

25^o VICTORIA, 1861.

A BILL

To facilitate the Transfer of Land.

[MR. HARGRAVE ;—9 October, 1861.]

WHEREAS it is expedient to facilitate the Transfer of Land by Preamble.
means of Registration and otherwise Be it enacted by the Queen's
Most Excellent Majesty by and with the advice and consent of the Legis-
lative Council and Legislative Assembly of New South Wales in Parlia-
5 ment assembled as follows :—

1 The term "The Court" shall for the purposes of this Act unless Interpretation.
the context otherwise indicate mean the Land Titles and Claims Court as
constituted by an Act of this Session.

2. A land registry shall be established and a Land Registrar shall Land Registrar.
10 be appointed and until Parliament otherwise determines the Registrar
General appointed under the Act nineteen Victoria number thirty-four
shall be the Land Registrar and he or his deputy appointed under the
Act twenty Victoria number twenty-seven shall perform all the duties of
the Land Registrar under this Act.

15 3. The Land Registrar shall before executing any such duty take Oath of Office.
the following oath before a Judge of the Supreme Court—

20 " I A B do solemnly swear that I will faithfully and to the best
" of my ability perform all the duties imposed upon me as
" Land Registrar by the Land Transfer and Registry Act
" of 1861 So help me God."

4. The Land Registrar shall have a seal of office (Seal of office.
the Seal) and all original instruments and all copies and extracts of or
from the same or of or from entries in the register hereinafter mentioned
issued by him shall be sealed with such seal And any person who shall Penalty for counter-
25 forge such seal or who shall forge or alter any such instrument copy or feiting.
extract or who shall knowingly utter any such forged instrument copy or
extract shall be guilty of forgery.

Instruments and copies sealed by Registrar to be evidence of contents.

5. All instruments copies or extracts purporting to be issued under this Act by the Land Registrar and sealed with such seal shall be received in all Courts as *primâ facie* evidence of the matters therein contained.

What land subject to Act.

6. All land hereafter granted in fee by the Crown and all land as to which a declaration of title by the Court shall have been made final shall be subject to this Act. 5

Registered instruments alone valid and priority determined by date of registration.

7. No instrument purporting to transfer or otherwise deal with or affect land subject to this Act (leases for periods not exceeding three years and wills only excepted) shall have any validity until registered 10 under this Act and all such instruments shall have effect and priority not according to their respective dates but according to priority of registration only.

Vesting orders to be registered.

8. All vesting orders made by the Supreme Court under the Trustee Acts of 1852 and 1853 relating to land subject to this Act shall 15 be registered under this Act and shall take effect only from the date of such registration.

Powers of Attorney to be registered.

9. All Powers of Attorney affecting land subject to this Act and all revocations thereof shall be registered under this Act and shall take effect only from the date of such registration. 20

Forms of covenants &c.

10. The words in column I of the second Schedule hereto shall have the same legal and equitable effect and shall be taken and construed for all intents and purposes as if the form of covenants or powers set against the same in column II of the same Schedule had been inserted in any such instrument. 25

Future Crown grants and final declarations to be registered.

11. The Land Registrar on delivery to him within days after its date of any grant of land hereafter made by the Crown to any person or of any order making final a declaration of title by the Court in favour of any person shall enter the name description and residence of such person on the register as proprietor of the land describing 30 such land by the description contained in the grant or order and shall also enter notice of any incumbrance reservation or other matter mentioned in any such order.

Land certificate to be given on registration.

12. On the entry of the name of the proprietor on the register the Land Registrar shall deliver to him a certificate (hereinafter styled a land 35 certificate) authenticated by the seal and signed by the Land Registrar stating the name of such proprietor and describing the lands in respect of which he is registered and referring to the incumbrances reservations and other matters if any of which notice has been entered on the register.

13. Every such land certificate shall be *primâ facie* evidence of Land certificate to be evidence. the several matters therein contained.

14. If any land certificate is lost mislaid or destroyed the Court Loss of certificate. may upon being satisfied of the fact of such loss mislaying or destruction direct a new land certificate to be granted in the place of the former one.

15. The Land Registrar may upon delivery up to him of a Power to grant new certificate. land certificate grant a new like certificate in the place of the one so delivered up.

16. The deposit of any land certificate shall for the purpose of Deposit of land certificate. creating a lien on the land described therein be deemed equivalent to a deposit of the title deeds of the land.

17. The following charges and interests shall not be deemed Certain charges not incumbrances. incumbrances within the meaning of this Act that is to say—

(1.) Quit rents.

15 (2.) Rights of common or of way—watercourses—rights of water and other easements.

(3.) Leases or agreements for leases for any term not exceeding *twenty-one* years or for any less estate in cases where there is an occupation under such leases or agreements.

20 and all registered lands shall unless the contrary is expressed on the register be deemed to be subject to such of the above charges and interests as may be for the time being subsisting thereon.

18. The registration as proprietor of land of any person as afore- Nature of estate of first registered proprietor. said shall confer on him an indefeasible estate in fee simple subject to the 25 incumbrances reservations and other matters if any entered on the register (hereinafter included under the term “incumbrances”) and subject also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances but free from all other estates incumbrances and interests whatsoever including estates 30 interests and claims of Her Majesty Her Heirs and Successors.

19. Where upon the first registration of land any notice of incum- Entry of discharge of incumbrance. brance affecting such land has been entered on the register the Court shall on proof of the discharge of such incumbrance direct the Land Registrar to enter a memorandum of such discharge on the register and 35 upon such entry being made the incumbrance shall be deemed to be discharged.

Power to charge
land.

20. The registered proprietor of any land may subject to any incumbrances appearing on the register in manner hereinafter mentioned charge the same with the payment at a prescribed time of any principal sum of money either with or without interest or with the payment of any annual sum of money. 5

Form of deed of
mortgage.

21. The instrument of charge shall be in writing under the hand of the registered proprietor in the form contained in the first Schedule hereto and attested by a solicitor of the Supreme Court as a witness to the execution thereof by the proprietor of the land and may or not confer a power of sale to be exercised after a time to be prescribed by the instru- 10
ment which shall be delivered to the Land Registrar who shall retain the same and enter on the register the name of the person in whose favour the charge is made as the proprietor of such charge and the particulars of the charge And upon such entry being completed the Land Registrar shall if required deliver to the proprietor of the charge a certificate of charge 15
sealed and signed as aforesaid containing the particulars of the entry made on the register.

Certificate of charge
evidence of entry on
register.

22. Every such certificate of charge shall be *primâ facie* evidence of the entry made on the register in respect of the matters mentioned in such certificate. 20

Foreclosure by pro-
prietor of principal
charge.

23. The proprietor of a charge of a principal sum may enforce a foreclosure of the land charged in the same manner and under the same circumstances in and under which he might enforce the same if the charge were secured by a conveyance of the land to him with a proviso for redemption on payment of the money named at the prescribed day. 25

Remedy of proprietor
with a power of
sale.

24. The proprietor of a charge under an instrument conferring a power of sale may at any time after the expiration of the prescribed period transfer the land on which he has a registered charge or any part thereof in the same manner as if he were registered proprietor of such land.

Remedy of proprietor
of annual charge not
having power of sale.

25. The proprietor of a charge of an annual sum of money not 30
having a power of sale may enforce all such remedies for the recovery of any moneys due to him in respect of such charge as he might enforce if such annual sum were a rentcharge duly charged upon the land.

Land certificate to be
produced on registry
of charge.

26. No charge on land shall be registered unless the land certificate of such land is produced at the time of registration and it shall be the 35
duty of the Land Registrar to record on the land certificate when produced notice of any charge created but any omission so to record the same shall not invalidate or affect the priority of any such charge.

27. Registered charges on the same land shall as between them- Priority of charges
selves rank according to the order in which they are entered on the register
and not according to the order in which they are created.

28. The Land Registrar shall on the requisition of the proprietor Discharge of charges.
5 of any charge or on the production of an order of the Court enter a memo-
randum of the discharge on the register and upon such entry being made
the land shall be deemed to be discharged.

29. Every registered proprietor of land may by endorsement on the Transfer of land.
land certificate in the form contained in the first Schedule hereto transfer
10 such land or any part thereof to another proprietor and such transfer shall
contain a statement of the consideration if any set forth in words at full
length and shall be attested by a solicitor of the Supreme Court as witness
to the execution thereof by the transferor.

30. The instrument of transfer shall be delivered to the Land Registry of transfer.
15 Registrar and retained by him and he shall thereupon enter the name of
the transferee as proprietor of the land comprised in the instrument.

31. Previously to completing the transfer of any land the Land Notice to be given of
Registrar shall give notice to the transferor of his intention to complete intended transfer.
the same and the transferor shall be deemed to remain proprietor of the
20 land until the name of the transferee is entered on the register in respect
thereof.

32. Upon completion of the registry of the transferee the Land Delivery of land
Registrar shall deliver to him a fresh land certificate stating the incum- certificate to trans-
brances if any subsisting on the land and shall also in cases where part feree.
25 only of the land is sold deliver to the transferor a fresh land certificate
containing a description of the lands retained by him.

33. A transfer of registered land in the form contained in the Estate of transferee
first Schedule hereto made for valuable consideration shall when registered on purchase.
confer on the proprietor to whom the same is made an indefeasible estate
30 in fee simple in the land transferred subject to the incumbrances if any
appearing on the register and subject also unless the contrary is expressed
on the register to such charges and interests if any as are hereinbefore
declared not to be incumbrances but free from all other estates incumbrances
and interests whatsoever including all estates claims and interests of Her
35 Majesty Her Heirs and Successors.

34. A transfer of registered land in the like form as last aforesaid Estate of voluntary
made without valuable consideration shall when registered confer on the transferee.
proprietor to whom the same is made an estate in fee simple in the land
transferred

transferred but subject as follows that is to say to the incumbrances if any appearing on the register also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances also to any unregistered estates rights or equities subject to which the transferor held the same but free from all 5 other estates incumbrances and interests whatsoever including all estates claims and interests of Her Majesty Her Heirs and Successors.

- Transfer of charges.** 35. A separate register shall be kept of charges and the registered proprietor of any charge may by indorsement on the certificate of charge in the form contained in the first Schedule hereto transfer such charge to 10 any other person and the transfer shall contain a statement of the purchase money if any paid or agreed to be paid for such transfer set forth in words at full length and shall be attested by a solicitor of the Supreme Court as witness to the execution thereof by the transferor.
- Registry of transfer.** 36. The instrument of transfer shall be delivered to the Land 15 Registrar and retained by him and he shall thereupon enter the name of the transferee on the register as proprietor of the charge comprised in the instrument.
- Notice to be given of intended transfer.** 37. Previously to completing the transfer of any charge the Land Registrar shall give notice to the transferor of his intention to complete 20 the same and the transferor shall be deemed to remain a proprietor of such charge until the name of the transferee is entered on the register in respect thereof.
- Delivery of certificate.** 38. Upon completion of the registry of the transferee the Land Registrar shall deliver to him a fresh certificate of charge. 25
- Transmission of land on death.** 39. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any land such person shall be registered in the place of the deceased proprietor or proprietors as may on the application of any person interested in the land be appointed by the Court. 30
- Transmission of charge on death.** 40. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any charge the executor or administrator of such sole deceased proprietor or of the survivor of such joint proprietors or if none such the Curator of Intestate Estates shall be entitled to be registered in his place. 35
- Fiduciary proprietors.** 41. Any person appointed by the Court or any executor or administrator when registered in the place of any deceased proprietor of any land or charge shall hold the land or charge in respect of which

which he is registered in trust for the persons and purposes to which it is applicable by law but he shall for the purpose of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof.

5 42. Upon the insolvency of any registered proprietor of any land Insolvency. or charge his assignee shall be entitled to be registered in his place.

43. The husband of any female proprietor of land shall be entitled Marriage of female proprietor. to be registered as co-proprietor with his wife but he shall be described on the register as co-proprietor in right of his wife and on his death the 10 original registry of the wife with a change if necessary in the name shall revive and confer the same rights as if her husband had never been registered as co-proprietor with her.

44. Where land is registered in the joint names of husband and Title of husband and wife. wife no disposition of such land shall be registered until the wife has 15 been examined by the Court or some officer authorized thereby apart from her husband and has assented to such disposition after full explanation of her rights in the land and of the effect of the proposed disposition.

45. The assignee of any insolvent proprietor shall hold the land Nature of title of assignee. or charge in respect of which he is registered subject to the equities upon and subject to which the insolvent held the same but he shall for the purposes of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof.

46. The fact of any person having become entitled to any land or Evidence of transmission of registered proprietorship. charge in consequence of the death or insolvency of any registered proprietor or of the marriage of any female proprietor shall be proved in such manner as the Court may from time to time or by general order direct.

47. The following rules shall be observed with respect to regis- Rules as to registration. tration :— 30

(1.) No notice of any trust implied express or constructive shall be receivable by the Land Registrar or entered upon the register.

35 (2.) Upon the occasion of the registry of two or more persons as proprietors of the same land or of the same charge an entry may with their consent be made on the register to the effect that when a number of such proprietors is reduced below a certain specified number no registered disposition of such land or charge shall be made except with the 40 sanction of the Court.

(3.)

(3.) The Court may upon the application of any registered proprietor for the time being or of any person beneficially interested in the land or charge cause a transfer of the land to be made to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor or 5 proprietors or make such order in the premises as the Court thinks just.

(4.) No alteration shall be made in the registered description of land except under the order of the Court.

(5.) Where any instrument is required by this Act to be attested 10 by a solicitor of the Supreme Court such instrument if executed in any place out of the Colony may be attested either by a solicitor of the Court of Chancery of England or Ireland a Writer to the Signet a Consul Vice-Consul or Notary Public. 15

Certificate of title.

48. The Land Registrar shall on the request of the registered proprietor of any land or charge or of any person authorized by him certify in writing under his hand and under the seal the state of the title of such registered proprietor specifying the name of such proprietor and the charges cautions inhibitions and other matters if any appearing on the register 20 and relating to such land or charge.

Trustee Acts 1852 and 1853 to apply to transfers of land.

49. For the purpose of authorizing or compelling a transfer to be made of any registered land or registered charge the Court may exercise all like powers as are vested in the Supreme Court by the Trustee Acts 1852 and 1853 or by any Act amending the same in relation to transfers 25 of stock.

Caution how to be lodged.

50. Any person interested under any lease settlement will or other unregistered instrument or by devolution in law or as a judgment creditor or otherwise howsoever in any land or charge registered in the name of any other party may lodge a caution with the Registrar to the effect that 30 no dealing with such land or charge be had on the part of the registered proprietor until notice has been served upon the cautioner.

Caution to be supported by affidavit.

