked H, or in words to the like effect, available in lieu of the register book, for the purpose of enabling a person to mortgage or to sell, in places without the limits of the said Province, land under the operation of this Act whereof he may be seised as proprietor :
- "Lunatic" shall mean any person who shall have been found to be a lunatic upon enquiry by the Supreme Court, or by any Judge thereof, or upon a Commission of Enquiry issuing out of the Supreme Court in the nature of a writ *de lunatico inquirendo* :
- The expression "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" 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 :
- "Registrar-General" shall mean the Registrar-General, or other officer duly authorized or appointed to carry out the provisions of this Act, or any person duly authorized as Deputy of such Registrar-General, or to act on his behalf in respect to this Act :

The word "instrument" shall mean and include any land grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate, or exemplification of will, or any other document, in writing, relating to the transfer or other dealing with lands :

"Register Book" shall mean the book hereinafter directed to be kept for the purpose of recording therein, in order, grants and certificates of titles issued, and the execution of instruments affecting land under the operation of this Act :

"Person," used and referred to in the masculine gender, shall include a female as well as a male, and shall include a body corporate :

The naming any person as proprietor, vendor, mortgagor, mortgagee, encumbrancer, encumbrancee, lessor or lessee, or as trustee, or as seized of or having any estate or interest in any land, shall be deemed to include the heirs, executors, administrators, and assigns of such person :

And, generally, unless the contrary shall appear from the context, every word importing the singular number only shall extend to several persons or things, and every word importing the plural number shall apply to one person or thing, and every word importing the masculine gender only shall extend to a female.

Functions of the Registrar-General and his department.

4. The department of the Registrar-General shall be the department to undertake the general superintendence of matters relating to the transfer, transmission, sale, mortgage, and encumbering of all land under the operation of this Act, and the releasing of such land from any mortgage or encumbrance, and shall be authorized to carry into execution the provisions of this Act, and of any Acts to amend or extend the provisions of this Act in force for the time being.

Oaths of office.

5. The oath following, shall be taken before one of the Judges of the Supreme Court, by the Registrar-General, and by each Deputy Registrar-General, after the passing of this Act; and by every Registrar-General and Deputy Registrar-General to be hereafter appointed, before entering upon the execution of his office—

I, A. B., do solemnly swear, that I will faithfully, and to the best of my ability, execute and perform the office and duties of Registrar-General, or Deputy Registrar-General, for the Province of South Australia, according to the provisions of the Real Property Act. So HELP ME GOD.

Certificates and documents purporting to be signed and sealed in a given manner to be received as evidence.

6. All documents whether purported to be issued or written by or under the directions of the Registrar-General, and purporting either to be sealed with his seal or signed by him, or by one of his deputies, shall be received in evidence, and shall be deemed to be issued or written by or under the directions of the Registrar-General without further proof unless the contrary be shown.

Registrar-General may make rules.

7. The Registrar-General may, with the consent of the Governor, for the purposes of carrying into effect the provisions contained in this Act, give such instructions as to the manner of making entries in the register book, as to the execution and attestation of instruments as to any evidence to be required for identifying any person, and generally as to any act or thing to be done in pursuance of this Act, as he may think fit.

Registrar-General, with sanction of Governor, to issue forms of instruments, &c.

8. The Registrar-General may, with the consent of the Governor of the said Province from time to time prepare and sanction forms of the various books, instruments, and papers required by this Act, and may with like sanction from time to time make such alterations therein as he deems requisite; and shall, before finally issuing or altering any such form, give such public notice thereof as he deems necessary in order to prevent inconvenience; and shall cause every such form to be sealed with such seal as aforesaid,

or marked with some other distinguishing mark, 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 licence any person to print and sell the same; and every such instrument and paper as aforesaid shall be made in the form issued by the Registrar-General, and sanctioned by him as the proper form for the time being; and every such instrument or paper, if made in a form purporting to be a proper form, and to be sealed or marked as aforesaid, shall be taken to be made in the form hereby required, unless the contrary is proved.

Penalty for counterfeiting seal, fraudulently altering forms, and for not using forms issued by the Registrar-General.

9. Every person who counterfeits, assists in counterfeiting, or procures to be counterfeited, such seal or other distinguishing mark as aforesaid, or who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any form issued by the Registrar-General with a view of evading any of the provisions of this Act or any condition contained in such form, shall for each offence be deemed guilty of a misdemeanour, and shall incur a penalty not exceeding One Hundred Pounds; or may, at the discretion of the Court before whom such case may be tried, be imprisoned for any period not exceeding twelve calendar months; and every person who, in any case in which a form sanctioned by the Registrar-General is by this Act required to be used, uses without reasonable excuse any form not purporting to be so sanctioned, or who prints, sells, or uses any document purporting to be a form so sanctioned knowing the same not to be so sanctioned for the time being, or not to have been prepared and issued by the Registrar-General, shall for each such offence incur a penalty not exceeding Ten Pounds.

Powers of Registrar.

10. The Registrar-General may exercise the following powers, that is to say—

To inspect documents.

- (1.) He may require the proprietor or other person making application to have any land brought under the operation of this Act, or the proprietor, or mortgagee, or other person interested in any land under the operation of this Act, in respect of which any transfer, lease, mortgage, or other encumbrance, 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 a registration abstract granted under this Act, to produce any land grant, certificate of titles, conveyance, bill of sale, mortgage deed, lease, will, or any other instrument in his possession or within his control affecting such land or the title thereto:

He may summon and examine witnesses.

- (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 duly made by the Registrar-General, such proprietor, mortgagee, or other person refuses or neglects to produce any such instrument, or to allow the same to be inspected, or refuses or neglects to give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives any person hereinbefore authorized to demand any such explanation, he shall for each such offence incur a penalty not exceeding Twenty Pounds; and the Registrar-General, if the instrument or information so withheld appears to him material, shall not be bound to proceed with the bringing of such land under the operation of this Act, or with the registration of such mortgage or sale, or with the issuing of such powers of mortgage or sale as the case may be.

He may administer oaths.

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

Further powers of Registrar-General.

- (4.) The Registrar-General may, upon such evidence as shall appear to him sufficient in that behalf, correct errors in entries made, and supply entries omitted to be made under the provisions of this Act: Provided always, that in the correction of any such entry, he shall not erase or render illegible the original entry; and shall, on correcting or supplying any entry, affix his initials thereto; and every correction so made and omission so supplied, shall have the like validity and effect as if such error had not been made, or such entry omitted, except as regards any assurance or instrument which may have been entered in the register book previously to the actual time of correcting the entry or supplying the omitted entry. He may enter caveat on behalf of any person who shall be under the disability of infancy, coverture, lunacy, unsoundness of mind, or absence from the Province, 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.

Appointment of Lands Titles Commissioners.

11. It shall be lawful for the Governor, with the advice of the Executive Council, by warrant under his hand, and the public seal of the said Province, to appoint two persons, not being legal practitioners, who, together with the Registrar-General, shall be Commissioners for investigating and dealing with claims for the bringing of land under the provisions of this Act, and from time to time with like advice and in like manner to remove any of such Commissioners so appointed from office, and to appoint another person in his place.

Style, remuneration, form of procedure.

12. The style of such Commissioners shall be the "Lands Titles Commissioners." The Registrar-General shall receive a reasonable salary. The other Commissioners shall be remunerated by fees on applications referred to them for bringing lands under the operation of this Act, as set forth in the Schedule hereto marked U. At meetings of the said Lands Titles Commissioners two shall form a quorum, and the Registrar-General, if present, shall preside as Chairman.

Solicitors to be appointed.

13. It shall be lawful for the said Commissioners, subject to the approval of the Governor, to appoint two legal practitioners, at reasonable salaries, to be their solicitors and permanent counsel, and also, subject to the like approval, to dismiss and discharge such solicitors and to appoint others in their stead.

Land alienated after the first day of July, 1858, to be subject to provisions of this Act.

14. All land alienated from the Crown within the said Province, from and after the first day of July, one thousand eight hundred and fifty-eight, shall be subject to the provisions of this Act.

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

15. Land, in the said Province, the grants of which may have been signed 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 operation of this Act in the following manner, that is to say—the Registrar-General shall receive applications in the form of the Schedule hereto annexed, marked I, or in words to that effect, for bringing land under the operation of this Act, if made by any of the following persons, that is to say—

By any person (claiming to be the person) in whom the fee simple of the land is vested in possession, either at law or in equity, and not being a mortgagee: 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 to have contracted to purchase the fee of any land, but not having obtained a conveyance of the said land : Provided that the vendor of the said land shall consent in such application.

By any person claiming to be entitled beneficially to land for a life estate, or a greater estate than a life-estate, in possession.

By any married woman beneficially entitled to land for a life estate, or a greater estate than a life-estate, in possession : Provided that the husband of such married woman shall consent in such application.

By the father (if he shall be living), or (if the father shall be dead) by the mother, or other guardian of any minor, in the name of such minor.

By the committee or guardian of any lunatic or person of unsound mind, in the name of such lunatic or person of unsound mind.

Undivided shares and mortgaged lands may not be brought under Act, except upon conditions.

Provided always, that the Registrar-General shall not receive such application from any person claiming to be entitled to an undivided share of any land, unless the persons who shall appear to be entitled to the other undivided shares of the said land shall join in such application with a view to bringing the entirety of the said land under the operation of this Act ; nor shall the Registrar-General receive any application from the mortgagor of any land subject to mortgage to bring such land under the operation of this Act, unless the mortgagee shall consent in such application.

Applicant to deposit instruments of title ; and abstract, if required.

16. And such applicant shall, at the time of making his application, deposit with the Registrar-General all instruments in his possession, or under his control, constituting, or in any way affecting his title to such land, and also, if required, an abstract of title, in which he shall set forth and describe every instrument constituting or in any way affecting his title to such land, with the names and so far as shall be within his knowledge the addresses of all persons, if any, seised or possessed of any estate or interest in such land at law or in equity, in possession or in futurity, or expectancy, whether a life-estate, or of a greater or less description than a life-estate, and shall make and subscribe a declaration to the truth of such abstract, or if such applicant be the sole and only person having estate or interest in such land, then he shall make and subscribe a declaration to that effect.

Lands granted subsequent to Registration Act of 1842, when applicant proprietor is original grantee and no transactions have taken place. Lands granted prior to Registration Act of 1842 when applicant proprietor is not original grantee or mortgages are satisfied or parties thereto are also parties to application, and no transmissions have taken place. When evidence of title is not clear, or transmissions have taken place, or parties interested in unsatisfied mortgages are not parties to the application.

17. Upon the receipt of such application the Registrar-General shall refer the same to the Lands Titles Commissioners for their consideration, and if it shall appear to such Commissioners that the applicant proprietor is the original grantee of the land in respect to which application is made, and that such land has been granted on or subsequent to the first day of March, one thousand eight hundred and forty-two, and that no sale, mortgage, or other encumbrance or transaction in any way affecting the title of such land has at any time been registered in the said Province, then, and in such case it shall be lawful for such Commissioners to direct the Registrar-General to bring such land under the operation of this Act forthwith ; and if it shall appear to the satisfaction of the said Commissioners that the land referred to in such application was granted prior to the first day of March, one thousand eight hundred and forty-two, or that the title of the applicant to such land has not been derived by transmission, and that every mortgage, encumbrance, or beneficial interest affecting such title has been released and satisfied, or if any such mortgage, encumbrance, or interest remains unsatisfied that the parties interested therein are also parties to such application, then and in any such case the said Commissioners shall direct the Registrar-General to cause notice of such application to be advertised, once in the *South Australian Government Gazette*, and three times in at least one newspaper published in the City of Adelaide, 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 *South Australian Government Gazette*, upon or after the expiration of which the Registrar-General shall, unless he shall in the interval have received a caveat forbidding him so to do, proceed to bring such land under the operation of this Act: But if it shall appear to the satisfaction of the said Commissioners that the applicant's title to such land has been derived by transmission, or that any parties interested in any unsatisfied mortgage or encumbrance affecting the title to such land, or any other party beneficially interested therein, are not parties to such application, or that the evidence of title set forth by such applicant proprietor is imperfect, it shall be lawful for such Commissioners to direct the Registrar-General to reject such application altogether, or, at their discretion, to direct the Registrar-General to cause notice of such application to be published in the *South Australian Government Gazette*, and in the *London Gazette*, and in the official gazettes of each of the colonies of New South Wales, Victoria, Tasmania, and New Zealand, or in any one or more of such gazettes, and the said Commissioners shall specify the number of times, and at what intervals, such advertisement shall be published in each or any of such gazettes, and shall also limit and appoint a time, not less than two months nor more than three years from the date of the first of such advertisements in the *South Australian Government Gazette*, upon or after the expiration of which it shall be lawful for the Registrar-General to bring such land under the operation of this Act, unless he shall in the interval have received a caveat, forbidding him so to do.

Notice of application to be published. Lands brought under the Act by notice in the *Government Gazette*.

18. The Registrar-General shall, under such direction as aforesaid, or under any order of the Supreme Court, cause notice to be published in such manner as by such direction or order may be prescribed, that application had been made for bringing the land therein referred to under the operation of this Act; and shall also cause 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 proceed by notice, published in the *South Australian Government Gazette*, to bring the land referred to in such application under the provisions of this Act, unless within the time limited in such direction, or under any order of the Supreme Court, he shall have received a caveat, as hereinafter described, forbidding him so to do.

Parties interested may enter caveat.

19. It shall be lawful for any person having or claiming an interest in any land so advertised as aforesaid, or for the attorney of any person having or claiming interest therein, within the time hereinbefore limited and appointed, or that may by such direction as aforesaid of the Lands Titles Commissioners, be for that purpose limited and appointed, to lodge a caveat with the Registrar-General forbidding the bringing of such land under the operation of this Act, which caveat shall be in the form of the Schedule hereto annexed marked L, or as near thereto as circumstances permit, and shall particularize the estate, interest, lien, or charge, claimed by the person lodging the same, and if such claim is made under any instruments other than those set forth in the abstract deposited by the applicant proprietor, the person lodging such caveat shall deliver a full and complete abstract of his title, which shall contain the same matters, and be subject to the same regulations as are hereinbefore prescribed for the case of an abstract deposited by the applicant proprietor.

If caveat be received within time limited proceedings stayed.

20. The Registrar-General, upon receipt of any such caveat within the time for either case 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 operation 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.

Penalty for lodging caveat without reasonable ground.

21. After the expiration of three calendar months from the date thereof every 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 to establish his title to the estate, interest, lien, or charge therein specified, and every person who shall fail to show probable cause for lodging such caveat to the satisfaction of the Judge before whom any prosecution may in such case be instituted, shall forfeit and pay a penalty not exceeding One Hundred Pounds.

Applicant proprietor may summons Registrar-General to show cause, if dissatisfied.

22. If, upon the application of any proprietor to have land, of which he is seised brought under the operation of this Act the Registrar-General shall refuse so to do, or if such applicant 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 applicant proprietor to require the Registrar-General to set forth in writing, under his hand, his objections to the title of such applicant proprietor or the grounds upon which such direction was given, and such applicant proprietor may, if he think fit, at his own costs, summons such Registrar-General to appear before the Supreme Court to substantiate and uphold his objections to such title, such summons to be issued at the request of such applicant proprietor, or his solicitor, under the hand of a Judge of the said Court, and served upon such Registrar-General six clear days, at least, before the day appointed for the hearing of such objections, and such objections shall be heard by the said Court upon motion; and upon such hearing the said Court shall, if any such objections be a question of fact, direct an issue to be tried to decide such fact; and it shall thereupon be lawful for the said Court to forbid the bringing of such land under the operation of this Act, or to order that such land may be brought under the same after the expiration of such period of time as the said Court shall think fit, not exceeding the period limited by any law, for the time being in force in the said Province, as the period within which actions of ejectment may be brought, and the Registrar-General shall obey such order.

Case may be argued by counsel; expense to be borne by applicant.

23. Upon any such motion as aforesaid, it shall be lawful for any person interested in any land touching or concerning the title to which such motion shall be made, and for the said Registrar-General by himself or his counsel, to argue the same before the said Court, in support of or objection to the bringing of such land under the operation of this Act, and the Registrar-General, or his solicitor, shall have the right of reply; and all expenses attendant upon any of the matters or proceedings aforesaid shall be borne and paid by the person requiring such land to be brought under the operation of this Act.

Form of notice for bringing land under operation of this Act.

24. Every notice for bringing land under the operation of this Act shall be in the form of the Schedule hereto annexed, marked M, or in words to the like effect, and shall take effect and be valid to all intents from the date of the publication thereof.

Applicant proprietor may withdraw his application.

25. It shall be lawful for any proprietor, being an applicant to have land brought under the operation of this Act, to withdraw his application at any time prior to the issuing of such notice; and the Registrar-General 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.

Caveats in certain cases not to bar the bringing of land under this Act.

26. The Registrar-General shall not notice any caveat forbidding the bringing of land under the operation of this Act, if the party lodging the same claims only an estate or interest to take effect after the determination, or in defeasance of an estate tail, or forbids the bringing of such land

under the operation of this Act, on the plea only of the absence of legal evidence that a former proprietor was in being and capable at the time when any power of attorney executed by such proprietor was exercised by his attorney in the selling or purchasing, or releasing of such land.

Certificate of title to be issued when land is brought under the operation of this Act. Instruments of title, if they include other property, to be returned to applicant proprietor.

27. So soon as any land has been brought under the operation of this Act, the Registrar-General shall make out and deliver to the applicant proprietor a certificate of title to the same, in form or to the effect hereinafter described, and every such certificate of title shall contain a reference to the original grant of such land, and the Registrar-General shall stamp as cancelled every instrument of title deposited by such proprietor, when making his application: Provided that, if any grant or other instrument so deposited shall relate to or include any property, whether personal or real, other than the land included in such certificate of title, then the Registrar-General shall endorse on such grant or other instrument a memorandum setting forth that the said grant or instrument is cancelled, in so far only as relates to the land included in such certificate of title, and shall return such grant or other instrument to such proprietor, otherwise he shall retain the same in his office: Provided, also, that the powers or authorities of the husband of any married woman, or of the guardian or committee of any minor, lunatic, or person of unsound mind, shall in no wise be altered or abridged, in consequence of the issuing of any certificate of title in the name of such married woman, minor, lunatic, or person of unsound mind.

Certificate of title to issue in name of deceased applicant proprietor, unless Registrar-General shall have notice of his death. Succession not interfered with thereby.

28. In case an applicant proprietor shall die in the interval between the date of his application to bring land under the operation of this Act, and the date when he shall be entitled to receive a certificate of title to such land, the certificate of title shall be issued in the name of such applicant proprietor, unless the Registrar-General shall have received notice in writing of the death of such applicant proprietor from his legal personal representative, heir, or devisee; and such land shall devolve in like manner as if the certificate of title had been issued to the applicant proprietor prior to his death.

Certificate of title to be issued to legal representative of applicant proprietor deceased.

29. Upon receipt of such notice of the death of an applicant proprietor dying as hereinbefore is mentioned, the Registrar-General may, upon like proof as is required to be made before him in the case of transmission by the death of the registered proprietor of any land, issue a certificate of title to the legal personal representative of such deceased proprietor, or other person legally entitled to receive certificate of title for such land under the provisions of this Act, unless he shall have previously received a caveat forbidding the issue of such certificate of title, and the caveator shall in such case take such proceedings as shall be necessary for establishing his right or claim to the estate or interest claimed by him; and such caveat and the proceedings thereunder shall be subject to the provisions in this Act provided for the case of caveats forbidding the registration of transfers, transmissions, or other dealings in land under the operation of this Act.

Remaindermen may be registered as such. Name of remainderman to be endorsed on certificate of title. Remainderman on being registered to contribute to assurance fund.

30. Whenever a certificate of title shall have been issued to a proprietor in respect of a life estate, or any other estate less than an estate in fee simple, in land under the operation of this Act, the person entitled as remainderman to the said land may apply to the Registrar-General to be entered in the register book as a remainderman, and the Registrar-General shall thereupon cause the title of such applicant to the estate or interest claimed by him to be investigated; and shall cause advertisements to be published in manner hereinbefore prescribed for the case of bringing land under the operation of this Act, and shall proceed to enter the name of such applicant on the register book, as remainderman of the estate or interest to which he shall appear to be entitled,

unless caveat, forbidding such entry, shall be received by him within the time for that purpose limited in such direction or by any order of the Supreme Court; and the Registrar-General shall endorse upon the certificate of title of such land, if produced to him for that purpose, a memorandum, setting forth that such applicant had been entered in the register book as such remainderman, with the day and hour in which such entry had been made; and the Registrar-General shall in every such case receive the same fees and payments, including the sum payable to the assurance fund, as are required to be paid by persons applying to bring land under the operation of this Act.

Remainderman registered as such, prohibited from dealing with estate, except in manner prescribed in this Act. Provision not to apply to unregistered remainderman.

31. Every remainderman and every person deriving, through a remainderman, registered as such in the register book, shall thereafter transfer, mortgage, encumber, or otherwise deal with the estate or interest, in respect to which he is so registered, in manner and by the use of the instruments and forms by this Act, prescribed in each case for the transfer, mortgage, encumbrance, and other dealing with land, under the operation of this Act, and not otherwise; and the Registrar-General shall enter the particulars of every memorandum of sale, bill of mortgage, bill of encumbrance, or other instrument duly executed by such remainderman, or person deriving through a remainderman, affecting the estate or interest in respect to which he is registered in the register book, in manner hereinafter prescribed for the case of transfers, mortgages, encumbrances, and other dealings in land, under the operation of this Act: Provided always that nothing herein contained shall be construed to invalidate any deed, conveyance, or assurance, which a remainderman may have executed in respect to his estate or interest in such land prior to his being entered as such remainderman in the register book.

Certificate of title to be issued to remainderman as soon as his estate shall revert into an estate in possession, and to purchaser entitled to a present estate in fee simple.

32. Upon proof, to the satisfaction of the Registrar-General, that the life-estate, or other less estate than an estate in fee simple, in respect of which a certificate of title of land shall have been issued to any person by the Registrar-General, is determined, or has become vested in the person entitled to the said land for the estate next in remainder, or that a purchaser is absolutely entitled to the said land for a present estate in fee simple in possession, it shall be lawful for the Registrar-General to cancel the existing certificate of title of such land, and, in lieu thereof, to issue such new certificate of title of the said land as the nature of the case and other circumstances may render necessary; and the Registrar-General shall, in such case, enter in the register book, and on the certificate of title, when delivered up, the particulars by this Act prescribed to be entered in the case of cancelling a certificate of title consequent on a transfer or transmission: Provided also, that previous to issuing any such new certificate of title of such land as hereinbefore mentioned, the Registrar-General may require the title of the person claiming to be entitled in remainder to the said land to be investigated, and direct advertisements to be published in any such manner as is hereinbefore prescribed for the case of applications made for the purpose of bringing land under the operation of this Act; and shall receive the same fees and payments, including the sum payable to the assurance fund, as are required to be paid by persons applying to bring land under the operation of this Act.

Persons registered as joint proprietors to be joint tenants. Tenants in common to receive each a distinct certificate of title.

33. Two or more persons who may be registered as joint proprietors of an estate or interest in land under the operation 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.

Registrar-General to keep register book.

34. The Registrar-General shall keep a book, to be called the "Register Book of Real Property," and shall bind up therein the duplicates of all grants

and of all certificates of title issued from and after the first day of July, one thousand eight hundred and fifty-eight, and shall open therein a separate page for each grant and certificate of title, and shall record thereon the particulars of all instruments affecting the land included under each such grant or certificate of title, distinct and apart.

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

35. Every certificate of title made out by the Registrar-General shall be in duplicate, and in the form marked A in the Schedule hereto, and the Registrar-General shall note by endorsement thereon, and in such manner as to preserve their priority, the particulars of all unsatisfied mortgages or other encumbrances, and of every lease, rent, charge, or term of years, or outstanding estate whatsoever, affecting such land, which shall have been registered, or of which he may have notice, and shall cause one of such certificates of title to be bound up in the register book, and deliver the other to the proprietor entitled to the land described in such certificate, and every such certificate, duly authenticated under the hand and seal of the Registrar-General shall be received in all Courts of Justice as evidence of the particulars therein set forth and of their being entered in the register book in the manner set forth in such certificate.

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

36. The Registrar-General shall not register any instrument purporting to transfer, or otherwise to deal with or affect any estate or interest in land under the operation of this Act, unless such instrument be in accordance with the provisions thereof.

Grants and other instruments to be executed in duplicate. Grants and certificates of title registered when embodied in register book. Other instruments registered when particulars thereof are entered on the register book.

37. Every grant, certificate of title, memorandum of sale, or other instrument transferring or in any way affecting land under the operation of this Act, shall be executed in duplicate, and the Registrar-General after registering the same shall retain in his office one original of every such instrument, and shall deliver the other to the person entitled thereto, and every land grant, and every certificate of title to such land, shall be deemed and taken to be registered under the provisions and for the purposes of this Act so soon as the same shall have been marked by the Registrar-General with a folio and volume as embodied in the register book; and every memorandum of sale, or other instrument as aforesaid, shall be deemed to be so registered so soon as the particulars thereof shall have been entered in the register book in manner hereinafter described.

Instruments effectual when entered in the register book. Upon entry of particulars, instrument deemed to be part of register book.

38. So soon as the particulars thereof shall have been entered in the register book, every instrument drawn in any of the several forms provided in the Schedules to this Act, or in any form which the Registrar-General may deem it requisite and expedient to sanction for transferring, mortgaging, leasing, or otherwise dealing with land under the operation of this Act, or for creating, transferring, surrendering, or discharging any estate or interest in the said land, shall, for the purposes of this Act, be deemed and taken to be embodied in the said register book as part and parcel thereof, and the estate or interest mentioned in such instrument as to be transferred or otherwise dealt with or affected, shall thereupon pass, and be vested in manner directed in such instrument, subject to such conditions and covenants as may therein be expressed, or as are by this Act declared to be implied in instruments of the like nature, and such instrument when so constructively embodied, as aforesaid, in the register book, shall have equal validity and effect as any deed or instrument heretofore executed and used for the purposes aforesaid, and shall create and impose the like obligations on the persons signing the same, and shall also continue in force for the like period of time as any deed or other instrument made to secure the payment of any specialty debt.

Certificate of title and entry in register book indefeasible title.

39. Notwithstanding any error or omission in the observance of any

formality herein prescribed to be observed in bringing land under the operation of this Act, and excepting in the case of frauds, and so far as regards any wrong description of any land or of its boundaries, or the omission or misdescription of any right-of-way or other easement, created in, or existing upon, any land under the operation of this Act, every certificate of title or entry in the register book, signed by the Registrar-General, shall absolutely vest the estate or interest in the land therein mentioned, in the manner and to the effect expressed in such certificate of title or entry, and the registered proprietor of such estate or interest in the said land shall be secure from eviction or disturbance or adverse claim, in respect of any estate, right, or interest in the said land, which is not declared in such certificate of title, or entry on the register book, or in the instrument referred to in such entry.

Percentage of halfpenny in the Pound to be levied for assurance of title.

40. Upon the first bringing of any land under the operation of this Act, whether by the alienation thereof from the Crown, or consequent upon the application of the proprietor thereof as hereinbefore provided, and also upon the registration of the title to any land under the provisions of this Act derived through the will or intestacy of a previous proprietor, there shall be paid to the Registrar-General the sum of one halfpenny in the Pound sterling on the value of such land; and in the case of land brought under the operation of this Act by alienation 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 of one halfpenny in the Pound, 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 Registrar-General shall not be satisfied as to the correctness of the value so declared or sworn to, it shall be lawful for him to require such applicant proprietor, or person deriving such land by transmission to produce a certificate of such value under the hand of a sworn appraiser, which certificate shall be received as conclusive evidence of such value for the purpose aforesaid.

Assurance Fund to be invested in Government Securities. Deficiency to be made good out of General Revenue.

41. All sums of money so received as aforesaid, shall be paid to the Treasurer of the said Province to constitute an Assurance Fund, out of which shall be made good the full amount awarded by any verdict or decree of Court to the rightful heir or proprietor of land under the operation of this Act as hereinafter provided, failing the recovery of such amount from the person who may by fraud, misrepresentation, or error, have become registered as proprietor of the same; and the said Treasurer may from time to time invest such sums in the South Australian Government Securities: Provided always that in case of deficiency in such Assurance Fund the full amount so awarded shall be made good to such rightful heir or proprietor out of the General Revenues of the said Province.

Transfer by sale.

42. When land under the operation of this Act is intended to be disposed of by sale, the vendor shall execute a memorandum of sale, in form of the Schedule hereto annexed marked B, or as near thereto as circumstances permit, which memorandum shall contain such description of the land intended to be transferred as is contained in the original grant, or in the certificate of title of such land, or such description as may be sufficient to identify that particular portion of land which it is intended to dispose of, and shall contain an accurate statement of the estate or interest of such vendor intended to be transferred, and a memorandum of all mortgages and other encumbrances affecting the same; and if such land be leased, the name and description of the lessee with a memorandum of the lease, and every such memorandum of sale shall be attested by a witness.

Registration of transfer. Memoranda of sale to be entered in the order of their production.

43. Every memorandum of sale for the transfer of land under the operation of this Act, when duly executed, shall be produced to the Registrar-General, who shall thereupon enter in the register book, the name, residence, and

description of the vendor, or of each vendor, if more than one; the name, residence, and description of the purchaser, or of each purchaser, if more than one; the amount of the consideration money paid; the date of the memorandum of sale, and of its production, and such other particulars as the Registrar-General may deem necessary; and shall endorse on such memorandum of sale, and also on the duplicate grant or certificate of title, lease, or other instrument evidencing title to the estate or interest intended to be transferred, the fact of such entry having been made, with the date and hour thereof, and shall sign each such endorsement and shall affix his seal to such memorandum of sale, and the particulars of every such memorandum of sale shall be entered in the register book in the order of the production thereof, and upon such entry being made by the Registrar-General, the land or the estate or interest therein, as set forth and limited in such memorandum of sale as to be transferred, shall pass to and vest in the purchaser; and every memorandum of sale so endorsed and authenticated shall be received in all Courts of Justice as sufficient evidence of the particulars therein set forth, and of their having been entered in the register book in manner stated in such memorandum of sale.

Purchaser not entitled to call for any instrument dated prior to the existing certificate of title.

44. Upon the sale or transfer of any estate or interest in land under the operation of this Act, the purchaser or transferee of such estate or interest shall not be entitled to call for the production of any memorandum of sale, or other instrument dated prior to the date of the existing certificate of title of such land, unless such instrument shall be entered in the register book, and notified by memorandum on the duplicate of such certificate as an encumbrance, lien, or interest in, or affecting the said land.

Easements and incorporeal rights to be registered.

45. Whenever any easement or any incorporeal right other than an annuity or rent charge affecting any land under the operation of this Act is created for the purpose of being annexed to, or used and enjoyed, together with other land under the operation of this Act, the Registrar-General shall enter in the register book the date of the memorandum of sale or other instrument creating such easement or incorporeal right, the date of its production to him, the name, residence, and description of the grantor and of the grantee, the amount of the consideration money, the nature of the incorporeal right or easement, and such other particulars as the Registrar-General may deem necessary.

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

46. If the memorandum of sale purports to transfer an estate in fee simple in the whole or in part of the land mentioned in any grant or certificate of title, the vendor shall (unless the grant or certificate of title shall be held by some registered mortgagee or encumbrancee, whose mortgage or encumbrance is not intended to be paid off and discharged out of the purchase-money) deliver up the grant or certificate of title of the said land; and the Registrar-General shall in such case enter on such grant or certificate of title a memorandum cancelling such grant or certificate of title, either wholly or partially, according as the memorandum of sale 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 occasioning such surrender and cancelling.

Fresh certificate to be issued to purchaser. A certificate for the balance, if any, unsold to be issued to proprietor when demanded, or to a registered transferee thereof.

47. The Registrar-General, upon cancelling any grant or certificate of title, either wholly or partially, pursuant to any such transfer, shall make out to the purchaser, or other registered transferee, a certificate of title to the land mentioned in such memorandum of sale, and every such certificate of title shall refer to the original grant of such land, and to the memorandum of sale or other instrument of transfer to the purchaser or other registered transferee thereof; and the Registrar-General shall retain every such cancelled or partially cancelled grant or certificate of title; and whenever required

thereto by the proprietor of an unsold portion or balance of land included in any such partially cancelled grant or certificate of title, or by a registered purchaser or transferee of such portion or balance of land so included, or of any part thereof, shall make out to such proprietor, purchaser, or transferee a certificate of title for such balance of land, or for any part thereof, of which he is the proprietor, purchaser, or transferee.

Lands under the operation of this Act, how leased. Particulars to be recorded in register. Endorsement by Registrar legal evidence.

48. When any land under the operations of this Act is intended to be leased or demised for a life or lives, or for any term of years exceeding three years, the proprietor shall execute a lease in form of the Schedule hereto annexed, marked C, or as near thereto as circumstances permit; and every such lease shall contain the same description that is given in the grant or certificate of title of the land, or such other description as may be necessary to identify such land, and shall be attested by a witness; and such lease, when so executed, together with the grant, certificate of title, or other instrument evidencing the title of such proprietor to an estate in such land, unless the Registrar-General shall dispense with the production of such grant, certificate of title, or other instrument, shall be presented to the Registrar-General, who shall record in the register book the date and hour of such production to him, the date of the lease, the amount of rent or consideration money, the dates on which it is appointed to be paid, and the names and the descriptions of the lessor and of the lessee, and if right of purchase is intended to be granted in such lease, the amount of the purchase money, and the period within which the right may be exercised; and shall record the like particulars by memorandum on the grant, certificate of title, or other instrument, as aforesaid; and shall endorse on the lease a memorandum of the day and hour on which the said particulars were entered in the register book, and shall authenticate such memorandum by signing his name and affixing his seal thereto; and every lease bearing such memorandum, so authenticated shall be received as evidence on behalf of the lessor and lessee named in the said lease, or other person claiming any estate or interest under the said lease, of all covenants, conditions, restrictions, and matters therein expressed, or by this Act declared to be implied on the part of the lessor or lessee respectively.

Right of purchase may be granted.

49. In any such lease as aforesaid, a right to purchase the fee simple of the land thereby demised may be granted to the lessee by a stipulation to that effect expressed in such lease; and, in such case, the true amount of the purchase money to be paid by the lessee, the period within which such right may be exercised, and such other particulars as may be considered necessary for explaining the terms of such right of purchase, shall be stated on such lease; and, in case the lessee shall pay the purchase money stipulated, and otherwise observe his covenants expressed and implied in such lease, the lessor shall be bound to execute a memorandum of sale to such lessee of the said land, and the fee simple thereof, and to perform all necessary acts by this Act prescribed to be done for the purpose of transferring to a purchaser the said land and the fee simple thereof.

Upon registration of lease the land to vest in lessee for the time, and under conditions expressed therein. No lease of mortgaged land valid without consent of mortgagee.

50. Upon the entry in the register book of any lease, the land which is therein mentioned to be leased, shall be transferred to and shall vest in the lessee for the term or other estate in and by the said lease mentioned to be demised, and subject to the express and implied covenants, conditions, and restrictions contained in the said lease, and which are hereinafter declared to be implied on the part of the lessor and the lessee respectively; save and except so far as any such implied covenants and conditions are qualified or negated by the said lease; Provided always that no lease of mortgaged or encumbered land, executed subsequently to the entry in the register book of any bill of mortgage or bill of encumbrance shall be valid and binding against the mortgagee or encumbrance, unless such mortgagee or encum-

brancee shall have consented to such lease prior to the same being entered in the register book.

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

51. 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 Province 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 the said endorsement shall be signed by the lessee and by the lessor, as evidence of the acceptance thereof, and shall be attested by a witness; and the Registrar-General shall thereupon 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 such other person as, having regard to intervening circumstances, if any, the said land would have been vested if no such lease had ever been executed; and the production of such lease or counterpart bearing such endorsement and memorandum as hereinbefore mentioned shall be sufficient evidence that such lease had been so surrendered.

Lands under this Act, how mortgaged or encumbered. Mortgage or encumbrance valid, when particulars entered in register book.

52. Whenever any estate or interest in land under the operation of this Act is intended to be charged or made security in favour of any mortgagee, the mortgagor shall execute a bill of mortgage in form of the Schedule hereto annexed marked D, or as near thereto as circumstances will permit, and whenever any such estate or interest as aforesaid is intended to be charged with, or made security in favour of any encumbrance, for the payment of an annuity, rent charge, or sum of money, the encumbrancer shall execute a bill of encumbrance, in form of one or other of the Schedules hereto annexed marked respectively E and F, or as near thereto as circumstances will permit; and every such bill of mortgage or bill of encumbrance shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and such description as is given in the grant or certificate of title of the land in which such estate or interest is held, or such other description as may be necessary to identify such land, together with a statement of all mortgages and other encumbrances, if any, which may affect the said land, estate, or interest; and every such bill of mortgage or bill of encumbrance shall be attested by a witness, and every bill of mortgage or bill of encumbrance so executed, together with the grant or certificate of title of such land, or as the case may be, the lease or other instrument evidencing the title of the mortgagor or encumbrancer to such estate or interest in the said land, shall be produced to the Registrar-General, who shall enter in the register book the date and hour of such production to him, the date of the bill of mortgage or bill of encumbrance, the name, residence, and description of the mortgagor or encumbrancer and of the mortgagee or encumbrancee; and in the case of a bill of mortgage, the amount of the principal money secured, the rate of interest, and the date, if any, appointed for the redemption of such money, and the dates on which interest is appointed to be paid, or, in case of a bill of encumbrance, the amount of the annuity, rent charge, or sum of money intended to be charged or secured, the times appointed for the payment of such annuity, rent charge, or other sum of money, the rate of interest in case interest thereon shall be payable under the bill of encumbrance, and the events upon which such annuity, rent charge, or sum of money and interest shall become and cease to be payable; and the Registrar-General shall record the like particulars by a memorandum endorsed upon such grant or certificate of title, lease or other instrument of title; and shall also endorse upon such grant or certificate of title, lease, or other instrument, a memorandum stating the day and hour of the day in which the particulars of such mortgage or encumbrance had been recorded in the register book; and upon

such entry being made as aforesaid in the register book, the estate or interest in the land referred to and described in such bill of mortgage or bill of encumbrance shall be held by such mortgagor or encumbrancer, subject to and liable for the payment of the principal sum and interest.

Bill of mortgage or encumbrance to be recorded in order of time in which they are produced to Registrar-General, and endorsed. Priority of mortgages and encumbrances.

53. Every bill of mortgage or bill of encumbrance shall be entered by the Registrar-General in the register book in the order of time in which the same is produced to him for that purpose; and the Registrar-General shall record by memorandum on such bill of mortgage or bill of encumbrance, that the same has been entered by him, stating the day and hour of such entry, and shall certify such memorandum by signing the same and affixing his seal thereto, and every such bill of mortgage or bill of encumbrance so certified shall be received in all Courts of Justice as sufficient evidence that the estate and interest therein described had been so mortgaged or encumbered, as the case may be, and of all other particulars therein contained; and bills of mortgage and bills of encumbrance registered in respect to or affecting the same estate or interest in any land under the operation of this Act, shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other according to the date at which each instrument is recorded in the register book, and not according to the date of each instrument itself.

B remedy when mortgagor or encumbrancer is in default. Power to sell. Appropriation of proceeds.

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

of the moneys which may then be due to the mortgagee or encumbrancee, and the surplus (if any) shall be paid to the mortgagor or encumbrancer, as the case may be.

Registrar-General to give effect to sale by mortgagee or encumbrancee.

55. The Registrar-General, in any such case as aforesaid, upon receipt of a memorandum of sale of such estate or interest so mortgaged or encumbered, signed by such mortgagee or encumbrancee, shall enter the particulars of such memorandum of sale in the register book, and shall record the fact of such entry by endorsement on such memorandum of sale, and shall in other respects proceed in manner herein prescribed for the case of a transfer of a like estate or interest by the proprietor thereof, and every such transfer when so recorded by the Registrar-General shall be as valid and effectual to pass such estate or interest as if the memorandum of sale had been executed by the mortgagor or encumbrancer prior to the date of the execution of the bill of mortgage or the bill of encumbrance, as the case may be; and if such memorandum of sale shall purport to pass an estate in fee simple, and the existing grant or certificate of title be for that purpose surrendered to him, the Registrar-General shall make out and deliver to the purchaser a certificate of title to such land, having first endorsed thereon memoranda setting forth the particulars of all unsatisfied mortgages or other encumbrances, and of all leases, transfers, or other transactions (if any) affecting such land, which shall appear to have been registered and recorded upon such grant or certificate of title so surrendered, and shall in all other respects proceed as hereinbefore is directed in the case of the sale of an estate in fee simple in land under the operation of this Act.

Payments by instalments and extension of time.

56. The payment of any sum of money by weekly instalments, or other periodical payments, may be secured on any land or on any estate or interest therein, by bill of mortgage, or bill of encumbrance, in the form or to the effect of either of the said Schedules D or B to this Act annexed, by varying such form, so as to express fully the terms and modes of payment of such sum of money: Provided also, that the period of time hereinbefore limited as the period after expiration of which it shall be lawful for a mortgagee or encumbrancee to sell an estate pledged as security, in the event of default made in payment of interest or principal, or of any annuity or rent charge, or in consequence of the non-fulfilment of any covenant, may, by condition expressed in any such bill of mortgage, or bill of encumbrance, be extended or shortened, and, notwithstanding such variations in such form, the like covenants, rights, powers, and obligations, shall be implied thereunder and thereby, both against the mortgagor or encumbrancer, and the mortgagee or encumbrancee, as would be implied if no such variation had been made in the form of such Schedule.

Bill of mortgage or bill of encumbrance not a transfer. 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.

57. Every bill of mortgage and bill of encumbrance shall be construed and have effect only as a security for the sum of money, annuity, or rent charge intended to be thereby secured, and shall not operate or take effect as a transfer of the land, estate, or interest intended to be thereby charged with the payment of any money; but it shall be lawful for the mortgagee or encumbrancee, upon default in payment of the money secured by such bill of mortgage or bill of encumbrance, or any part thereof, to enter into possession of the mortgaged or encumbered land, by receiving the rents and profits thereof, or to distrain upon the occupier or tenant of the said land, under the power to distrain hereinafter contained: Provided also, that it shall be lawful for any registered mortgagee or encumbrancee, whenever any money, annuity, or rent charge shall have become in arrear, to bring an action of ejectment, to obtain possession of the said land, either before or after entering into the receipt of the rents and profits thereof, or making any distress as aforesaid; and either before or after any sale of such land shall be effected, under the power of sale given or implied in such bill of mortgage or bill of encumbrance; and any such

registered mortgagee or encumbrancee shall be entitled by suit or other proceedings in equity to foreclose the right of the mortgagor or encumbrancer to redeem the said mortgaged or encumbered lands.

Mortgagee or encumbrancee may distrain on tenant or occupier for arrears, not exceeding the amount of rent due by such tenant or occupier. No lessee liable for greater sum than the amount of rent actually owing by him.

58. Besides his personal remedy against the mortgagor or encumbrancer, as the case may be, every mortgagee or encumbrancee, for the better recovery of any arrears of interest which may be due under any bill of mortgage, or of the arrear of any annuity or rent charge, or any interest which may be due under any bill of encumbrance, shall be entitled after such interest, annuity, or rent charge shall have become in arrear for twenty-one days; and after application for the payment thereof shall have been made, by, or on behalf of the mortgagee or encumbrancee, as the case may be, to the occupier or tenant of any land mentioned in the said bill of mortgage or bill of encumbrance, to enter upon the said lands, and distrain and sell the goods and chattels of such occupier or tenant of the said land, and to retain thereout the moneys which shall be so in arrear, and all costs and expenses occasioned thereby: Provided that no lessee or tenant, occupying such land, shall be liable to pay to any mortgagee or encumbrancee of such land a greater sum than the amount of rent which, at the time of making such distress, may be then due from such lessee or tenant to the mortgagor or encumbrancer, or to the person claiming the said land, under the mortgagor or encumbrancer.

Procedure when leasehold interest is sold under bill of mortgage or encumbrance.

59. Whenever any lease shall have been sold by a mortgagee or encumbrancee of the said lease, under the power of sale given to him by this Act, the said lease may be transferred to the purchaser by the endorsement on the said lease, signed by the mortgagee or encumbrancee in manner hereinafter provided in case of the transfer of a registered lease, or by such other form as the Registrar-General shall approve of; and the Registrar-General, at the time of recording on the said lease, in the manner hereinafter provided, the transfer thereof to the purchaser, shall cancel the said bill of mortgage or bill of encumbrance, and shall enter in the register book the particulars of such transfer and of such cancellation; and shall also, if the same shall be presented to him for that purpose, endorse on the grant or certificate of title of the land mentioned in such bill of mortgage or bill of encumbrance, a memorandum, stating that such mortgage or encumbrance had been discharged or had ceased to exist, and the date on which such last-mentioned entry had been made in the register book; and every such transfer, when so entered in the register book by the Registrar-General, shall be as valid and effectual to pass the said leasehold estate or interest as if the transfer of the said lease had been executed by the mortgagor or encumbrancer prior to the date of the execution of the bill of mortgage or bill of encumbrance, as the case may be.

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

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

Discharge of mortgages and encumbrances.

61. Upon the production of any such bill of mortgage or bill of encumbrance, having thereon a receipt for the entire or any part of the mortgage money or encumbrance money thereby secured, signed by the mortgagee or encumbrancee, and attested by a witness, the Registrar-General shall make an entry in the register book, noting that the said mortgage or encumbrance is discharged wholly or partially, as the case may require; and upon such entry

being so made in the register book, the estate or interest which by such bill of mortgage or bill of encumbrance had been pledged or subjected as security for such loan or sum of money, shall cease to be subject to or liable for the same, or, as the case may be, for the part thereof, noted in such entry as discharged pursuant to such entry as aforesaid: And, in case any annuity or sum of money shall be secured by any such bill of encumbrance during the life of any encumbrancee or other person, or contingent upon the occurrence of some event or circumstance, the Registrar-General, on the production of such bill of encumbrance, together with proof of the death of such annuitant, or other person, or together with proof of the occurrence of the event or circumstance, upon which, in accordance with the provisions of such bill of encumbrance, such annuity or sum of money shall cease to be payable, as the case may be, and upon proof of all arrears of the said annuity and interest or money having been paid, satisfied, or discharged to the said annuitant, or other person entitled to the same, shall make an entry in the register book, noting that such annuity or sum of money is satisfied and discharged, and shall cancel such bill of encumbrance; and, upon such entry being made in the register book, the estate or interest which had been pledged or subjected as security for the payment of such annuity or sum of money, shall cease to be subject to or liable for the same, or any charges incident thereon: And the Registrar-General shall, in any or either such case as aforesaid, endorse on the grant, certificate of title, or other instrument evidencing the title of the mortgagor or encumbrancer to the 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.

Mortgage money may be paid to Registrar-General, if mortgagee be absent from the Colony and mortgage discharged.

62. It shall be lawful for the Registrar-General, in case any mortgagee shall be absent from the Province, or in case there shall be no person authorized to give a receipt to the mortgagor for the mortgage money, at or after the date appointed for the redemption of any mortgage, to receive such mortgage money, with all arrears of interest then due thereon, in trust for the mortgagee or other person entitled thereto; and the Registrar-General shall thereupon 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 to the Registrar-General of the bill of mortgage with the receipt of the mortgagee; and the Registrar-General shall, if demanded, give to the mortgagor a receipt for the money so paid to him in trust, and shall endorse on the grant, certificate of title, or other instrument as aforesaid, and also on the bill of mortgage, whenever those instruments shall be brought to him for that purpose, the several particulars hereinbefore directed to be endorsed on each of such instruments respectively: Provided always, that if it shall be shown to the Registrar-General that any absent mortgagee has a duly constituted attorney or agent in the Province, authorized to receive such mortgage money and interest, the Registrar-General shall not receive the aforesaid mortgage money and interest in trust for such absent mortgagee; provided also, that after payment to the Registrar-General of any mortgage money and interest, under the provisions hereinbefore contained, the mortgagee entitled thereto shall not recover from the Registrar-General, or the Treasurer of the Province, any further sum or interest, in respect of the said mortgage, than the sum which shall have been so received by the Registrar-General in trust for such mortgagee, and upon and after the date of such payment to the Registrar-General, the interest upon such mortgage shall cease to run or accrue.

Transfer of mortgage, and of encumbrance, and of lease.

63. A registered mortgage, a registered lease, or the interest of a registered encumbrancee of any land under this Act may be transferred to any person, by endorsement on the bill of mortgage, lease, or bill of encumbrance, which endorsement shall be in the form of the Schedule hereto annexed marked O, or

in words to the like effect; and on the production of such bill of mortgage, lease, or bill of encumbrance, so endorsed, to the Registrar-General, he shall enter in the register book the name of the transferee as mortgagee, lessee, or encumbrancee, of the land therein mentioned, and shall, by memorandum under his hand, record on such bill of mortgage, or bill of encumbrance, or lease, and, if the same be presented to him for that purpose, on the grant, certificate of title, or other instrument evidencing title to the estate or interest mortgaged or encumbered, that such transfer had been recorded by him, stating the date and hour of such record; and, upon such entry being so made, the estate or interest of the transferrer, 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, and the Registrar-General shall certify such endorsement by signing the same, and affixing his seal thereto, and every transfer, so certified, shall be received in evidence by any Court of Justice as sufficient evidence of its having been so entered in the register book.

General covenants to be implied in instruments.

64. In every instrument creating or transferring any estate, interest, or charge for valuable consideration under the provisions of this Act, there shall be implied the following covenants by the party creating or transferring such estate, interest, or charge, that is to say—That such covenanting party will, at the cost of the party requiring the same, do all such acts and execute all such instruments as in accordance with the provisions of this Act may be necessary to give effect to all covenants, conditions, and purposes expressly set forth in such instrument as aforesaid, or as are by this Act declared to be implied against such covenanting party in any such instrument.

Covenants to be implied in every bill of mortgage.

65. In every bill of mortgage there shall be implied the following covenants against the mortgagor, that is to say—

- (1.) That he will pay the principal money and interest thereby secured after the rate and at the times therein mentioned, without any deduction whatsoever:
- (2.) That the mortgagor 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 lease against the lessee.

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

- (1.) That he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property, during the continuance of the lease:
- (2.) That he will keep and yield up the demised property in good and tenantable repair.

Powers to be implied in lessor.

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

- (1.) That he may, by himself or his agents, at all reasonable times, enter upon the demised property, and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode in 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.

Registrar-General to note particulars of re-entry in register book.

68. In any such case the Registrar-General, 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 Registrar-General shall cancel such lease if delivered up to him for that purpose.

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

69. Such of the covenants hereinafter set forth as shall be expressed in any lease or mortgage, as to be implied against the lessee or mortgagor, shall, if expressed in the form of words hereinafter appointed and prescribed for the case of each such covenant respectively, be so implied against such lessee or mortgagor as fully and effectually as if such covenants were set forth fully and in words at length in such lease or mortgage; that is to say, the words "that he will insure," shall imply as follows—that he will insure 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 lease or bill of mortgage, or if no amount be specified, then to their full value, all buildings, tenements, or premises erected on such land, which shall be of a nature or kind capable of being insured against loss or damage by fire, and that he will, at the request of the mortgagee or lessor, hand over to, and deposit with him, the policy of every such insurance, and produce to him the receipt or receipts for the annual or other premiums payable on account thereof: Provided, always, that all moneys to be received under or by virtue of any such insurance shall, in the event of loss or damage by fire, be laid out and expended in making good such loss or damage: Provided also, that if default shall be made in the observance or performance of the covenant last above-mentioned, it shall be lawful for the mortgagee or lessor, without prejudice nevertheless, to and concurrently with the powers granted him by his bill of mortgage or lease, in manner in and 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; the words "and paint outside every alternate year" shall apply as follows, viz.—and also will, in every alternate year, during the currency of such lease, paint all the outside woodwork and ironwork belonging to the hereditaments and premises mentioned in such lease, with two coats of proper oil-colours, in a workmanlike manner; the words "and paint and paper inside every third year" shall imply as follows, viz.—and will, in every third year, during the currency of such lease, paint the inside wood, iron, and other works now or usually painted, with two coats of proper oil-colour, in a workmanlike manner; and also re-paper, with paper of a quality as at present, and such parts of the said premises as are now papered; and also wash, stop, whiten, or colour such parts of the said premises as are now whitened or coloured respectively; the words "and will fence" shall apply 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 capable of resisting the trespass of horses, oxen, bulls, and cows; the words "and cultivate" shall apply 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 husbandlike manner, and will not impoverish or waste the same; the words "that the said lessee will not use the said premises as a shop" shall apply as follows, viz.—and also that the said lessee will not convert, use, or occupy the said hereditaments and premises mentioned in such lease, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or permit or suffer the said hereditaments and premises, or any part thereof, to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said lessor; the words "and will not carry on offensive trades" shall apply 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; the words "and will not, without leave, assign, or sublet" shall apply as follow, 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; the words "and will not cut timber" shall apply as follows— and also that the said lessee shall not nor will cut down, fell, injure, or destroy any growing or living timber or timber-like trees, standing and being upon the said hereditaments and premises above-mentioned, without the consent in writing of the said lessor; the words "and will carry on the business of a publican, and conduct the same in an orderly manner" shall apply as follows, viz.—and also that the said lessee will, at all times during the currency of such lease, use, exercise, and carry on, in and upon the premises therein mentioned, the trade or business of a licensed victualler or publican and retailer of spirits, wines, ale, beer, and porter, and keep open and use the messuage, tenement, or inn, and buildings standing and being upon the said land, as and for an inn or public-house for the reception, accommodation, and entertainment of travellers, guests, and other persons resorting thereto or frequenting the same, and manage and conduct such trade or business in a quiet and orderly manner, and will not do, commit, or permit, or suffer to be done or committed, any act, matter, or thing whatsoever, whereby or by means whereof any licence shall or may be forfeited or become void or liable to be taken away, suppressed, or suspended in any manner howsoever; the words "and will apply for renewal of licence" shall apply 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; the words "and will facilitate the transfer of licence" shall apply 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.

Such covenants may be set forth in declaration, in actions for breach.

70. Where any memorandum of sale or other instrument in accordance with the provisions of this Act is executed by more parties than one, such

plied covenants shall be construed to be several and not to bind the parties jointly, and in any declaration in an action for a supposed breach of any such covenants, the covenant alleged to be broken may be set forth, and it shall be lawful to allege that the party against whom such action is brought did so covenant precisely in the same manner as if such covenant had been expressed in words in such memorandum of sale or other instrument, any law or practice to the contrary notwithstanding.

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

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

Covenants declared to be implied may be negatived or modified.

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

Lands may be vested in trust by instrument of nomination.

73. Whenever the registered proprietor of any land under the operation of this Act, or of any estate or interest in such land, is desirous of vesting the said land, estate, or interest in any trustees, it shall be lawful for such proprietor to execute an instrument in form of the Schedule hereto annexed, marked K, or as near thereto as circumstances will permit, nominating trustees of the said land, estate, or interest; and every such nomination of trustees shall contain an accurate statement of the estate or interest intended to be vested in any trustees, and such description as is given in the grant or certificate of title of the land in which such estate or interest is held, or such other description as may be necessary to identify such land, and shall be attested by a witness; and every nomination of trustees so executed, together with the grant or certificate of title of such land or, as the case may be, the lease or other instrument proving the title of the registered proprietor to such land, estate, or interest, shall be produced to the Registrar-General, who shall enter in the register book the date of the nomination of trustees, and the date of its production, the name, residence, and description of the person nominating the trustees, and the names, residences, and descriptions of the persons who are nominated trustees, and such other particulars as the Registrar-General may deem necessary, and shall endorse on such nomination of trustees, and also on the grant, certificate of title, lease, or other instrument evidencing title to the estate or interest intended to be vested in the said trustees, unless the Registrar-General shall see reason to dispense with the production thereof, the fact of such entry having been made, with the date and hour thereof, and shall sign each such endorsement, and shall affix his seal to such nomination of trustees, and upon such entry being made by the Registrar-General, the land, or the estate, or the interest therein, as set forth and limited in such nomination of trustees, shall pass to and vest in the said trustees.

Trusts may be declared either by schedule to instrument of nomination, or by separate deed or instrument. Instrument declaring trusts to be deposited, but not registered.

74. The trusts which are intended to be declared of any land, estate, or interest vested in trustees as hereinbefore mentioned, may be declared either by a Schedule to the aforesaid instrument effecting such nomination of trustees, or by any separate instrument or deed. Whenever the said trusts are declared by a separate instrument or deed, the same may include as well land under the operation of this Act, as land which is not under the operation of this Act, provided that the description of the several parcels of land contained in such separate instrument or deed shall sufficiently distinguish the land which is under the operation of this Act from the land which is not under the operation of this Act; and whenever such trusts are declared by a separate instrument, a duplicate or attested copy of such instrument shall be deposited with the Registrar-General for the purpose of safe custody and reference; but such duplicate or attested copy shall not be registered.

No entry of trusts to be made in register book. Trustees to receive certificate of title, and deal with same as if beneficial owners.

75. Whenever land under the operation of this Act shall be settled, or shall become vested in trustees upon any trust, whether express, implied, or constructive, the Registrar-General shall not make any entry of the said trusts in the register book : and the trustees, after the entry in the register book of the nomination of trustees, in manner hereinbefore provided, shall, notwithstanding any trust affecting the said land, be entitled to sell, transfer, mortgage, or otherwise deal with the said land in the like manner as if the said trustees had been the beneficial owners of the said land ; and in case the fee simple of such land be so settled or vested in trust, such trustees shall be entitled to receive a certificate of title for the same.