51. Every such caution shall be supported by an affidavit made by the cautioner or his agent in such form as the Court directs stating the nature of the interest of the cautioner and such other matters as may be 35 required by the said Court.

52. After any such caution has been lodged in respect of any land or charge the Land Registrar shall not register any dealing with such land or charge until he has served notice on the cautioner warning him that his caution will cease to have any effect after the expiration of *twenty-one* 5 days next ensuing the date of such notice And after the expiration of such period the caution shall cease unless an order to the contrary is made by the Court and upon the caution so ceasing the land or charge shall be dealt with in the same manner as if no caution had been lodged. Effect of caution.

53. If before the expiration of the said period of *twenty-one* days 10 the cautioner or some other person on his behalf appears before the Court and enters into a bond with sufficient security conditioned to indemnify every party against any damage that may be sustained by reason of any dealing with the land being delayed the Court may thereupon if it thinks fit so to do make an order on the Registrar requiring him to delay 15 registering any dealing with the property for such further period as is mentioned in the order. Transfer to be further delayed on bond being given.

54. Where two or more cautions are lodged with respect to the same land or to the same charge the cautioners shall as between themselves have priority according to the dates at which their cautions are 20 lodged and not according to the dates of the creation of the claims in respect of which they have lodged such cautions. Priority of cautions.

55. If any person lodges a caution with the Land Registrar without reasonable cause he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation 25 as may be just and such compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caution. Compensation for improper lodging of caution.

56. The Court may upon the application of any person interested made in such manner as the Court directs issue an order inhibiting for a 30 time or until the occurrence of an event to be named in such order or generally until further order any dealing by the Land Registrar with any registered land or registered charge. Power of Court to inhibit transfers.

57. Previously to making any such inhibitory order as aforesaid the Court shall make such inquiries as to the circumstances of the land 35 or charge in respect of which the same is made and of the parties interested therein and direct such notice to be given as it thinks necessary to enable it to form a judgment as to the expediency of making such an order and shall hear any persons interested in such land who may apply to them to be heard. Duty of Court on application for inhibition.

Court may annex conditions to order.

58. The said Court may make or refuse any such order and annex thereto any terms or conditions it may think fit and discharge such order when granted with or without costs and generally act in the premises in such manner as the justice of the case requires. And the Land Registrar without being made a party to the proceedings upon being served with such order or an official copy thereof shall obey the same. 5

Power to place restrictions on registry.

59. Where the registered proprietor of any land or charge is desirous for his own sake or at the request of some person beneficially interested in such land or charge to place restrictions on transferring or otherwise dealing with such land or charge such proprietor may upon application to the Land Registrar direct that no transfer shall be made of such land or charge unless the following things or such of them as he may prescribe are done (that is to say)—

Unless notice of any application for a transfer is transmitted by post to such address as he may specify to the Land Registrar. 15

Unless the consent of some person to be named by such proprietor is given to the transfer.

Unless some such other matter or thing is done as may be required by the applicant and approved by the Land Registrar. 20

Registrar to enter directions in book.

60. The Land Registrar shall thereupon make a note of such directions on the register and no transfer shall be made except in conformity with such directions but it shall not be the duty of the Registrar to enter any of the above directions except upon such terms as to payment and otherwise as the Registrar may with the sanction of the Court direct nor to enter any restriction that the said Court may deem unreasonable or calculated to cause inconvenience and any such directions may at any time be withdrawn or modified at the instance of the registered proprietor for the time being and be subject to be set aside by the order of the said Court. 25 30

Address to be furnished by parties on the register.

61. Every person whose name is entered on the register as proprietor of land or of a charge or as cautioner or as entitled to receive any notice or in any other character shall be required to furnish to the Land Registrar a place of address in the Colony. 35

Mode of serving notices.

62. Every notice by this Act required to be given to any person shall be served personally or through the post in a registered letter marked outside "Land Registry" and directed to such person at the address

address furnished to the Registrar and such notice shall unless returned be deemed to have been served on the cautioner at the time when it would be delivered to him in the ordinary course of the post But no proceeding shall be taken on the faith of such notice having been served until the 5 expiration of such period not less than *five* days exclusive of the day of posting as the Court may by general order appoint.

63. The Postmaster General shall give directions for the immediate return to the Land Registrar of all letters marked as aforesaid and addressed to any person who cannot be found. Notices to be returned by Post Office.

10 64. On the return of any letter containing any notice the Registrar shall not act in the matter requiring such notice to be given except under the direction of the Court who shall make such order as under the circumstances may be proper. On return of notices Registrar to apply to Court.

15 65. No registered purchaser for valuable consideration shall be affected by the omission to send or by the non-receipt of any notice by this Act directed to be given. Purchasers not affected by omission to send notices.

20 66. All applications to the Land Registrar in respect of any entry or alteration to be made in the register shall be made by a solicitor of the Supreme Court and the Land Registrar shall with the sanction of the Court frame and cause to be printed and circulated or otherwise promulgated as he sees occasion forms of applications and directions indicating the particulars of the information to be furnished to the Land Registrar when any application is made to him under this Act and also forms of registered instruments and such other forms and directions as the Land 25 Registrar may deem requisite or expedient for facilitating proceedings under this Act. Registrar to frame and promulgate forms.

30 67. The Land Registrar shall not individually nor shall any person acting under his authority be liable to any action suit or proceeding for or in respect of any act or matter *bonâ fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act. Registrar not to be liable in respect of acts done *bonâ fide*.

68. The Court shall with the approval of the Governor and Executive Council determine the amount of fees to be paid to the Land Registrar with respect to the following matters— Court to determine amount of fees to be paid for registration.

35 The first entry on the register of land and of incumbrances on land.

The registry of transfers and transmissions of land and charges.

And

And the said Court may with the like approval from time to time alter any amounts so determined. But all such fees shall be paid to the Colonial Treasurer to be carried to the account of the Consolidated Revenue Fund of the Colony.

Principle on which fees to be determined.

69. In determining the amount of fees payable as aforesaid regard shall be had to the following matters— 5

- (1.) In the case of the registry of land or of any transfer of land on the occasion of a sale—to the value of the land as determined by the amount of purchase money.
- (2.) In the case of the registry of land or of any transfer of land not upon a sale to the value of the land to be ascertained in such manner as the Court by any general order directs. 10
- (3.) In the case of registry of a charge or any transfer of a charge to the amount of such charge.

Subject nevertheless to the qualifications following—

15

- (1.) The amount of fees payable shall not in any case exceed *five* per cent. on the value of the land or the amount of charge.
- (2.) A maximum amount shall be fixed and in cases where the value of any land or the amount of any charge exceeds 20 such maximum the Court may make payable in respect of such excess fees on such a reduced scale as the Court thinks expedient.
- (3.) Where increased labor is thrown on the Registrar by reason of the severance of the parcels of an estate the entry of a new description of parcels or of any other matter an increased sum may be charged. 25

Scale of costs to be fixed.

70. The President and Commissioners of the Court with the concurrence of the Chief Justice may from time to time fix a scale of costs to be paid to solicitors in respect of any work to be done by them in any matter relating to registered land and may from time to time alter any such scale when fixed and such scale of costs may be based either wholly or in part on an *ad valorem* principle and upon publication in the *Gazette* shall have the force of law. 30

71.

71. The forms in the first Schedule hereto shall be used in all Forms to be used. matters to which they refer but the Court may from time to time make such alterations in such forms as it deems requisite and shall publish any form when altered in the *Gazette* and upon such publication being made ⁵ it shall have the force of law.

72. Subject to such regulations as may be imposed and to the Inspection of documents by authority of registered proprietor. payment of such sums as may be fixed by the Court with the assent of the Chief Justice any person registered as proprietor of any land or charge and any person authorized by any such proprietor or by an order ¹⁰ of the Court but no other person may inspect and make copies of and extracts from any register or document in the custody of the Land Registrar relating to such land or charge.

73. If any person fraudulently procures assists in fraudulently Certain offences to be felony. procuring or is privy to the fraudulent procurement of any order of the ¹⁵ Court in relation to registered land or fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of the entry on the register of any caution or notice of a lease or of the erasure from the register or alteration on the register of any caution or notice of a lease such person shall be guilty of a misdemeanor and ²⁰ any order procured by fraud and any act consequent on such order and any entry erasure or alteration so made by fraud shall be void as between all parties or privies to such fraud.

74. No proceeding or conviction for any act hereby declared to be Conviction not to affect civil remedy. a misdemeanor shall affect any remedy which any person aggrieved by ²⁵ such act may be entitled to either at law or in equity against the person who has committed such act.

75. If any person is guilty of the following offences or any of them Forgery to be a felony. (that is to say)—

³⁰ (1.) Forges or procures to be forged or assists in forging the seal of the office or the name signature or handwriting of any officer of the land registry in cases where such officer is by this Act expressly or impliedly authorized to affix his signature.

³⁵ (2.) Stamps or procures to be stamped or assists in stamping any document with any forged seal of the land register.

(3.)

(3.) Forges or procures to be forged or assists in forging the name signature or handwriting of any person whomsoever to any instrument which is by this Act or in pursuance of any power contained in this Act expressly or impliedly authorized to be signed by such person. 5

(4.) Uses with an intention to defraud any person whomsoever any document upon which any impression or part of the impression of any seal of the land registry has been forged knowing the same to have been forged or any document the signature to which has been forged knowing 10 the same to have been forged such person shall be guilty of felony.

Punishment of felony.

76. Any person convicted of felony under this Act shall be liable to be kept to hard labor on the roads for the term of his life or any term not less than *seven* years or to imprisonment for any term not exceeding 15 *three* years with or without hard labor.

Enactment of penalty not to exclude obligation to make discovery.

77. Nothing in this Act contained shall entitle any person to refuse to make a complete discovery by answer to any Bill in Equity or to answer any question or interrogatory in any Civil proceeding in any Court of Law or Equity or of Insolvency but no answer to any such Bill 20 question or interrogatory shall be admissible in evidence against such person in any criminal proceeding under this Act.

General Rules to be made.

78. The Court may with the concurrence of the Chief Justice make rules for establishing the best and most effectual system of registration under this Act and generally for carrying into complete execution 25 all matters hereby contemplated but not expressly or sufficiently provided for.

When gazetted to be law and to be laid before Parliament.

79. All such rules when published in the *Gazette* shall have the force of law and they shall be laid before both Houses of Parliament forthwith if then in Session and if not within fourteen days after the 30 opening of the then next Session.

Short Title and commencement.

80. This Act shall be styled and may be cited as the "Land Transfer and Registry Act of 1861" and shall commence and take effect on and from the first day of January one thousand eight hundred and sixty-two. 35

FIRST SCHEDULE.

FORM OF LAND CERTIFICATE.

Dated the _____ day of _____

I hereby certify that *A. B.* is the registered proprietor of the lands described in the Schedule annexed to this certificate and that such lands are free from incumbrances (*subject to the incumbrances hereinafter mentioned.*)

C. D.
Registrar.

FORM OF CHARGE.

10 Dated _____ day of _____

I *A. B.* being the registered proprietor of the lands described in the accompanying land certificate hereby charge the same with the payment of ten thousand pounds to *John Jones* on the _____ day of _____ next and also with payment of interest thereon at the rate of *five pounds per centum per annum* payable to the said *John Jones* or his assigns on the *first of January and the first of July* in every year so long as the said principal sum or any portion thereof remains unpaid. The said *John Jones* shall have power to sell the land at the expiration of six months from the _____ day of _____ if whole moneys not then or sooner paid.

A. B.

20 Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales.

FORM OF CERTIFICATE OF CHARGE.

Dated the _____ day of _____

I hereby certify that *John Jones* is proprietor of a charge of *ten thousand pounds* on the lands described in the Schedule annexed to the certificate and that the interest is payable to the said *John Jones* on the *first day of January and the first day of July* in every year at the rate of *five pounds per centum*. The said *John Jones* has a power in default of payment to sell the land at the expiration of six months from the _____ day of _____

C. D.
Registrar.

30

FORM OF TRANSFER OF LAND.

Dated the _____ day of _____

I the within named *A. B.* in consideration of seven hundred pounds paid to me transfer to *C. D.* the within mentioned lands.

35

(Signed) *A. B.*

Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales.

FORM OF TRANSFER OF CHARGE.

Dated the _____ day of _____

40 I the within named *John Jones* in consideration of ten thousand pounds this day paid to me hereby transfer to *John Smith* the within mentioned charge.

(Signed) *John Jones.*

Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales.

SECOND SCHEDULE.

COLUMN I.

1. The said A. B. covenants with the said C. D.

2. That the said A. B. has notwithstanding any act of his the right to grant the said lands to the said C. D.

3. and that the said C. D. shall have quiet possession of the said lands.

4. free from all incumbrances.

5. And that the said A. B. will execute further assurances if requisite.

6. And that the said A. B. has done no act to incumber.

7. And the said A. B. releases to the said C. D. all his claims upon the said land.

COLUMN II.

1. And the said A. B. doth hereby for himself his heirs executors and administrators covenant with the said C. D. his heirs and assigns in manner following (that is to say)— 5

2. That notwithstanding any act deed matter or thing by the said A. B. done executed committed permitted or suffered to the contrary he the said A. B. now hath in himself good right full power and absolute authority to grant release or otherwise assure the said lands and other the premises hereby assured or intended so to be with their and every of their appurtenances unto the said C. D. in manner aforesaid and according to the true intent of these presents. 10

3. And that it shall be lawful for the said C. D. his heirs and assigns from time to time and at all times hereafter peaceably and quietly to enter upon have hold occupy possess and enjoy the said lands and premises hereby conveyed or intended so to be with their and every of their appurtenances and to have receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any suit denial 20
eviction interruption claim or demand whatsoever of from or by him the said A. B. or his heirs or any person claiming or to claim by from under or in trust for him them or any of them.

4. And that free and clear or freely and absolutely acquitted exonerated and for ever discharged or otherwise by the said A. B. 25
or his heirs well and sufficiently kept harmless and indemnified from and against every former and other gift grant bargain sale trust and any and every other estate right title interest charge and incumbrance whatsoever made executed created or suffered by the said A. B. or his heirs or by any person claiming or to claim 30
by from under or in trust for him them or any of them.