The words "no survivorship" in any instrument of appointment shall operate to prevent a less number of trustees than are named in such instrument dealing with the land. In such case Supreme Court to give direction for appointment to any vacancy, or for securing moneys. Receipt of trustees valid discharge; and purchaser or mortgagee not bound to see after application of money. Continuing trustees may nominate co-trustees in case of vacancy. Appointment of new trustees to be noted in register book.

76. It shall be lawful for the registered proprietor of any land under the operation of this Act, or any estate or interest in such land, to insert the words "no survivorship" in any instrument intended by such registered proprietor to operate as a nomination of trustees ; and whenever such words shall be so inserted, it shall not be lawful for any less number of trustees than the number named in the aforesaid instrument, to sell, transfer, mortgage, 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 made under the provisions of this Act, which application shall be made by or on behalf of some person beneficially interested in the aforesaid land, estate, or interest ; and it shall be lawful for the said Court or Judge by such order as aforesaid, to give directions for the appointment of any new trustee or trustees in the place of any former trustee or trustees, and for the investment or application of such purchase money or mortgage money as the said Court or Judge may think fit for the benefit of the persons beneficially interested in the aforesaid money ; and such order accompanied by the memorandum of sale, bill of mortgage, or instrument purporting to transfer or affect the said land, estate, or interest, shall be deposited with the Registrar-General, who shall thereupon make the entry in the register book, which, under the provisions of this Act, is required for the purpose of giving effect to the said memorandum of sale, bill of mortgage, or other instrument, as the case may be ; and the receipt of such trustee, or (except in cases where the words "no survivorship" have been entered in the register book, as hereinafter provided) the receipt of the surviving trustees or trustee, or of the legal personal representative of the last surviving trustee, shall be a sufficient discharge to any purchaser or mortgagee of such land or any part thereof, whether such purchaser or mortgagee had notice or not of the said trusts ; and the purchaser or mortgagee of the said land shall not be bound to see to the application of the money paid, upon receiving such receipt : Provided that nothing herein contained shall prevent any less number of trustees than the number which may be named in the aforesaid instrument operating as a nomination of trustees from filling up any vacancy which may arise in the number of the aforesaid trustees, by nominating any other person to be co-trustee with the acting or continuing trustees under the aforesaid instrument ; and such new trustee may be nominated by any instrument in form of the Schedule hereto annexed, marked K, or as near thereto as circumstances will permit, with the addition of the words "no survivorship ;" and whenever the vacancy in the number of the said trustees shall be so filled up by the appointment of any new trustee the Registrar-General shall enter in the register book such particulars as are hereby required to be entered in the register book in the case of any instrument intended to operate as a nomination of trustees ; and thereupon, the new trustee shall have the like estate, interest, power, and authority, as if such new trustee had been originally nominated a trustee by the registered proprietor of such land, estate, or interest.

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

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

Proprietor may vest estate jointly in himself and others without limiting any use or executing any reassignment.

78. It shall be lawful for the registered proprietor of any estate or interest in land under the operation of this Act, whether such land shall be of the nature of real or personal property, or for any mortgagee or encumbrancee thereof, by any of the forms of instruments of transfer, or other assurance provided by this Act, and containing such alterations, if any, as may be deemed necessary in the said forms of instruments, to transfer or otherwise assure and vest such land, estate, or interest, or the money secured by any bill of mortgage, or bill of encumbrance, or any part thereof to and in himself, jointly with any other person or persons; and it shall not be necessary, for the purpose of any such transfer or assurance, or for the purpose of vesting such land, estate, interest, or money in such registered proprietor jointly with any other person or persons, to limit any use or execute any reassignment; but the said transfer or assurance by such registered proprietor to himself, and another, or others, shall vest the said land, estate, or interest, or money, in such registered proprietor jointly with any other person or persons, according to the intent and meaning appearing in such instrument, and thereby expressed.

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

79. Whenever any registered proprietor of land, under the operation of this Act, shall appear to the Supreme Court to be a trustee of such land, within the intent and meaning of "The Trustee Act, No. 7, of 1855," and any order shall be made in the premises by the Supreme Court, or a Judge thereof, the Registrar-General, on being served with an office copy of such order, shall proceed to carry out and give effect to the same, by entering in the register-book the date and hour of the production of the said order, the date of the said order, and the name, residence, and description of the person in whom the said order shall purport to vest the said land; and, until such entry as aforesaid shall be made in the register book, the said order shall have no effect or operation in transferring or otherwise vesting the said land in the person named in the said order; and the Registrar-General shall also record the like particulars upon the grant, certificate of title, or other instrument evidencing title to the said land, in case the same shall be produced to him for that purpose.

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

80. Wherever a person entitled to or interested in land as a trustee for some other person, 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 operation of this Act, such person shall be bound to allow his name to be used as 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 of the said land 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.

Transmission of land to be authenticated by declaration of party claiming, before registered. Declaration, before whom made.

81. If any estate or interest in land under the operation of this Act, or any mortgage, or encumbrance affecting such land, shall become transmitted, in consequence of the death, bankruptcy, or insolvency of the registered pro-

prietor thereof, such transmission shall be authenticated by a declaration in writing, or in such other manner as the Registrar-General may require; and every such declaration shall state the manner in which and the party to whom such land shall have been so transmitted, and shall be made and signed by the person claiming to be entered in the register book as registered proprietor of such estate, or interest, mortgage, or encumbrance; or, in case the person claiming as aforesaid shall be an infant, lunatic, or person of unsound mind, then such declaration as aforesaid shall be made and signed by the guardian or committee of such person claiming as aforesaid, or by some credible person acting for and on behalf of such person claiming as aforesaid; and every such declaration shall be made before the Registrar-General, if the declarant shall be resident within the boundaries of the City of Adelaide; or if the declarant shall be resident beyond the boundaries aforesaid, and within the Province of South Australia, then before a Justice of the Peace for the said Province; or if the parties be resident in the United Kingdom of Great Britain and Ireland, or in any British possession other than the said Province, or in any foreign place, then in the presence of any of the persons hereinafter appointed respectively as persons before whom the execution of instruments executed beyond the limits of the said Province may be proved.

Transmission by bankruptcy or insolvency. Certified copy of appointment of assignee to be deposited with Registrar-General. Upon entry of such appointment, assignees empowered to deal with lands. Bankruptcy or insolvency of trustees not to affect beneficiaries.

82. Whenever such transmission shall take place by virtue of the bankruptcy or insolvency of a registered proprietor, an office copy, or other duly certified copy of the appointment of the assignees of the bankrupt or insolvent, or such other sufficient evidence of such appointment as the Registrar-General may require, shall be left with the Registrar-General; and the Registrar-General shall thereupon enter a memorandum of the particulars of such appointment in the register book, and upon such entry being made, it shall be lawful for such assignees to transfer to any purchaser or other person, the land, estate, or interest so transmitted as aforesaid; and every memorandum of sale or other instrument for that purpose, executed by such assignees in accordance with the provisions of this Act, shall have the same validity and effect as a like instrument would have if executed prior to such transmission by bankruptcy or insolvency by the registered proprietor of such land, estate, or interest: Provided always, that nothing herein contained shall alter or vary the position of the assignees of a bankrupt or insolvent trustee of any land, as between such assignee and any person who may be beneficially interested in any land, of which such insolvent trustee is the registered proprietor; but the rights of such persons (if any), as between him and such assignees, in respect of such land, shall remain entirely unaffected, notwithstanding the insolvency of the registered proprietor of the said land; and the said insolvent shall transfer the said land to the persons beneficially interested therein, and shall do and execute all acts which may be necessary for nominating a new trustee or new trustees of the said land, and carrying into effect any trusts affecting the said land at the date of his insolvency.

Marriage of female proprietor to be certified to Registrar-General by declaration. Particulars to be entered in register book. Instruments to be registered, giving effect to dealings in land by married women.

83. Whenever a female proprietor, entitled to any estate or interest affecting any land under the operation of this Act, shall marry, the Registrar-General, on production of the register of such marriage or other sufficient evidence of the celebration thereof, accompanied by a declaration to be made in manner hereinbefore prescribed, of the identity of the woman named in the register book as the proprietor of such estate or interest with the person named in such register of marriage, shall enter on the register book a memorandum of the day and hour of the production to him of the register or other evidence of such marriage, and of the particulars certified to him by such declaration, and shall, when required by such female proprietor or other person claiming through her, enter in the register book any instrument purporting to transfer or otherwise affect the said land, estate, or interest, in

accordance with the provisions of this Act: Provided that every such instrument shall, in all cases when the same is by law required to be acknowledged by such married woman for the purpose of transferring the said land, estate, or interest, be duly acknowledged by such married woman, in the manner hereinafter provided, previously to the same being so recorded by the Registrar-General; and every such entry by the Registrar-General shall state the date and hour of the production of such instrument, and all such other particulars as herein are required to be recorded by the Registrar-General in the register book at the time of entering such instrument, and the Registrar-General shall also make such endorsement as herein is required to be made on the grant, certificate of title, or other instrument evidencing title to the said land, estate, or interest thereby transferred or affected.

Transmission by death, will, and probate, or letters of administration, to be produced. Particulars to be registered.

84. Whenever land, under the operation of this Act, shall be transmitted in consequence of the death of the registered proprietor of such land, no person shall be entitled to obtain a certificate of title of such land, or to sell, transfer, or otherwise affect the said land, until the probate or an office copy of the will of the deceased proprietor, or letters of administration, in case the said proprietor shall have died intestate, shall be produced and left with the Registrar-General for the purpose of recording the same in the register book, and the Registrar-General shall enter in the register book the date of the will and of the probate, or, as the case may be, the date of the grant of the letters of administration, the date and hour of the production to him of such will and probate, or letters of administration, and, whenever the same can be ascertained, the date of the death of such proprietor, with such other particulars as the Registrar-General shall deem necessary.

Certificate of title to be issued to executors or to Curator of Intestate Estates if no caveat be lodged after advertisement. Outstanding certificates to be delivered up. Rights of heirs and devisees saved, except so far as regards purchasers or mortgagees for *bond fide* consideration.

85. After the expiration of six calendar months from the death of the registered proprietor of any land under the operation of this Act, the executor or administrator of such deceased proprietor, or in those cases where no executor or administrator shall have been appointed, or where an executor or administrator shall decline to act in the execution of the said will, or shall not reside within the said Province, then the Curator of Intestate Estates may apply to the Registrar-General to issue to him a certificate of title of the said land, and the Registrar-General shall thereupon give notice of the receipt by him of such application by one advertisement in the *South Australian Government Gazette*, and two advertisements in at least one newspaper published in the City of Adelaide; and, unless within fourteen days from the date of the latest of such advertisements a caveat shall have been entered by, or on behalf of any person claiming the said land, or any part thereof, or any estate or interest therein, by devise or descent, the Registrar-General shall proceed to issue to such executor, administrator, or the Curator of Intestate Estates, as the case may be, a certificate of title of the said land: Provided always that before the issuing of the aforesaid certificate of title to such executor, administrator, or Curator of Intestate Estates, the outstanding grant or certificate of title shall be delivered up and cancelled, and the Registrar-General shall enter in the register book a statement of the fact that such outstanding grant or certificate of title has been delivered up by the executor, administrator, or Curator of Intestate Estates, for the purpose of being cancelled, and the date and hour of such delivery thereof: Provided also, that, subject to the power hereby conferred upon any executor or administrator, or upon the Curator of Intestate Estates, of transferring the said land, the rights or interests of any devisee or heir, or of any other person interested in the said land, shall not be affected in consequence of such certificate of title having been issued to any executor or administrator, or to the Curator of Intestate Estates, except so far as regards any purchaser or mortgagee of the said land, *bond fide* for valuable

consideration, claiming or deriving title from or under any executor or administrator, or from or under the Curator of Intestate Estates.

Certificate of title to vest powers of disposition in executors or Curator of Intestate Estates.

86. After any certificate of title shall be issued by the Registrar-General to the executor or administrator of a deceased proprietor of any land, or to the Curator of Intestate Estates, under the provisions contained in this Act, such executor, or administrator, or the Curator of Intestate Estates, shall have and exercise the like power of disposition over the land mentioned in such certificate of title as he is by law entitled to exercise over any personal estate belonging to the testator or intestate which may be vested in him as such executor or administrator, or as the Curator of Intestate Estates is by law entitled to exercise over the personal estate of intestates, under the provisions of an Ordinance of the Governor and Legislative Council of South Australia, No. 12 of 1848, intituled "An Ordinance for the better preservation and management of the estates of deceased persons in certain cases."

Heir-at-law or devisee may apply to Judge of Supreme Court to order the Registrar-General to issue certificate of title to him. Registrar-General, if authorized by executors, or Curator of Intestate Estates, may issue certificate of title to devisee or heir.

87. Subject to such disposition of the said land, as hereinbefore mentioned, by an executor, or administrator, or by the Curator of Intestate Estates, it shall be lawful for the heir-at-law, or devisee of a deceased proprietor, at any time to apply to the Supreme Court or a Judge thereof, by motion or petition, in a summary way, to make an order for the Registrar-General to issue to such heir-at-law, or devisee, a certificate of title of the land which may have descended or have been devised to such heir-at-law or devisee, and the Supreme Court or a Judge thereof, shall make such order therein as may seem proper, and may thereby direct any caveat to be entered for the protection of the interests of such other persons (if any) as may be interested in the said land, and may also direct the costs of such application to be borne and paid out of the estate of the said deceased proprietor, or by such other person, or in such other manner as the Court may think just; and such order shall be left with the Registrar-General, who shall enter the particulars thereof in the register book, and shall forthwith give effect to the said order by complying with the directions therein contained: Provided always, that in any case where the executor or administrator of any deceased proprietor, or the Curator of Intestate Estates, shall, at the time when the probate or office copy of the will of the deceased proprietor is produced and left with the Registrar-General for the purpose of being recorded in the register book, by any writing authorize the Registrar-General to issue a certificate of title of the said land to the heir-at-law or devisee of the deceased proprietor of the said land, the Registrar-General shall comply with the aforesaid authority by issuing such certificate of title to the heir-at-law or devisee of the deceased proprietor of the said land, without requiring such order to be obtained for that purpose as hereinbefore directed; and the Registrar-General shall, thereupon, make such entry in the register book relating to the issuing of the said certificate of title to such heir-at-law or devisee as he is hereby required to make at the time of his issuing a certificate of title of the said land to the executor or administrator of a deceased proprietor.

Powers of Supreme Court under Statute of the 6th Queen Anne, applicable to registration under this Act.

88. For the purposes of registration under the provisions of this Act, of an estate or interest in or upon any land, or of any instrument affecting or relating to the said land, or on any application for the issuing by the Registrar-General of a certificate of title under the provisions of this Act, it shall be lawful for the Supreme Court, or a Judge thereof, in its equitable jurisdiction, upon motion or petition, to exercise all such powers as are conferred, or as may be applicable for any of the purposes hereinbefore mentioned, under a Statute passed in the sixth year of the reign of Her Majesty Queen Anne, and intituled "An Act for the more effectual discovery of the death of persons pretended to be alive, to the prejudice of those who claim estates after their deaths."

Transfer of mortgage or lease includes transfer of right to sue thereunder. Saving powers to Courts of Equity to give effect to trusts.

89. By virtue of every such transfer as is hereinbefore mentioned, the right to sue upon any bill of mortgage, bill of encumbrance, or other instrument, and to recover any debt, sum of money, annuity, or damages thereunder (notwithstanding the same may be deemed or held to constitute a 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.

Partition of coparcenership, or joint tenancy, or tenancy in common.

90. Whenever it is intended that partition should be made by coparceners, joint tenants, or tenants in common, of any land under the operation of this Act, or of any estate or interest in such land, such coparceners, joint tenants, or tenants in common, may execute a memorandum of sale, lease, or other such instrument of transfer as in accordance with the provisions of this Act the nature of the estate or interest may require, purporting to sell, lease, or otherwise transfer, to each or any of such coparceners, joint tenants, or tenants in common respectively, such part of the said land, or their estate or interest in such part of the said land as shall be expressed and described in such memorandum of sale, lease, or instrument of transfer; and upon such memorandum of sale, lease, or other instrument being presented to the Registrar General, he shall enter the particulars of the same in the register book, and proceed in other respects as is hereinbefore directed for the case of the transfer of a like estate or interest in land under the operation of this Act, and upon such entry being made in the register book the estate or interest of such coparceners, joint tenants, or tenants in common, in the particular piece of land described in such memorandum of sale, lease, or other instrument, shall pass from such coparceners, joint tenants, or tenants in common, and shall vest in the individual named and described as purchaser, lessee, or transferee, of the estate or interest of such coparceners, joint tenants, or tenants in common, as set forth, limited and described in such memorandum of sale, lease, or other instrument of transfer.

Agent holding power of attorney to sell or dispose of the fee may apply to bring land under Act and receive certificate of title in the name of his principal.

91. Where any attorney, or agent acting under a power of attorney from a person who would himself be entitled to make application to bring any land under the operation of this Act, and to receive certificate of title for the same, shall by such power be authorized to sell or absolutely to dispose of such land, it shall be lawful for such attorney or agent, in pursuance of any contract for the sale of such land, to make a declaration that his principal is so entitled as aforesaid, and to apply on behalf of his principal to bring such land under the operation of this Act, and to receive certificate of title for the same in the name of said principal; and every instrument dealing with such land in accordance with the provisions of this Act, and signed by such attorney or agent on behalf of his principal shall be valid and effectual for the purposes intended by such instrument, and such land shall be considered to have been properly brought under this Act, notwithstanding the absence of any express authority from the principal to sign such instruments or make such declaration or application: Provided that nothing herein contained shall interfere with any express prohibition to an attorney or agent to bring any land under the operation of this Act.

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

92. Upon the application of any registered proprietor of lands held under separate grants or certificates of title, and the delivering up of such separate grants or certificate of title, it shall be lawful for the Registrar-General to issue to such proprietor a single certificate of title for the whole of such lands, whenever 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, having regard to the descriptions of such parcels of land, and the plans thereof by this Act required to be delineated on such certificate of title; and, upon issuing any such single certificate of title, the Registrar-General shall cancel the several grants or previous certificates of title of such land so delivered up, and shall endorse upon each a memorandum setting forth the occasion of such cancellation, referring to the single certificate of title so issued, in which the land described in such cancelled grants or certificates of title is included.

Upon surrender of existing grant or certificate, proprietor may obtain separate certificates, including each a portion of the land described in such surrendered grant or certificate.

93. Upon the application of any registered proprietor of land held under a single grant or certificate of title, and the delivering up of such single grant or certificate of title, it shall be lawful for the Registrar-General to issue to such proprietor several certificates of title, each including a separate portion of the land previously held by such proprietor, under such single grant or certificate of title; and the Registrar-General shall, at the same time, cancel such single grant or certificate of title so delivered up, and shall endorse thereon a memorandum setting forth the occasion of such cancellation, referring to each of the several certificates of title so issued in respect to the land described in such cancelled grant or certificate of title.

Registrar-General may dispense with production of duplicates of certificates of title, and other instruments, in certain cases.

94. It shall be lawful for the Registrar-General, in case he shall see reasonable cause for so doing, to dispense with the production of any grant, certificate of title, lease, or other instrument, for the purpose of making the endorsement thereon, which by this Act is required to be made, upon the transfer or other dealing with land under the operation of this Act; and the Registrar-General may, in such case, if he shall think proper, require proof to be made, by affidavit or otherwise, of the identity of the person transferring or otherwise dealing with the said land, with the person who is registered as proprietor thereof; and the Registrar-General, on making the entry in the register book of the particulars of such transfer, or other dealing affecting the said land, shall likewise state in the said entry, that no endorsement of such transfer or other dealing has been made on the duplicate grant, certificate of title, lease, or other instrument, and upon such entry as aforesaid being made in the register book, and upon the endorsement of the said entry, with the date thereof on the instrument purporting to transfer or deal with such land, such transfer or other dealing shall be as valid and effectual as if the endorsement had been made upon the duplicate of the grant, certificate of title, or other instrument.

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

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

No contract for sale or dealing with land *in futuro* to be registered.

96. Except as hereinbefore provided in the case of right of purchase covenanted in a lease, no agreement for the sale, lease, or other dealing with any estate or interest in land under the operation of this Act to be performed *in futuro*, shall be entered in the register book; but any person claiming an estate or interest in any such land under any contract or agreement in writing or by transmission, may, by caveat in the form of the Schedule hereto marked P, or as near thereto as circumstances will permit, forbid the registration of any instrument affecting such land, estate, or interest.

Notice of caveat to parties. Person lodging caveat may be summoned to show cause.

97. Upon receipt of any caveat, the Registrar-General shall enter the particulars thereof in the register book, and also, if the same be produced to him for that purpose, on the grant, certificate of title, lease, or other instrument evidencing title to the estate or interest affected by such caveat, and if such grant or other instrument, as aforesaid, be not produced to him, then the Registrar-General shall give notice of the receipt of such caveat to the person

registered as proprietor in respect to the estate or interest referred to in such caveat, and to every person presenting for the purpose of registration any instrument relating to such estate or interest, and such registered proprietor, or any person claiming estate or interest in the same land, may, if he think fit, summon the person signing such caveat to attend before the Judges of the Supreme Court of the said Province, or one of them, to show cause why such caveat should not be withdrawn; and it shall be lawful for the said Court, or a Judge thereof, upon proof that such last-mentioned person has been summoned, to make such order in the premises, either *ex parte* or otherwise, as to the said Court or Judge shall seem fit.

Caveats to contain the names and descriptions of parties, and a sufficient description to identify the land. Caveator to leave an address, at which notice may be served. Registrar-General may approve form of caveat.

98. Every caveat left, under the provisions of this Act, with the Registrar-General, shall state therein the name and address of the person by whom, or on whose behalf such caveat shall be lodged, and shall contain a sufficient description to identify the land which is intended to be affected thereby, and the estate or interest (if any), which shall be claimed by the caveator in the said land; and every such caveat shall be signed by the caveator, or by his solicitor, known agent or attorney; and all notices relating to such caveat, or any proceedings in respect thereof, shall be served, either at the place of address mentioned in such caveat, or at the office of the solicitor, known agent or attorney, who shall have signed such caveat; and such service shall be deemed sufficient service of the notice, as against all persons who may claim under the said caveat: Provided always, that it shall be lawful for the Registrar-General, in case he see fit, to require the form of any caveat to be amended, and, from time to time, to issue such forms of caveats as he shall deem necessary for the purpose of carrying into effect the several provisions, matters, and things, which are intended to be hereby effected or provided for.

No entry to be made in register-book affecting lands in respect to which caveat continues in force.

99. So long as any caveat shall remain in force prohibiting the transfer or other dealing with land, the Registrar-General shall not enter in the register-book any memorandum of sale 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.

Registrar-General may cancel caveat, upon proof that the interest of parties have been satisfied, or that the interest of the caveator is inadequate to warrant the caveat.

100. Any caveat which may be lodged under the provisions hereinbefore contained may be cancelled by the Registrar-General, upon its being proved to his satisfaction that the estate, interest, or claim of the caveator has ceased, been abandoned, or withdrawn; or that the rights of the parties on whose behalf such caveat may have been lodged are satisfied or arranged; or, in case the Registrar-General shall be satisfied that the nature of the estate, interest, or claim of the caveator, or person on whose behalf the caveat is lodged, is not such as to entitle him to prohibit the sale, or mortgage, or other dealing with the land, estate, or interest referred to in such caveat.

Power of attorney. Saving powers executed prior to this Act, or without the limits of the Province.

101. The proprietor of land under the operation of this Act, or any person registered as having estate or interest therein, may authorize and appoint any person to act for him, or on his behalf, in respect to the leasing of such land, or the sale or mortgage of his estate or interest therein, or otherwise lawfully to deal with such land, in accordance with the provisions of this Act, by executing a power in form of the Schedule hereto marked G, or as near thereto as circumstances will permit, which power shall contain the same description of such land as is contained in the grant, or existing certificate of title thereof, or such other description as may be sufficient to identify the said land, and shall set forth accurately the estate or interest of such proprietor in the said land, and shall specify the nature of the power intended to be conferred, the name and description of the person by whom, the places where, and the time

within which it is to be exercised; and upon such power being brought to the Registrar-General, he shall enter the particulars of the same in the register-book, and shall record upon such power a memorandum of the day and hour on which the said particulars were so entered, and shall authenticate such record by signing the same and affixing thereto his seal; and from and after the date of such entry in the register book, all acts lawfully done or performed by the person so appointed under authority of and within the limits prescribed in such power, shall have the same force and effect, and be equally binding on such proprietors, as if the said acts had been done or performed by such proprietor; and every such power bearing such endorsement, authenticated as aforesaid, shall be received in evidence as sufficient proof that the person to whom such power has been granted is duly authorized to make all contracts, to sign all instruments, and to perform all other lawful acts in accordance with the powers therein limited and appointed for the attainment of the objects therein specified, or any of them: Provided always, that nothing herein contained shall be interpreted to invalidate any power of attorney executed without the limits of the said Province, or prior to the passing of this Act, although such power may not be in accordance with the provisions of this Act.

Registration abstract for registering dealings without the limits of the Province.

102. The Registrar-General, upon the application of any registered proprietor of land under the operation of this Act, shall grant to such proprietor a registration abstract enabling him to sell, mortgage, or otherwise deal with his estate or interest in such land at any place without the limits of the said Province, which registration abstract shall be in the form in the Schedule hereto marked H, or as near to such form as circumstances will permit, and the Registrar-General shall at the same time enter in the register book a memorandum recording the issue of such registration abstract, and shall endorse on the grant, certificate of title, or other instrument evidencing or constituting the title of such applicant proprietor to such estate or interest a like memorandum recording the issue of such registration abstract, and from and after the issuing of any such registration abstract, no sale, mortgage, lease, or other transaction transferring, encumbering, or in any way affecting the estate or interest in respect of which such registration abstract is issued shall be entered in the register book until such abstract shall have been surrendered to the Registrar-General to be cancelled, or the loss or destruction of such abstract proven to his satisfaction, or until the same shall have been revoked in manner hereinafter provided.

Mode of procedure under registration abstract.

103. Whenever any sale, mortgage, or lease, is intended to be transacted under any such registration abstract, a memorandum of sale, bill of mortgage, or lease, as the case may require, shall be prepared in duplicate in the forms for such case hereinbefore appointed and prescribed, or as near to such form as circumstances will permit, 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 Province may be proven, and record shall be made upon such registration abstract of the several particulars hereinbefore required to be entered in the register book by the Registrar-General in the case of a transfer, mortgage, or lease, as the case may be, made within the limits of the said Province, and upon such record being authenticated by the signature of such authorized person as aforesaid, such transfer, mortgage, or lease, shall be as valid and binding to all intents as if the same had been made within the limits of the said Province, and recorded in the register book by the Registrar-General, and subject to the rules hereinafter for each such case prescribed, every person whose name shall have been so recorded as purchaser, mortgagee, or lessee of such land upon such registration abstract, shall be held and taken to be registered as such, and shall have the same rights and powers, and be subject to the same liabilities as he would have had and been subject to if his name had been registered in the register book instead of on such abstract as proprietor, mortgagee, or lessee of such land, or of such estate or interest therein.

General rules applicable to powers of attorney and registration abstracts.

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

- (1.) The power shall be exercised in conformity with the directions contained therein :
- (2.) No sale, mortgage, or lease *bond fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such sale, mortgage, or lease :
- (3.) No sale, mortgage, or lease *bond fide* made to a purchaser, mortgagee, or lessee, without notice, shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given :
- (4.) If sale be effected, there shall be delivered up to the Registrar-General the memorandum of sale by which the land or any estate or interest therein is contracted to be transferred, the registration abstract, and the grant, certificate of title, lease, or other instrument of title ; the Registrar-General shall enter in the register book a memorandum of the particulars of such sale, and of the cancelling of such abstract, and shall endorse on such memorandum, and also on the grant, certificate of title, lease, or other instrument of title, a memorandum of the date and hour on which such entry was made, and if a full estate in fee simple in such land, or in any part thereof, shall have been passed by such memorandum of sale, he shall cancel the grant or certificate of title delivered up, and shall issue a certificate of title of such land, or of the sold portion thereof to the purchaser, and if part only be sold, he shall also issue a certificate of title of the unsold portion to the proprietor ; and shall, before issuing the same, endorse on each of such certificates of title a memorandum of the particulars of all unsatisfied mortgages or encumbrances appearing in the register book, or on the registration abstract affecting the land included under each such certificate of title respectively :
- (5.) Every mortgage which is so endorsed as aforesaid on the registration abstract shall have priority over all bills of mortgages of the same estate executed subsequently to the date of the entry of the issuing of such abstract in the register book ; and if there be more mortgages than one so endorsed, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled one before the other according to the date at which a record of each instrument is endorsed on such abstract, and not according to the date of the bill of mortgage :
- (6.) The discharge and also the transfer of any mortgage, so endorsed on such abstract, may be endorsed on such abstract by any person hereinbefore authorized to record a mortgage thereon upon the production of such evidence and the execution of such instruments as are hereinbefore required to be executed and produced to the Registrar on the entry of the discharge or transfer of a mortgage in the register book ; and such endorsement, so made on such abstract, shall have the same effect and be as valid, to all intents, as if such transfer or discharge had been entered in the register book by the Registrar-General in manner hereinbefore provided.
- (7.) Upon proof, at any time, to the satisfaction of the Registrar-General that any power or 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 Registrar-General, as circumstances may require, either to issue a new power or registration abstract, as the case may be, or to direct such entries to be made in the register book, or such other matter or thing to be done as might have been made or done if no such loss or obliteration had taken place.