5. And that the said A. B. his heirs executors or administrators and all and every other person whosoever having or claiming or who shall or may hereafter have or claim any estate right title or interest whatsoever at law or in equity in to or out of the said 35
lands and premises hereby granted released or otherwise assured or intended so to be or any of them or any part thereof by from under or in trust for him them or any of them shall and will from time to time and at all times hereafter upon every reasonable request and at the costs and charges of the said C. D. his heirs or assigns 40
make do execute or cause to be made done or executed all such further and other lawful acts deeds things conveyances and assurances in the law whatsoever for the better more perfectly and absolutely conveying and assuring the said lands and premises hereby granted released or otherwise assured or intended so to be 45
and every part thereof with their appurtenances unto the said C. D. his heirs and assigns in manner aforesaid as by the said C. D. his heirs and assigns his or their counsel in the law shall be reasonably advised or required so as no such further assurances contain or imply any further or other covenant or warranty than against the 50
acts and deeds of the person who shall be required to make or execute the same and his heirs executors or administrators only and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof to go or travel from his usual place of abode. 55

6. And that the said A. B. hath not at any time heretofore made done committed executed or knowingly suffered any act deed matter or thing whatsoever whereby or by means whereof the said lands and premises hereby granted released or otherwise assured or intended so to be or any part or parcel thereof are is or shall or 60
may be in anywise impeached charged incumbered or affected in title estate or otherwise howsoever.

7. And the said releasor doth by these presents remise release and for ever quit claim unto the said release his heirs and assigns all and all manner of right title interest claim and demand whatsoever 65
at law and in equity into and out of the said lands and premises hereby granted or intended so to be and every part and parcel thereof so that neither he nor his heirs executors administrators or assigns shall nor may at any time hereafter have claim pretend to challenge or demand the said lands and premises or any part 70
thereof in any manner howsoever but the said releasee his heirs and assigns and the same lands and premises shall from henceforth and for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor might or could have upon him in respect of the said lands or upon the said 75
lands.

| COLUMN I. | COLUMN II. |
|--|--|
| 8. That he will insure. | 8. That he the said A. B. his executors administrators or assigns will so long as any money shall remain on this security keep all the buildings on the said land insured against loss or damage by fire in the amount of the principal sum hereby secured at the least and will pay all premiums and sums of money necessary for such purpose on the first day on which the same respectively ought to be paid and will on demand produce to the said C. D. his executors administrators and assigns the policy or policies of such insurance and the receipt for every such payment and also that if default shall be made in keeping the said premises so insured it shall be lawful for the said C. D. his executors administrators and assigns out of his or their own moneys to insure and keep insured the said premises in any sum not exceeding the amount of the said principal sum and that the said A. B. his executors administrators or assigns will repay to the said C. D. his executors administrators or assigns all moneys expended for that purpose by him or them with interest thereon at the rate aforesaid from the time of the same respectively having been advanced and paid and that until such repayment the same shall be a charge upon the said premises hereinbefore expressed to be hereby assured. |
| 5 | |
| 10 | |
| 15 | |
| 20 | |
| 9. That the said (mortgagee) may sell after any default. | 9. And it is hereby declared that the said (mortgagee) his executors administrators or assigns may at any time after any default shall have been made in the observance of any of the covenants herein contained without any further consent on the part of the said (mortgagor) his heirs or assigns sell the said premises or any part thereof either together or in parcels and either by public auction or private contract and may buy in or rescind any contract for sale and re-sell without being responsible for loss occasioned thereby and may execute and do all such assurances and things for effecting any such sale as he or they shall think fit and that upon a sale by any person or persons who may not be seised of the legal estate the person on whom the legal estate shall be vested shall execute and do such assurances and things for carrying the same into effect as the person or persons by whom the sale shall be made shall direct Provided that upon any sale purporting to be made in pursuance of the aforesaid power no purchaser shall be bound to inquire whether any money remains upon the security of these presents nor as to the propriety or regularity of such sale and notwithstanding any impropriety or irregularity whatsoever in any such sale the same shall as regards the purchaser or purchasers be deemed to be within the aforesaid power and be valid accordingly And it is hereby declared that the receipt of the said (mortgagee) his executors administrators or assigns for the purchase moneys of the premises sold or only part thereof shall effectually discharge the purchaser or purchasers therefrom and from being concerned to sue to the application thereof And that the said (mortgagee) his executors administrators and assigns shall out of the moneys arising from any sale in pursuance of the aforesaid power in the first place pay the expenses incurred on such sale or otherwise in relation to the premises and in the next place apply such moneys in or towards satisfaction of the moneys for the time being owing on the security of these presents and then pay the surplus if any of the moneys arising from such sale to the said (mortgagor) his heirs or assigns and that the aforesaid power of sale and other powers may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys then owing on the security of these presents Provided also that the said (mortgagee) his executors administrators or assigns shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts or any of them. |
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c 12—C

[The text in this section is extremely faint and illegible due to the age and condition of the document. It appears to be a list or a series of entries, possibly related to the dates in the header.]

Legislative Council.

25^o VICTORIA, 1861.

A BILL

To facilitate the Transfer of Land.

(As amended and agreed to in Select Committee.)

WHEREAS it is expedient to facilitate the Transfer of Land by ^{Preamble.}
means of Registration and otherwise Be it enacted by the Queen's
Most Excellent Majesty by and with the advice and consent of the Legis-
lative Council and Legislative Assembly of New South Wales in Parlia-
ment assembled as follows :—

1 The term "The Court" shall for the purposes of this Act unless ^{Interpretation.}
the context otherwise indicate mean the Land Titles ~~and Claims~~ Court as
constituted by an Act of this Session.

2. A land registry shall be established and a Land Registrar shall ^{Land Registrar.}
10 be appointed ~~and until Parliament otherwise determines~~ the Registrar
General appointed under the Act nineteen Victoria number thirty-four
shall be the Land Registrar and he or his deputy appointed under the
Act twenty Victoria number twenty-seven shall perform all the duties of
the Land Registrar under this Act.

15 3. The Land Registrar shall before executing any such duty take ^{Oath of Office.}
the following oath before a Judge of the Supreme Court—

20 " I A B do solemnly swear that I will faithfully and to the best
" of my ability perform all the duties imposed upon me as
" Land Registrar by the Land Transfer and Registry Act
" of 1861 So help me God."

4. The Land Registrar shall have a seal of office (hereinafter styled ^{Seal of office.}
the Seal) and all original instruments and all copies and extracts of or
from the same or of or from entries in the register hereinafter mentioned
issued by him shall be sealed with such seal And any person who shall ^{Penalty for counter-}
25 forge such seal or who shall forge or alter any such instrument copy or ^{feiting.}
extract or who shall knowingly utter any such forged instrument copy or
extract shall be guilty of forgery.

c 12—A

5.

NOTE.—The words to be omitted are ruled through : the words to be inserted are printed in black letter.

- Instruments and copies sealed by Registrar to be evidence of contents. 5. All instruments copies or extracts purporting to be issued under this Act by the Land Registrar and sealed with such seal shall be received in all Courts as *primâ facie* evidence of the matters therein contained.
- What land subject to Act. 6. All land hereafter granted in fee by the Crown and all land as to which a declaration of title by the Court shall have been made final shall be subject to this Act.
- Registered instruments alone valid and priority determined by date of registration. 7. ~~No~~ **All registered** instruments purporting to transfer or otherwise deal with or affect land subject to this Act (~~leases for periods not exceeding three years and wills only excepted~~) shall have any validity until registered under this Act and all such instruments shall have effect and priority not according to their respective dates but according to priority of registration only.
- Vesting orders to be registered. 8. ~~All vesting orders made by the Supreme Court under the Trustee Acts of 1852 and 1853 relating to land subject to this Act shall be registered under this Act and shall take effect only from the date of such registration.~~ 15
- Land under this Act exempt from registration under any other Act. 8. All instruments whatever directed or required by any Act to be registered shall if affecting land subject to this Act be registered only under this Act and such registration shall be deemed to be a compliance with such other direction or requisition. 20
- Powers of Attorney to be registered. 9. All Powers of Attorney affecting land subject to this Act and all revocations thereof shall be registered under this Act and shall as to such land take effect only from the date of such registration.
- Forms of covenants &c. 10. The words in column I of the second Schedule hereto shall have the same legal and equitable effect and shall be taken and construed for all intents and purposes as if the form of covenants or powers set against the same in column II of the same Schedule had been inserted in any such instrument. 25
- Future Crown grants and final declarations to be registered. 11. The Land Registrar on delivery to him within days after its date of any grant of land hereafter made by the Crown to any person or of any order making final a declaration of title by the Court in favour of any person shall enter the name description and residence of such person on the register as proprietor of the land describing such land by the description contained in the grant or order and shall also enter notice of any incumbrance reservation or other matter mentioned in any such order. 30 35
- Land certificate to be given on registration. 12. On the entry of the name of the proprietor on the register the Land Registrar shall deliver to him a certificate (hereinafter styled a land certificate) authenticated by the seal and signed by the Land Registrar stating the name of such proprietor and describing the lands in respect of which he is registered and referring to the incumbrances reservations and other matters if any of which notice has been entered on the register. 40
- Land certificate to be evidence. 13. Every such land certificate shall be *primâ facie* evidence of the several matters therein contained. 45
- Loss of certificate. 14. If any land certificate is lost mislaid or destroyed the Court may upon being satisfied of the fact of such loss mislaying or destruction direct a new land certificate to be granted in the place of the former one.
- Power to grant new certificate. 15. The Land Registrar may upon delivery up to him of a land certificate grant a new like certificate in the place of the one so delivered up. 50
- Deposit of land certificate. 16. The deposit of any land certificate shall for the purpose of creating a lien on the land described therein be deemed equivalent to a deposit of the title deeds of the land.
- Certain charges not incumbrances. 17. The following charges and interests shall not be deemed incumbrances within the meaning of this Act that is to say— 55
- (1.) Quit rents.
 - (2.) Rights of common or of way—watercourses—rights of water and other easements.
 - (3.) Leases or agreements for leases for any term not exceeding *twenty-one* years or for any less estate in cases where there is an occupation under such leases or agreements. 60

and

and all registered lands shall unless the contrary is expressed on the register be deemed to be subject to such of the above charges and interests as may be for the time being subsisting thereon.

18. The registration as proprietor of land of any person as afore-
 5 said shall confer on him an indefeasible estate in fee simple subject to the
 incumbrances reservations and other matters if any entered on the register
 (hereinafter included under the term "incumbrances") and subject also
 unless the contrary is expressed on the register to such charges and interests
 if any as are hereinbefore declared not to be incumbrances **except the**
 10 **estate or interest of a proprietor claiming the same land under a prior**
certificate of title or under a prior grant registered under the provisions
of this Act and except as regards the omission or misdescription of
any right of way or other easement created in or existing upon the same
land or the wrong description thereof or of its boundaries but free from
 15 all other estates incumbrances and interests whatsoever including estates
 interests and claims of Her Majesty Her Heirs and Successors.

Nature of estate of first registered proprietor.

19. Where upon the first registration of land any notice of incum-
 brance affecting such land has been entered on the register the Court
 shall on proof of the discharge of such incumbrance direct the Land
 20 Registrar to enter a memorandum of such discharge on the register and
 upon such entry being made the incumbrance shall be deemed to be
 discharged.

Entry of discharge of incumbrance.

20. The registered proprietor of any land may subject to any
 incumbrances appearing on the register in manner hereinafter mentioned
 25 charge the same with the payment at a prescribed time of any principal
 sum of money either with or without interest or with the payment of any
 annual sum of money.

Power to charge land.

21. The instrument of charge shall be in writing under the hand of
 the registered proprietor in the form contained in the first Schedule hereto
 30 and attested by a solicitor of the Supreme Court as a witness to the
 execution thereof by the proprietor of the land and may or not confer a
 power of sale to be exercised after a time to be prescribed by the instru-
 ment which shall be delivered to the Land Registrar who shall retain the
 same and enter on the register the name of the person in whose favour the
 35 charge is made as the proprietor of such charge and the particulars of the
 charge And upon such entry being completed the Land Registrar shall
 if required deliver to the proprietor of the charge a certificate of charge
 sealed and signed as aforesaid containing the particulars of the entry made
 on the register.

Form of deed of mortgage.

40 22. Every such certificate of charge shall be *primâ facie* evidence
 of the entry made on the register in respect of the matters mentioned in
 such certificate.

Certificate of charge evidence of entry on register.

23. The proprietor of a charge of a principal sum may enforce a
 foreclosure of the land charged in the same manner and under the same
 45 circumstances in and under which he might enforce the same if the charge
 were secured by a conveyance of the land to him with a proviso for
 redemption on payment of the money named at the prescribed day.

Foreclosure by proprietor of principal charge.

24. The proprietor of a charge under an instrument conferring a
 power of sale may at any time after the expiration of the prescribed period
 50 transfer the land on which he has a registered charge or any part thereof
 in the same manner as if he were registered proprietor of such land.

Remedy of proprietor with a power of sale.

25. The proprietor of a charge of an annual sum of money not
 having a power of sale may enforce all such remedies for the recovery of
 any moneys due to him in respect of such charge as he might enforce if
 55 such annual sum were a rentcharge duly charged upon the land.

Remedy of proprietor of annual charge not having power of sale.

26. No charge on land shall be registered unless the land certificate
 of such land is produced at the time of registration and it shall be the
 duty of the Land Registrar to record on the land certificate when produced
 notice

Land certificate to be produced on registry of charge.