- (8.) Upon the delivery of any abstract to the Registrar-General, he shall after recording in the register book in such manner as to preserve its priority, the particulars of every unsatisfied mortgage registered thereon, cancel such abstract, and enter the fact of such cancellation in the register book; and shall also, by endorsement on the grant or certificate of title, lease, or other instrument evidencing the title of such proprietor to such land, note the particulars of every such unsatisfied mortgage, and of every such lease, and the cancellation of such certificate of mortgage, and every certificate so cancelled shall be void to all intents, and shall file in his office the duplicates of every memorandum of sale, bill of mortgage, lease, or other instrument executed thereunder, which may for that purpose be delivered to him.

Revocation of power of attorney.

105. The registered owner for the time being of any land in respect of which a power of attorney has been issued may, by an instrument, under his hand, in the form Q in the Schedule hereto, or as near thereto as circumstances will permit, revoke such power; and if the holder of such power shall neglect or refuse to surrender the same to such owner, or his agent exhibiting such revocation order, duly certified by the Registrar-General, he shall be guilty of a misdemeanour, 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.

Power of attorney rendered null by revocation order.

106. After the presentation of such revocation order to the holder of such power, the said power shall, so far as concerns any mortgage or sale to be thereafter made, be deemed to be revoked and of no effect.

Consent may be given by endorsement.

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

Provision for cases of infancy or other incapacity.

108. If any person interested in any land under the operation of this Act is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act to be made or done by a proprietor in respect of registry, transfer, or transmission, mortgage, or encumbrance of such land, or the release of the same from any mortgage or encumbrance, or the leasing, assigning, or in any other manner dealing with such land, then the guardian or committee, if any, of such incapable person, or, if there be none, any person appointed by any Court or Judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making of such declaration, or doing such thing, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person; and all acts done by such substitute shall be as effectual as if done by the person for whom he is substituted.

Acknowledgment of married women interested in land under this Act may be taken by Registrar-General as well as by Judge or Master of Supreme Court. Memorandum of such acknowledgment to be endorsed on instrument in form of Schedule, and entered in register book.

109. In all cases where married women are interested in land under the operation of this Act, it shall be lawful for the Registrar-General, or a Judge of the Supreme Court, or the Master thereof, on the transfer of such land, or an estate or interest therein by such married woman, and whether the instru-

ment of transfer shall embrace or relate solely to land under the operation of this Act, or shall embrace or relate both to land under the operation of this Act, and also land not under the operation of this Act, to take the acknowledgment of such married woman touching the instrument executed by her for the purpose of transferring, disposing of, releasing, surrendering, or extinguishing any estate, right, title, or interest in such land, in like manner as the deed of any married woman is now required to be acknowledged by her before a Judge of the Supreme Court, or the Master thereof; and also to examine her apart from her husband touching her knowledge of such instrument, and ascertain whether she freely and voluntarily consents thereto, in like manner as a Judge of the Supreme Court, or the Master thereof, is now required to examine any married woman touching the deed of any married woman, under the provisions of an Ordinance intituled "An Ordinance to render effectual conveyances by married women, and to declare the effect of certain deeds in relation to dower." And the Registrar-General, or Judge, or Master (or other person), taking such acknowledgment and examination shall sign a memorandum, to be endorsed on or written at the foot, or in the margin of such instrument, which memorandum shall be in form of the Schedule hereto annexed marked T, or in words to the like effect; and an entry of the said acknowledgment shall be made by the Registrar-General in the register book at the time when the other particulars relating to the said instrument are directed to be entered in the register book; and every such instrument so acknowledged by any married woman, and recorded by the Registrar-General in the register book, shall be as effectual to pass all the estate, right, title, or interest of the married woman by whom the same is executed, in the lands to which the same relates, as if she had been then unmarried.

Rights and liabilities during coverture.

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

Seal of Corporation substituted for signature.

111. Every Corporation, in lieu of signing the forms of instruments provided by this Act, or such other form as may be sanctioned as aforesaid, may affix the common seal of the said Corporation to such form of instrument; and every such form of instrument shall contain a statement that the common seal of the said Corporation was affixed by the proper officer for that purpose, verified by his signature, in like manner as the contract or deed of such Corporation is usually made and verified.

Attestation of instruments. Execution of instruments, before whom to be proved.

112. Instruments executed pursuant to the provisions of this Act, if attested by one witness, shall be held to be duly attested, and the execution of any instrument made in accordance with the provisions of this Act, or the discharge of any mortgage or encumbrance, or the transfer or surrender of any lease, may be proved, if the parties executing the same be resident within the boundaries of the City of Adelaide, then before the Registrar-General; if the parties executing the same be not resident within the said boundaries, then before the Registrar-General or a Justice of the Peace; if the said parties be resident in the United Kingdom of Great Britain and Ireland, then by 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; and a certificate of such proof, under the hand and seal of the Registrar-General, or of any such Justice of the Peace, Notary Public, Mayor, or other Chief Officer, Chief Justice, Judge, Governor, Resident, Chief Secretary, or Consular Officer, as the case may be, shall be sufficient evidence that the execution of such instrument had been duly proved.

Mode of proving instruments.

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

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

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 Registrar General, Justice, or other person before whom such witness shall prove such signature as aforesaid, shall endorse upon such instrument a certificate in form of the Schedule hereto annexed marked R, or as near thereto as circumstances will permit: Provided also, that, if any person signing any such instrument, transfer, release, or surrender, as aforesaid, as the maker thereof, shall be personally known to the Registrar-General, Justice, or other person as aforesaid, it shall be lawful for such person to attend and appear before such Registrar-General, Justice, or other person to whom he is personally known, and then and there acknowledge that he did freely and voluntarily sign such instrument, transfer, release, or surrender; and upon such acknowledgment, the Registrar-General, Justice, or other person, as the case may be, shall endorse on such instrument a certificate, in the form or to the effect of the Schedule hereto marked S, or as near thereto as circumstances will permit, and it shall not be necessary for such instrument to be proved by the attesting witness in manner aforesaid: Provided also that such questions as aforesaid may be varied as circumstances shall or may require, in case any person shall sign such instrument by his mark: Provided also, that, on the signing of any such instrument by any married woman, and the acknowledgment thereof by her in manner mentioned or referred to in this Act, no further or other proof or acknowledgment shall be requisite or necessary.

Justices required to administer oaths.

114. Every such Justice as aforesaid, sitting in open Court, shall be, and he is hereby required to administer the oath, or take the solemn affirmation, or the acknowledgment, of any person attending before him for the purpose of proving or acknowledging any such instrument as aforesaid.

Provision in case of lost grant.

115. In the event of the grant or certificate of title of any land registered under 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 Registrar-General, stating the facts of the case, the names and descriptions of the registered owners, and the particulars of all mortgages, encumbrances, or other matters affecting such land and the title thereto, to the best of declarant's knowledge and belief; and the Registrar-General, if satisfied as to the truth of such declaration, and the *bond fides* of the transaction may 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 at the time appearing, and shall also contain a statement of the circumstances under which such provisional certificate is issued; and the Registrar-General shall, at the same time, enter in the register book notice of the issuing of such provisional certificate, and the date thereof, and the circumstances under which it was issued; and such provisional certificate shall be available for all purposes and uses for which the grant or certificate of title so lost or mislaid would have been available, and as valid to all intents as such lost grant or certificate.

Duplicates of future public maps to be deposited.

116. From and after the passing of this Act all public maps delineating the Waste Lands of the Crown in the said Province 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 brought under the operation of this Act, and executed subsequent to the passing thereof, reference is made to the public maps of the said Province 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.

117. It shall be lawful for any proprietor, subdividing any land under the operation of this Act, for the purpose of selling the same in allotments as a township, to deposit with the Registrar-General a map of such township, provided that such map shall exhibit, distinctly delineated, all roads, streets, passages, thoroughfares, squares, or reserves, appropriated or set apart for public use, and also all allotments into which the said land may be divided, marked with distinct numbers or symbols, and the person depositing such map shall sign the same, and shall certify the accuracy thereof by declaration before the Registrar-General or a Justice of the Peace.

Registrar-General may require map to be deposited.

118. It shall be lawful for the Registrar-General, if he shall think fit, to require the proprietor applying to have any land brought under the operation 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, 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 such proprietor shall sign such map and shall declare to the accuracy of the same before the Registrar-General or a Justice of the Peace; and if such proprietor shall neglect or refuse to comply with such requirement, it shall not be incumbent on the Registrar-General to proceed with the bringing of such land under the operation of this Act, or with the registration of such transfer or lease: Provided always that subsequent subdivisions of the same land may be delineated on the map or plan of the same, so deposited, if such map be upon a sufficient scale, in accordance with the provisions herein contained, and such proprietor shall certify the correctness of the delineation of each such subdivision, by declaration in manner prescribed for the case of the deposit of an original map.

Search allowed.

119. Any person may, upon payment of a fee specified in Schedule U hereto, have access to the register book for the purpose of inspection at any reasonable time during the hours and upon the days appointed for search.

Certified copies signed and sealed to be furnished by Registrar-General and to be received in evidence.

120. The Registrar General, upon payment of such reasonable sum as may be appointed by any regulation made by him for such case, with sanction of the Governor, shall furnish to any person applying at a reasonable time for the same, a certified copy of any instrument affecting or relating to land registered 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, and the production of any such certified copy, so signed and sealed, shall be as effectual in evidence to all intents as the production of the original.

No action of ejectment to lie, except in the cases mentioned in this Act.

121. No action of ejectment shall be brought against a registered proprietor for recovering the possession of land under the operation of this Act, except in the case hereinbefore provided of a mortgagee or encumbrancee bringing such action against a mortgagor or encumbrancer, and in the case of a registered proprietor or lessor bringing an action of ejectment against the lessee or tenant claiming the said land under any lease.

Person defrauded may bring action against fraudulent proprietor for recovery of land or for damages.

122. In case any person shall have been registered through fraud as proprietor of any land or an estate, or interest in any land, the person defrauded, or any person claiming through him, may at his election apply by petition, in a summary way, to the Supreme Court in its Equitable Jurisdiction, for the recovery of the said land, estate, or interest, from such fraudulent proprietor, or the person (not being a purchaser or mortgagee *bond fide* for valuable consideration) claiming under such fraudulent proprietor; or the person so defrauded, or any person claiming through him, may bring and prosecute an action at law in the Supreme Court for the recovery of damages against such fraudulent proprietor, or the person (other than as aforesaid) claiming under such fraudulent proprietor.

Supreme Court may order the cancelling of any entry in the register book obtained through fraud, and the substitution of any other entry. Saving the case of a purchaser, or mortgagee, for valuable consideration.

123. In case the person so defrauded shall apply to the Supreme Court, as hereinbefore provided, for the recovery of the said land, estate, or interest, it shall be lawful for the said Court to make an order for cancelling or altering any entry in the register book relating to the said land, estate, or interest, and substituting any entry in lieu thereof; and directing and ordering such other acts and instruments to be done and executed as such Court shall, under the circumstances, deem necessary and just: And the Registrar-General shall give effect to the said order by making the necessary entries directed to be made in the register book relating to the said land, estate, or interest: Provided always, that nothing in this Act contained shall be interpreted to subject to any action of ejectment, or for recovery of damages, any purchaser or mortgagee *bond fide* for valuable consideration, of any land under the operation of this Act, although his vendor or mortgagor may have been registered as proprietor through fraud or error, or may have derived from or through a person registered as proprietor through fraud or error.

Persons barred from bringing actions for ejectment, persons electing to bring actions for damages, and persons damaged by error or mistake, may bring action for recovery of damages against the registered proprietor at the time when deprivation or injury occurred. Amount of damages limited to the value at the time of deprivation.

124. Any person who may, by the provisions of this Act, be prevented from bringing an action of ejectment for the recovery of land from the registered proprietor thereof, and any person who may have been so defrauded as aforesaid, and shall elect to bring an action at law for the recovery of damages against such fraudulent proprietor of any land, or against the person (other than as aforesaid) claiming under such fraudulent proprietor, or any person injured or otherwise damaged in consequence of an error or mistake arising from any entry in the register book, in respect of which right of action is hereby given against the Registrar-General, may bring and prosecute an action at law in the Supreme Court for the recovery of damages against the person who was the registered proprietor of the said land, estate, or interest at the time when the act, error, mistake, or other dealing affecting the said land or easement, and occasioning the said injury, damage, or loss to the plaintiff to the said action was made, done, committed, or took place, but no greater amount of damages for the loss of the said land shall be recovered in

the said action than the estimated value of such land at the time when the aforesaid act, error, mistake, or other dealing affecting the said land was originally made, done, committed, or took place.

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

125. In case the registered proprietor of the said land, estate, or interest, against whom such action for damages is directed to be brought as aforesaid, shall be dead, or shall have been adjudged insolvent, then, in such case it shall be lawful to bring such action for damages against the Registrar-General, as such nominal defendant, as hereinafter provided, for the purpose of recovering the amount of the said damages and costs against the Assurance Fund hereinbefore described: Provided that the Assurance Fund shall not be liable for payment of any damages after the expiration of six years, to be computed from the time when the act, error, mistake, or other dealing affecting the said land or easement, and occasioning the said injury, damage, or loss to the plaintiff to the said action was made, done, committed, or took place; and the Treasurer of the said Province upon receipt of a certificate of the Chief Justice of the Supreme Court, and of a warrant under the hand of the Governor, as hereinbefore provided, shall pay the amount of such damages and costs, and charge the same to the account of the Assurance Fund.

Actions for recovery of damages may, in certain cases, be brought against the Registrar-General as nominal defendant. Treasurer, on receipt of warrant from Governor, to pay amount of award. Notice of action to be served on Registrar-General and Attorney-General. Process and notice to be served on Attorney-General.

126. Every action which shall be brought by any person to recover damages for or by reason of any loss or damage occasioned by any omission, mistake, or misfeasance of the Registrar-General, or any of his officers or clerks in the execution of their respective duties under the provisions of this Act, shall be brought against the Registrar-General as the nominal defendant; and in case in any such action the plaintiff recover final judgment against such nominal defendant, then, upon the application or motion of such plaintiff, the Chief Justice of the Supreme Court shall and he is hereby directed to certify to the Treasurer of the said Province the fact of such judgment having been recovered, and the amount of damages and costs recovered, and thereupon or before the expiration of two calendar months after such judgment is so certified, the said Treasurer, upon the receipt of a warrant under the hand of the Governor, countersigned by the Chief Secretary of the said Province, shall pay the amount of such damages and costs to the person recovering the same, his executors or administrators, and shall charge the same to the account of the Assurance Fund hereinbefore described: Provided always, that notice, in writing, of every such action and of the cause thereof shall be served upon the Attorney-General of the said Province, and also upon the Registrar-General, one calendar month at least before the commencement of such action: Provided also, that the Registrar-General shall not be personally chargeable upon any judgment recovered as aforesaid, nor shall any process or notice in or relating to any such action (except as aforesaid) be served upon the Registrar-General, but all such processes and notices shall be served upon the Attorney-General of the said Province for the time being.

If action discontinued, or plaintiff nonsuited, the nominal defendant entitled to costs.

127. 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.

Registrar-General may summon person by whom a certificate of title or entry has been fraudulently or wrongfully obtained. If summons disregarded, Registrar-General may apply for a warrant for such person to be apprehended and brought before a Judge of the Supreme Court.

128. If any grant, certificate of title, or other instrument affecting land under the operation of this Act, or any entry, memorandum, or endorsement in or upon any such instrument shall be fraudulently or wrongfully obtained from, or procured to be made or issued by the Registrar-General, it

shall be lawful for the Registrar-General to summon before him the person who shall have so fraudulently or wrongfully obtained the same, or procured the same to be made or issued as hereinbefore mentioned, and in case the person having been so summoned shall not attend before the Registrar-General at the time appointed, having no lawful impediment to be notified to the Registrar-General at the time so appointed as aforesaid, the Registrar-General may apply to a Judge of the Supreme Court to issue a warrant, authorizing and directing some person to be therein named for that purpose, to apprehend and arrest the person so summoned to attend before the Registrar-General, and to bring such person before a Judge of the Supreme Court for examination, and such Judge shall thereupon issue such warrant for that purpose.

In case person summoned keeps out of the way summons may be served upon any servant or inmate of his last known place of abode.

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

Party appearing may be examined on oath. Court may order the delivery of the instrument to the Registrar-General. In case of neglect or refusal, Registrar-General may issue a fresh certificate or other instrument.

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

If party abscond, proceedings to be conducted as in the case of party attending upon summons or warrant.

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

Court to award costs and expenses.

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

Costs unpaid may be levied by distress.

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

No distress to be trespass for want of form.

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

Indemnity of Registrar-General.

135. The Registrar-General shall not, except as hereinbefore is provided, be subject to be sued or prosecuted by any person whomsoever on account of any act done or default made by him in his character as Registrar-General; and the person, goods, or lands of the Registrar-General, shall not be liable to execution of any legal process by reason of any act or default made or done by him in his character of Registrar-General, but he shall be indemnified out of the Assurance Fund or out of the General Revenues of the said Province, in case such Assurance Fund shall prove to be insufficient, in respect of all losses, costs, or damages, which may be incurred or recovered by any person under any action or suit brought or prosecuted under the provisions of this Act, touching or concerning any matter or thing relating to the execution of this Act and the powers hereby granted.

Witnesses to have expenses tendered.

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

Fees to be charged.

137. It shall be lawful for the Registrar-General to charge and recover such fees as shall be appointed by the Governor of the said Province, by and with the consent of the Executive Council, not in any case exceeding the several fees specified in the Schedule hereto, marked U.

Right to register restricted to principal, and his attorney or solicitor. Penalty for registering incorrect instruments.

138. The right to register and deposit any instrument required to be registered under the provisions of this Act, or to enter a caveat affecting any land, shall be exercised by the person claiming under or in respect of such instrument or caveat, or by his solicitor; and whenever such instrument shall be left with the Registrar-General for the purpose of being registered under the provisions of this Act, such instrument shall be certified by the person registering the same as correct for the purposes of registration under the Real Property Act, and a statement to that effect shall be endorsed on such instrument, and signed by the person so registering the same; and the Registrar-General shall not be required to compare the said instrument, when the same is left with the Registrar-General, with the duplicate thereof in the custody of the person registering such instrument; and shall not incur or become subject to any liability, action, or other proceeding in consequence of any error or mistake in the duplicate thereof, but the person who shall falsely or negligently certify to the correctness of any instrument on registering the

same, shall incur therefor a penalty not exceeding Fifty Pounds: Provided always, that the aforesaid 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 such instrument and the duplicate thereof to be correct for the purpose of registration.

Judges of Supreme Court to regulate remuneration of Practitioners.

139. It shall be lawful for the Judges of the Supreme Court to readjust, fix, and determine the remuneration, and the rate, or mode, or kind of remuneration to be in future charged and received by the Practitioners of the Supreme Court for conveyancing, or other business, regulated or affected by the provisions of this Act, and to frame, as far as may be practicable, a scale of fees and emoluments for such business, and such scale of fees shall be laid before both Houses of the said Parliament within fourteen days after the same shall have been framed, if the said Parliament shall be then sitting, or if not sitting then within fourteen days after its next sitting; and such remuneration, fees, or emoluments as shall be fixed, or determined, or allowed by the Judges of the Supreme Court, for such business as aforesaid, if not disallowed by the said Parliament, shall be chargeable by the Practitioners of the Supreme Court for such business accordingly, with such power of varying the same as from time to time the Judges for the time being shall approve.

Registrar-General to pay moneys into Treasury, and to render accounts. Parties entitled to be paid by Treasurer upon warrant signed by Registrar-General.

140. The Registrar-General shall keep a correct account of all such sums of money as shall be received by him in accordance with the provisions of this Act, and shall pay the same into the public Treasury of the said Province 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-in-Chief of the said Province, by and with the advice of the Executive Council thereof; and the Registrar-General shall address to the said Treasurer requisitions to pay moneys received by him, 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 Province, and accompanied by warrant for payment of the same under the hand of the Governor, countersigned by the Chief Secretary thereof, the said Treasurer shall be bound to obey, and all fines and fees received under the provision of this Act, except fees payable to the Lands Titles Commissioners for the bringing of land under the operation of this Act, shall be carried to account by the said Treasurer as General Revenue.

Penalty for falsifying register book, or procuring entries or instruments by fraud or misrepresentations. Person making false oath or affirmation guilty of perjury, and liable to be imprisoned, in addition to damages recoverable by the party damaged.

141. Any person who shall wilfully or knowingly, by fraud or misrepresentation, make, or cause, or obtain to be made in the register book, any entry which might in any way affect the right, title, estate, or interest of himself, or of any other person, in any land under the operation of this Act, or who shall wilfully or knowingly, by fraud or misrepresentation, procure from the Registrar-General any certificate of title, registration abstract, or other instrument evidencing or relating to title to, or estate or interest in land under the operation of this Act, or shall cause or procure to be made any entry, certificate, memorandum, or endorsement by this Act prescribed to be made in or upon any such certificate, abstract, or other instrument by the Registrar-General, or other authorized person, or who shall use or utter any such certificate, abstract, or other instrument, knowing the same to be counterfeited, forged, or altered, or to have been obtained by fraud or misrepresentation, or to contain or bear any entry, memorandum, certificate, or endorsement as aforesaid, forged, counterfeited, or altered, or obtained by fraud or misrepresentation, and who shall be thereof lawfully convicted, shall be deemed guilty of felony, and be sentenced to be imprisoned for any period

not exceeding four years, and to be kept to hard labour or solitary confinement for any part of the period aforesaid; and if any person shall wilfully or knowingly make a false oath or affirmation touching or concerning any matter or procedure made or done in pursuance of this Act, and be thereof lawfully convicted, such person shall be deemed guilty of perjury, and be imprisoned for the period, and in the manner aforesaid, and, in addition to such punishment, any person damnified or suffering loss by any such fraud, misrepresentation, forgery, counterfeit, alteration, use, or utterance, of any such certificate, abstract, or other instrument, as aforesaid, or by the making of any such false oath or affirmation, shall have a right of action against, and be entitled to recover damages from, the person guilty of such fraud, misrepresentation, forgery, counterfeit, alteration, use, or utterance, or making such false oath or affirmation, the amount of all damages he may have sustained thereby, with full costs of suit, as hereinbefore provided.

Jurisdiction.

142. Unless in any case herein otherwise expressly provided, all offences against the provisions of this Act may be prosecuted, and all penalties or sums of money imposed or declared to be due or owing by or under the provisions of the same, may be sued for and recovered in the name of the Attorney-General, or of the Registrar-General, before any Court in the said Province 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.

143. This Act shall commence and take effect from and after the first day of July, one thousand eight hundred and fifty-eight.

SCHEDULES REFERRED TO.

A

SOUTH

[*Royal Arms.*]

AUSTRALIA.

Certificate of Title.

A.B., of (*here insert description, and if certificate be issued pursuant to any sale, reference to memorandum of sale, reciting particulars*) is now seised of an estate (*here state whether in fee simple*) subject nevertheless to such encumbrances, liens, and interests, as are notified by memorandum endorsed hereon, in that piece of land situated in the (*County, Hundred, or Township*) of

bounded on the (*here set forth boundaries, in chains, links, or feet*), containing (*here state area*), be the same a little more or less (*exclusive of roads intersecting the same, if any*), with right of way over (*state rights of way, and other privileges, or easements, if any*); plan of which piece of land is delineated in (*margin, or in map No* , deposited in Registry Office), which said piece of land is (*or is part of*) the (*Country Section or Town Allotment*), marked , delineated in the public map of the said (*County, Hundred, or Township*), deposited in the office of the Surveyor-General, which was originally granted the day of , under the hand and seal of Governor (*or Resident Commissioner*) of the said Province, to C.D., of (*here insert description*), as appears by (*land grant, former certificate, or other instrument of title*), now delivered up and cancelled.

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

Registrar-General (*I.S.*)

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

B

SOUTH AUSTRALIA.

Memorandum of sale.

I, A.B., being registered as the proprietor of an estate (*here state nature of the estate or interest, whether in fee simple or life estate, or of a greater or less description than a life estate*), subject, however, to such encumbrances, liens, and interests, as are notified by memorandum endorsed hereon, in all that piece of land situated in the (*County, Hundred, or Township*), of , bounded on the (*here set forth boundaries, in chains, links, or feet*), 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 consists of part only of the land contained in an existing grant or certificate of title, refer to plan delineated in margin, or annexed to instrument, or deposited in the Lands Titles Office. If the land contain all that is included in an existing certificate, refer to that certificate for 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, which was originally granted the day of , under the hand and seal of Governor (*or Resident Commissioner*) of the said Province, to C.D.,

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 the diagram of an existing grant or certificate of title refer to that diagram, otherwise refer to plan thereof on margin of this mortgage, or deposited in the Lands Titles Office*), which said piece of land is (or is part of) the (*Country Section or Town Allotment*) marked _____, delineated in the public map of the said (*County, Hundred, or Township*), deposited in the office of the Surveyor-General, which was originally granted the _____ day of _____, under the hand and seal of Governor (or *Resident Commissioner*) of the said Province, to *C.D.*, of (*insert description*).

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, 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 are intended, and state what covenants declared by "Real Property Act" to be implied in mortgages are intended to be barred or modified; and if so, in what manner*). And for the better securing to the said *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.*

E

Bill of Encumbrance for securing a sum of Money.

I, *A.B.*, being registered as the proprietor of an estate (*here state nature of the estate or interest*), subject, however, to such encumbrances, liens, and interests, as are notified by memoranda endorsed hereon, in that piece of land situated in (*here describe the land by a sufficient description for identifying it with the description in the grant, certificate of title, or instrument relating to the same, appearing in the register book, and referring to the original grant of such land by the Crown*).

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 hereinafter mentioned, do hereby encumber the said land, for the benefit of the said *C.D.*, with the sum 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 intended to be secured, the interest, if any, and the events on which such sum shall become and cease to be payable; also, any special covenants or powers, and any modifications 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.*

F

Bill of Encumbrance for securing an Annuity.

I, *A. B.* being registered as the proprietor of an estate (*here state nature of the estate or interest*), subject, however, to such encumbrances, liens, and interests, as are notified by memoranda endorsed hereon, in that piece of land

H

SOUTH AUSTRALIA.

Registration Abstract.

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

(Signed) *A.B.*

To the Registrar-General

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

I, , Registrar-General of the Province of South Australia, do hereby certify that the above particulars relating to the above-described land and to the estate and interest therein of *A.B.*, whose signature is above subscribed, are correct as appears by entries recorded in the register book of the said Province, Fo. vol. No. : Pursuant, therefore, to the above application, and by virtue of powers in me vested by Act of the Legislature of the said Province, intituled "The Real Property Act," this registration abstract is issued for the purpose of enabling the said *A.B.* to deal with the said lands at places without the limits of the said Province.

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

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

Registrar-General.

Signed, sealed, and delivered, the day of in the presence of *X.Y.*
Schedule referred to.

I

SOUTH AUSTRALIA.

Application for lands to be brought under operation of the Real Property Act.

I, *A.B.*, of do declare (*that I am*), or (*on (L.S.) behalf of* of , *that he is*) seized in possession of an estate (*here state the description of the estate, whether in fee simple or a lesser estate, or as trustee, or held in trust for uses*) in all that piece of land situated in (*here state the situation*) bounded (*here state the boundaries, and the length of each line of boundary, in chains and links, or in feet*), containing (*here state 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 if the land is portion only of an original Section as delineated on a Crown Grant, refer to plan of the same deposited in the Lands Titles Office, or annexed to the application, or delineated on margin*) which piece of land is (*the Town Allotment or Country Section, or is part of the Town Allotment or Country Section*) originally granted to , of , by land grant under the hand and seal of , formerly Governor (*or Resident Commissioner*) of the Province of South Australia. Dated the day of numbered in the plan of the (*District, Township, or County*) of , as delineated on the public maps of the Province deposited in the Survey Office, Adelaide: And I do further declare, that I am not aware of any mortgage, encumbrance, or claim affecting the said lands, or that any person hath any claim, estate, or interest in the said lands, 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 all unsatisfied mortgages, encumbrances, claims, or interests, if any*), 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 _____, Registrar-General or Justice of the Peace.

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

Dated at _____, this _____ day of _____, 18

A.B.