- notice of any charge created but any omission so to record the same shall not invalidate or affect the priority of any such charge.
- Priority of charges. 27. Registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register and not according to the order in which they are created. 5
- Discharge of charges. 28. The Land Registrar shall on the requisition of the proprietor of any charge or on the production of an order of the Court enter a memorandum of the discharge on the register and upon such entry being made the land shall be deemed to be discharged.
- Transfer of land. 29. Every registered proprietor of land may by endorsement on the land certificate in the form contained in the first Schedule hereto transfer such land or any part thereof to another proprietor and such transfer shall contain a statement of the consideration if any set forth in words at full length and shall be attested by a solicitor of the Supreme Court as witness to the execution thereof by the transferor. 10
- Registry of transfer. 30. The instrument of transfer shall be delivered to the Land Registrar and retained by him and he shall thereupon enter the name of the transferee as proprietor of the land comprised in the instrument. 15
- Notice to be given of intended transfer. 31. Previously to completing the transfer of any land the Land Registrar shall give notice to the transferor of his intention to complete the same and the transferor shall be deemed to remain proprietor of the land until the name of the transferee is entered on the register in respect thereof. 20
- Delivery of land certificate to transferee. 32. Upon completion of the registry of the transferee the Land Registrar shall deliver to him a fresh land certificate stating the incumbrances if any subsisting on the land and shall also in cases where part only of the land is sold deliver to the transferor a fresh land certificate containing a description of the lands retained by him. 25
- Estate of transferee on purchase. 33. A transfer of registered land in the form contained in the first Schedule hereto made for valuable consideration shall when registered confer on the proprietor to whom the same is made an indefeasible estate in fee simple in the land transferred subject to the incumbrances if any appearing on the register and subject also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances but free from all other estates incumbrances and interests whatsoever including all estates claims and interests of Her Majesty Her Heirs and Successors. 30
- Estate of voluntary transferee. 34. A transfer of registered land in the like form as last aforesaid made without valuable consideration shall when registered confer on the proprietor to whom the same is made an estate in fee simple in the land transferred but subject as follows that is to say to the incumbrances if any appearing on the register also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances also to any unregistered estates rights or equities subject to which the transferor held the same but free from all other estates incumbrances and interests whatsoever including all estates claims and interests of Her Majesty Her Heirs and Successors. 40
- Transfer of charges. 35. A separate register shall be kept of charges and the registered proprietor of any charge may by indorsement on the certificate of charge in the form contained in the first Schedule hereto transfer such charge to any other person and the transfer shall contain a statement of the purchase money if any paid or agreed to be paid for such transfer set forth in words at full length and shall be attested by a solicitor of the Supreme Court as witness to the execution thereof by the transferor. 45
- Registry of transfer. 36. The instrument of transfer shall be delivered to the Land Registrar and retained by him and he shall thereupon enter the name of the transferee on the register as proprietor of the charge comprised in the instrument. 55

37. Previously to completing the transfer of any charge the Land Registrar shall give notice to the transferor of his intention to complete the same and the transferor shall be deemed to remain a proprietor of such charge until the name of the transferee is entered on the register in respect thereof. Notice to be given of intended transfer.
38. Upon completion of the registry of the transferee the Land Registrar shall deliver to him a fresh certificate of charge. Delivery of certificate.
39. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any land such person shall be registered in the place of the deceased proprietor or proprietors as may on the application of any person interested in the land be appointed by the Court. Transmission of land on death.
40. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any charge the executor or administrator of such sole deceased proprietor or of the survivor of such joint proprietors or if none such the Curator of Intestate Estates shall be entitled to be registered in his place. Transmission of charge on death.
41. Any person appointed by the Court or any executor or administrator when registered in the place of any deceased proprietor of any land or charge shall hold the land or charge in respect of which he is registered in trust for the persons and purposes to which it is applicable by law but he shall for the purpose of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof. Fiduciary proprietors.
42. Upon the insolvency of any registered proprietor of any land or charge his assignee shall be entitled to be registered in his place. Insolvency.
43. The husband of any female proprietor of land shall be entitled to be registered as co-proprietor with his wife but he shall be described on the register as co-proprietor in right of his wife and on his death the original registry of the wife with a change if necessary in the name shall revive and confer the same rights as if her husband had never been registered as co-proprietor with her. Marriage of female proprietor.
44. Where land is registered in the joint names of husband and wife no disposition of such land shall be registered until the wife has been examined by the Court or some officer authorized thereby apart from her husband and has assented to such disposition after full explanation of her rights in the land and of the effect of the proposed disposition. Title of husband and wife.
45. The assignee of any insolvent proprietor shall hold the land or charge in respect of which he is registered subject to the equities upon and subject to which the insolvent held the same but he shall for the purposes of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof. Nature of title of assignee.
46. The fact of any person having become entitled to any land or charge in consequence of the death or insolvency of any registered proprietor or of the marriage of any female proprietor shall be proved in such manner as the Court may from time to time or by general order direct. Evidence of transmission of registered proprietorship.
47. The following rules shall be observed with respect to registration :— Rules as to registration.
- (1.) No notice of any trust implied express or constructive shall be receivable by the Land Registrar or entered upon the register.
 - (2.) Upon the occasion of the registry of two or more persons as proprietors of the same land or of the same charge an entry may with their consent be made on the register to the effect that when a number of such proprietors is reduced below a certain specified number no registered disposition of such land or charge shall be made except with the sanction of the Court.

(3.)

- (3.) The Court may upon the application of any registered proprietor for the time being or of any person beneficially interested in the land or charge cause a transfer of the land to be made to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor or proprietors or make such order in the premises as the Court thinks just. 5
- (4.) No alteration shall be made in the registered description of land except under the order of the Court.
- (5.) Where any instrument is required by this Act to be attested 10 by a solicitor of the Supreme Court such instrument if executed in any place out of the Colony may be attested either by a solicitor of the Court of Chancery of England or Ireland a Writer to the Signet a Consul Vice-Consul or Notary Public. 15

Certificate of title.

48. The Land Registrar shall on the request of the registered proprietor of any land or charge or of any person authorized by him certify in writing under his hand and under the seal the state of the title of such registered proprietor specifying the name of such proprietor and the charges cautions inhibitions and other matters if any appearing on the register 20 and relating to such land or charge.

Trustee Acts 1852 and 1853 to apply to transfers of land.

49. For the purpose of authorizing or compelling a transfer to be made of any registered land or registered charge the Court may exercise all like powers as are vested in the Supreme Court by the Trustee Acts 1852 and 1853 or by any Act amending the same in relation to transfers 25 of stock land.

Effect of unregistered dispositions.

50. The registered proprietor alone shall be entitled to transfer or charge property by a registered disposition but any person whether the registered proprietor or not having a sufficient estate or interest in registered land may by any unregistered lease settlement will or other 30 instrument create the same demises estates for life estates tail or other estates and interests as he might create if the land were not registered and any lessee or other person entitled to or claiming any right in such estates or interests may protect the same from being impaired by any act of the registered owner by entering on the register such 35 notices cautions inhibitions or other restrictions as are hereinafter mentioned but subject to any notices of leases no purchaser for valuable consideration of any registered land or registered interest in land shall be affected by any notice express implied or constructive of any unregistered disposition. 40

Lessee may apply for registry of notice of lease.

51. Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land made subsequently to the last transfer of the land on the Register where the term granted exceeds twenty-one years or where the occupation is not in accordance with such lease or agreement may apply to the Registrar to 45 register notice of such lease or agreement and when so registered every registered proprietor of the land and every person deriving title through him excepting proprietors of charges registered prior to the registration of such notice shall be deemed to be affected with notice of such lease or agreement. 50

Manner of registering notice of leases.

52. In order to register notice of a lease or agreement for a lease if the registered proprietor of the land does not concur in such registry the applicant shall obtain an order of the Landed Estates Court authorizing the registration of the notice of such lease and shall deliver such order to the Registrar accompanied with the original lease 55 or a copy thereof and thereupon the Registrar shall make a note in the register of the principal estate identifying the lease or copy so deposited and the lease or copy so deposited shall be deemed to be the instrument of

of which notice is given but if the registered proprietor concurs in such registry notice may be entered in such manner as may be agreed upon.

50. 53. Any person interested under any lease settlement will or other unregistered instrument or by devolution in law or as a judgment creditor or otherwise howsoever in any land or charge registered in the name of any other party may lodge a caution with the Registrar to the effect that no dealing with such land or charge be had on the part of the registered proprietor until notice has been served upon the cautioner. Caution how to be lodged.
- 10 51. 54. Every such caution shall be supported by an affidavit made by the cautioner or his agent in such form as the Court directs stating the nature of the interest of the cautioner and such other matters as may be required by the said Court. Caution to be supported by affidavit.
- 15 52. 55. After any such caution has been lodged in respect of any land or charge the Land Registrar shall not register any dealing with such land or charge until he has served notice on the cautioner warning him that his caution will cease to have any effect after the expiration of *twenty-one* days next ensuing the date of such notice And after the expiration of such period the caution shall cease unless an order to the contrary is made by the Court and upon the caution so ceasing the land or charge shall be dealt with in the same manner as if no caution had been lodged. Effect of caution.
- 20 53. 56. If before the expiration of the said period of *twenty-one* days the cautioner or some other person on his behalf appears before the Court and enters into a bond with sufficient security conditioned to indemnify every party against any damage that may be sustained by reason of any dealing with the land being delayed the Court may thereupon if it thinks fit so to do make an order on the Registrar requiring him to delay registering any dealing with the property for such further period as is mentioned in the order. Transfer to be further delayed on bond being given.
- 25 54. 57. Where two or more cautions are lodged with respect to the same land or to the same charge the cautioners shall as between themselves have priority according to the dates at which their cautions are lodged and not according to the dates of the creation of the claims in respect of which they have lodged such cautions. Priority of cautions.
- 30 55. 58. If any person lodges a caution with the Land Registrar without reasonable cause he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just and such compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caution. Compensation for improper lodging of caution.
- 35 56. 59. The Court may upon the application of any person interested made in such manner as the Court directs issue an order inhibiting for a time or until the occurrence of an event to be named in such order or generally until further order any dealing by the Land Registrar with any registered land or registered charge. Power of Court to inhibit transfers.
- 40 57. 60. Previously to making any such inhibitory order as aforesaid the Court shall make such inquiries as to the circumstances of the land or charge in respect of which the same is made and of the parties interested therein and direct such notice to be given as it thinks necessary to enable it to form a judgment as to the expediency of making such an order and shall hear any persons interested in such land who may apply to them to be heard. Duty of Court on application for inhibition.
- 45 58. 61. The said Court may make or refuse any such order and annex thereto any terms or conditions it may think fit and discharge such order when granted with or without costs and generally act in the premises in such manner as the justice of the case requires And the Land Registrar without being made a party to the proceedings upon being served with such order or an official copy thereof shall obey the same. Court may annex conditions to order.
- 50 59. 62. Where the registered proprietor of any land or charge is desirous for his own sake or at the request of some person beneficially interested Power to place restrictions on registry.
- 60

interested in such land or charge to place restrictions on transferring or otherwise dealing with such land or charge such proprietor may upon application to the Land Registrar direct that no transfer shall be made of such land or charge unless the following things or such of them as he may prescribe are done (that is to say)—

Unless notice of any application for a transfer is transmitted by post to such address as he may specify to the Land Registrar.

Unless the consent of some person to be named by such proprietor is given to the transfer.

Unless some such other matter or thing is done as may be required by the applicant and approved by the Land Registrar.

Registrar to enter directions in book.

~~60.~~ **63.** The Land Registrar shall thereupon make a note of such directions on the register and no transfer shall be made except in conformity with such directions but it shall not be the duty of the Registrar to enter any of the above directions except upon such terms as to payment and otherwise as the Registrar may with the sanction of the Court direct nor to enter any restriction that the said Court may deem unreasonable or calculated to cause inconvenience and any such directions may at any time be withdrawn or modified at the instance of the registered proprietor for the time being and be subject to be set aside by the order of the said Court.

Address to be furnished by parties on the register.

~~61.~~ **64.** Every person whose name is entered on the register as proprietor of land or of a charge or as cautioner or as entitled to receive any notice or in any other character shall be required to furnish to the Land Registrar a place of address in the Colony.

Mode of serving notices.

~~62.~~ **65.** Every notice by this Act required to be given to any person shall be served personally or through the post in a registered letter marked outside "Land Registry" and directed to such person at the address furnished to the Registrar and such notice shall unless returned be deemed to have been served on the cautioner at the time when it would be delivered to him in the ordinary course of the post. But no proceeding shall be taken on the faith of such notice having been served until the expiration of such period not less than *five* days exclusive of the day of posting as the Court may by general order appoint.

Notices to be returned by Post Office.

~~63.~~ **66.** The Postmaster General shall give directions for the immediate return to the Land Registrar of all letters marked as aforesaid and addressed to any person who cannot be found.

On return of notices Registrar to apply to Court.

~~64.~~ **67.** On the return of any letter containing any notice the Registrar shall not act in the matter requiring such notice to be given except under the direction of the Court who shall make such order as under the circumstances may be proper.

Purchasers not affected by omission to send notices.

~~65.~~ **68.** No registered purchaser for valuable consideration shall be affected by the omission to send or by the non-receipt of any notice by this Act directed to be given.

Registrar to frame and promulgate forms.

~~66.~~ **69.** All applications to the Land Registrar in respect of any entry or alteration to be made in the register shall be made by a solicitor of the Supreme Court and the Land Registrar shall with the sanction of the Court frame and cause to be printed and circulated or otherwise promulgated as he sees occasion forms of applications and directions indicating the particulars of the information to be furnished to the Land Registrar when any application is made to him under this Act and also forms of registered instruments and such other forms and directions as the Land Registrar may deem requisite or expedient for facilitating proceedings under this Act.

Registrar not to be liable in respect of acts done *bonâ fide*.

~~67.~~ **70.** The Land Registrar shall not individually nor shall any person acting under his authority be liable to any action suit or proceeding for or in respect of any act or matter *bonâ fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act.

68. 71. The Court shall with the approval of the Governor and Executive Council determine the amount of fees to be paid to the Land Registrar with respect to the following matters—

Court to determine amount of fees to be paid for registration.

5 The first entry on the register of land and of incumbrances on land.

The registry of transfers and transmissions of land and charges. And the said Court may with the like approval from time to time alter any amounts so determined. But all such fees shall be paid to the Colonial Treasurer to be carried to the account of the Consolidated Revenue Fund of the Colony.

69. 72. In determining the amount of fees payable as aforesaid regard shall be had to the following matters—

Principle on which fees to be determined.

15 (1.) In the case of the registry of land or of any transfer of land on the occasion of a sale—to the value of the land as determined by the amount of purchase money.

(2.) In the case of the registry of land or of any transfer of land not upon a sale to the value of the land to be ascertained in such manner as the Court by any general order directs.

20 (3.) In the case of registry of a charge or any transfer of a charge to the amount of such charge.

Subject nevertheless to the qualifications following—

(1.) The amount of fees payable shall not in any case exceed five per cent. on the value of the land or the amount of charge.

25 (2.) A maximum amount shall be fixed and in cases where the value of any land or the amount of any charge exceeds such maximum the Court may make payable in respect of such excess fees on such a reduced scale as the Court thinks expedient.

30 (3.) Where increased labor is thrown on the Registrar by reason of the severance of the parcels of an estate the entry of a new description of parcels or of any other matter an increased sum may be charged.

70. 73. The President and Commissioners of the Court with the concurrence of the Chief Justice may from time to time fix a scale of costs to be paid to solicitors in respect of any work to be done by them in any matter relating to registered land and may from time to time alter any such scale when fixed and such scale of costs may be based either wholly or in part on an *ad valorem* principle and upon publication in the *Gazette* shall have the force of law.

Scale of costs to be fixed.

71. 74. The forms in the first Schedule hereto shall be used in all matters to which they refer but the Court may from time to time make such alterations in such forms and such additional forms as it deems requisite and shall publish any form when altered altered or additional form in the *Gazette* and upon such publication being made it shall have the force of law.

Forms to be used.

72. 75. Subject to such regulations as may be imposed and to the payment of such sums as may be fixed by the Court with the assent of the Chief Justice any person registered as proprietor of any land or charge and any person authorized by any such proprietor or by an order of the Court but no other person may inspect and make copies of and extracts from any register or document in the custody of the Land Registrar relating to such land or charge.

Inspection of documents by authority of registered proprietor.

73. 76. If any person fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of any order of the Court in relation to registered land or fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of the entry on the register of any caution or notice of a lease or of the erasure

Certain offences to be felony.

erasure from the register or alteration on the register of any caution or notice of a lease such person shall be guilty of a misdemeanor and any order procured by fraud and any act consequent on such order and any entry erasure or alteration so made by fraud shall be void as between all parties or privies to such fraud.

Conviction not to affect civil remedy.

~~74.~~ **77.** No proceeding or conviction for any act hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such act may be entitled to either at law or in equity against the person who has committed such act.

Forgery to be a felony.

~~75.~~ **78.** If any person is guilty of the following offences or any of them (that is to say)—

- (1.) Forges or procures to be forged or assists in forging the seal of the office or the name signature or handwriting of any officer of the land registry in cases where such officer is by this Act expressly or impliedly authorized to affix his signature.
- (2.) Stamps or procures to be stamped or assists in stamping any document with any forged seal of the land register.
- (3.) Forges or procures to be forged or assists in forging the name signature or handwriting of any person whomsoever to any instrument which is by this Act or in pursuance of any power contained in this Act expressly or impliedly authorized to be signed by such person.
- (4.) Uses with an intention to defraud any person whomsoever any document upon which any impression or part of the impression of any seal of the land registry has been forged knowing the same to have been forged or any document the signature to which has been forged knowing the same to have been forged

such person shall be guilty of felony.

Punishment of felony.

~~76.~~ **79.** Any person convicted of felony under this Act shall be liable to be kept to hard labor on the roads for the term of his life or any term not less than *seven* years or to imprisonment for any term not exceeding *three* years with or without hard labor.

Enactment of penalty not to exclude obligation to make discovery.

~~77.~~ **80.** Nothing in this Act contained shall entitle any person to refuse to make a complete discovery by answer to any Bill in Equity or to answer any question or interrogatory in any Civil proceeding in any Court of Law or Equity or of Insolvency but no answer to any such Bill question or interrogatory shall be admissible in evidence against such person in any criminal proceeding under this Act.

General Rules to be made.

~~78.~~ **81.** The Court may with the concurrence of the Chief Justice make rules for establishing the best and most effectual system of registration under this Act and generally for carrying into complete execution all matters hereby contemplated but not expressly or sufficiently provided for.

When gazetted to be law and to be laid before Parliament.

~~79.~~ **82.** All such rules when published in the *Gazette* shall have the force of law and they shall be laid before both Houses of Parliament forthwith if then in Session and if not within fourteen days after the opening of the then next Session.

Short Title and commencement

~~80.~~ **83.** This Act shall be styled and may be cited as the "Land Transfer and Registry Act of 1861" and shall commence and take effect on and from the first day of January one thousand eight hundred and sixty-two.

FIRST SCHEDULE.

FORM OF LAND CERTIFICATE.

Dated the _____ day of _____

I hereby certify that *A. B.* is the registered proprietor of the lands described in the
5 Schedule annexed to this certificate and that such lands are free from incumbrances (*subject to the incumbrances hereinafter mentioned.*)

C. D.
Registrar.

FORM OF CHARGE.

10 Dated _____ day of _____

I *A. B.* being the registered proprietor of the lands described in the accompanying
land certificate hereby charge the same with the payment of ten thousand pounds to *John*
Jones on the _____ day of _____ next and also with payment of interest
thereon at the rate of *five pounds per centum per annum* payable to the said *John Jones*
15 or his assigns on the *first of January and the first of July* in every year so long as the
said principal sum or any portion thereof remains unpaid The said *John Jones* shall have
power to sell the land at the expiration of six months from the _____ day
of _____ if whole moneys not then or sooner paid.

A. B.

20 Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales.

FORM OF CERTIFICATE OF CHARGE.

Dated the _____ day of _____

I hereby certify that *John Jones* is proprietor of a charge of *ten thousand pounds*
25 on the lands described in the Schedule annexed to the certificate and that the interest is
payable to the said *John Jones* on the *first day of January and the first day of July* in every
year at the rate of *five pounds per centum* The said *John Jones* has a power in default of
payment to sell the land at the expiration of six months from the _____ day of _____

C. D.
Registrar.

30

FORM OF TRANSFER OF LAND.

Dated the _____ day of _____

I the within named *A. B.* in consideration of seven hundred pounds paid to me
transfer to *C. D.* the within mentioned lands **or the portion of the within mentioned**
35 **lands hereinafter described viz. :—**

(Signed) *A. B.*

Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales.

FORM OF TRANSFER OF CHARGE.

40 Dated the _____ day of _____

I the within named *John Jones* in consideration of ten thousand pounds this day paid
to me hereby transfer to *John Smith* the within mentioned charge.

(Signed) *John Jones.*

45 Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales.

SECOND

SECOND SCHEDULE.

| COLUMN I. | COLUMN II. |
|---|---|
| 1. The said A. B. covenants with the said C. D. | 1. And the said A. B. doth hereby for himself his heirs executors and administrators covenant with the said C. D. his heirs and assigns in manner following (that is to say)— 5 |
| 2. That the said A. B. has notwithstanding any act of his the right to grant the said lands to the said C. D. | 2. That notwithstanding any act deed matter or thing by the said A. B. done executed committed permitted or suffered to the contrary he the said A. B. now hath in himself good right full power and absolute authority to grant release or otherwise assure the said lands and other the premises hereby assured or intended 10 so to be with their and every of their appurtenances unto the said C. D. in manner aforesaid and according to the true intent of these presents. |
| 3. and that the said C. D. shall have quiet possession of the said lands. | 3. And that it shall be lawful for the said C. D. his heirs and assigns from time to time and at all times hereafter peaceably and 15 quietly to enter upon have hold occupy possess and enjoy the said lands and premises hereby conveyed or intended so to be with their and every of their appurtenances and to have receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any suit denial 20 eviction interruption claim or demand whatsoever of from or by him the said A. B. or his heirs or any person claiming or to claim by from under or in trust for him them or any of them. |
| 4. free from all incumbrances. | 4. And that free and clear or freely and absolutely acquitted exonerated and for ever discharged or otherwise by the said A. B. 25 or his heirs well and sufficiently kept harmless and indemnified from and against every former and other gift grant bargain sale trust and any and every other estate right title interest charge and incumbrance whatsoever made executed created or suffered by the said A. B. or his heirs or by any person claiming or to claim 30 by from under or in trust for him them or any of them. |
| 5. And that the said A. B. will execute further assurances if requisite. | 5. And that the said A. B. his heirs executors or administrators and all and every other person whosoever having or claiming or who shall or may hereafter have or claim any estate right title or interest whatsoever at law or in equity in to or out of the said 35 lands and premises hereby granted released or otherwise assured or intended so to be or any of them or any part thereof by from under or in trust for him them or any of them shall and will from time to time and at all times hereafter upon every reasonable request and at the costs and charges of the said C. D. his heirs or assigns 40 make do execute or cause to be made done or executed all such further and other lawful acts deeds things conveyances and assurances in the law whatsoever for the better more perfectly and absolutely conveying and assuring the said lands and premises hereby granted released or otherwise assured or intended so to be 45 and every part thereof with their appurtenances unto the said C. D. his heirs and assigns in manner aforesaid as by the said C. D. his heirs and assigns his or their counsel in the law shall be reasonably advised or required so as no such further assurances contain or imply any further or other covenant or warranty than against the 50 acts and deeds of the person who shall be required to make or execute the same and his heirs executors or administrators only and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof to go or travel from his usual place of abode. 55 |
| 6. And that the said A. B. has done no act to incumber. | 6. And that the said A. B. hath not at any time heretofore made done committed executed or knowingly suffered any act deed matter or thing whatsoever whereby or by means whereof the said lands and premises hereby granted released or otherwise assured or intended so to be or any part or parcel thereof are is or shall or 60 may be in anywise impeached charged incumbered or affected in title estate or otherwise howsoever. |
| 7. And the said A. B. releases to the said C. D. all his claims upon the said land. | 7. And the said releasor doth by these presents remise release and for ever quit claim unto the said release his heirs and assigns all and all manner of right title interest claim and demand whatsoever 65 at law and in equity into and out of the said lands and premises hereby granted or intended so to be and every part and parcel thereof so that neither he nor his heirs executors administrators or assigns shall nor may at any time hereafter have claim pretend to challenge or demand the said lands and premises or any part 70 thereof in any manner howsoever but the said releasee his heirs and assigns and the same lands and premises shall from henceforth and for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor might or could have upon him in respect of the said lands or upon the said 75 lands. |

| COLUMN I. | COLUMN II. |
|--|--|
| 8. That he will insure. | 8. That he the said A. B. his executors administrators or assigns will so long as any money shall remain on this security keep all the buildings on the said land insured against loss or damage by fire in the amount of the principal sum hereby secured at the least and will pay all premiums and sums of money necessary for such purpose on the first day on which the same respectively ought to be paid and will on demand produce to the said C. D. his executors administrators and assigns the policy or policies of such insurance and the receipt for every such payment and also that if default shall be made in keeping the said premises so insured it shall be lawful for the said C. D. his executors administrators and assigns out of his or their own moneys to insure and keep insured the said premises in any sum not exceeding the amount of the said principal sum and that the said A. B. his executors administrators or assigns will repay to the said C. D. his executors administrators or assigns all moneys expended for that purpose by him or them with interest thereon at the rate aforesaid from the time of the same respectively having been advanced and paid and that until such repayment the same shall be a charge upon the said premises hereinbefore expressed to be hereby assured. |
| 9. That the said (mortgagee) may sell after any default. | 9. And it is hereby declared that the said (mortgagee) his executors administrators or assigns may at any time after any default shall have been made in the observance of any of the covenants herein contained without any further consent on the part of the said (mortgagor) his heirs or assigns sell the said premises or any part thereof either together or in parcels and either by public auction or private contract and may buy in or rescind any contract for sale and re-sell without being responsible for loss occasioned thereby and may execute and do all such assurances and things for effecting any such sale as he or they shall think fit and that upon a sale by any person or persons who may not be seised of the legal estate the person on whom the legal estate shall be vested shall execute and do such assurances and things for carrying the same into effect as the person or persons by whom the sale shall be made shall direct Provided that upon any sale purporting to be made in pursuance of the aforesaid power no purchaser shall be bound to inquire whether any money remains upon the security of these presents nor as to the propriety or regularity of such sale and notwithstanding any impropriety or irregularity whatsoever in any such sale the same shall as regards the purchaser or purchasers be deemed to be within the aforesaid power and be valid accordingly And it is hereby declared that the receipt of the said (mortgagee) his executors administrators or assigns for the purchase moneys of the premises sold or only part thereof shall effectually discharge the purchaser or purchasers therefrom and from being concerned to sue to the application thereof And that the said (mortgagee) his executors administrators and assigns shall out of the moneys arising from any sale in pursuance of the aforesaid power in the first place pay the expenses incurred on such sale or otherwise in relation to the premises and in the next place apply such moneys in or towards satisfaction of the moneys for the time being owing on the security of these presents and then pay the surplus if any of the moneys arising from such sale to the said (mortgagor) his heirs or assigns and that the aforesaid power of sale and other powers may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys then owing on the security of these presents Provided also that the said (mortgagee) his executors administrators or assigns shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts or any of them. |

The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the origin of life is a problem of the first importance, and that it is one of the most interesting and important problems of the present day. The author discusses the various theories of the origin of life, and shows that the most probable theory is that of spontaneous generation. He then discusses the conditions under which life could have originated, and shows that the conditions are not so favorable as is generally supposed. He concludes that the origin of life is a problem of the first importance, and that it is one of the most interesting and important problems of the present day.

The second part of the paper is devoted to a detailed discussion of the theory of spontaneous generation. It is shown that this theory is based on the fact that life can be generated from non-living matter under certain conditions. The author discusses the various experiments which have been conducted to test this theory, and shows that the results are in favor of it. He then discusses the conditions under which life can be generated, and shows that these conditions are not so favorable as is generally supposed. He concludes that the theory of spontaneous generation is the most probable theory of the origin of life.

Legislative Council.

25^o VICTORIÆ, 1861.

A BILL

(As amended in Committee of the Whole.)

To facilitate the Transfer of Land.

WHEREAS it is expedient to facilitate the Transfer of Land by Preamble.
means of Registration and otherwise Be it enacted by the Queen's
Most Excellent Majesty by and with the advice and consent of the Legis-
lative Council and Legislative Assembly of New South Wales in Parlia-
ment assembled as follows :—

5 1 The term "The Court" shall for the purposes of this Act unless Interpretation.
the context otherwise indicate mean the Land Titles Court as constituted
by an Act of this Session.

10 2. A land registry shall be established and a Land Registrar shall Land Registrar.
be appointed the Registrar General appointed under the Act nineteen
Victoria number thirty-four shall be the Land Registrar and he or his
deputy appointed under the Act twenty Victoria number twenty-seven
shall perform all the duties of the Land Registrar under this Act.

15 3. The Land Registrar shall before executing any such duty take Oath of Office.
the following oath before a Judge of the Supreme Court—

" I A B do solemnly swear that I will faithfully and to the best
" of my ability perform all the duties imposed upon me as
" Land Registrar by the Land Transfer and Registry Act
" of 1861 So help me God."