Witness to signature—*C.D.*

K

Nomination of Trustees.

I, *A.B.*, being registered as the proprietor of an estate (*here state nature of the estate or interest*), subject, however, to such encumbrances, liens, and interests, as are notified by memoranda endorsed hereon, in that piece of land situated in (*here describe the land by a sufficient description for identifying it with the description in the grant, certificate of title, or instrument relating to the same appearing in the register book, and referring to the original grant of such land by the Crown*), do hereby transfer all my estate or interest in the said land above described to *C.D.* of _____, *E.F.* of _____, and *G.H.* of _____, as trustees of the same, under the provisions of the Real Property Act.

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

A.B.

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

Schedule of Trusts.

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

L

Caveat.

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 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 operation of the Real Property Act, do hereby forbid the bringing of the said lands under the operation of the said Act.

Dated this _____ day of _____, 18

A.B.

Signed in my presence this _____ day of _____

To the Registrar-General of the Province of South Australia.

M

Notice of Lands brought under Act.

Whereas *A.B.*, of _____ claiming to be seised of an estate, in the lands

E

described at foot hereof, has applied to have the said lands brought under the operation of the Real Property Act, and such claim having been duly advertised in manner prescribed by the said Act, and no caveat in respect to the said lands having been received by me within the time for that purpose by the said Act limited: Now I, _____, of _____, Registrar-General, by virtue of powers by the said Act in me vested, do hereby declare the said lands to be lands brought under the operation of the said Act, from and after the date hereof.

Given under my hand the _____ day of _____, 18 ____ .
(Signed) _____ Registrar-General.

O

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

I, the within-mentioned C.D., in consideration of £ _____, this day paid to me by X.Y., of _____, the receipt of which sum I do hereby acknowledge, hereby transfer to him the estate or interest in respect to which I am registered as 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 _____

(L.S.)

C.D.

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

P

Caveat forbidding Registration of Contract for dealing with estate or interest futuro.

To the Registrar-General of South Australia—

Take notice that I, _____, claiming estate or interest (*here state the nature of the estate or interest claimed, and the grounds on which such claim is founded*) in (*here describe land*) forbid the registration of any memorandum of sale, or other instrument, made, signed, or executed by (*here insert name and address of person supposed to have made, or suspected of being about to make, such memorandum of sale or other instrument*), affecting the said land, until this caveat be by me, or by the order of the Supreme Court, or some Judge thereof, withdrawn. Dated this (*here insert date of caveat*) day of _____ 18 ____ .

A.B.

Q

SOUTH AUSTRALIA.

Revocation Order.

I, A.B., of _____, being seised of an estate (*here state the nature of the estate, whether in fee simple or of a less description*) in all that piece of land (*here describe land*), hereby revoke the power of mortgaging (*or selling*) the said land given by me to _____, by a power of attorney dated the _____ day of _____

In witness whereof, I have hereunto subscribed my name and affix my seal, this _____ day of _____

(L.S.)

A.B. of _____

I, M.N., Registrar-General, hereby certify that the above-named proprietor has executed this revocation order in manner above appearing.

(Signed)

Registrar-General.

R

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

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

(Signed)

Registrar-General, or J.P.

S

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

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

(Signed)

Registrar-General, or J.P.

T

Certificate of Registrar-General upon acknowledgment of instrument to be made by a Married Woman under Clause 109.

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

As witness my hand this _____ day _____ of _____,

(Signed)

Registrar-General.

U

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

For the bringing land under the operation 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 title consists of a land grant only	0	1	0
When the title is of any other description, and the value exceeds £200	1	0	0
Do. do. do., exceeds £100 but does not exceed £200	0	15	0
Do. do. do., when the value does not exceed £100	0	10	0

E 2

	£	s.	d.
For every certificate of title issued to proprietor for balance of land left upon a transfer of portion of the land included under a former grant or certificate of title	0	10	0
For certificate of title issued under other circumstances	1	0	0
Registering memorandum of sale, bill of mortgage, bill of encumbrance, lease, or nomination of trustees	0	10	0
For registering transfer of mortgage, or of encumbrance, or release of mortgage, or encumbrance, or the transfer or surrender of a lease	0	5	0
Registering declaration of ownership, taken by transmission	0	10	0
For every power of attorney	0	10	0
For every registration abstract	1	0	0
For cancelling power or registration abstract	0	5	0
For every revocation order	0	10	0
Receipt and noting of caveat	0	10	0
For every search	0	2	0
For every map or plan deposited	0	5	0
For every deed or other instrument declaratory of trusts deposited	0	5	0
For certified copy, first five folios, per folio of seventy-two words..	0	1	0
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upon withdrawal of application to return documents to proprietor, if so requested, s. 25

not to notice caveats in certain case, s. 26

to deliver certificate of title to applicant proprietor, s. 27

to stamp as cancelled every instrument deposited by applicant proprietor, s. 27

upon receipt of notice of death of applicant proprietor may issue certificate to legal personal representative, s. 29

shall enter name of applicant remainderman in register book, s. 30

shall enter particulars of every instrument under Act, executed by remainderman, s. 31

may cancel existing certificate, and issue new certificate on remainder vesting in possession, s. 32

may require title of person claiming in remainder to be investigated, s. 32

shall keep a book called the "Register Book of Real Property," s. 34

shall not register any instrument affecting land under Act, unless in accordance with provisions thereof, s. 36

to retain in his office one original of every instrument under Act, s. 37

- REGISTRAR-GENERAL**, to enter in register book particulars of instrument creating easement or incorporeal rights, s. 45
 to record particulars of lease, s. 48
 shall enter in register book particulars of surrender of lease, s. 51
 shall enter particulars of bill of mortgage or of encumbrance according to the order of production, s. 53
 to give effect to sale by mortgagee or encumbrancee, ss. 55, 59
 shall enter discharge of mortgage or encumbrance, s. 61
 may receive mortgage money and give receipt to mortgagor, s. 62
 shall enter in register book transfer of mortgage, encumbrance, or lease, s. 63
 shall certify endorsement of transfer of mortgage, encumbrance, or lease, by his signature and seal, s. 63
 shall enter in register book re-entry by lessor, s. 68
 shall cancel lease, s. 68
 particulars of nomination of trustees to be entered by, in register book, s. 73
 not to enter trusts in register book, s. 75
 shall cause the words "no survivorship" to be written on certificate of title to trustees, if written on instrument of nomination, s. 77
 to give effect to order of Supreme Court under Trustee Act, s. 79
 to take declarations of transmissions within the city of Adelaide, s. 81
 to enter in register book particulars of appointment of assignees in bankruptcy, s. 82
 shall enter in register book instruments executed by married women, s. 83
 to advertise application for certificate of title by Curator of Intestate Estates, s. 85
 if authorized by executors or Curator of Intestate Estates, may issue certificate of title to devisee or heir, s. 87
 may dispense with the production of instruments, s. 94
 may require proof of identity, s. 94
 shall enter particulars of caveat in register book, s. 97
 may require form of any caveat to be amended, s. 98
 may cancel caveats in certain cases, s. 100
 to issue registration abstract on application of registered proprietor, s. 102
 may take acknowledgment of married women, s. 109
 may issue provisional certificate in case of loss of original, s. 115
 may require map to be deposited, s. 118
 shall furnish certified copies of instruments, if required, s. 120
 to give effect to order of Court for cancellation or alteration of entry in register book, s. 123
 may be made nominal defendant in case of death or insolvency of registered proprietor, or in case of action brought for injury occasioned by mistake in Lands Titles Office, ss. 125, 126
 notice of action to be served upon, s. 126
 not to be personally chargeable upon any judgment recovered, s. 126
 may summon person by whom a certificate of title has been fraudulently obtained, s. 128
 may apply for a warrant of apprehension, if summons be disregarded, s. 128

- REGISTRAR-GENERAL**, may order that substituted service of summons shall be equivalent to personal service, s. 129
 may examine upon oath person summoned, s. 130
 may order delivery up of instrument wrongfully obtained, s. 130
 may give or withhold costs in proceedings relating to summons, examination, or warrant, s. 132
 may issue warrant of distress to levy costs, s. 133
 to be indemnified, s. 135
 to charge and recover fees, s. 137
 shall not be required to compare instrument left for registration with duplicate, s. 138
 to keep account of money received under Act, and pay money into Treasury, s. 140
 to address to Treasurer requisitions to pay money received in trust by Registrar-General, s. 140
 penalties may be sued for, in name of, s. 142.
- REGISTRATION ABSTRACT**, see "Abstract, Registration."
- REMAINDERMAN**, may apply to be entered in register book, s. 30
 title of, to be investigated, s. 30
 to pay assurance fee on being registered, s. 30
 registered, shall deal with land according to provisions of Act, s. 31
 instruments executed by, to be entered in register book, s. 31
 instrument executed by, prior to his being registered, not to be invalidated, s. 31
 certificate of title to be issued to, on estate vesting in possession, s. 32
 to pay assurance fee, on estate vesting in possession, s. 32.
- REPEAL**, of all laws, &c., inconsistent with Act, s. 1.
- REPRESENTATIVES**, real and personal, to be included under name of proprietor, s. 3.
- REVOCATION ORDER**, of power of attorney, ss. 105, 106, sch. Q
- RIGHT OF PURCHASE**, in lease, s. 49.
- S**, sch., form of certificate of Registrar-General, or Justice of the Peace, of execution of instrument.
- SALE**, see "Memorandum of Sale"
 power of, in mortgagee or encumbrancee, s. 54
 agreement for, *in futuro*, not to be registered, s. 96.
- SCALE**, of maps, see "Map."
- SEAL**, of Registrar-General, to be received in evidence, s. 6
 person counterfeiting, guilty of misdemeanour, s. 9
 penalty for counterfeiting, s. 9
 of Corporation, substituted for signature, s. 111.
- SEARCH**, allowed in register book, s. 119
 fee for, sch. U.
- SECRETARY**, Chief, of British possession, execution of instruments may be proved before, s. 112
 to countersign warrant from Governor to Treasurer, s. 126.
- SOLICITOR**, right to register and deposit instruments required to be registered or to enter caveat, restricted to, or to person claiming under instrument, s. 138.
- SOLICITORS**, to Commissioners, see "Counsel."
- SUPREME COURT**, see "Court."
- SURRENDER OF LEASE**, to be by endorsement on lease, signed by lessee and lessor, and attested, s. 51.
- SURVEYOR-GENERAL**, to sign and certify accuracy of duplicates of public maps of waste Crown Lands, s. 116.
- SURVIVORSHIP**, see "No Survivorship."
- T**, sch., form of certificate of acknowledgment of married women.
- TENANTS**, joint, or in common, not to bring property under Act, unless all join in application, s. 15

- TENANTS**, joint, persons registered as joint proprietors deemed as, s. 33
in common, bound to receive separate certificates of title, s. 33
joint, or in common, partition by, s. 90.
- TERMS**, used in Act, interpretation of, s. 3.
- TITLE**, of Act, "Real Property Act," s. 2.
- TRANSMISSION**, meaning of, s. 3
to be authenticated by declaration in writing, s. 81
by bankruptcy or insolvency, certified copy of appointment of
assignees to be left with Registrar-General, s. 82
by death, probate or office copy of will, or letters of administra-
tion, to be left with Registrar-General, s. 84.
- TRANSFER**, meaning of, s. 3
by remainderman, to be in form prescribed by Act, s. 31
by memorandum of sale, s. 43
to lessee, by registration of lease, s. 50
bill of mortgage or of encumbrance, not to operate as, s. 57
of lease on sale by mortgagee or encumbrancee of lease, to be by
endorsement, s. 59
of mortgage, encumbrance, and lease, to be by endorsement, s. 63,
sch. O
general covenant implied in instruments of, s. 64
of land, whether of the nature of real or personal property, may
be made by proprietor to himself jointly with others, s. 78
of mortgage, encumbrance, or lease, includes transfer of right to
sue thereunder, s. 89
see "Memorandum of Sale."
- TREASURER**, moneys constituting Assurance Fund, to be paid to, s. 41
to invest moneys in Government Securities, s. 41
to pay out moneys on receipt of certificate of Chief Justice, and of
warrant from Governor, ss. 125, 126.
- TRUSTEES**, lands may be vested in, by instrument of nomination, s. 73
of fee simple, entitled to receive certificate of title, s. 75
entitled to deal with land as beneficial owners, s. 75
less than the number originally appointed not to deal with land
when the words "no survivorship" have been inserted, s. 76
new, may be appointed by Court or Judge, s. 76
continuing, may nominate co-trustee in case of vacancy, s. 76
new, to have the like estate and powers as if originally appointed,
s. 76
action of ejectment may be brought or defended in name of, by
beneficial owner, s. 80
bankruptcy or insolvency of, not to affect beneficiaries, s. 82.
- TRUSTS**, may be declared by schedule to instrument of nomination, or by
separate instrument or deed, s. 74
not to be entered in register book, s. 75
notwithstanding any, trustees may deal with land as beneficial
owners, s. 75.
- U**, sch., fees payable under Act.
- USE**, not to be limited by proprietor when transferring land to himself jointly
with others, s. 78.
- WARRANT**, Governor to issue to Treasurer for payment of damages and costs
recovered against Registrar-General, ss. 125, 126
to apprehend person summoned by Registrar-General, s. 128.
- WIFE**, see "Acknowledgment," "Married Woman."
- WILL**, included under term instrument, s. 3.
- WITNESS**, one sufficient to attest instruments under Act, s. 112
oath or affirmation of, to prove execution of instruments, s. 113
questions to be put to, s. 113

APPENDIX.

DESCRIPTION OF THE MODE IN WHICH BUSINESS IS CONDUCTED IN THE LANDS TITLES OFFICE, ADELAIDE.

All lands alienated from the Crown subsequent to the date appointed for the Real Property Act to come into operation, are granted subject to the provisions of that Act, and freed from the oppressions of the English Property Laws. These are known in South Australia as "Free Lands."

The grants of these are forwarded to the Lands Titles Office, in duplicate, from the Land Office. One part of each grant is bound up in the register book. The counterpart, marked with the volume and folium which its counterpart constitutes in the register book, is delivered to the proprietor. The receipt of the grant is noted in the journal hereinafter described.

Lands alienated from the Crown prior to the date appointed for the Real Property Act to come into operation are brought under the provisions of that Act upon the application of the proprietor of the fee or other greatest estate in possession.

For the form of application and the procedure to be followed by the applicant, adapted to the varying conditions and requirements of ownership, see instructions under the head "Application," in a subsequent page.

The receipt of the application is noted in the application book, hereinafter described.

The deeds and other evidence of the applicant's title are deposited together with the application. These are handed to the Solicitors of the Lands Titles Commissioners, who call upon the applicants for such explanations or additional evidence as they may require.

The Solicitors, after examining the title and making the necessary search, draw up a report on each case for consideration by the Commissioners.

The Commissioners sit once a week to consider the applications reported on by their Solicitors, and decide the extent to which the claim of each applicant to be recognised as proprietor of the fee or other greatest estate, as the case may be, is to be advertised, and the time to intervene between the advertisement and the issue of certificate of title, or, if they see fit, defer the case for further enquiry, or reject it altogether.

The decisions of the Commissioners are entered on the minutes, and recorded in the warrant book for the guidance of the Registrar-General. Copy of each minute is also endorsed on the Solicitors' report of the case to which that minute refers.

The Registrar-General causes advertisement to be made in conformity with the warrant, and if no caveat be lodged with him within the time for that purpose limited, proceeds to bring the land under the Real Property Act by notice in the *Government Gazette*.

If caveat be lodged, the Registrar-General notifies the receipt thereof to the applicant proprietor, and abstains from further procedure until the caveat be withdrawn, lapses through non-procedure by the caveator within the time for that purpose limited, or is discharged by due course of law. So soon as land is brought under the Act, the title-deeds surrendered are stamped as cancelled, and together with the application and report of the Solicitors are deposited in a bag marked with the date and number of the application, the name of the applicant, and the folium of the register-book, constituted by the certificate of title issued, as presently described in respect to the lands referred to. The parcels so made up are deposited in tin boxes in the muniment room.

In the top of each box is placed a list of the titles therein deposited. Deeds evidencing title to other property besides that brought under the Act are returned to the proprietor stamped as cancelled, so far as regards the land brought under the Act.

Certificates of title are made out in duplicate for lands brought under the Act, one part of each is bound up in the register book, the counterpart is delivered to the proprietor marked with the number of the folium which its counterpart constitutes in the register book.

The issue of each certificate is noted in the journal.

Lands thus emancipated from the English Real Property Law, are in South Australia designated "Freed Lands."

THE APPLICATION BOOK.

Form A of the schedule hereto contains the record of the transactions in respect to land the subject of application prior to its being "freed." It exhibits in parallel columns the number and date of the application, the name of the applicant, the description of the property, the extent of advertisement, and the time limited by Board's warrant for lodging caveats, the date on which caveat is received, the name and address of the caveator, the date from which the land is freed, and the folium of the register book constituted by the certificate of title.

THE REGISTER BOOK.

Form B of the schedule hereto is constituted by counterpart grants of "Freed Lands," and counterpart certificates of title of "Freed Lands."

Each grant or certificate constitutes a folium. The upper portion is occupied by the form of grant or certificate, and a diagram of the land; the remainder, and the reverse side are ruled with faint lines, on which are recorded memorials of the dealings and matters affecting each estate or interest in that land until upon a change of ownership of the fee, a fresh certificate of title is issued. The fresh certificate constitutes a new folium on which are carried forward the memorials of all estates or interests existing, or created in the land represented thereby, which remain unexpired or undischarged at the date of the change of ownership of the fee. The previous grant or certificate of title is at the same time cancelled by memorandum under the hand of the Registrar-General, setting forth the circumstances which occasioned the change of ownership, with a reference to the volume and folium of the register book where the fresh certificate may be found. Each fresh certificate is in like manner marked with the volume and folium for reference to the cancelled certificate.

By withdrawing the cancelled grants and certificates, and binding together two or more of the volumes thus reduced, the register book is prevented from growing into unwieldy dimensions. The fly-leaf of each condensed volume contains a list of the cancelled grants and certificates withdrawn, with a reference to the volume and folium where the fresh certificate issued in respect of each may be found.

THE JOURNAL.

Form C of the schedule hereto is posted daily. It contains a record of all transactions affecting "Free" or "Freed Lands" in the order of time in which they are registered. It exhibits in parallel columns the date and hour in which each instrument is presented at the Lands Titles Office, the names of the parties thereto, the description of the property affected, the distin-

guishing letter indicating the nature of the instrument, its distinguishing number, and the volume and folium of the register book, where the particulars, with those of all other transactions affecting the same land, are recorded together under the grant or existing certificate thereof.

THE INDEX.

Form D of the schedule hereto is compiled from the journal. In it the names of proprietors and parties dealing are arranged alphabetically, three or more lines being left under each name, on which are inscribed the description of each property dealt with, the number of the instrument, the distinguishing letter indicating its nature, and the volume and folium of the register-book where the history of the title is recorded. The Roman numerals indicate the volume, and the Arabic numerals the folium of the register book in all cases. The same index includes also the reference to deeds declaring trusts; and to wills and other instruments allowed to be deposited for safe custody, and reference without registration. These are numbered in a series distinct from that appropriated to registered instruments.

THE WARRANT BOOK.

Form E of the schedule hereto sufficiently explains itself.

The above with a list of maps, minute book, letter book, and cash book, of the description ordinarily used, constitutes the official books of the department.

TRANSFERS AND OTHER DEALINGS.

When land is intended to be sold, leased, mortgaged, encumbered, settled, or vested in trustees, or when any estate or interest in land is intended to be transferred, released, surrendered, or otherwise dealt with, an instrument in the form prescribed, adapted to the particular case, is executed in duplicate by the parties dealing. This is examined by the Solicitors to the Lands Titles Commission, who draw up a draft memorial of the particulars in a waste book kept for that purpose. This memorial is entered by the registering clerk in the register book under the grant or certificate of title of the land referred to. The entry is then compared with the draft by the Registrar-General, or his Deputy, and signed.

A certificate under the hand of the Registrar-General or his Deputy is endorsed on each instrument, stating the day and hour when the particulars thereof were entered in the register book, with the volume and folium where the entry may be found. The transaction is likewise noted in the journal (schedule C). The estate or interest is passed created or becomes discharged as the case may be upon the signature of the entry in the register book.

All instruments are numbered in a consecutive series in the order of their presentation at the Lands Titles Office. After entry in the register book and endorsement as above described, one original of each instrument is delivered to the person entitled. The counterparts of instrument are tied together in bundles of twenty; ten such bundles occupy a compartment in the muniment room. Under this arrangement it is found that any instrument can be produced on the instant when the number is called.

Instruments are cancelled and set aside whenever the estates or interests of which they are evidence are surrendered, discharged, or lapse. By this method the instruments required to be kept arranged and at hand for reference, are prevented from accumulating so as to be cumbrous.

Cancelled instruments withdrawn from the register book, or from the compartments, are set apart arranged in order in the muniment room. It is intended to apply to the Legislature for an Act authorising the destruction of

these, as also of the surrendered title deeds of "Freed Land" after the lapse of a period to be named.

Full instructions for filling in the forms of instruments prescribed for each class of dealing, illustrated by examples, will be found at the close of this Appendix.

The examples from the register book (schedule B), exhibit the nature of the memorials entered in each case.

TRANSMISSIONS.

Whenever any estate or interest in "Free" or "Freed Lands" becomes transmitted in consequence of the death, bankruptcy, or insolvency of the previous proprietor, or whenever a female proprietor of any such estate or interest shall marry, the facts must be authenticated to the Registrar-General by the declaration of the party interested, to be made before one or other of the authorities indicated under the head "Attestation of Instruments."

The Registrar-General, before giving effect by registration to any dealing by parties deriving or holding interest under any of such circumstances, must be furnished as the case may require with probate or office copy of the will of the deceased proprietor, or authenticated copy of the letters of administration, or of the appointment of assignees, or of the register of the marriage. The Registrar-General thereupon endorses on the will or other instrument a certificate of the day and hour on which it was produced to him, and records the fact of its production in the register book.

In the case of transmission by will, or consequent on intestacy, six months must elapse before any instrument purporting to deal with the transmitted estate or interest can be received at the Lands Titles Office.

The Registrar-General notifies the receipt of such instrument by advertisement, once in the official gazette and twice in a newspaper published in Adelaide, and may not proceed to give effect to the same until fourteen days have elapsed from the date of the latest of such advertisements, or if caveat be lodged within that period.

CAVEATS.

The particulars of caveats forbidding the bringing of land under the Act are entered in the application book. Caveats referring to "Free" or "Freed Lands" are numbered in a consecutive series. The receipt of them is noted in the journal, and followed by the number of the caveat is inscribed in the register book with a red ink pen, opposite the entry of the estate or interest referred to. See examples in schedules A and B hereto.

SEARCHES.

Persons desiring to make search are almost invariably proprietors or persons negotiating some transaction, and as such, have access to some registered instrument affecting the property, which will indicate the volume and folio of the register book in which the certificate of title may be found.

If, as may sometimes be the case, the person applying to search is not in possession of a registered instrument, but remembers on or about the date of any transaction affecting the property, the volume and folio of the register book where the certificate of title may be found is readily ascertained on reference to the journal.

If the party desiring to make search is not in possession of a registered instrument, and cannot specify any date on or about which a transaction affecting the property was registered, the index must be referred to for the volume and folio of register book where the certificate of title may be found. Reference to the index is seldom necessary, except in the case of an heir or administrator seeking to ascertain what property was held by a deceased

proprietor, or in the case of a creditor or assignee seeking to ascertain what property is held by an insolvent.

The Clerk of Records opens the register book at the folio required for perusal by the person making search. The particulars of all transactions affecting the estate are there set forth under the certificate of title with the numbers of the instruments by which severally the transactions were effected. If the person searching desires more full information respecting any transaction than is given in the memorandum on the certificate, upon his calling the number the Clerk of Records exhibits for his perusal the instrument by which the transaction was effected.

The Clerk of Records is strictly enjoined not to permit the register book or the instrument to be out of his sight whilst in the hands of the person making search.

Certificates of search are forwarded per post or telegram, in answer to requisition accompanied by the fee, 2s.

GENERAL RULES.

No erasure is allowed in any official book, neither will any instrument be received for registration in which an erasure is detected. Words written in error may be scored out and the correct words interlined, but in such case the initials of the person making the correction must be added.

The description of the parcels in any memorandum of sale, lease, mortgage, encumbrance, or nomination of trustees, must be the same as that given in the existing grant or certificate of the land affected thereby, except when part only of the land is dealt with, and in such cases an accurate description must be given, together with a diagram on a scale not less than one inch to twenty chains if the area exceeds ten acres; on a scale not less than one inch to five chains if the area exceeds five but does not exceed ten acres; on a scale not less than one inch to two chains if the area does not exceed five acres.

ESTABLISHMENT AND INCOME.

The establishment required for conducting the entire conveyancing business of the colony of South Australia (about 10,000 transactions annually) upon the system above described, is estimated as follows:—

Registrar-General	£1,000	0	0
Solicitor	800	0	0
Deputy Registrar-General	500	0	0
Clerks, first class, two	560	0	0
Do., second class, two	480	0	0
Do., third class, two	400	0	0
Do., fourth class, one	160	0	0
Messenger, one	100	0	0
Books, stationery, book-binding, postages, and miscellaneous charges	500	0	0
	<hr/>		
	£4,500	0	0

The income from fees upon the scale at present authorized accruing from that amount of business would be about £7,000 per annum.

At a comparatively small increase in the expenditure the above staff might be strengthened so as to render it equal to the transaction of a greatly increased business. Probably the business might be increased tenfold without more than doubling the expenditure above given.

FORM A.—APPLICATION BOOK.

Application		Name.	Residence.	Description of Property.	Date of advertisement in Gazette.	Number of advertisements in local or other papers.	Period within which after date of advertisement caveat may be lodged.	Caveat by whom lodged.	Date when received.	Time for issue of certificate.	When issued.	Vol.	Folio
No.	Date.												
50	1858 Aug. 27	S. Jones	Adelaide	Town Acre, 800	Rejected	—	—	—	—	—	—	—	—
185	Oct. 1	J. Brown	Norwood	Section 201, Survey B	Oct. 14	Three	Two Months	—	—	Dec. 22	1859 Jan. 4	VI	129
231	Nov. 29	J. White	Port Adelaide	Section 21, Hind. Port Adelaide	Dec. 6	Three	One Month	J. Scott	Dec. 8	1859 Feb. 23	—	—	—
306	1859 March 27	S. Smith	Kapunda	Section 12, Hundred Kapunda	March 31	One	One Month	—	—	April 30	May 2	VI	130

FORM B.

REGISTER BOOK.

Certificate of Title,
Register Book,
Vol. V., folio 13.

SOUTH  AUSTRALIA.

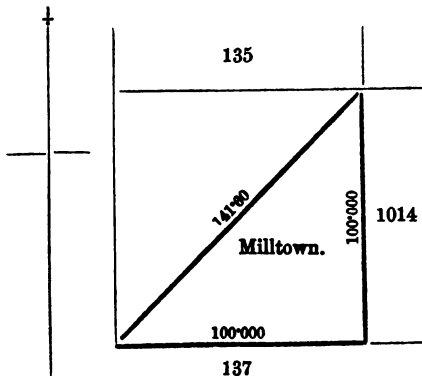
Pursuant to Memorandum of Sale No. 560, dated 15th day of January, 1859, by John Adams and William Smith, John Adams, of Adelaide, merchant, is now seised of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, being the south-eastern portion of the Section numbered 136 in the said Hundred, and formed by drawing a line from the north-east corner to the south-west corner of the said section, which said piece of land contains 500 acres be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line, and is laid out as the township called Milltown, according to the plan of the said township deposited in the Lands Titles Registration Office No. 36, which said Section No. 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to the said John Adams and William Smith, as appears by land grant, Vol. V. folio 7, now delivered up and cancelled.

In witness whereof, I have hereunto signed my hand and affixed my seal this sixteenth day of January, one thousand eight hundred and fifty-nine.

R. R. TORRENS, (Seal)
Registrar-General.

Signed, sealed, and delivered, the 16th day
of January, 1859, in the presence of

W. B. T. A.



Memorandum of Sale No. 715, dated the 20th day of January, 1859, produced the same day at two o'clock in the afternoon, from the above named John Adams to William Brown, of Kapunda, Esquire, Lot 2 in plan of township of Milltown No. 36. Consideration money paid, six pounds.

Cancelled as regards Lot 2.
Certificate of Title of said
Lot 2 registered vol. VI., folio
7.

R. R. TORRENS,
Registrar-General.

Memorandum of Sale No. 816, dated the 25th day of January, 1859, produced to me the twenty-sixth day of January, 1859, at three o'clock in the afternoon, from the above-named John Adams to Henry Jones, of Clare, farmer, Lot 19 in plan of township of Milltown No. 36. Consideration money paid, Fifteen Pounds.

Cancelled as regards Lot 19, Certificate of Title of said Lot 19, registered Vol. VI., folio 21.