20 4. The Land Registrar shall have a seal of office (hereinafter styled Seal of office.
the Seal) and all original instruments and all copies and extracts of or
from the same or of or from entries in the register hereinafter mentioned

- Penalty for counterfeiting. issued by him shall be sealed with such seal And any person who shall forge such seal or who shall forge or alter any such instrument copy or extract or who shall knowingly utter any such forged instrument copy or extract shall be guilty of forgery.
- Instruments and copies sealed by Registrar to be evidence of contents. 5. All instruments copies or extracts purporting to be issued under this Act by the Land Registrar and sealed with such seal shall be received in all Courts as *primâ facie* evidence of the matters therein contained.
- What land subject to Act. 6. All land hereafter granted in fee by the Crown and all land as to which a declaration of title by the Court shall have been made final shall be subject to this Act. 10
- Registered instruments alone valid and priority determined by date of registration. 7. All registered instruments purporting to transfer or otherwise deal with or affect land subject to this Act shall have effect and priority not according to their respective dates but according to priority of registration only. 15
- Land under this Act exempt from registration under any other Act. 8. All instruments whatever directed or required by any Act to be registered shall if affecting land subject to this Act be registered only under this Act and such registration shall be deemed to be a compliance with such other direction or requisition.
- Powers of Attorney to be registered. 9. All Powers of Attorney affecting land subject to this Act and all revocations thereof shall be registered under this Act and shall as to such land take effect only from the date of such registration. 20
- Forms of covenants &c. 10. The words in column I of the second Schedule hereto shall have the same legal and equitable effect and shall be taken and construed for all intents and purposes as if the form of covenants or powers set against the same in column II of the same Schedule had been inserted in any such instrument subject nevertheless to any express qualification or addition therein inserted which shall vary the effect thereof. 25
- Future Crown grants and final declarations to be registered. 11. The Land Registrar on delivery to him within thirty days after its date of any grant of land hereafter made by the Crown to any person or of any order making final a declaration of title by the Court in favour of any person shall enter the name description and residence of such person on the register as proprietor of the land describing such land by the description contained in the grant or order and shall also enter notice of any incumbrance reservation or other matter mentioned in any such order. 30
- Land certificate to be given on registration. 12. On the entry of the name of the proprietor on the register the Land Registrar shall deliver to him a certificate (hereinafter styled a land certificate) authenticated by the seal and signed by the Land Registrar stating the name of such proprietor and describing the lands in respect of which he is registered and referring to the incumbrances reservations and other matters if any of which notice has been entered on the register. 35
- Land certificate to be evidence. 13. Every such land certificate shall be *primâ facie* evidence of the several matters therein contained. 40
- Loss of certificate. 14. If any land certificate is lost mislaid or destroyed the Court may upon being satisfied of the fact of such loss mislaying or destruction direct a new land certificate to be granted in the place of the former one. 45
- Power to grant new certificate. 15. The Land Registrar may upon delivery up to him of a land certificate grant a new like certificate in the place of the one so delivered up. 50
- Deposit of land certificate. 16. The deposit of any land certificate shall for the purpose of creating a lien on the land described therein be deemed equivalent to a deposit of the title deeds of the land.
- Certain charges not incumbrances. 17. The following charges and interests shall not be deemed incumbrances within the meaning of this Act that is to say— 55
- (1.) Quit rents.
 - (2.) Rights of common or of way—watercourses—rights of water and other easements.
 - (3.)

(3.) Leases or agreements for leases for any term not exceeding twenty-one years or for any less estate in cases where there is an occupation under such leases or agreements.

and all registered lands shall unless the contrary is expressed on the register be deemed to be subject to such of the above charges and interests as may be for the time being subsisting thereon.

18. The registration as proprietor of land of any person as aforesaid shall confer on him an indefeasible estate in fee simple subject to the incumbrances reservations and other matters if any entered on the register (hereinafter included under the term "incumbrances") and subject also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances except the estate or interest of a proprietor claiming the said land under a prior certificate of title or under a prior grant registered under the provisions of this Act and except as regards the omission or misdescription of any right of way or other easement created in or existing upon the same land or the wrong description thereof or of its boundaries but free from all other estates incumbrances and interests whatsoever including estates interests and claims of Her Majesty Her Heirs and Successors.

Nature of estate of first registered proprietor.

19. Where upon the first registration of land any notice of incumbrance affecting such land has been entered on the register the Court shall on proof of the discharge of such incumbrance direct the Land Registrar to enter a memorandum of such discharge on the register and upon such entry being made the incumbrance shall be deemed to be discharged.

Entry of discharge of incumbrance.

20. The registered proprietor of any land may subject to any incumbrances appearing on the register in manner hereinafter mentioned charge the same with the payment at a prescribed time of any principal sum of money either with or without interest or with the payment of any annual sum of money.

Power to charge land.

21. The instrument of charge shall be in writing under the hand of the registered proprietor in the form contained in the first Schedule hereto and attested by a solicitor of the Supreme Court as a witness to the execution thereof by the proprietor of the land and may or not confer a power of sale to be exercised after a time to be prescribed by the instrument which shall be delivered to the Land Registrar who shall retain the same and enter on the register the name of the person in whose favour the charge is made as the proprietor of such charge and the particulars of the charge And upon such entry being completed the Land Registrar shall if required deliver to the proprietor of the charge a certificate of charge sealed and signed as aforesaid containing the particulars of the entry made on the register.

Form of deed of mortgage.

22. Every such certificate of charge shall be *prima facie* evidence of the entry made on the register in respect of the matters mentioned in such certificate.

Certificate of charge evidence of entry on register.

23. The proprietor of a charge of a principal sum may enforce a foreclosure of the land charged in the same manner and under the same circumstances in and under which he might enforce the same if the charge were secured by a conveyance of the land to him with a proviso for redemption on payment of the money named at the prescribed day.

Foreclosure by proprietor of principal charge.

24. The proprietor of a charge under an instrument conferring a power of sale may at any time after the expiration of the prescribed period transfer the land on which he has a registered charge or any part thereof in the same manner as if he were registered proprietor of such land.

Remedy of proprietor with a power of sale.

25. The proprietor of a charge of an annual sum of money not having a power of sale may enforce all such remedies for the recovery of any moneys due to him in respect of such charge as he might enforce if such annual sum were a rentcharge duly charged upon the land.

Remedy of proprietor of annual charge not having power of sale.

- Land certificate to be produced on registry of charge. 26. No charge on land shall be registered unless the land certificate of such land is produced at the time of registration and it shall be the duty of the Land Registrar to record on the land certificate when produced notice of any charge created but any omission so to record the same shall not invalidate or affect the priority of any such charge. 5
- Priority of charges. 27. Registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register and not according to the order in which they are created.
- Discharge of charges. 28. The Land Registrar shall on the requisition of the proprietor of any charge or on the production of an order of the Court enter a memorandum of the discharge on the register and upon such entry being made the land shall be deemed to be discharged. 10
- Transfer of land. 29. Every registered proprietor of land may by endorsement on the land certificate in the form contained in the first Schedule hereto transfer such land or any part thereof to another proprietor and such transfer shall contain a statement of the consideration if any set forth in words at full length and shall be attested by a solicitor of the Supreme Court as witness to the execution thereof by the transferor. 15
- Registry of transfer. 30. The instrument of transfer shall be delivered to the Land Registrar and retained by him and he shall thereupon enter the name of the transferee as proprietor of the land comprised in the instrument. 20
- Notice to be given of intended transfer. 31. Previously to completing the transfer of any land the Land Registrar shall give notice to the transferor of his intention to complete the same and the transferor shall be deemed to remain proprietor of the land until the name of the transferee is entered on the register in respect thereof. 25
- Delivery of land certificate to transferee. 32. Upon completion of the registry of the transferee the Land Registrar shall deliver to him a fresh land certificate stating the incumbrances if any subsisting on the land and shall also in cases where part only of the land is sold deliver to the transferor a fresh land certificate containing a description of the lands retained by him. 30
- Estate of transferee on purchase. 33. A transfer of registered land in the form contained in the first Schedule hereto made for valuable consideration shall when registered confer on the proprietor to whom the same is made an indefeasible estate in fee simple in the land transferred subject to the incumbrances if any appearing on the register and subject also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances except the estate or interest of a proprietor claiming the said land under a prior declaration of title or prior grant registered under the provisions of this Act or under any certificate of title issued to any transferee in conformity therewith and except as regards the omission or misdescription of any right of way or other easement created in or existing upon the same land or the wrong description thereof or of its boundaries but free from all other estates incumbrances and interests whatsoever including all estates claims and interests of Her Majesty Her Heirs and Successors. 40
- Estate of voluntary transferee. 34. A transfer of registered land in the like form as last aforesaid made without valuable consideration shall when registered confer on the proprietor to whom the same is made an estate in fee simple in the land transferred but subject as follows that is to say to the incumbrances if any appearing on the register also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances also to any unregistered estates rights or equities subject to which the transferor held the same but free from all other estates incumbrances and interests whatsoever including all estates claims and interests of Her Majesty Her Heirs and Successors. 50
- Transfer of charges. 35. A separate register shall be kept of charges and the registered proprietor of any charge may by indorsement on the certificate of charge in the form contained in the first Schedule hereto transfer such charge to any

any other person and the transfer shall contain a statement of the purchase money if any paid or agreed to be paid for such transfer set forth in words at full length and shall be attested by a solicitor of the Supreme Court as witness to the execution thereof by the transferor.

5 36. The instrument of transfer shall be delivered to the Land Registrar and retained by him and he shall thereupon enter the name of the transferee on the register as proprietor of the charge comprised in the instrument. Registry of transfer.

10 37. Previously to completing the transfer of any charge the Land Registrar shall give notice to the transferor of his intention to complete the same and the transferor shall be deemed to remain a proprietor of such charge until the name of the transferee is entered on the register in respect thereof. Notice to be given of intended transfer.

15 38. Upon completion of the registry of the transferee the Land Registrar shall deliver to him a fresh certificate of charge. Delivery of certificate.

20 39. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any land such person shall be registered in the place of the deceased proprietor or proprietors as may on the application of any person interested in the land be appointed by the Court. Transmission of land on death.

25 40. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any charge the executor or administrator of such sole deceased proprietor or of the survivor of such joint proprietors or if none such the Curator of Intestate Estates shall be entitled to be registered in his place. Transmission of charge on death.

30 41. Any person appointed by the Court or any executor or administrator when registered in the place of any deceased proprietor of any land or charge shall hold the land or charge in respect of which he is registered in trust for the persons and purposes to which it is applicable by law but he shall for the purpose of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof. Fiduciary proprietors.

35 42. Upon the insolvency of any registered proprietor of any land or charge his assignee shall be entitled to be registered in his place. Insolvency.

40 43. The husband of any female proprietor of land shall be entitled to be registered as co-proprietor with his wife but he shall be described on the register as co-proprietor in right of his wife and on his death the original registry of the wife with a change if necessary in the name shall revive and confer the same rights as if her husband had never been registered as co-proprietor with her. Marriage of female proprietor.

45 44. Where land is registered in the joint names of husband and wife no disposition of such land shall be registered until the wife has been examined by the Court or some officer authorized thereby apart from her husband and has assented to such disposition after full explanation of her rights in the land and of the effect of the proposed disposition. Title of husband and wife.

50 45. The assignee of any insolvent proprietor shall hold the land or charge in respect of which he is registered subject to the equities upon and subject to which the insolvent held the same but he shall for the purposes of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof. Nature of title of assignee.

55 46. The fact of any person having become entitled to any land or charge in consequence of the death or insolvency of any registered proprietor or of the marriage of any female proprietor shall be proved in such manner as the Court may from time to time or by general order direct. Evidence of transmission of registered proprietorship.

Rules as to registration.

47. The following rules shall be observed with respect to registration :—

- (1.) No notice of any trust implied express or constructive shall be receivable by the Land Registrar or entered upon the register. 5
- (2.) Upon the occasion of the registry of two or more persons as proprietors of the same land or of the same charge an entry may with their consent be made on the register to the effect that when a number of such proprietors is reduced below a certain specified number no registered disposition 10 of such land or charge shall be made except with the sanction of the Court.
- (3.) The Court may upon the application of any registered proprietor for the time being or of any person beneficially interested in the land or charge cause a transfer of the land 15 to be made to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor or proprietors or make such order in the premises as the Court thinks just.
- (4.) No alteration shall be made in the registered description 20 of land except under the order of the Court.
- (5.) Where any instrument is required by this Act to be attested by a solicitor of the Supreme Court such instrument if executed in any place out of the Colony may be attested either by a solicitor of the Court of Chancery of England 25 or Ireland a Writer to the Signet a Consul Vice-Consul or Notary Public.

Certificate of title.

48. The Land Registrar shall on the request of the registered proprietor of any land or charge or of any person authorized by him certify in writing under his hand and under the seal the state of the title of such 30 registered proprietor specifying the name of such proprietor and the charges cautions inhibitions and other matters if any appearing on the register and relating to such land or charge.

Trustee Acts 1852 and 1853 to apply to transfers of land.

49. For the purpose of authorizing or compelling a transfer to be made of any registered land or registered charge the Court may exercise 35 all like powers as are vested in the Supreme Court by the Trustee Acts 1852 and 1853 or by any Act amending the same in relation to transfers of land.

Effect of unregistered dispositions.

50. The registered proprietor alone shall be entitled to transfer or charge property by a registered disposition but any person whether the 40 registered proprietor or not having a sufficient estate or interest in registered land may by any unregistered lease settlement will or other instrument create the same demises estates for life estates tail or other estates and interests as he might create if the land were not registered and any lessee or other person entitled to or claiming any right in such 45 estates or interests may protect the same from being impaired by any act of the registered owner by entering on the register such notices cautions inhibitions or other restrictions as are hereinafter mentioned but subject to any notices of leases no purchaser for valuable consideration who shall become in virtue of such purchase the registered owner of any registered 50 land or registered interest in land shall be affected by any notice express implied or constructive of any unregistered disposition.

Lessee may apply for registry of notice of lease.

51. Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land made subsequently to the last transfer of the land on the Register where the term granted exceeds 55 twenty-one years or where the occupation is not in accordance with such lease or agreement may apply to the registrar to register notice of such lease or agreement and when so registered every registered proprietor of

the

the land and every person deriving title through him excepting proprietors of charges registered prior to the registration of such notice shall be deemed to be affected with notice of such lease or agreement.

52. In order to register notice of a lease or agreement for a lease Manner of registering notice of leases.
 5 if the registered proprietor of the land does not concur in such registry the applicant shall obtain an order of the Landed Estates Court authorizing the registration of the notice of such lease and shall deliver such order to the Registrar accompanied with the original lease or a copy thereof and thereupon the Registrar shall make a note in the
 10 register of the principal estate identifying the lease or copy so deposited and the lease or copy so deposited shall be deemed to be the instrument of which notice is given but if the registered proprietor concurs in such registry notice may be entered in such manner as may be agreed upon.

53. Any person interested under any lease settlement will or other Caution how to be lodged.
 15 unregistered instrument or by devolution in law or as a judgment creditor or otherwise howsoever in any land or charge registered in the name of any other party may lodge a caution with the Registrar to the effect that no dealing with such land or charge be had on the part of the registered proprietor until notice has been served upon the cautioner.

20 54. Every such caution shall be supported by an affidavit made by the cautioner or his agent in such form as the Court directs stating the nature of the interest of the cautioner and such other matters as may be required by the said Court. Caution to be supported by affidavit.

25 55. After any such caution has been lodged in respect of any land or charge the Land Registrar shall not register any dealing with such land or charge until he has served notice on the cautioner warning him that his caution will cease to have any effect after the expiration of *twenty-one* days next ensuing the date of such notice And after the expiration of such period the caution shall cease unless an order to the contrary is made by
 30 the Court and upon the caution so ceasing the land or charge shall be dealt with in the same manner as if no caution had been lodged. Effect of caution.

56. If before the expiration of the said period of *twenty-one* days the cautioner or some other person on his behalf appears before the Court and enters into a bond with sufficient security conditioned to indemnify
 35 every party against any damage that may be sustained by reason of any dealing with the land being delayed the Court may thereupon if it thinks fit so to do make an order on the Registrar requiring him to delay registering any dealing with the property for such further period as is mentioned in the order. Transfer to be further delayed on bond being given.