R. R. TORRENS,
Registrar-General.

Memorandum of Sale No. 827, dated twenty-eighth day of January, 1859, produced the same day at eleven o'clock in the forenoon, from the within named John Adams to Mary Robinson, of Adelaide, spinster, Lot 26 in plan of township of Milltown No. 36. Consideration money paid, Twenty Pounds.

Cancelled as regards Lot 26, Certificate of Title of said Lot 26 registered Vol. VI., folio 33.

R. R. TORRENS,
Registrar-General.

Certificate of Title,
Register Book,
Vol. V., folio 14.

SOUTH AUSTRALIA.

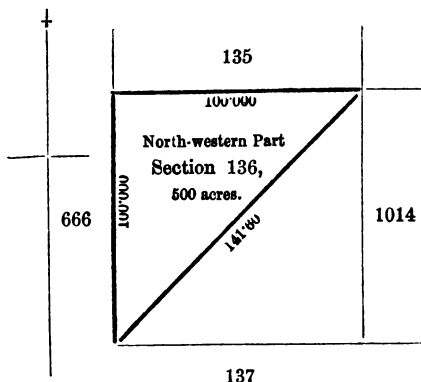
Pursuant to Memorandum of Sale No. 56, dated 15th day of January, 1859, by John Adams and William Smith, William Smith of Adelaide, merchant, is now seised of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, being the north-western portion of the Section numbered 136 in the said Hundred, and formed by drawing a line from the north-east corner to the south-west corner of the said Section which said piece of land contains five hundred acres be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line, which said Section numbered 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to the said John Adams and William Smith, as appears by Land Grant, vol. V., folio 7, now delivered up and cancelled.

In witness whereof I have hereunto signed my name and affixed my seal the sixteenth day of January one thousand eight hundred and fifty-nine.

R. R. TORRENS, (Seal.)
Registrar-General.

Signed, sealed, and delivered by the above named Thomas William Smith, of the herein part of the Certificate of Title, the day of January, 1859, in presence of

W. B. T. A.



Lease No. 718, dated the twentieth day of January, 1859, from the above named William Smith to John Brown, of Adelaide, carpenter, of the above described land Term, 21 years. Rent, £500 per annum, payable half-yearly, on the 20th July and 20th day of January.

Recorded the 21st day of January, 1859, at half-past eleven o'clock in the forenoon.

R. R. TORRENS,
Registrar-General.

Certificate of Title,
Register Book,
Vol. V., folio 190.

AUSTRALIA.



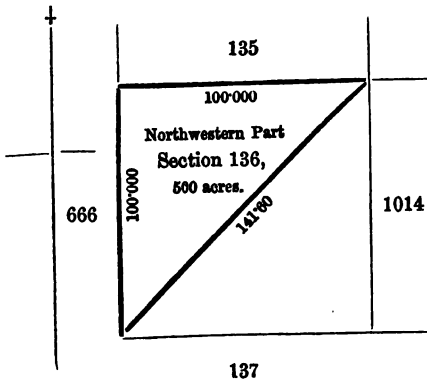
Pursuant to Memorandum of Sale No. 720, dated the twentieth day of March, 1860, by William Smith, Thomas Wilson, of Norwood, baker, is now seized of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, being the north-western portion of the Section numbered 136 in the said Hundred, and formed by drawing a line from the north-east corner to the south-west corner of the said Section, which said piece of land contains five hundred acres be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a dark line, which said Section numbered 136 is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, Vol. V., folio 14, now delivered up and cancelled.

In witness whereof I have hereunto signed my name and affixed my seal this twenty-first day of March, one thousand eight hundred and sixty.

R. R. TORRENS,
Registrar-General. (Seal)

Signed, sealed, and delivered the 21st day of March, 1860, in presence of

B. T. A.



Lease No. 718, dated the twentieth day of January, 1859, from the above-named William Smith to John Brown, of Adelaide, carpenter, of the above described land. Term, 21 years. Rent, \$500 per annum, payable half-yearly, on the 20th day of July, and 20th day of January.

Recorded the 21st day of January, 1859, at half-past eleven o'clock in the forenoon.

R. R. TORRENS,
Registrar-General.

Bill of Mortgage, No. 1121, dated twenty-third day of March, 1860, produced to me the same day at two o'clock in the afternoon, from the within-named Thomas Wilson to Henry Johnston, of Kensington, builder. Principal sum secured, £2,000. Rate of interest, 10 per cent. Date appointed for redemption, 23rd day of March, 1864. Interest to be paid half-yearly, on the 23rd day of September, and 23rd day of March.

Recorded the twenty-third day of March, 1860, at two o'clock in the afternoon.

R. R. TORRENS,
Registrar-General.

Bill of Mortgage No. 1132, dated the 1st day of April, 1860, produced to me the same day at noon, from the within named John Brown, the lessee described in the within mentioned lease No. 718, to William Carter, of Norwood, shoemaker. Principal sum secured, £500. Rate of interest, 10 per centum. Date appointed for redemption, 1st April, 1862. Interest to be paid half-yearly, on the 1st day of October and 1st day of April.

Recorded the 1st day of April, 1860, at noon.

R. R. TORRENS,
Registrar-General.

Transfer of the within mentioned Lease, No. 718, by endorsement thereon dated 4th day of April, 1860, from John Brown, the said lessee, to Charles Roberts, of Adelaide, gentleman, subject to the above mentioned Bill of Mortgage No. 1132.

Recorded the 6th day of April, 1860.

R. R. TORRENS,
Registrar-General.

Transfer of the above-mentioned Mortgage No. 1132 of the Lease No. 718 by endorsement thereon, dated the 18th January, 1861, from William Carter, the said mortgagee, to the within Thomas Wilson.

Recorded the 19th day of January, 1861.

R. R. TORRENS,
Registrar-General.

Surrender of the within-mentioned Lease No. 718 by endorsement thereon, dated the fifth day of July, 1861, by the said Charles Roberts, the transferee of the said lease to the within-named Thomas Wilson.

Recorded the 7th day of July, 1861.

R. R. TORRENS,
Registrar-General.

The estate of the within named Thomas Wilson in the land within described became transmitted on the 10th day of January, 1863, to Thomas Jones, of Adelaide, gentleman, as the administrator to the goods, chattels, and effects of the said Thomas Wilson, in consequence of the death of the said Thomas Wilson, intestate, on the 10th day of January, 1863, as appears by letters of Administration dated the 1st day of February, 1863, produced to me the same day at noon, and by declaration in writing by the said Thomas Jones, dated the 1st day of February, 1863.

R. R. TORRENS,
Registrar-General.

Certificate of Title,
Register Book,
Vol. VI., folio 33.

SOUTH



AUSTRALIA.

Pursuant to Memorandum of Sale No. 827, dated twenty-eighth day of January, 1859, by John Adams, Mary Robinson, of Adelaide, spinster, is now seised of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the township of Milltown, being Allotment numbered 26 in the plan of the said township deposited in the Lands Titles Registration Office No. 36, containing one acre, be the same more or less, and bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line, which said piece of land is part of the Section numbered 136 in the Hundred of Clare, County of Clare, and is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith of Adelaide, merchants, as appears by Certificate of Title, Vol. V., folio 13, delivered up and cancelled as regards the said allotment.

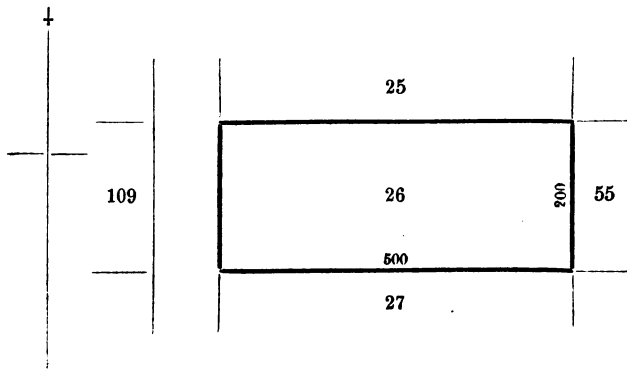
In witness whereof, I have hereunto signed my hand and affixed my seal this thirtieth day of January, one thousand eight hundred and fifty-nine.

R. R. TORRENS,
Registrar-General.

(Seal.)

Signed, sealed, and delivered the 30th day of
January, 1859, in presence of

W. B. T. A.



Marriage of the within named Mary Robinson to Charles Giles, of Norwood, builder, on the 1st March, 1859, as appears by the register of such marriage, and by the declaration of identity produced to me on the fourth day of March, 1859, at noon.

R. R. TORRENS,
Registrar-General.

Certificate of Title,
Register Book,
Vol. VI., folio 34.

SOUTH AUSTRALIA.



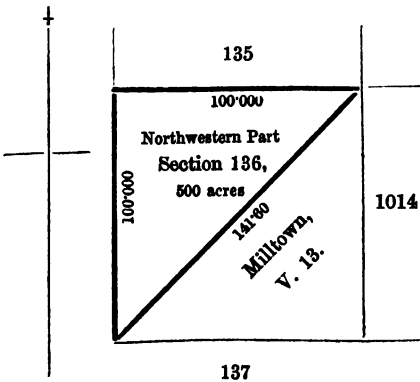
Thomas Jones, of Adelaide, Esquire, is now seized of an estate in fee simple, as administrator to Thomas Wilson, of Norwood, baker, deceased, subject, nevertheless, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon in that piece of land situated in the Hundred of Clare, County of Clare, being the north-western portion of the Section numbered 136 in the said Hundred, and formed by drawing a line from the north-east corner to the south-west corner of the said Section: which said piece of land contains five hundred acres be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line, which said Section numbered 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, Register Book, vol. V. folio 190, now delivered up and cancelled.

In witness whereof I have hereunto signed my name and affixed my seal this second day of August, one thousand eight hundred and sixty-three.

R. R. TORRENS, (Seal.)
Registrar-General.

Signed, sealed, and delivered this _____ day of August, 1863, in the presence of

W. B. T. A.



Bill of Mortgage No. 1121, dated the twenty-third day of March, 1860, produced to me the same day at two o'clock in the afternoon, from the above named Thomas Wilson, deceased, to Henry Johnston, of Kensington, builder. Principal sum secured, £2,000; rate of interest, 12%. Date appointed for redemption, 23rd day of March, 1864; interest to be paid half-yearly on the 23rd day of September, and 23rd day of March.

Recorded the 23rd day of March, 1860, at two o'clock in the afternoon.

R. R. TORRENS,
Registrar-General.

Discharge of the within mentioned Bill of Mortgage No. 1121, by the receipt endorsed thereon, for the whole of the money thereby secured. Dated 4th day of September, 1863. Recorded same day at noon.

R. R. TORRENS,
Registrar-General.

Memorandum of Sale No. 2141, dated the 4th of September, 1863, produced the same day at noon, from the within named Thomas Jones to John Smith, of Adelaide, gentleman, thirteen acres of the within land, situated at the north-western corner thereof. Consideration money paid, £3,000. This certificate is cancelled so far as regards the said thirteen acres, for which a fresh certificate is issued, Vol. VI., folio 199.

R. R. TORRENS,
Registrar-General.

Certificate of Title,
Register Book,
Vol. VI., folio 199.

Pursuant to Memorandum of Sale No. 2141, dated the fourth day of September, 1863, by Thomas Jones, administrator of Thomas Wilson deceased, John Smith, of Adelaide, gentleman, is now seized of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, containing thirteen acres, be the same more or less, and bounded as appears by the plan drawn in the margin hereof, and therein marked by a thick line; which said Section numbered 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves, MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, Vol. VI., folio 34, now delivered up and cancelled as regards the land comprised in the present Certificate of Title.



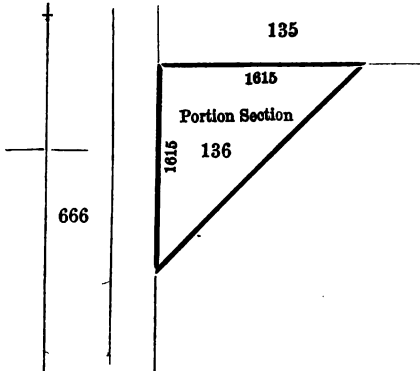
AUSTRALIA.

Pursuant to Memorandum of Sale No. 2141, dated the fourth day of September, 1863, by Thomas Jones, administrator of Thomas Wilson deceased, John Smith, of Adelaide, gentleman, is now seized of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, containing thirteen acres, be the same more or less, and bounded as appears by the plan drawn in the margin hereof, and therein marked by a thick line; which said Section numbered 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves, MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, Vol. VI., folio 34, now delivered up and cancelled as regards the land comprised in the present Certificate of Title.

In witness whereof I have hereunto signed my hand and affixed my seal this sixth day of September, one thousand eight hundred and sixty-three.

R. R. TORRENS, (Seal.)
Registrar-General.

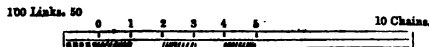
Signed, sealed, and delivered the 6th day of
September, 1863, in the presence of
W. B. T. A.



Power of Attorney No. 3112, dated the first day of November, 1863, from the within-named John Smith to Thomas Stokes, of Hindmarsh, Builder, produced to me the second day of November, 1863, at noon.

Recorded the second day of November, 1863, at noon.

R. R. TORRENS,
Registrar-General.



Lease No. 4121, dated the third day of November, 1863, produced to me the same day at eleven o'clock in the forenoon, by the said Thomas Stokes, the attorney named in the above mentioned Power of Attorney, to William Short, of Adelaide, Gentleman. Term, seven years. Rent, £20 per annum, payable quarterly, on the 3rd day of March, 3rd day of June, 3rd day of September, and the 3rd day of December.

Recorded the third day of December, 1863, at eleven o'clock in the forenoon.

R. R. TORRENS,

Registrar-General.

The above property was transmitted to Henry Oldham and Thomas Giles, of Adelaide, merchants, the assignees appointed on the insolvency of the said John Smith, as appears by an office copy of such appointment, and by the declaration in writing made by the said Henry Oldham and Thomas Giles, dated respectively the second day of March, 1864. Produced to me the same day at noon.

Recorded the second day of March, 1864, at noon.

R. R. TORRENS,

Registrar-General.

Certificate of Title,
Register Book,
Vol. X., folio 7.



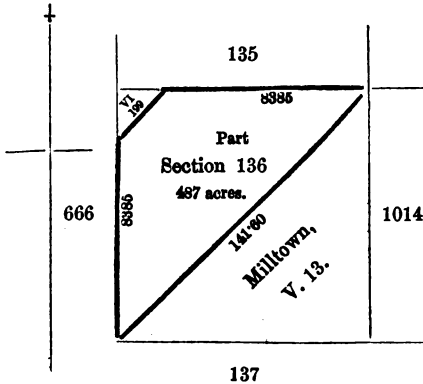
Pursuant to an order of the Supreme Court, dated the first day of October, 1863, Henry Wilson, of Adelaide, Esquire, the heir-at-law of Thomas Wilson, deceased, is now seised of an estate in fee simple, subject, nevertheless, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, being portion of the Section numbered 136 in the said Hundred; which said piece of land contains four hundred and eighty-seven acres be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line, which said Section numbered 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and Seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, vol. VI., folio 34, now delivered up and cancelled.

In witness whereof I have hereunto signed my name and affixed my seal this second day of October, one thousand eight hundred and sixty-three.

R. R. TORRENS, (Seal.)
Registrar-General.

Signed, sealed, and delivered this 2nd day of October, 1863, in the presence of

W. B. T. A.



Bill of Encumbrance No. 1481, dated the third day of November, 1863, produced to me the same day at noon, by the above named Henry Wilson, in favour of his daughter Emily Wilson. Sum secured, £500. Time of payment, attainment of the age of 21 years.

Recorded the 3rd day of November, 1863, at noon.

R. R. TORRENS,
Registrar-General.

Bill of Encumbrance No. 1561, dated the first day of December, 1863, produced to me the same day at half-past two o'clock in the afternoon by the within-named Henry Wilson, in favour of his wife, Ann Wilson. Annuity secured, £150. Period of commencement, death of the said Henry Wilson.

Recorded the first day of December, 1863, at noon.

R. R. TORRENS,
Registrar-General.

Discharge of the within-mentioned Bill of Encumbrance No. 1481, by the receipt dated thirteenth day of March, 1866, endorsed thereon for the sum of £500 thereby secured.

Recorded the thirteenth day of March, 1866, at noon.

R. R. TORRENS,
Registrar-General.

Discharge of the above Bill of Encumbrance No. 1561 by the death of the said Ann Wilson, on the seventeenth day of April, 1867, as appears by the Certificate of her death, under the hand of the Registrar-General of Births, Deaths, and Marriages.

Recorded this eighteenth day of April, 1867, at noon.

R. R. TORRENS,
Registrar-General.

Certificate of Title,
Register Book,
Vol. XI., folio 3.

SOUTH



AUSTRALIA.

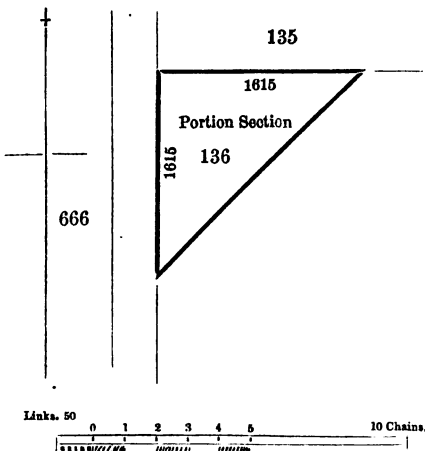
Pursuant to Memorandum of Sale No. 8662, dated the fifth day of June, 1868, by Henry Oldham and Thomas Giles, the assignees appointed under the insolvency of John Smith, John Williams is now seised of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, containing thirteen acres, be the same more or less, being portion of the Section numbered 136 in the said Hundred, and situated at the north-western corner thereof, measuring on the northern and western sides thereof one thousand six hundred and fifteen links be the same more or less, and bounded as appears by the plan drawn in the margin hereof, and therein marked by a thick line; which said Section numbered 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, Vol. VI., folio 199, now delivered up and cancelled.

In witness whereof I have hereunto signed my hand and affixed my seal this sixth day of June, one thousand eight hundred and sixty-eight.

R. R. TORRENS, (Seal.)
Registrar-General.

Signed, sealed, and delivered the 6th day of
June, 1868, in the presence of

W. B. T. A.



Lease No. 4121, dated the third day of December, 1863, produced to me the same day at eleven o'clock in the forenoon, by Thomas Stokes, the attorney named in the Power of Attorney No. 3112, endorsed on Certificate of Title, vol. VI., folio 199, to William Short, of Adelaide, gentleman. Term, seven years. Rent, £20 per annum, payable quarterly, on the 3rd day of March, the 3rd day of June, the 3rd day of September, and the 3rd day of December.

Recorded the third day of
December, 1863, at eleven
o'clock in the forenoon.

R. R. TORRENS,
Registrar-General.

Certificate of Title,
Register Book,
Vol. XX., folio 220.



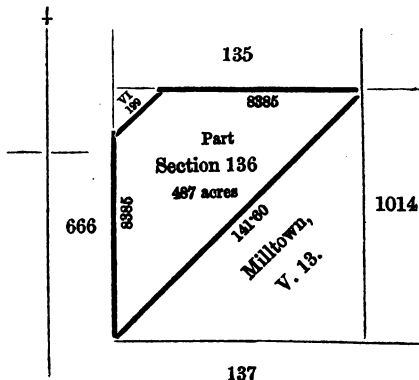
Pursuant to Instrument of Nomination of Trustees, No. 981, dated the first day of May, 1868, by Henry Wilson, Peter Wilson and Henry Tomkins, both of Adelaide, merchants, are now seised of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, being portion of the Section numbered 136 in the said Hundred, which said piece of land contains four hundred and eighty-seven acres be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line; which said Section numbered 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, Vol. X., folio 7, now delivered up and cancelled.

In witness whereof, I have hereunto signed my hand and affixed my seal this second day of May, one thousand eight hundred and sixty-eight.

R. R. TORRENS, (Seal)
Registrar-General.

Signed, sealed, and delivered, the 2nd day
of May, 1868, in the presence of

W. B. T. A.



FORM C.

JOURNAL.

JOURNAL.]

Date.	Hour.	Name.	Opposite Party.
1859. January 5	11 a.m.	John Brown	
" 20	1 p.m.	Frederick Sanderson	
February 4	2 p.m.	Edward Wilson	Henry Green
" 15	1 p.m.	Alfred Jennings	Robert Owen
" 20	noon	William Roberts	James Cummings
March 3	1 p.m.	Henry Loveday	John Guthrie
" 5	2 p.m.	Richard MacDonald	Frederick Curtis
" 10	11 a.m.	Edward Ward	
" 14	2 p.m.	Charles Young	Thomas Brown
" 20	noon	Robert Goings	William Wilson
" 26	2 p.m.	Henry Heath	

Property.	Distinguishing Letter.	No. of Instrument.	Volume and Folio of the Register Book.	
			Vol.	Folio.
Section 1150, Hundred of Adelaide, County Adelaide	G	70	II.	60
Section 40, Hundred of Moorooroo, County of Light	C	95	II.	180
Section 250, Hundred of Yatala, County of Adelaide	T	104	II.	260
Lot 20, Township of Gawler	M	130	II.	272
Lot 51, Township of Goolwa	E	189	II.	299
Section 1160, Hundred of Saddleworth, County of Light	T.L	200	III.	50
Section 400, Hundred of Adelaide, County of Adelaide	L	218	III.	81
Town Acre, 750	R	242	III.	111
Section 1210, Hundred of Yatala, County of Adelaide	T.M.	269	III.	166
Allotment 6, Township of Port Adelaide	S.L.	283	III.	204
	P	286	III.	214

NOTE EXPLANATORY OF DISTINGUISHING LETTERS.

- G** signifies Grant from the Crown.
C, Certificate of Title.
T, Transfer of the Fee.
L, Lease.
T.L., Transfer of a Lease.
S.L., Surrender of a Lease.
M.L., Mortgage of a Lease.
M, Mortgage.
T.M., Transfer of Mortgage.
E, Encumbrance.
T.E., Transfer of an Encumbrance.
D, Discharge of Mortgage or Encumbrance.
N, Nomination of Trustees to settlement of estate.
P, Power of Attorney.
R, Registration Abstract.
A, Appointment of Assignees or Administrators.
X, a Caveat.
Z, a Deed declaratory of Trusts or any Instrument deposited for safe custody and reference, without being registered.

FORM D.

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Lot 73, Port Adelaide, 977 E, Vol. X, folio 33.

Acre 17, Alberton 997 C, Vol. X, folio 65.

ATKINS, HENRY, Merchant, Adelaide.

Acre 82, Adelaide, 998 P, Vol. X, folio 67.

Section 27, Hundred Alma, G, Vol. X, folio 85.

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Lot 12, Walkerville, 1010 M, Vol. XI, folio 8.

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FORM E.

WARRANT BOOK.

WARRANT OF LANDS TITLES COMMISSIONERS.

Name.	Date of Application.	Property.	Class.	No. of notifications in Gazette.	Period within which after date of advertisement, caveat may be lodged.	No. of Advertisements in Local Papers.
John Adams	1858. Oct. 21	Section 136, Hundred of Clare, County of Clare	2	1	One month	3
Thomas Wilson	" 21	Lot 80, Bowden, part of Section 354, Survey B	5	1	Two months	3
William Smith	" 28	Portion of Town Acre 20, City of Adelaide	3	1	Two months	3, & 3 in Melbourne <i>Argus</i>
Robert Brown	" 29	Section 24, Hundred of Grey, County Grey	2	1	One month	3
James Willis	Nov. 7	Lot 19, Town of Port Adelaide	3	1	Twelve months	3, & in London <i>Gazette</i> 3. In Victorian <i>Government Gazette</i> 1, Melbourne <i>Argus</i> 3, New South Wales <i>Government Gazette</i> 1, Sydney <i>Herald</i> 3.

Whereas the parties named in the above list have requested that the lands therein described be brought under the Real Property Act, and the said applications have been referred to us by the Registrar-General, we hereby direct that publication of the same may be made as above specified, and particularized opposite the name of each respectively; and in case no caveat be received by the Registrar-General in respect to such lands, on or before the expiration of the periods set opposite each name respectively, from the date of the *South Australian Government Gazette* notice, we direct the Registrar-General to take such steps as are by law directed for bringing such land under the operation of the said Act.

W. H. M. } Lands Titles Commissioners.
J. H. }

Dated this thirtieth day of October, 1858.

GENERAL INSTRUCTIONS.

INSTRUCTIONS FOR GUIDANCE IN BRINGING LAND UNDER THE ACT.

Any person may act as agent for another in filling in the forms of application for bringing land under the Act, and charge for the services so rendered; or the proprietor may himself transact the business.

Any person may bring under the provisions of the Real Property Act, land of which he is the proprietor, or which he has contracted to purchase, provided that in the latter case the vendor shall express his concurrence in such application, by writing on the form of application the words "I consent hereto," signing the same. If the land be vested in the applicant as a trustee only, and the trust deed does not contain powers of sale and absolute disposal, the person entitled to the next life estate must concur in the application; but if the trust deed vests in the trustees power of sale and absolute disposal, such concurrence is not necessary. If the applicant be a married woman, the concurrence of her husband must be indicated in the manner above described. The father or guardian of a minor, or the committee of a lunatic, may apply to bring land under the Act in the name of such minor or lunatic.

Any person holding land for a life estate, or for a greater estate than a life estate, in possession, may bring the same under the Act, and receive certificate of title evidencing the nature of his interest.

An undivided share in land cannot be brought under the Act unless the proprietors of the other undivided shares join in the application with a view to bringing the entirety under the Act. In which case if the parties are entitled as joint tenants one certificate will be issued, describing the interest of each proprietor; but if they held as tenants in common each will receive a separate certificate representing his undivided share.

If the land be mortgaged, the concurrence of the mortgagee must be certified in the same manner. The amount of the mortgage, the date when payable, the rate of interest, and the dates on which the same is payable, must also be stated, together with the name, residence, and trade or calling of the mortgagee, the date of the mortgage deed, and of its registration. If the land be under lease, the term for which it is leased, the amount of rent, the dates when payable, and the name, residence, and description of the lessee, the date of lease and of its registration must also be stated. If right of purchase be covenanted, the fact must be stated, with the amount of purchase money, and the period within which the privilege may be exercised. Should there be any encumbrance, or settlement, or outstanding estate, or interest affecting the land, the same must be stated.

An accurate description of the land is indispensable. When the land mentioned in the application consists of an entire section or allotment, as delineated in an original land grant, a reference to that land grant for the description will be sufficient. When the land referred to constitutes an allotment in any township, and the map of that township has been deposited in the Lands Titles Office, in terms of Section 76 of the Real Property Law Amendment Act, reference to that map for the description will be sufficient; when the land consists of an allotment in any township the map of which has been deposited in the Registry Office of Deeds, under Ordinance No. 22 of 1858, reference to that map for the description will sometimes be sufficient. As, however, several of the maps so deposited are inaccurate, or not drawn to scale, as in some cases the allotments do not really contain the quantity of land stated in the deed, and in other instances the area is not stated either in

the deed or on the plan, reference to maps deposited under the provisions of that Act will not always be sufficient. In these instances, as also in cases where no map has been deposited, and the land referred to consists of portion only of a section or allotment delineated on an original grant, the application must state accurately the length of each boundary line in chains and links or in feet. If the block of land be other than a triangular figure bounded by straight lines, or a right angled figure bounded by straight lines, a map or plan drawn to scale with minute accuracy must be delineated on the margin of the form of application, or on a separate paper annexed thereto.

When the title consists of a land grant only the application fee is 1s. When the title is other than a land grant, and the value of the property does not exceed £100, the application fee is 10s. If the value exceed £100, but does not exceed £200, the application fee is 15s. If the value exceed £200, 20s. The fee for certificates of title is in every instance £1. These fees, with one halfpenny in the pound sterling on the value, as contribution to the Assurance Fund, must be paid at the time of making application.

When there is a contract for sale pending; the bringing of the land under the Act, and the conveyance to the purchaser, may be combined in one operation without any additional expense if the application be made in the name of the intending purchaser, and the concurrence of the proprietor expressed.

When partition is intended to be made by joint tenants or tenants in common, the same may be done without additional expense if the intention be expressed in the application.

When the title is a land grant, the certificate will be issued within one week from receipt of the application. When the title is other than a land grant, the certificate will be issued within six weeks, except in cases when the evidence of title is imperfect, or the land has been derived by transmission, or where parties appearing to have an interest in the fee are not parties concurring in the application. These cases will be specially dealt with on their merits, and extended advertisement directed by the Lands Titles Commissioners, and a further payment exacted in order to defray the expense of the extended advertisement.

Any number of properties in land, wherever situated within the colony, if belonging to the same proprietor, may be included in one application, but separate certificates of title must be taken out for sections or allotments situated so far apart that they cannot conveniently be included in the same diagram.