40 57. Where two or more cautions are lodged with respect to the same land or to the same charge the cautioners shall as between themselves have priority according to the dates at which their cautions are lodged and not according to the dates of the creation of the claims in respect of which they have lodged such cautions. Priority of cautions.

45 58. If any person lodges a caution with the Land Registrar without reasonable cause he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just and such compensation shall be recoverable in an action at law by the person who has sustained damage from the person
 50 who lodged the caution. Compensation for improper lodging of caution.

59. The Court may upon the application of any person interested made in such manner as the Court directs issue an order inhibiting for a time or until the occurrence of an event to be named in such order or generally until further order any dealing by the Land Registrar with any
 55 registered land or registered charge. Power of Court to inhibit transfers.

60. Previously to making any such inhibitory order as aforesaid the Court shall make such inquiries as to the circumstances of the land or charge in respect of which the same is made and of the parties interested therein Duty of Court on application for inhibition.

therein and direct such notice to be given as it thinks necessary to enable it to form a judgment as to the expediency of making such an order and shall hear any persons interested in such land who may apply to them to be heard.

Court may annex conditions to order. Power to place restrictions on registry.

61. The said Court may make or refuse any such order and annex thereto any terms or conditions it may think fit and discharge such order when granted with or without costs and generally act in the premises in such manner as the justice of the case requires And the Land Registrar without being made a party to the proceedings upon being served with such order or an official copy thereof shall obey the same. 5 10

62. Where the registered proprietor of any land or charge is desirous for his own sake or at the request of some person beneficially interested in such land or charge to place restrictions on transferring or otherwise dealing with such land or charge such proprietor may upon application to the Land Registrar direct that no transfer shall be made of such land or charge unless the following things or such of them as he may prescribe are done (that is to say)— 15

Unless notice of any application for a transfer is transmitted by post to such address as he may specify to the Land Registrar. 20

Unless the consent of some person to be named by such proprietor is given to the transfer.

Unless some such other matter or thing is done as may be required by the applicant and approved by the Land Registrar. 25

Registrar to enter directions in book.

63. The Land Registrar shall thereupon make a note of such directions on the register and no transfer shall be made except in conformity with such directions but it shall not be the duty of the Registrar to enter any of the above directions except upon such terms as to payment and otherwise as the Registrar may with the sanction of the Court direct nor to enter any restriction that the said Court may deem unreasonable or calculated to cause inconvenience and any such directions may at any time be withdrawn or modified at the instance of the registered proprietor for the time being and be subject to be set aside by the order of the said Court. 30 35

Address to be furnished by parties on the register.

64. Every person whose name is entered on the register as proprietor of land or of a charge or as cautioner or as entitled to receive any notice or in any other character shall be required to furnish to the Land Registrar a place of address in the Colony.

Mode of serving notices.

65. Every notice by this Act required to be given to any person shall be served personally or through the post in a registered letter marked outside "Land Registry" and directed to such person at the address furnished to the Registrar and such notice shall unless returned be deemed to have been served on the cautioner at the time when it would be delivered to him in the ordinary course of the post But no proceeding shall be taken on the faith of such notice having been served until the expiration of such period not less than five days exclusive of the day of posting as the Court may by general order appoint. 40 45

Notices to be returned by Post Office.

66. The Postmaster General shall give directions for the immediate return to the Land Registrar of all letters marked as aforesaid and addressed to any person who cannot be found. 50

On return of notices Registrar to apply to Court.

67. On the return of any letter containing any notice the Registrar shall not act in the matter requiring such notice to be given except under the direction of the Court who shall make such order as under the circumstances may be proper. 55

Purchasers not affected by omission to send notices.

68. No registered purchaser for valuable consideration shall be affected by the omission to send or by the non-receipt of any notice by this Act directed to be given. 69.

69. All applications to the Land Registrar in respect of any entry or alteration to be made in the register shall be made by a solicitor of the Supreme Court and the Land Registrar shall with the sanction of the Court frame and cause to be printed and circulated or otherwise promulgated as he sees occasion forms of applications and directions indicating the particulars of the information to be furnished to the Land Registrar when any application is made to him under this Act including plans according to such scale as he shall think fit and also forms of registered instruments and such other forms and directions as the Land Registrar may deem requisite or expedient for facilitating proceedings under this Act.

Registrar to frame and promulgate forms.

70. The Land Registrar shall not individually nor shall any person acting under his authority be liable to any action suit or proceeding for or in respect of any act or matter *bonâ fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act.

Registrar not to be liable in respect of acts done *bonâ fide*.

71. If any person shall sustain any damage loss or injury by reason of any mistake omission or error which may happen or be made in or respecting any registration effected or certificate issued under this Act the person aggrieved his heirs executors or administrators may bring an action against the Colonial Treasurer of the Colony and also against any person not being himself a party lawfully entitled to indemnity in respect of such mistake omission or error who shall derive benefit from such registration or certificate shall be so effected or issued his heirs executors or administrators if resident in the Colony but if not then against the Colonial Treasurer alone to recover full compensation for any such damage loss or injury and upon proof of such damage loss or injury the plaintiff in such action shall recover such compensation as aforesaid against the defendants therein And in every such action the Colonial Treasurer and his co-defendant or either of them may plead in bar any tender which may have been made on paying into Court in the usual way according to the practice of the Court the amount of the money tendered or to pay money into Court and plead such payment in bar of the further maintenance of the action and whichever party shall succeed in such action shall be entitled to costs to be awarded and recovered according to the practice of the Court Provided that the Colonial Treasurer shall be reimbursed out of the Consolidated Revenue Fund all moneys which he may pay or incur for or in respect of damages or costs in any such action Provided also that in all such cases the Colonial Treasurer shall be entitled to recover by action in the Supreme Court from the person by whom or in whose favour such registration or certificate shall have been effected or issued his heirs executors or administrators all moneys so paid or incurred as last aforesaid with costs of suit.

Indemnity for error in registration or certificate.

72. In order to create an indemnity fund to the Government for or towards meeting the liabilities created by the next preceding section there shall in addition to the fees of Court be payable upon the issue of any first certificate of registration the sum of _____ in the pound on the estimated value of the land in respect of which such certificate shall be issued and no such certificate shall be issued or take effect until payment thereof and the same shall be paid over to the Colonial Treasurer and by him carried to the account of the Consolidated Revenue Fund and such value shall be ascertained in like manner as hereinafter provided in respect of fees of Court.

Indemnity fund.

73. The Court shall with the approval of the Governor and Executive Council determine the amount of fees to be paid to the Land Registrar with respect to the following matters—

Court to determine amount of fees to be paid for registration.

The first entry on the register of land and of incumbrances on land.

The registry of transfers and transmissions of land and charges. And the said Court may with the like approval from time to time alter any amounts so determined. But all such fees shall be paid to the Colonial Treasurer to be carried to the account of the Consolidated Revenue Fund of the Colony.

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Principle on which fees to be determined.

74. In determining the amount of fees payable as aforesaid regard shall be had to the following matters—

(1.) In the case of the registry of land or of any transfer of land on the occasion of a sale—to the value of the land as determined by the amount of purchase money.

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(2.) In the case of the registry of land or of any transfer of land not upon a sale to the value of the land to be ascertained in such manner as the Court by any general order directs.

(3.) In the case of registry of a charge or any transfer of a charge to the amount of such charge.

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Subject nevertheless to the qualifications following—

(1.) The amount of fees payable shall not in any case exceed *five* per cent. on the value of the land or the amount of charge.

(2.) A maximum amount shall be fixed and in cases where the value of any land or the amount of any charge exceeds such maximum the Court may make payable in respect of such excess fees on such a reduced scale as the Court thinks expedient.

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(3.) Where increased labor is thrown on the Registrar by reason of the severance of the parcels of an estate the entry of a new description of parcels or of any other matter an increased sum may be charged.

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Scale of costs to be fixed.

75. The Court with the concurrence of the Chief Justice may from time to time fix a scale of costs to be paid to solicitors in respect of any work to be done by them in any matter relating to registered land and may from time to time alter any such scale when fixed and such scale of costs may be based either wholly or in part on an *ad valorem* principle and upon publication in the *Gazette* shall have the force of law.

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Forms to be used.

76. The forms in the first Schedule hereto shall be used in all matters to which they refer but the Court may from time to time make such alterations in such forms and such additional forms as it deems requisite and shall publish any altered or additional form in the *Gazette* and upon such publication being made it shall have the force of law.

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Inspection of documents by authority of registered proprietor.

77. Subject to such regulations as may be imposed and to the payment of such sums as may be fixed by the Court with the assent of the Chief Justice any person registered as proprietor of any land or charge and any person authorized by any such proprietor or by an order of the Court but no other person may inspect and make copies of and extracts from any register or document in the custody of the Land Registrar relating to such land or charge.

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Certain offences to be felony.

78. If any person fraudulently procures or assists in fraudulently procuring or is privy to the fraudulent procurement of any order of the Court in relation to registered land or fraudulently procures or assists in fraudulently procuring or is privy to the fraudulent procurement of the entry on the register of any caution or notice of a lease or of the erasure from the register or alteration on the register of any caution or notice of a lease such person shall be guilty of a misdemeanor and any order procured by fraud and any act consequent on such order and any entry erasure or alteration so made by fraud shall be void as between all parties or privies to such fraud.

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79. No proceeding or conviction for any act hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such act may be entitled to either at law or in equity against the person who has committed such act. Conviction not to affect civil remedy.

5 80. If any person is guilty of the following offences or any of them Forgery to be a felony.
(that is to say)—

10 (1.) Forges or procures to be forged or assists in forging the seal of the office or the name signature or handwriting of any officer of the land registry in cases where such officer is by this Act expressly or impliedly authorized to affix his signature.

(2.) Stamps or procures to be stamped or assists in stamping any document with any forged seal of the land register.

15 (3.) Forges or procures to be forged or assists in forging the name signature or handwriting of any person whomsoever to any instrument which is by this Act or in pursuance of any power contained in this Act expressly or impliedly authorized to be signed by such person.

20 (4.) Uses with an intention to defraud any person whomsoever any document upon which any impression or part of the impression of any seal of the land registry has been forged knowing the same to have been forged or any document the signature to which has been forged knowing the same to have been forged

25 such person shall be guilty of felony.

81. Any person convicted of felony under this Act shall be liable to be kept to hard labor on the roads for the term of his life or any term not less than seven years or to imprisonment for any term not exceeding three years with or without hard labor. Punishment of felony.

30 82. Nothing in this Act contained shall entitle any person to refuse to make a complete discovery by answer to any Bill in Equity or to answer any question or interrogatory in any Civil proceeding in any Court of Law or Equity or of Insolvency but no answer to any such Bill question or interrogatory shall be admissible in evidence against such Enactment of penalty not to exclude obligation to make discovery.

35 person in any criminal proceeding under this Act.

83. The Court may with the concurrence of the Chief Justice make rules for establishing the best and most effectual system of registration under this Act and generally for carrying into complete execution all matters hereby contemplated but not expressly or sufficiently provided General Rules to be made.

40 for.

84. All such rules when published in the *Gazette* shall have the force of law and they shall be laid before both Houses of Parliament forthwith if then in Session and if not within fourteen days after the opening of the then next Session. When gazetted to be law and to be laid before Parliament.

45 85. This Act shall be styled and may be cited as the "Land Transfer and Registry Act of 1861" and shall commence and take effect on and from a day to be fixed by the Governor by Proclamation. Short Title and commencement

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FIRST SCHEDULE.

FORM OF LAND CERTIFICATE.

Dated the _____ day of _____

I hereby certify that *A. B.* is the registered proprietor of the lands described in the Schedule annexed to this certificate and that such lands are free from incumbrances (*subject to the incumbrances hereinafter mentioned.*) 5

C. D.
Registrar.

FORM OF CHARGE.

Dated _____ day of _____ 10

I *A. B.* being the registered proprietor of the lands described in the accompanying land certificate hereby charge the same with the payment of ten thousand pounds to *John Jones* on the _____ day of _____ next and also with payment of interest thereon at the rate of *five pounds per centum per annum* payable to the said *John Jones* or his assigns on the *first of January and the first of July* in every year so long as the said principal sum or any portion thereof remains unpaid. The said *John Jones* shall have power to sell the land at the expiration of six months from the _____ day of _____ if whole moneys not then or sooner paid. 15

A. B.

Witness *C. D.* of _____ solicitor of the _____ 20
Supreme Court of New South Wales.

FORM OF CERTIFICATE OF CHARGE.

Dated the _____ day of _____

I hereby certify that *John Jones* is proprietor of a charge of *ten thousand pounds* on the lands described in the Schedule annexed to the certificate and that the interest is 25 payable to the said *John Jones* on the *first day of January and the first day of July* in every year at the rate of *five pounds per centum*. The said *John Jones* has a power in default of payment to sell the land at the expiration of six months from the _____ day of _____

C. D.
Registrar. 30

FORM OF TRANSFER OF LAND.

Dated the _____ day of _____

I the within named *A. B.* in consideration of seven hundred pounds paid to me transfer to *C. D.* the within mentioned lands or the portion of the within mentioned lands hereinafter described viz. :— 35

(Signed) *A. B.*

Witness *C. D.* of _____ solicitor of the _____
Supreme Court of New South Wales.

FORM OF TRANSFER OF CHARGE.

Dated the _____ day of _____ 40

I the within named *John Jones* in consideration of ten thousand pounds this day paid to me hereby transfer to *John Smith* the within mentioned charge.

(Signed) *John Jones.*

Witness *C. D.* of _____ solicitor of the _____ 45
Supreme Court of New South Wales.

SECOND

SECOND SCHEDULE.

COLUMN I.

1. The said A. B. covenants with the said C. D.
2. That the said A. B. has notwithstanding any act of his the right to grant the said lands to the said C. D.
3. and that the said C. D. shall have quiet possession of the said lands.
4. free from all incumbrances.
5. And that the said A. B. will execute further assurances if requisite.
6. And that the said A. B. has done no act to incumber.
7. And the said A. B. releases to the said C. D. all his claims upon the said land.

COLUMN II.