Lands included in one original grant, or treated as one property in any deeds of title surrendered, may, at the desire of the applicant proprietor, be divided into two or more properties, each under a separate certificate of title.

Lands represented under several surrendered grants or deeds of title as separate properties, may, at the desire of the proprietor, be included together in one certificate of title whenever the lands are so situated as to admit of being included in the same diagram.

Therefore the application fee for bringing under the Real Property Act lands held by the same proprietor under, say twenty separate grants, and wherever situated, is one shilling only; and the application fee for bringing under the Act twenty separate properties, held under titles all derived through the South Australian Company or other original proprietor, is twenty shillings.

Subject to the regulation as to diagrams above referred to, the applicant proprietor is at liberty to exercise discretion as to the number of certificates of title at Twenty Shillings each under which his property shall be represented.

The assurance fee charged on the first bringing of land under the Act, guarantees all subsequent dealings with the same land by sale, lease, mortgage, encumbrance, or settlement, and is not again charged until the land becomes transmitted by will or intestacy.

In cases where application to bring land under the Act is about to be made by purchaser, with consent of the vendor pursuant to a contract, the purchaser may be reluctant to part with the purchase money until his title is completed

by the bringing of the land under the Act in his name. The vendor may, on the other hand, be unwilling to sign the consent on the form of application until the purchase money be paid. This matter is arranged either by payment of the agreed purchase money into the hands of a stake-holder, or into a Bank, in the joint names of the vendor and purchaser pending the publication of the *Gazette* notice bringing the land under the Act in the name of the latter. Or sometimes the vendor signs the consent, and protects himself by lodging a caveat with the Registrar-General forbidding the issue of the *Gazette* notice and certificate of title until his receipt for the purchase money is produced.

The declarations on the form, and also the attestation of the signatures of applicants and concurring parties, must be made in manner and before the authorities hereinafter specified under the heading "Execution of Instruments and Attestation," which see.

The application, with the title-deeds of the land, may be forwarded through the Post, or delivered at the Lands Titles Office, Adelaide.

Abstracts are sometimes required when all the deeds are not produced, or when the title is complicated by transmission through the death, insolvency, &c., of former proprietors.

Blank forms may be procured at the Lands Titles Office, or will be forwarded through the post to any applicant transmitting one shilling in stamps.

Mistakes in filling in forms of application may be corrected by scoring the pen through the words written in error, and writing the correct words over them. In such cases a memorandum of the number of words scored out, and of the number interlined, must be made on the margin of the form, signed by the applicant proprietor, and by the attesting witness.

No form will be received on which an erasure is detected.

The following examples are given for further illustration:—

Title, a Land Grant, and no outstanding interest.

(I)

[SOUTH AUSTRALIA.]

APPLICATION FOR LANDS TO BE BROUGHT UNDER OPERATION OF REAL
PROPERTY ACT.

I, A.B., of _____, do declare that I am seised in possession of an estate in fee simple in all that Section of land containing eighty acres, be the same little more or less, and numbered 75, situate in the Hundred of Light, County of Light, which Section was originally granted to me by land grant, under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, dated fourth day of June, 1853; and is delineated on the public maps of the Province deposited in the Survey Office in Adelaide: And I do further declare, that I am not aware of any mortgage, encumbrance, or claim affecting the said lands, or that any person hath any claim, estate, or interest in the said lands at law or in equity, in possession or in expectancy, and I make this solemn declaration conscientiously believing the same to be true.

Dated at Adelaide, this 10th day of August, 1858.

(Signed)

THOMAS JONES.

Made and subscribed by the above-named Thomas Jones, this 10th day of August, 1858, in the presence of me, R. R. Torrens, Registrar-General.

I, Thomas Jones, the above declarant, do hereby apply to have the piece of land described in the above declaration brought under the operation of the Real Property Act.

Dated at Adelaide, this 10th day of August, 1858.

(Signed)

THOMAS JONES.

Witness to signature—R. R. TORRENS.

[ENDORSEMENT TO THE ABOVE.]

I declare the within described land to be of the value of £100 sterling, and no more, and I make this solemn declaration conscientiously believing the same to be true.

(Signed) THOMAS JONES.

Made and subscribed by the above-named Thomas Jones in my presence, the tenth day of August, 1858.—R. R. TORRENS.

Application by Trustees not holding powers of absolute disposition and sale. Property an Allotment under Lease; reference for description to Map in General Registry-Office. Tenant for life to concur.

(I) [SOUTH AUSTRALIA.]

APPLICATION FOR LANDS TO BE BROUGHT UNDER OPERATION OF THE
REAL PROPERTY ACT.

We, William Smith, of Adelaide, John Edwards, of Adelaide, and Richard Smith, of Norwood, as trustees under an indenture, dated 5th May, 1856, do declare that we are seised in possession of an estate in fee simple in all that allotment of land, No. 28, containing one half of an acre, be the same little more or less, and being part and parcel of the Section of land, No. 52, situate in the Hundred of Clare, County of Stanley, which allotment No. 28, is more particularly delineated in plan deposited in the General Registry-Office of the said Province, No. 29 of 1855, and which said Section was originally granted to Thomas Rolfe, by land grant, under the hand and seal of Sir R. G. MacDonnell, Governor-in-Chief of the said Province, dated third day of July, 1853, and is delineated on the public maps of the Province deposited in the Survey Office in Adelaide: And we do further declare, that we are not aware of any mortgage, encumbrance, or claim affecting the said lands, or that any person hath any claim, estate, or interest in the said lands at law or in equity, in possession or in expectancy, other than is set forth and stated as follows, that is to say—that the above property is under lease to Edward Johnson, for the term of seven years, at the yearly rent of £50, payable half-yearly, on 31st of March and 30th of September, and we make this solemn declaration conscientiously believing the same to be true.

I consent hereto,
(Signed)
Thomas Jenkins,
(Tenant for life.)
Witness—Henry Robinson.

Dated at Adelaide, this 8th day of September, 1858.

(Signed)

{ WILLIAM SMITH.
JOHN EDWARDS.
RICHARD SMITH.

Made and subscribed by the above-named William Smith, John Edwards, and Richard Smith, this 8th day of September, 1858, in the presence of me,

R. R. TORRENS, Registrar-General.

We, William Smith, John Edwards, and Richard Smith, the above declarants, do hereby apply to have the piece of land described in the above declaration brought under the operation of the Real Property Act.

Dated at Adelaide, this 8th day of September, 1858.

(Signed)

{ WILLIAM SMITH.
JOHN EDWARDS.
RICHARD SMITH.

Witness to signature—R. R. TORRENS.

[ENDORSEMENT TO THE ABOVE.]

We declare the within described land to be of the value of £500 sterling, and no more, and we make this solemn declaration conscientiously believing the same to be true.

(Signed)

{ WILLIAM SMITH.
JOHN EDWARDS.
RICHARD SMITH.

Made and subscribed by the above-named William Smith, John Edwards, and Richard Smith, in my presence, this 8th day of September, 1858.

R. R. TORRENS.

Property, Allotment in Township, subject to Mortgage; reference for description to map deposited in terms of Real Property Act. Mortgagee concurs.

(I)

[SOUTH AUSTRALIA

APPLICATION FOR LANDS TO BE BROUGHT UNDER OPERATION OF THE
REAL PROPERTY ACT.

I, Thomas Bone, of Kensington, do declare that I am seised in possession of an estate in fee simple in all that allotment of land, No. 430, containing one-quarter of an acre, be the same little more or less; and being part and parcel of the Sections of land, numbered 1129 and 1130, in the Hundred of Port Adelaide, County Adelaide; which Sections have been laid out by Messrs. Watts and Levi, as and for a Township, as the said allotment, No. 430, is more particularly delineated in plan of said Sections deposited in Lands Titles Registration Office, No. 3; and which said Sections were originally granted to Philip Levi, by land grant, under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, dated 26th day of July, 1850, and are delineated on the public maps of the Province deposited in the Survey Office in Adelaide: And I do further declare, that I am not aware of any mortgage, encumbrance, or claim affecting the said lands, or that any person hath any claim, estate or interest in the said lands at law or in equity, in possession or in expectancy, other than is set forth and stated as follows, that is to say—that the above property is subject to a mortgage to John Watson for the sum of £100; and I make this solemn declaration conscientiously believing the same to be true.

I consent hereto,
(Signed)
John Watson.
Witness—R. R. Torrens.

Dated at Adelaide, this 14th day of March, 1859.

(Signed)

THOMAS BONE.

Made and subscribed by the above-named Thomas Bone, this 14th day of March, 1859, in the presence of me,

R. R. TORRENS, Registrar-General.

I, Thomas Bone, the above declarant, do hereby apply to have the piece of land described in the above declaration brought under the operation of the Real Property Act.

Dated at Adelaide, this 14th day of March, 1859.

(Signed)

THOMAS BONE.

Witness to signature—R. R. TORRENS.

[ENDORSEMENT TO THE ABOVE.]

I declare the within described land to be of the value of £500 sterling

and no more, and I make this solemn declaration conscientiously believing the same to be true.

(Signed) THOMAS BONE.

Made and subscribed by the above-named Thomas Bone, in my presence, this 14th day of March, 1859.

R. R. TORRENS, Registrar-General.

When Title is deed for part of an original Section, referring for description to diagram on paper annexed; applicant being purchaser under contract, and vendor concurring.

(I) [SOUTH AUSTRALIA.]

APPLICATION FOR LANDS TO BE BROUGHT UNDER OPERATION OF THE
REAL PROPERTY ACT.

I, Thomas Atkins, of Bowden, do declare that I am seised in possession, as intending purchaser from Edward Martin, in all that piece of land, containing twenty acres, being part of and situate at the northern extremity of the Section of land, numbered 250, situate in the Hundred of Adelaide, County of Adelaide, which piece of land is more particularly delineated in plan annexed hereto; which said Section, No. 250, was originally granted to Edward Martin by land grant under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, dated 8th July, 1853, and is delineated on the public maps of the Province deposited in the Survey Office in Adelaide: 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 lands at law or in equity, in possession or in expectancy, and I make this solemn declaration conscientiously believing the same to be true.

I consent hereto,
(Signed)
Edward Martin (Vendor.)
Witness—R. R. Torrens.

Dated at Adelaide, this 12th day of March, 1859.

(Signed) THOMAS ATKINS.

Made and subscribed by the above-named Thomas Atkins, this 12th day of March, 1859, in the presence of me,

R. R. TORRENS, Registrar-General.

I, Thomas Atkins, the above declarant, do hereby apply to have the piece of land described in the above declaration brought under operation of the Real Property Act.

Dated at Adelaide, this 12th day of March, 1859.

(Signed) THOMAS ATKINS.

Witness to signature—R. R. TORRENS.

[ENDORSEMENT TO THE ABOVE.]

I declare the within described land to be of the value of £30 sterling, and no more, and I make this solemn declaration conscientiously believing the same to be true.

(Signed) THOMAS ATKINS.

Made and subscribed by the above-named Thomas Atkins, in my presence, this 12th day of March, 1859.

R. R. TORRENS.

INSTRUCTIONS FOR CONDUCTING TRANSFERS AND OTHER DEALINGS WITH LAND, APPLICABLE TO INSTRUMENTS GENERALLY.

Who entitled to present instruments for registration.

The prescribed forms of memorandum of sale, lease, mortgage, &c., &c., may be procured at the Lands Titles Office, or will be forwarded through the Post-Office, to any address, upon receipt of one shilling in postage stamps; these instruments when filled up, executed and attested in manner hereinafter described, and in duplicate, may be presented at the Lands Titles Office by the party claiming thereunder, or forwarded by him through the Post-Office, addressed to the Registrar-General, or presented for registration by his solicitors. In either case the words "Correct for the purpose of registration," signed by the party presenting the instrument, must be endorsed thereon.

2. The fees for each case prescribed must be paid at the time of forwarding or presenting the instrument.

3. No instrument on which an erasure is detected will be received for registration. Mistakes may be corrected by scoring the pen through the words written in error, and writing the correct words over them; in every such case a memorandum of the number of words scored out and interlined must be made at foot of the instrument signed by the party executing the same, and by the attesting witness.

4. Every instrument affecting any estate or interest in land under the Real Property Act must be signed by the registered proprietor who contracts to deal with that estate or interest. The signature must be attested by one witness, and it is desirable that the witness should be a resident householder.

Execution of instruments and attestations.

5. If the contracting proprietor does not attend personally at the Registry Office, and execute the instrument in presence of the Registrar-General, then such contracting proprietor, or the person attesting his signature, must acknowledge or prove the execution of the instrument before a Justice of the Peace, who will notify such acknowledgment or proof by a certificate to that effect, under his hand and seal endorsed upon the instrument.

6. Before granting such certificate, the Justice will require the contracting proprietor, if he attend and is personally known to him, to acknowledge that "he did freely and voluntarily sign such instrument;" but if the contracting proprietor does not attend, or is not known to such Justice, the witness who attested the signature will be required to answer the following questions on oath, or under statutory declaration—"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?" "Do you personally know A.B., the person signing this instrument, and whose signature you attested?" "Is he of sound mind? and did he freely and voluntarily sign the same?" Execution of instruments may be proved in like manner—in the United Kingdom, before a Notary Public or Mayor; in a British Colony, before a Judge, Governor, or Government Resident; in a foreign place, before a British Consular Officer there resident.

Description of Parcels.

7. When the property to be dealt with comprises the entire of the lands included under any existing grant or grants, certificate or certificates, or comprises the entire of any allotment or allotments in any township, the plan of which has been deposited in terms of the Real Property Act, a reference to such grants, certificates, or plan for the description of the property, will suffice, and a diagram will not be required. When the property to be dealt with comprises part only of the lands included in any such grant, or certificate, or

allotment, the portion to be dealt with must be minutely described and delineated in a diagram, accurately drawn to scale on the margin of the instrument.

8. The diagram is occasionally dispensed with in the case of a memorandum of sale of the fee, if the description given be sufficient to enable the draftsman of the department to delineate the subdivision, with the aid of a deposited plan, or of the diagram on the existing grant or certificate of title.

Acknowledgment by married women and consent of parties.

9. Whenever the land to be dealt with is vested in a married woman, the acknowledgment of such married woman must be taken before a Judge, or before the Master of the Supreme Court, or before the Registrar-General, whose certificate of such acknowledgment must be endorsed on the instrument in the form of Schedule T of the Real Property Law Amendment Act.

10. Whenever the concurrence of any person interested is required to give validity to any transaction, such concurrence may be signified by the words "I consent hereto," written on the instrument and signed by such person; the signature must be witnessed and attested in manner hereinbefore described.

11. The counterpart of every instrument registered, bearing a certificate that the particulars thereof have been entered in the register book, showing the volume and folio authenticated by the hand and seal of the Registrar-General, will be returned to the party who has acquired estate or interest thereby.

12. Entry in the register book is the essential which gives validity to transactions; and the certificate and seal of the Registrar-General render the instrument evidence to prove title in any Court of Justice.

INSTRUCTIONS FOR TRANSFER OF ESTATE OR INTEREST.

13. When land is intended to be sold, the proprietor fills up memorandum of sale, form B, stating the amount of purchase money, and describing rights of way or other easements or privileges, if any, reserved by such proprietor; also rights of way or other easements, if any, over other lands intended to be attached to and exercised in conjunction with the proprietorship of the land intended to be sold.

14. If the land be under lease, the name, residence, and description of the tenant; the term of the lease, the amount of rent, and any material covenants, such as right of purchase, should be stated.

15. If the land be mortgaged or encumbered, the amount secured, the date when payable, the rate of interest, and other particulars, with the name, residence, and description of the mortgagee, or encumbrancee, should be stated; but if the land be settled and the vendor acts in the capacity of trustee only, that circumstance need not be stated, as the purchaser has no occasion to look to the appropriation of the purchase money.

16. The existing grant or certificate of title must be deposited in the Lands Titles Office, together with the duplicate memorandum of sale.

17. Whenever it is intended to sell an estate less than an estate in fee simple, or to sell merely a right of way or other easement or privilege without the fee of the land, the memorandum of sale may be modified so as to express clearly the nature of the lesser estate, easement, or privilege intended to be disposed of. In such cases the certificate of title will be returned to the proprietor of the fee, bearing a memorandum under the hand of the Registrar-General certifying the registration of the transfer of the lesser estate or easement.

18. When the fee simple is transferred, a certificate of title will be made out and delivered to the purchaser in exchange for the memorandum of sale.

19. If the fee of part only of the land included under an existing grant or certificate of title be sold, a certificate for the balance of such land will be given to the proprietor, and the previous certificate will be cancelled, or, at the desire of the proprietor, the existing grant or certificate will be cancelled so far only as regards the portion of land transferred, and the issue of certi-

fronts for the balance postponed in anticipation of future sales. The deposited grant or certificate will, in such case, be retained in the Lands Titles Office.

20. Properties represented by several grants or certificates of title may be dealt with under one memorandum of sale to the same purchaser, who may exercise his discretion as to whether the lands shall be included in one certificate or divided into separate properties, each represented by a separate certificate, subject, however, to the existing regulations in respect to plans and diagrams.

21. When land is intended to be offered for sale as a township, the proprietor is required to deposit in the Lands Titles Office a plan of the township, and to subscribe a declaration to the accuracy of the same before the Registrar-General or a Justice of the Peace.

22. The allotments, streets, squares, and other reserves for public purposes must be distinctly delineated, and the allotments numbered.

23. If the allotments be of an area not exceeding one statute acre, then the plan must be on a scale of not less than one inch to two chains. If the allotments be of an area exceeding one acre but not exceeding five acres, then the plan may be on a scale of not less than one inch to five chains. If the allotments be of a greater area than five acres then the plan must be on a scale of not less than one inch to ten chains.

24. The above is the minimum scale for plans deposited; but a larger scale, as affording facility for marking off future subdivisions, is recommended for adoption whenever the township is of such moderate extent as may admit of it without inconvenience.

25. The proprietor, before proceeding to sale, should deposit the grant or certificate of title to the lands comprised in the township, taking a receipt for the same; he should also provide himself with forms of memorandum of sale, to be filled in and executed in favour of each purchaser as sales are effected.

26. When the handwriting is known, and there is no reason to suspect fraud, the proving of execution before the Registrar-General or Justice of the Peace will generally be dispensed with.

27. These memoranda of sale must be forwarded to the Lands Titles Office in duplicate, as hereinbefore directed. One counterpart will be returned to the purchaser, bearing the official stamp, and certificate of entry in the register book, to be exchanged for certificate of title so soon as the same can be made out.

28. The fees are—for memorandum of sale, ten shillings; for certificate of title, one pound; and must be paid at the time when the memorandum of sale is presented or forwarded for registration.

29. Before paying the purchase money the purchasers should have the existing grant or certificate of title delivered up, or should satisfy themselves that it has been already deposited in the Lands Titles Office.

30. The grant or certificate of title will show by the memoranda endorsed all transactions affecting the land, yet prudent persons will take the precaution of making search, lest any caveat should be lodged forbidding the Registrar-General to give effect to the transfer.

31. The register book may be searched by the party interested, or by any person on his behalf, or a certificate of search exhibiting the state of the title will be forwarded by the Registrar-General to any party applying through the post or per telegram; the fee, in either case, is two shillings for each title searched.

32. Some delay and labour will be saved if persons making search or applying for certificate of search, state the volume and folio of the register book in which the history of the title is recorded; this information may readily be obtained from the vendor, as every instrument issued from the Land Titles Office bears upon it a memorandum referring to the volume and olio of the register book.

33. Mortgages, encumbrances, and leases, may be transferred by a simple endorsement of the words following:—"I, the within-mentioned _____, in consideration of the sum of £ _____, this day paid to me, by _____, the receipt of which I do hereby acknowledge, do hereby transfer to him the

estate or interest in respect to which I am registered as 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 , 18 ."

34. The surrender of a lease is effected by endorsing the single word—"Surrendered," signed by the lessor and lessee. Signatures to endorsements of transfer, or surrender, in such cases must be attested as directed in the former part of this letter.

35. The instrument should then be presented at, or forwarded to, the Lands Titles Office, that the particulars of the endorsement may be entered in the register book, and the certificate and seal of registration affixed.

36. The fee for registering transfer of mortgage, encumbrance, or lease, or surrender of lease by endorsement, is five shillings.

37. In the case of transfers of this nature, the instrument will generally be returned to the party entitled within ten minutes. When the fee is transferred, the certificate of title will generally be ready for issue on the succeeding day.

38. Examples of memoranda of sale are annexed, exhibiting the mode of filling in forms under different circumstances.

SCHEDULES REFERRED TO.

Where land transferred is the whole of a Section of land included in Certificate of Title.

(B)

[SOUTH AUSTRALIA.]

MEMORANDUM OF SALE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title, vol. II., folio 54) of an estate in fee simple in all that Section of land, situate in the Hundred of Goolwa, County Hindmarsh, containing eighty acres, be the same a little more or less, and numbered 1300, bounded as described in certificate of title aforesaid, which said Section is delineated in the public maps of the said Hundred in the office of the Surveyor-General, and was originally granted the fifth day of May, 1849, under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, to Thomas Jones, of Willunga, farmer, in consideration of the sum of £200 paid to me by William Robinson, of Adelaide, aforesaid, bricklayer, the receipt of which sum I hereby acknowledge, do hereby transfer to the said William Robinson all my estate and interest in the said piece of land. In witness whereof I have hereunto subscribed my name, this twenty-second day of January, 1859.

JOHN SMITH.

Signed on the day above named by the said John Smith, in the presence of Thomas Browne, Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration.—WILLIAM ROBINSON.

Where land transferred is portion of a Section of land included in Certificate of Title.

(B)

[SOUTH AUSTRALIA.]

MEMORANDUM OF SALE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title, vol I., folio 93) of an estate in fee simple in all that piece or parcel of land, situate in the Hundred of

Goolwa, County of Hindmarsh, containing fifteen acres, be the same a little more or less, being the northern portion of the Section of land No. 1300 in said Hundred, and bounded as appears in plan drawn in margin hereof, which said piece of land measures on the south and north sides thereof severally 300 links, and on the east and west sides thereof severally 100 links, which said Section is delineated in the public map of the said Hundred in the office of the Surveyor-General, and was originally granted on the fifth day of May, 1849, under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, to Thomas Jones, of Willunga, farmer, in consideration of the sum of £85, paid to me by William Robinson, of Adelaide, aforesaid, bricklayer, the receipt of which sum I hereby acknowledge, do hereby transfer to the said William Robinson all my estate and interest in the said piece of land. In witness whereof I have hereunto subscribed my name, this twenty-second day of January, 1859.

JOHN SMITH.

Signed on the day above named by the said John Smith, in the presence of Thomas Browne, Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration.—WILLIAM ROBINSON.

Appeared before me, at Adelaide, the 24th day of January, 1859, John Smith, of Adelaide, the party executing the within instrument, and did freely and voluntarily sign the same.

(Signed)

THOMAS JOHNSON, J.P.

When land is transferred subject to a lease and mortgage.

(B)

[SOUTH AUSTRALIA.]

MEMORANDUM OF SALE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title vol. III., folio 54) of an estate in fee simple, subject, however, to such encumbrance and interest hereinafter mentioned, in all that Section of land situate in the Hundred of Goolwa, County of Hindmarsh, containing eighty acres, be the same a little more or less, and numbered 1300, bounded as described in certificate of title aforesaid, which said Section is delineated in the public map of the said Hundred, in the office of the Surveyor-General, and was originally granted the fifth day of May, 1849, under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, to Thomas Jones, of Willunga, farmer, in consideration of the sum of £200, paid to me by William Robinson, of Adelaide, bricklayer, the receipt of which sum I hereby acknowledge, do hereby transfer to the said William Robinson, all my estate and interest in the said piece of land, subject as follows, that is to say—a lease, No. 20, dated 4th August, 1858, from me the said John Smith, to John Morris, of Kapunda, miller, at the yearly rent of £70, payable half-yearly. Term—seven years, and right of purchase at any time during the said term at the price or sum of £1,000; and subject also to bill of mortgage, No. 30, dated 6th November, 1858, from me, the said John Smith to Alfred Perkins, of Norwood, Esquire, for the sum of £400. Date when payable, 6th November, 1860. Rate of interest, £10 by the £100 in every year. In witness whereof I have hereunto signed my name, this twenty-second day of January, 1859.

JOHN SMITH.

Signed on the day above named by the said John Smith in the presence of Thomas Browne, Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration.—WILLIAM ROBINSON.

Appeared before me, at Adelaide, the 24th day of January, 1859, Thomas Browne, of Adelaide, the attesting witness to this instrument, and acknowledged his signature to the same; and did further declare that John Smith, the party executing the same, was personally known to him, the said Thomas Browne, and that the signature of this said instrument is the handwriting of the said John Smith.

(Signed)

THOMAS JOHNSON, J.P.

Where land is transferred under Power of Attorney and is subject to an annuity.

(B)

[SOUTH AUSTRALIA.]

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title, vol. IV., folio 17) of an estate in fee simple, subject, however, to such encumbrance and interest hereinafter mentioned, in all that Section of land situate in the Hundred of Goolwa, County of Hindmarsh, containing eighty acres, be the same little more or less, and numbered 1300, bounded as described in certificate of title aforesaid, which said Section is delineated in the public map of the said Hundred, in the office of the Surveyor-General, and was originally granted the fifth day of May, 1849, under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, to Thomas Jones, of Willunga, farmer, in consideration of the sum of £300, paid to me by William Robinson, of Adelaide, Esquire, the receipt of which sum I hereby acknowledge, do hereby transfer to the said William Robinson all my estate and interest in the said piece of land, subject as follows—that is to say, bill of Encumbrance, No. 52, dated 12th May, 1857, from the said John Smith, securing to my wife, Jane Smith, an annuity of £100 per annum. In witness whereof I have hereunto subscribed my name, this 27th day of January, 1859.

JOHN SMITH, by his Attorney, Richard Tomkins.

Signed on the day above-named by the said John Smith, by his Attorney, Richard Tomkins, in the presence of Thomas Browne, Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of Registration.—WILLIAM ROBINSON.

Grant of Right of Way.

(B)

[SOUTH AUSTRALIA.]

MEMORANDUM OF SALE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title, vol. V., folio 37) of an estate in fee simple in all that Section of land situated in the Hundred of Goolwa, County of Hindmarsh, containing eighty acres, be the same little more or less, and No. 1300, bounded as described in certificate of title aforesaid, in consideration of the sum of Twenty Pounds paid to me by John Watkins, of Adelaide, the receipt of

which sum I hereby acknowledge, do hereby grant to the said John Watkins and others claiming through or under him, owners or occupiers of the Section of land, No. 1300, in the said Hundred, full liberty and right of way, and of driving of horses and other cattle, and either on foot or on horseback, and with carts or other carriages to or from the well or pond situated on said Section No. 1300, for the purpose of watering such horses and other cattle, or of carrying away and using the water therefrom, such well or pond to be approached from eastern corner of said Section, No. 1300. In witness whereof I have hereunto subscribed my name, this twenty-seventh day of January, 1859.

JOHN SMITH.

Signed on the day above-named by the said John Smith in the presence of Thomas Browne, of Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of Registration—JOHN WATKINS.

MORTGAGES AND ENCUMBRANCES.

After entering on the form of mortgage or encumbrance the name, residence, and trade or calling of the intending mortgagor or encumbrancer, the nature of the estate held by him, whether fee simple or leasehold, as also the particulars of leases, prior mortgages, or other encumbrances if any affecting the property, must be stated.

2. Next must be set forth a description of the land identical with that given in the grant, certificate of title, or lease, under which the estate about to be pledged is held, or a reference for description and diagram must be made to that grant, certificate, or lease.

3. If, however, part only of a section or allotment, as described and delineated in such grant, certificate, or lease, is intended to be pledged, then an accurate description of that part must be given, setting forth the length of each boundary line in chains and links, or in feet. Moreover, a diagram of the portion to be pledged, drawn accurately to scale, will be necessary whenever the line dividing the portion to be pledged is not a straight line, and whenever the portion to be pledged is cut off from the original section or allotment by more than one line.

4. Next must be stated the name, residence, and trade or calling of the person in whose favour the mortgage or encumbrance is to be effected, the amount of the sum of money or annuity to secure which the land is to be pledged, the date (if any) fixed for payment of the sum so secured, or the occurrences or conditions upon which it may be intended that such payment shall be contingent, together with the rate of interest and the dates on which it is to be paid.

5. Covenants for punctual payment, for keeping in repair, and for right of entry upon the premises to inspect the state of repairs need not be inserted, as these are declared by law to be implied in every mortgage under the Real Property Act, unless expressly barred or modified by words to that effect in the bill of mortgage.

6. A covenant for insurance against loss by fire may be introduced into the bill of mortgage by using the four words, "that he will insure;" the law declaring that whenever these words are introduced the mortgagor will be bound "to insure, and, so long as the term expressed in the said mortgage shall not have expired, will keep insured in some public insurance office, to be approved by such mortgagee, against loss or damage by fire to the full amount specified in such bill of mortgage, or if no amount be specified, then to their full value all buildings, tenements, or premises erected on such

land which shall be of a nature or kind capable of being insured against loss, or damage by fire; and that he will, at the request of the mortgagee, hand over to and deposit with him the policy of every such insurance, and produce to him the receipt or receipts for the annual or other premiums payable on account thereof: Provided always, that all moneys to be received under or by virtue of any such insurance shall, in the event of loss or damage by fire, be laid out and expended in making good such loss or damage; provided also, that if default shall be made in the observance or performance of the covenant last above-mentioned, it shall be lawful for the mortgagee, without prejudice, nevertheless, to and concurrently with the powers granted him by his bill of mortgage, in manner in and by the Act provided, to insure such building, and the cost and charges of such insurance shall, until such mortgage be redeemed, be a charge upon the said land."

7 Any other covenants agreed on between the parties may be introduced into the bill of mortgage or encumbrance.

8. Repayment by instalments or periodical payments is provided for by a special clause in the Act, and a form of bill of mortgage adapted to such cases and for the use of building or benefit societies is supplied at the Lands Titles Office.

9. The bill of mortgage or encumbrance, when filled in and executed as directed in the instructions for preparing instruments given in the preceding letters, together with the grant certificate of title, or lease under which the land intended to be pledged is held, must be forwarded to or presented at the Lands Titles Office, in order that the particulars may be entered in the register book.

10. One counterpart of the bill of mortgage or of encumbrance will be delivered to the mortgagee or encumbrancee, bearing certificate, under the hand and seal of the Registrar-General, that the particulars had been entered in the register book, stating volume and folio.

11. Entry in the register book is the essential which gives validity to the transaction; the certificate of the Registrar-General makes the instrument evidence in all Courts of Justice that such entry has been made.

12. The question who shall hold the counterpart, grant, or certificate of title, or lease, representing the property pledged, is left to be settled between the parties.

13. Under the old law of mortgaging by transfer of the legal estate, it is usual for the mortgagee to hold the deeds.

14. On the Continent of Europe, where the system of hypothecation or pledge is substituted for that device so costly and injurious to the mortgagor, the mortgagee does not generally hold the title deeds.

15. The mortgage, under the South Australian Real Property Act, is nearly identical with the continental "hypothec;" and whilst there is nothing to forbid the custody of the grant, certificate, or lease by the mortgagee or encumbrancee, such custody can afford him no additional security or advantage beyond what would be secured to him holding his bill of mortgage or encumbrance whilst the custody of the grant or other instrument of title remained with the mortgagor or encumbrancer.

16. This will more clearly be perceived upon calling to mind, first, that an original of the grant, certificate, or lease remains in the Lands Titles Office, which, as well as the counterpart in the hands of the proprietor, bears upon it a memorandum recording the mortgage or encumbrance, and the date and hour of its creation, certified under the hand of the Registrar-General; 2ndly, that the law declares that all mortgages, encumbrances, and other liens shall take effect according to the date of their registrations, and that no subsequent transaction or entry can affect the rights or powers of the previous mortgagee or encumbrancee, whose title is guaranteed by the law as indefeasible.

17. It should also be borne in mind that no lease granted subsequent to a mortgage or encumbrance can have any validity as against the mortgagee or encumbrancee unless his concurrence shall be certified thereon in manner above directed under the heading, "Instructions applicable to instruments generally."

18. Although the grant, certificate, or lease, will itself exhibit the state of the mortgagor's title, the mortgagee is nevertheless advised, as a precautionary measure, before paying the mortgage money, to cause search to be made, lest caveat should be entered forbidding the registration of dealings with the property; he may also, if there be reason to suspect fraud, protect himself by lodging a caveat forbidding any further dealing, pending the registration of his mortgage.

19. Any number of sections or allotments belonging to the same proprietor may be included in one form of mortgage or encumbrance.

20. A mortgage or encumbrance may be discharged by the simple endorsement thereon of a receipt for the money secured, signed by the party entitled, and attested by a witness.

21. By the 33rd and 34th sections of the Real Property Law Amendment Act power of sale is given to the mortgagee in case of default made by the mortgagor in payment of interest or principal, or in the observance of any covenant, after one month's notice in writing, served on the mortgagor, or left at his last known place of abode in the colony, or on the mortgaged premises.

22. The procedure to be followed in such cases is the same as that prescribed in the instructions under the head of transfers.

23. The Registrar-General is bound to give effect to sales by mortgagees under such circumstances, and the Act declares such sales to be "as valid and effectual to pass such mortgaged estate or interest as if the memorandum of sale had been executed by the mortgaging or encumbering proprietor, prior to the execution of the mortgage or encumbrance."

24. The fee for a mortgage or encumbrance is ten shillings; for release, five shillings; and the instrument duly registered will be returned to the parties generally within fifteen minutes after presentation. Examples are annexed illustrating the mode in which forms of mortgage and encumbrances are required to be filled in.

SCHEDULES REFERRED TO.

Mortgage with Covenant to Insure.

(D)

[SOUTH AUSTRALIA.]

BILL OF MORTGAGE.

I, John Smith, of Willunga, farmer, being registered as proprietor (certificate of title, vol. I, folio 169) of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the Hundred of Willunga, County of Adelaide, bounded as described in certificate of title aforesaid, containing eighty acres, be the same a little more or less; plan of which piece of land is delineated in aforesaid certificate of title, which said piece of land is the Country Section marked 258, delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, which was originally granted the twelfth day of August, 1857, under the hand and seal of Sir E. G. MacDonnell, Governor-in-Chief of the said Province, to Thomas Jenkins, of Adelaide, in consideration of the sum of Three Hundred Pounds sterling, this day lent to me by James Brown, of Adelaide, the receipt of which sum I hereby acknowledge, do hereby covenant with the said James Brown, that I will pay to him, the said James Brown, the above sum of Three Hundred Pounds on the twelfth day of September, 1861: Secondly, that I will pay interest on the said sum at the rate of Ten Pounds by the One Hundred Pounds in the year, by equal quarterly payments, on the twelfth day of December, twelfth day of March, twelfth day of June, and on the twelfth day of September, in every year: Thirdly, that I will insure the dwelling-

house, stable, and out-buildings erected and built on the above Section, in such Insurance Office as the said James Brown may direct : And for the better securing to the said James Brown the repayment in manner aforesaid of the said principal sum and interest, I hereby mortgage to the said James Brown all my estate and interest in the said land above described. In witness whereof I have hereto signed my name, this twelfth day of September, 1858.

JOHN SMITH, Mortgagor.

Signed by the above-named John Smith, as mortgagor, this twelfth day of September, 1858, in the presence of William Jones, of Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of Registration—JAMES BROWN.

ENDORSEMENT OF TRANSFER OF MORTGAGE.

I, the within-mentioned James Brown, in consideration of Three Hundred Pounds this day paid to me by George Brooks, of Adelaide, the receipt of which sum I do hereby acknowledge, hereby transfer to him the estate or interest in respect to which I am registered as 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 tenth day of January, 1861.

JAMES BROWN.

Signed by the above-named James Brown, in the presence of William Stokes, this 10th day of January, 1861.

WM. STOKES.

ENDORSEMENT OF DISCHARGE OF MORTGAGE.

Received from the within-named John Smith, this twelfth day of September, 1861, the sum of Three Hundred Pounds, being in full satisfaction and discharge of the within obligation.

JAMES BROWN, Mortgagor.

Witness—THOMAS STYLES.

Mortgage to a Building Society.

[SOUTH AUSTRALIA.]

BILL OF MORTGAGE.

I, John Smith, of Adelaide, carpenter, being a shareholder in the Society known as the "East Torrens Land, Building, and Investment Society," and being registered as the proprietor of an estate, in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memoranda, endorsed hereon, in that Section of land situated in the Hundred of Adelaide, County of Adelaide, bounded as described in certificate of title, vol. I., folio 63, containing eighty acres, be the same little more or less, plan of which piece of land is delineated in aforesaid certificate of title, which said piece of land is the Country Section numbered 842, delineated in the public map of the said Hundred, deposited in the office of the Surveyor

General, which was originally granted the fourth day of June, 1852, under the hand and seal of Sir Henry Edward Fox Young, Lieutenant-Governor of the said Province, to Charles Tomkins, of Adelaide, in consideration of the sum of One Hundred Pounds, lent to me by Alfred Johnson, Thomas Stokes, and George Robinson, the present trustees of the said Society, out of the funds of the said Society, the receipt of which sum I hereby acknowledge, do hereby covenant with the said present and future trustees of the said Society, that I will pay to the Secretary of the said Society, or the person appointed to receive the same, the sum of Two Shillings on every Wednesday in each week, and all subscriptions, fines, interest, and other payments to become due according to the rules of the said Society upon the said share, and upon the said principal sum of One Hundred Pounds so advanced to me as aforesaid. And also, that I will, during the continuance of the said Society, observe all the rules and regulations of the said Society until, with the consent of the present or future trustees of the said Society, I shall pay off such balance as according to the rules of the said Society may be owing to the said Society in respect of the said principal sum of One Hundred Pounds, with all arrears of subscriptions, fines, and other payments hereby covenanted to be paid to the said Society. And for the better securing to the present and future trustees of the said Society the payment at the times aforesaid, of such weekly sums and subscriptions, fines, interest, and other payments as aforesaid, I hereby mortgage to the said present and future trustees of the said Society all my estate and interest in the said land above described. And I empower the present and future trustees of the said Society to sell the estate and interest hereby pledged to them as security whenever I shall make default for the space of five weeks in payment of the said weekly sum of Two Shillings, and the subscriptions, fines, and interest, or other moneys to become due in respect of the said share, and of the said principal sum of One Hundred Pounds, according to the rules of the Society, without serving me with any written demand for payment of such moneys pursuant to the provisions contained in the 33rd section of the Real Property Law Amendment Act, 1853, or complying with the other requirements and provisions of the said Act in reference to the power of sale conferred on mortgagees claiming under any Bill of Mortgage; and save, as hereinbefore-mentioned, I hereby confirm unto the present and future trustees of the said Society all powers and remedies given by a bill of mortgage under the Real Property Act. In witness whereof I have hereto signed my name this fifth day of January, 1859.

JOHN SMITH, Mortgageor.

Signed by the above-named John Smith, as mortgageor, this fifth day of January, 1859, in presence of Robert Lloyd.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration—ALFRED JOHNSON, THOMAS STOKES,
GEORGE ROBINSON, Trustees.

LEASES.

25. The name, residence, and trade or calling of the lessor, the nature of the estate or interest held by him in the land intended to be leased, and a description of the land, such as is directed for the case of mortgage, must be set forth in the form of lease; also, the name, residence, and trade or calling of

the lessee, the term of years, the amount of rent, and dates on which it is to be paid. If a right to purchase be covenanted, the amount of the agreed purchase-money and the period within which the right may be exercised must also be stated.

26. Covenants for quiet enjoyment, for further assurance, for right of entry by the lessor to view the state of repair, for re-entry and resumption of possession by the lessor in case of rent being in arrear for six calendar months, or in case of default in the fulfilment of any covenant by the lessee continued for six calendar months, or in case of necessary repairs not being completed within reasonable time after requirement in writing to that effect served on the lessee; as also covenants on the part of the lessee for punctual payment of rent, for payment of rates and taxes during the continuance of the lease, and for keeping and yielding up the demised premises in good and tenantable repair, are declared to be implied in leases under the Real Property Act, unless barred or modified by express words introduced into the form of lease. There is therefore no occasion for encumbering the instrument with these details.

27. As regards other covenants, prolixity and verbiage may be avoided by the use of certain brief forms of words, to which specific signification is given in the Act—

Thus, a covenant to insure may be made binding by the use of four words—“that he will insure” which, if introduced in the form of lease, will imply and include all that is above recited in respect to the like covenants introduced into a bill of mortgage.

Again, by the introduction of the words “and shall paint outside every alternate year,” the tenant may be placed under the obligation “to paint all the outside woodwork and ironwork belonging to the hereditaments and premises mentioned in such lease, with two coats of proper oil-colours, in a workmanlike manner.”

By the introduction of the words, “and paint and paper inside, every third year,” the tenant may be placed under the obligation “to paint the inside wood, iron, and other works now or usually painted, with two coats of proper oil-colour, in a workmanlike manner; and also repaper with paper of a quality as at present, all such parts of the said premises as are now papered; and also wash, stop, whiten, or colour such parts of the said premises as are now whitened or coloured respectively.”

By using the three words, “and will fence” the tenant may be placed under obligation “to 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, capable of resisting the trespass of horses, oxen, bulls, and cows.

The words, “and will not cut timber,” introduced into the lease will operate to restrict the tenant from “cutting down, felling, injuring, or destroying any growing or living timber or timber-like trees standing and being upon the said hereditaments and premises above-mentioned, without the consent in writing of the said lessor.”

The words, “and will not, without leave, assign or sublet,” introduced into the lease, will deprive the tenant of the power of “assigning, transferring, demising, subletting, or setting over, or otherwise by any act or deed procuring the lands or premises therein-mentioned, or any of them or any part thereof, to be assigned, transferred, demised, sublet, or set over unto any person whomsoever, without the consent in writing of the said lessor first had and obtained.”

The use of these abbreviated forms of words is not compulsory.

28. The covenants above referred to or any other covenants may be introduced into the lease in any form of words that may, in the judgment of the parties or of their solicitors, be deemed best adapted for giving effect to the intention.

29. If the covenants declared to be implied are intended to be modified or it is desired to introduce in any modified form the covenant to insure, or any other covenant for which an abbreviated form of words is prescribed, or to express those identical covenants in other words than those prescribed, or to introduce any additional covenants, parties are advised to engage professional

assistance, lest the words they use may fail to give legal effect to their intention, or may admit of a double or doubtful interpretation, and so give occasion for litigation.

30. The lease, when filled up, executed, and attested, must be forwarded to or presented at the Lands Titles Office, in duplicate, together with the grant, certificate, or other instrument evidencing the title of the lessor, in order that the particulars may be entered on such instrument of title and recorded in the register book.

31. The one counterpart, bearing a certificate of the registration under the hand and seal of the Registrar-General, will be delivered to the lessee, the other will be filed in the Lands Titles Office, available for examination by the lessor or others interested.

32. A copy, certified under the hand and seal of the Registrar-General, will be supplied to the lessor, if required by him, at a cost of from two to five shillings, according to the length of the instrument.

33. Copies so certified are declared by the 117th section of the Real Property Act to be "as effectual in evidence, to all intents, as the production of the original." Several sections or allotments belonging to the same proprietor may be included under one lease.

34. The fee for registering a lease is ten shillings; the instrument will be returned to the parties generally within fifteen minutes after it is presented at the Lands Titles Office.

Examples are annexed further illustrating the procedure.

Lease of House, with Covenant to Insure and Paint.

(C)

[SOUTH AUSTRALIA

LEASE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title vol. I., folio 180), of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the City of Adelaide, being part of the Town Acre of land No. 59, bounded as described in certificate of title aforesaid, containing one quarter of an acre, be the same a little more or less, plan of which piece of land is delineated in aforesaid certificate of title; which said piece of land is the eastern quarter of said acre No. 59, survey marked A, as delineated in the public map of the said survey, deposited in the office of the Surveyor-General, which was originally granted the fourth day of March, 1837, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to William Johnson, of Adelaide, do hereby lease to Thomas Jones, of Adelaide, all the said piece of land, together with the dwelling-house, outbuildings, and premises erected thereon, to be held by him, the said Thomas Jones, as tenant, for the space of five years, at the yearly rental of Fifty Pounds, payable half-yearly, on the first day of July and first day of January in each year, from the date hereof; subject to the following covenants, conditions, and restrictions, that is to say—that the said Thomas Jones shall insure the said premises for the sum of Five Hundred Pounds at the least; also, that the said Thomas Jones shall paint the outside of the before-mentioned dwelling-house every alternate year; and also shall paint and paper the inside of the said dwelling-house every third year.

I, Thomas Jones, of Adelaide, hereby accept this lease of the above-described

lands to be held by me, as tenant, for the term, and subject to the conditions, restrictions, and covenants above set forth.

Dated this first day of January, 1859.

JOHN SMITH, Lessor.
THOMAS JONES, Lessee.

Signed by the above-named John Smith, as lessor, and by the above-named Thomas Jones, as lessee, this first day of January, 1859, in presence of Richard Watkins.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration—THOMAS JONES.

Lease with Right of Purchase.

(C)

[SOUTH AUSTRALIA.]

LEASE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title vol. I, folio 210) of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Saddleworth, County of Light, bounded as described in certificate of title aforesaid, containing eighty acres, be the same a little more or less, plan of which piece of land is delineated in aforesaid certificate of title, which said piece of land is the Country Section, marked 285, delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, which was originally granted the twelfth day of December, 1852, under the hand and seal of Sir Henry Edward Fox Young, Lieutenant-Governor of the said Province, to William Jones, of Adelaide, do hereby lease to Robert Mundy, of Adelaide, all the said lands, to be held by him the said Robert Mundy, as tenant, for the space of ten years, at the yearly rent of Forty Pounds, payable half-yearly, on first day of March and first day of October, from the day of date hereof; subject to the following covenants, conditions, and restrictions, that is to say—that the said Robert Mundy shall have the right of purchasing the fee simple of the land hereby leased, at any time within the time hereinafter mentioned, for the sum of Five Hundred Pounds.

I, Robert Mundy, of Adelaide, do hereby accept this lease of the above-described lands to be held by me, as tenant, for the term, and subject to the conditions, restrictions, and covenants above set forth.

Dated this first day of March, 1858.

JOHN SMITH, Lessor.
ROBERT MUNDY, Lessee.

Signed by the above-named John Smith, as lessor, and by the above-named Robert Mundy, as lessee, this first day of March, 1858, in presence of Thomas James.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration—ROBERT MUNDY.

SETTLEMENTS AND VESTING IN TRUST.

35. The following information is for the guidance of proprietors desiring to appoint trustees, and of trustees requiring to fill up vacancies by the appointment of co-trustees; also, to indicate the procedure by which the interests of

beneficiaries may be effectually protected under the provisions of the Real Property Act, such transactions being simple in their nature and such as may be conducted by any person of ordinary intelligence.

36. Parties are referred to their solicitor for the preparation of the deed declaring the nature of trusts confided by the proprietor and accepted by the trustees.

37. The proprietor, filling up the form of "nomination of trustees," will proceed, as directed in former cases, to state his name, residence, trade, or calling, and the nature of the estate or interest which he holds in the land proposed to be dealt with, describing the same either by reference to the grant, certificate, lease, or other instrument evidencing his title, or by an accurate description, with diagram, in case the land to be dealt with consists of part only of a section, or of an allotment described and delineated in such grant or other instrument. He will next proceed to give the names, place of abode, and trade or calling of each trustee, and if it is intended that the number of trustees originally nominated should be kept up, he will express that intention by inserting in the form the words "no survivorship." When these words are inserted on the nomination of trustees, the Registrar-General cannot, without the sanction of a Judge of the Supreme Court, give effect to any attempted dealing by surviving or continuing trustees until the original number is filled up.

38. The Supreme Court is empowered to make orders for filling up vacancies in the number of trustees, and for the investment or application of proceeds realized upon the trust property.

39. The interests of beneficiaries may be further protected by the proprietor lodging a caveat with the Registrar-General, forbidding dealing by the trustees without the consent of the tenant for life or other beneficiary.

40. The parent, guardian, or committee of any proprietor, incapacitated by infancy or lunacy, may lodge a protecting caveat on behalf of such incapacitated proprietor; and in the event of there being no parent or guardian, the Registrar-General is authorized to protect the interests of incapacitated persons by caveats.

41. The importance and efficacy of these provisions may be judged of from the evidence given before a Commission appointed by the House of Commons, by Mr. Freshfield, Solicitor to the Bank of England, to the effect that whilst trust property in the funds is dealt with by trustees with absolute power of disposal, to the extent of millions annually, frauds are unknown, when these simple precautionary measures are attended to.

42. Any number of sections or allotments belonging to the same proprietor may be included in one form of "nomination of trustees."

43. So soon as the particulars of that instrument are entered in the register book the legal estate will vest absolutely in the trustees, who may then proceed to deal with the same in all respects in manner hereinbefore described.

44. The Registrar-General is bound to give effect to their transactions, unless barred by caveat, and purchasers or mortgagees have no occasion to look after the appropriation of proceeds.

45. The declaration of the trusts under which the land is to be held may be made either by schedule annexed to the "nomination of trustees" or by a separate deed.

46. If by separate deed, lands not under the Real Property Act may be included therein, together with the lands under the Act, in respect to which the nomination of trustees is executed.

47. A duplicate or an attested copy of the deed declaring the trusts must be deposited in the Lands Titles Office for safe custody and reference by the parties entrusted, but may not be registered.

48. The fee for registering a nomination of trustees is ten shillings. The instrument, endorsed with the certificate of registration, will be returned within fifteen minutes after presentation at the Lands Titles Office. Example of a nomination of trustees is annexed.

(K)

[SOUTH AUSTRALIA.]

NOMINATION OF TRUSTEES.

I, John Jones, being registered as the proprietor of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that Section of land, situated in the Hundred of Light, County of Light, bounded as described in certificate of title, vol. II., folio 75, containing eighty acres, be the same more or less, and numbered 49, which said Section of land is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the tenth day of July, 1850, under the hand and seal of Sir Henry Edward Fox Young, Lieutenant-Governor of the said Province, to James Williams, of Adelaide, do hereby transfer all my estate or interest in the said land above described, to William Robinson, of Adelaide, Thomas Jenkins, of the same place, and Robert Baker, of Mitcham, near Adelaide, as Trustees of the same, under the provisions of the Real Property Act. In witness whereof I have hereunto signed my name, this fourteenth day of January, 1859.

JOHN JONES.

Accepted { WILLIAM ROBINSON.
THOMAS JENKINS.
ROBERT BAKER.

In the presence of Edward Morrison.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration—WILLIAM ROBINSON, THOS. JENKINS,
ROBERT BAKER.

POWERS OF ATTORNEY.

49. In filling in the form of power of attorney, the proprietor, after entering his name, residence, and trade or calling, is required to describe the nature of his estate or interest, whether fee simple or leasehold, &c., &c., giving the same description of the property as that contained in the existing grant, certificate, lease, or other instrument of title, or referring to such instrument, and the volume and folio of the register book for such description.

50. The name, residence, and trade or calling of the agent or attorney and the extent of the powers to be entrusted to him must next be stated. Any number of sections or allotments may be included in one power of attorney.

51. Persons residing beyond the limits of the colony, where the information necessary for accurate description cannot be had, may execute a general power of attorney in the usual form.

52. A registration-abstract will be issued, upon application at the Lands Titles Office, to proprietors desiring to effect sales in England or the colonies.

53. Judges, notaries public, and the chief officers of Corporations in England and the colonies are authorized to enter upon the registration-abstract the particulars respecting dealings with the property, which the Registrar-General is required to enter in the register book in the case of dealings within the limits of this province.

54. The fee for power of attorney is ten shillings; and for registration-abstract, twenty shillings.

Examples of a power of attorney and of a registration abstract are annexed.

(G)

[SOUTH AUSTRALIA]

POWER OF ATTORNEY.

I, Richard Stokes, of Adelaide, gentleman, being seised of an estate in fee simple subject, however, to such encumbrances, liens, and interests as are

notified by memorandum endorsed hereon, in those pieces of land, described in the Schedule hereto annexed, and bounded as described in land grants, vol. I., folios 44, 102, and 215, containing two hundred and fifty-eight acres, be the same a little more or less, do hereby appoint Thomas Robinson, of Adelaide, attorney on my behalf, to sell, lease, or mortgage the lands described in aforesaid Schedule, subject, nevertheless, to the restrictions and limitations declared and set forth at the foot hereof, and to execute all such instruments, and do all such acts, matters, and things, as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants, or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage, or trespass :—

I declare the above lands shall not be sold for less than One Thousand Pounds, or unless upon the following conditions, that is to say—that not less than one-half of purchase-money shall be paid on execution of memorandum of sale.

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

I declare the above land shall not be leased for any term of years exceeding twenty-one, or at a less rent than Ten Shillings per acre, or unless subject to the following covenants and restrictions, that is to say—that right of purchase may be granted at any time during the continuance of lease, at not less than Three Pounds per acre.

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

SCHEDULE.

No. of Section.	Hurdred.	Area.	No. of entry in Register Book.
2945	Macle-field	One hundred and eighty acres	Vol. I., folio 44.
145	Kapunda	Eighty-three acres	Vol. I., folio 102.
2940	Macclesfield	Sixty-seven acres	Vol. I., folio 215.

In witness whereof I have hereunto subscribed my name this tenth day of January, 1859.

RICHARD STOKES.

Signed by the above-named Richard Stokes, }
this tenth day of January, 1859, in pre- }
sence of John Jones.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration.—THOS. ROBINSON.

(H)

[SOUTH AUSTRALIA.]

REGISTRATION ABSTRACT.

I, James Richards, of Adelaide, gentleman, being seised of an estate in fee simple, subject, however, to such encumbrances, liens, and interests

as are notified by memoranda endorsed hereon, in those pieces of land situated in the Hundred of Willunga, County of Adelaide, bounded as described in certificate of title, vol. I., folios 51, 82, and 94, containing two hundred and forty acres, be the same a little more or less, plans of which pieces of land are delineated in aforesaid certificates of title, which said pieces of land are the Country Sections marked 210, 420, and 595, delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, which which were originally granted the eighth day of February, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to Thomas Roberts, of Adelaide, request that a registration abstract of my title to the said lands may be granted, enabling me to sell, lease, or otherwise deal with the same at places without the limits of the said Province.

To the Registrar-General.

JAMES RICHARDS.

Signed by the above named James Richards, this fourth day of October, 1858, in presence of John Jones.

I, Robert Richard Torrens, Registrar-General of the Province of South Australia, do hereby certify that the above particulars relating to the above described land, and to the estate and interest therein of James Richards, whose signature is above subscribed, are correct, as appears by entries recorded in the register book of the said Province, folios 51, 82, 94, vol. I. : Pursuant, therefore, to the above application, and by virtue of powers in me vested by Act of the Legislature of the said Province, intituled "The Real Property Act," this registration abstract is issued for the purpose of enabling the said James Richards to deal with the said lands at places without the limits of the said Province.

This abstract shall continue in force from the date thereof to the first day of February, 1860, unless sooner delivered up.

In witness whereof, I have hereunto signed my name and append my seal this first day of February, 1859.

ROBT. R. TORRENS, Registrar-General.

Signed, sealed, and delivered, the first day of February, 1859, in the presence of Thomas Johnson.

CAVEATS.

55. Caveats are of two sorts—First, adverse caveats, forbidding the bringing of land under the Act, or in the case of transmission consequent upon the death of a former proprietor forbidding the issue of certificate to, or the registration of dealing by the party claiming under will or letters of administration. These can only be lodged within the time for that purpose limited in the advertisement notifying the claim; and some proceeding at law must be commenced by the caveator to establish his claim within three months from the date of lodging the caveat, else it will be deemed to have lapsed.

56. Secondly, caveats not adverse, but merely to ensure to beneficiaries under deeds of settlement such timely notice of intended dealings by the trustees as may afford them opportunity for looking after the proceeds, or for the protection of parties pending the completion of contracts for mortgage or sale.

57. The fee for registering a caveat is ten shillings. Examples for illustration are annexed.

(L)

CAVEAT.

Take notice that I, Robert Smith, of Adelaide, gentleman, claiming estate or interest, as devisee, under the will of Thomas Smith, deceased, in lands described as part of Town Acre 456, Survey A, in notice dated the tenth day of January, 1859, advertising the same as land in respect to which claim has been made to have the same brought under the operation of Act of Council, No 15 of 1858, intituled the Real Property Act, do hereby forbid the bringing of the said lands under the operation of the said Act. Dated this twenty-eighth day of January, 1859.

ROBERT SMITH.

Signed in my presence, this twenty-eighth day of January, 1859, at Adelaide,

WILLIAM JACKSON, J.P.

To the Registrar-General of the Province of South Australia.

(P)

CAVEAT FORBIDDING REGISTRATION OF CONTRACT FOR DEALING WITH ESTATE OR INTEREST IN FUTURO.

To the Registrar-General of South Australia—

Take notice that I, Thomas Jones, of Adelaide, gentleman, claiming estate or interest as beneficially entitled under deed of settlement, dated second day of November, 1858, in all that Section of land No. 59, in Hundred of Willunga, County of Adelaide, forbid the registration of any memorandum of sale, or other instrument, made, signed, or executed by John Smith, Robert Robinson, and Henry Jackson, the Trustees appointed by instrument of nomination, dated fourteenth October, 1858, affecting the said land, until this caveat be by me, or by the order of the Supreme Court, or some Judge thereof, withdrawn. Dated this third day of January, 1859.

THOMAS JONES.

Signed in my presence, this third day of January, 1859.

FRED. THOMPSON, J.P.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration.—THOMAS JONES.

4X0
5-14-88