1. And the said A. B. doth hereby for himself his heirs executors and administrators covenant with the said C. D. his heirs and assigns in manner following (that is to say)— 5
2. That notwithstanding any act deed matter or thing by the said A. B. done executed committed permitted or suffered to the contrary he the said A. B. now hath in himself good right full power and absolute authority to grant release or otherwise assure the said lands and other the premises hereby assured or intended 10 so to be with their and every of their appurtenances unto the said C. D. in manner aforesaid and according to the true intent of these presents.
3. And that it shall be lawful for the said C. D. his heirs and assigns from time to time and at all times hereafter peaceably and 15 quietly to enter upon have hold occupy possess and enjoy the said lands and premises hereby conveyed or intended so to be with their and every of their appurtenances and to have receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any suit denial 20 eviction interruption claim or demand whatsoever of from or by him the said A. B. or his heirs or any person claiming or to claim by from under or in trust for him them or any of them.
4. And that free and clear or freely and absolutely acquitted exonerated and for ever discharged or otherwise by the said A. B. 25 or his heirs well and sufficiently kept harmless and indemnified from and against every former and other gift grant bargain sale trust and any and every other estate right title interest charge and incumbrance whatsoever made executed created or suffered by the said A. B. or his heirs or by any person claiming or to claim 30 by from under or in trust for him them or any of them.
5. And that the said A. B. his heirs executors or administrators and all and every other person whosoever having or claiming or who shall or may hereafter have or claim any estate right title or interest whatsoever at law or in equity in to or out of the said 35 lands and premises hereby granted released or otherwise assured or intended so to be or any of them or any part thereof by from under or in trust for him them or any of them shall and will from time to time and at all times hereafter upon every reasonable request and at the costs and charges of the said C. D. his heirs or assigns 40 make do execute or cause to be made done or executed all such further and other lawful acts deeds things conveyances and assurances in the law whatsoever for the better more perfectly and absolutely conveying and assuring the said lands and premises hereby granted released or otherwise assured or intended so to be 45 and every part thereof with their appurtenances unto the said C. D. his heirs and assigns in manner aforesaid as by the said C. D. his heirs and assigns his or their counsel in the law shall be reasonably advised or required so as no such further assurances contain or imply any further or other covenant or warranty than against the 50 acts and deeds of the person who shall be required to make or execute the same and his heirs executors or administrators only and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof to go or travel from his usual place of abode. 55
6. And that the said A. B. hath not at any time heretofore made done committed executed or knowingly suffered any act deed matter or thing whatsoever whereby or by means whereof the said lands and premises hereby granted released or otherwise assured or intended so to be or any part or parcel thereof are is or shall or 60 may be in anywise impeached charged incumbered or affected in title estate or otherwise howsoever.
7. And the said releasor doth by these presents remise release and for ever quit claim unto the said release his heirs and assigns all and all manner of right title interest claim and demand whatsoever 65 at law and in equity into and out of the said lands and premises hereby granted or intended so to be and every part and parcel thereof so that neither he nor his heirs executors administrators or assigns shall nor may at any time hereafter have claim pretend to challenge or demand the said lands and premises or any part 70 thereof in any manner howsoever but the said releasor his heirs and assigns and the same lands and premises shall from henceforth and for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor might or could have upon him in respect of the said lands or upon the said 75 lands.

COLUMN I.

8. That he will insure.

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9. That the said
(mortgagee) may sell
after any default

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COLUMN II.

8. That he the said A. B. his executors administrators or assigns will so long as any money shall remain on this security keep all the buildings on the said land insured against loss or damage by fire in the amount of the principal sum hereby secured at the least and will pay all premiums and sums of money necessary for such purpose on the first day on which the same respectively ought to be paid and will on demand produce to the said C. D. his executors administrators and assigns the policy or policies of such insurance and the receipt for every such payment and also that if default shall be made in keeping the said premises so insured it shall be lawful for the said C. D. his executors administrators and assigns out of his or their own moneys to insure and keep insured the said premises in any sum not exceeding the amount of the said principal sum and that the said A. B. his executors administrators or assigns will repay to the said C. D. his executors administrators or assigns all moneys expended for that purpose by him or them with interest thereon at the rate aforesaid from the time of the same respectively having been advanced and paid and that until such repayment the same shall be a charge upon the said premises hereinbefore expressed to be hereby assured.

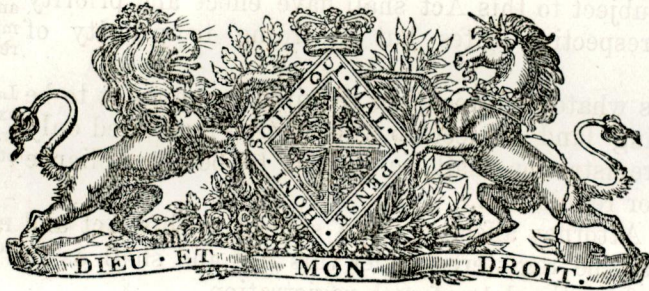
9. And it is hereby declared that the said (mortgagee) his executors administrators or assigns may at any time after any default shall have been made in the observance of any of the covenants herein contained without any further consent on the part of the said (mortgagor) his heirs or assigns sell the said premises or any part thereof either together or in parcels and either by public auction or private contract and may buy in or rescind any contract for sale and re-sell without being responsible for loss occasioned thereby and may execute and do all such assurances and things for effecting any such sale as he or they shall think fit and that upon a sale by any person or persons who may not be seised of the legal estate the person on whom the legal estate shall be vested shall execute and do such assurances and things for carrying the same into effect as the person or persons by whom the sale shall be made shall direct Provided that upon any sale purporting to be made in pursuance of the aforesaid power no purchaser shall be bound to inquire whether any money remains upon the security of these presents nor as to the propriety or regularity of such sale and notwithstanding any impropriety or irregularity whatsoever in any such sale the same shall as regards the purchaser or purchasers be deemed to be within the aforesaid power and be valid accordingly And it is hereby declared that the receipt of the said (mortgagee) his executors administrators or assigns for the purchase moneys of the premises sold or only part thereof shall effectually discharge the purchaser or purchasers therefrom and from being concerned to sue to the application thereof And that the said (mortgagee) his executors administrators and assigns shall out of the moneys arising from any sale in pursuance of the aforesaid power in the first place pay the expenses incurred on such sale or otherwise in relation to the premises and in the next place apply such moneys in or towards satisfaction of the moneys for the time being owing on the security of these presents and then pay the surplus if any of the moneys arising from such sale to the said (mortgagor) his heirs or assigns and that the aforesaid power of sale and other powers may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys then owing on the security of these presents Provided also that the said (mortgagee) his executors administrators or assigns shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts or any of them.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council Chamber,
Sydney, 27th November, 1861. }

R. O'CONNOR,
Clerk of the Legislative Council.

New South Wales.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

No.

An Act to facilitate the Transfer of Land.

WHEREAS it is expedient to facilitate the Transfer of Land by means of Registration and otherwise Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled as follows :—

1. The term "The Court" shall for the purposes of this Act unless the context otherwise indicate mean the Land Titles Court as constituted by an Act of this Session.
2. A land registry shall be established and a Land Registrar shall be appointed the Registrar General appointed under the Act nineteen Victoria number thirty-four shall be the Land Registrar and he or his deputy appointed under the Act twenty Victoria number twenty-seven shall perform all the duties of the Land Registrar under this Act.
3. The Land Registrar shall before executing any such duty take the following oath before a Judge of the Supreme Court—
" I A B do solemnly swear that I will faithfully and to the best of my ability perform all the duties imposed upon me as Land Registrar by the Land Transfer and Registry Act of 1861 So help me God."
4. The Land Registrar shall have a seal of office (hereinafter styled the Seal) and all original instruments and all copies and extracts of or from the same or of or from entries in the register hereinafter mentioned

c 12— (b) issued

NOTE.—The clause and parts of clauses ruled through are proposed to be inserted in Committee.

Land Transfer and Registry—1861.

- issued by him shall be sealed with such seal And any person who shall forge such seal or who shall forge or alter any such instrument copy or extract or who shall knowingly utter any such forged instrument copy or extract shall be guilty of forgery. Penalty for counterfeiting.
- 5 5. All instruments copies or extracts purporting to be issued under this Act by the Land Registrar and sealed with such seal shall be received in all Courts as *primâ facie* evidence of the matters therein contained. Instruments and copies sealed by Registrar to be evidence of contents.
- 10 6. All land hereafter granted in fee by the Crown and all land to which a declaration of title by the Court shall have been made final shall be subject to this Act. What land subject to Act.
- 15 7. All registered instruments purporting to transfer or otherwise deal with or affect land subject to this Act shall have effect and priority not according to their respective dates but according to priority of registration only. Registered instruments alone valid and priority determined by date of registration.
- 20 8. All instruments whatever directed or required by any Act to be registered shall if affecting land subject to this Act be registered only under this Act and such registration shall be deemed to be a compliance with such other direction or requisition. Land under this Act exempt from registration under any other Act.
- 25 9. All Powers of Attorney affecting land subject to this Act and all revocations thereof shall be registered under this Act and shall as to such land take effect only from the date of such registration. Powers of Attorney to be registered.
- 30 10. The words in column I of the second Schedule hereto shall have the same legal and equitable effect and shall be taken and construed for all intents and purposes as if the form of covenants or powers set against the same in column II of the same Schedule had been inserted in any such instrument subject nevertheless to any express qualification or addition therein inserted which shall vary the effect thereof. Forms of covenants &c.
- 35 11. The Land Registrar on delivery to him within thirty days after its date of any grant of land hereafter made by the Crown to any person or of any order making final a declaration of title by the Court in favour of any person shall enter the name description and residence of such person on the register as proprietor of the land describing such land by the description contained in the grant or order and shall also enter notice of any incumbrance reservation or other matter mentioned in any such order. Future Crown grants and final declarations to be registered.
- 40 12. On the entry of the name of the proprietor on the register the Land Registrar shall deliver to him a certificate (hereinafter styled a land certificate) authenticated by the Seal and signed by the Land Registrar stating the name of such proprietor and describing the lands in respect of which he is registered and referring to the incumbrances reservations and other matters if any of which notice has been entered on the register. Land certificate to be given on registration.
- 45 13. Every such land certificate shall be *primâ facie* evidence of the several matters therein contained. Land certificate to be evidence.
- 50 14. If any land certificate is lost mislaid or destroyed the Court may upon being satisfied of the fact of such loss mislaying or destruction direct a new land certificate to be granted in the place of the former one. Loss of certificate.
- 55 15. The Land Registrar may upon delivery up to him of a land certificate grant a new like certificate in the place of the one so delivered up. Power to grant new certificate.
16. The deposit of any land certificate shall for the purpose of creating a lien on the land described therein be deemed equivalent to a deposit of the title deeds of the land. Deposit of land certificate.
17. The following charges and interests shall not be deemed incumbrances within the meaning of this Act that is to say— Certain charges not incumbrances.
- (1.) Quit rents.
- (2.) Rights of common or of way—watercourses—rights of water and other easements.
- (3.)

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(3.) Leases or agreements for leases for any term not exceeding twenty-one years or for any less estate in cases where there is an occupation under such leases or agreements.

And all registered lands shall unless the contrary is expressed on the register be deemed to be subject to such of the above charges and interests as may be for the time being subsisting thereon.

18. The registration as proprietor of land of any person as aforesaid shall confer on him an indefeasible estate in fee simple subject to the incumbrances reservations and other matters if any entered on the register (hereinafter included under the term "incumbrances") and subject also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances except the estate or interest of a proprietor claiming the same land under a prior certificate of title or under a prior grant registered under the provisions of this Act and except as regards the omission or misdescription of any right of way or other easement created in or existing upon the same land or the wrong description thereof or of its boundaries but free from all other estates incumbrances and interests whatsoever including estates interests and claims of Her Majesty Her Heirs and Successors.

Nature of estate of first registered proprietor.

19. Where upon the first registration of land any notice of incumbrance affecting such land has been entered on the register the Court shall on proof of the discharge of such incumbrance direct the Land Registrar to enter a memorandum of such discharge on the register and upon such entry being made the incumbrance shall be deemed to be discharged.

Entry of discharge of incumbrance.

20. The registered proprietor of any land may subject to any incumbrances appearing on the register in manner hereinafter mentioned charge the same with the payment at a prescribed time of any principal sum of money either with or without interest or with the payment of any annual sum of money.

Power to charge land.

21. The instrument of charge shall be in writing under the hand of the registered proprietor in the form contained in the first Schedule hereto and attested by a solicitor of the Supreme Court as a witness to the execution thereof by the proprietor of the land and may or not confer a power of sale to be exercised after a time to be prescribed by the instrument which shall be delivered to the Land Registrar who shall retain the same and enter on the register the name of the person in whose favour the charge is made as the proprietor of such charge and the particulars of the charge. And upon such entry being completed the Land Registrar shall if required deliver to the proprietor of the charge a certificate of charge sealed and signed as aforesaid containing the particulars of the entry made on the register.

Form of deed of mortgage.

22. Every such certificate of charge shall be *prima facie* evidence of the entry made on the register in respect of the matters mentioned in such certificate.

Certificate of charge evidence of entry on register.

23. The proprietor of a charge of a principal sum may enforce a foreclosure of the land charged in the same manner and under the same circumstances in and under which he might enforce the same if the charge were secured by a conveyance of the land to him with a proviso for redemption on payment of the money named at the prescribed day.

Foreclosure by proprietor of principal charge.

24. The proprietor of a charge under an instrument conferring a power of sale may at any time after the expiration of the prescribed period transfer the land on which he has a registered charge or any part thereof in the same manner as if he were registered proprietor of such land.

Remedy of proprietor with a power of sale.

25. The proprietor of a charge of an annual sum of money not having a power of sale may enforce all such remedies for the recovery of any moneys due to him in respect of such charge as he might enforce if such annual sum were a rentcharge duly charged upon the land.

Remedy of proprietor of annual charge not having power of sale.

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26. No charge on land shall be registered unless the land certificate of such land is produced at the time of registration and it shall be the duty of the Land Registrar to record on the land certificate when produced notice of any charge created but any omission so to record the same shall **5** not invalidate or affect the priority of any such charge. Land certificate to be produced on registry of charge.
27. Registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register and not according to the order in which they are created. Priority of charges.
28. The Land Registrar shall on the requisition of the proprietor **10** of any charge or on the production of an order of the Court enter a memorandum of the discharge on the register and upon such entry being made the land shall be deemed to be discharged. Discharge of charges.
29. Every registered proprietor of land may by endorsement on the land certificate in the form contained in the first Schedule hereto transfer **15** such land or any part thereof to another proprietor and such transfer shall contain a statement of the consideration if any set forth in words at full length and shall be attested by a solicitor of the Supreme Court as witness to the execution thereof by the transferor. Transfer of land.
30. The instrument of transfer shall be delivered to the Land **20** Registrar and retained by him and he shall thereupon enter the name of the transferee as proprietor of the land comprised in the instrument. Registry of transfer.
31. Previously to completing the transfer of any land the Land Registrar shall give notice to the transferor of his intention to complete **25** the same and the transferor shall be deemed to remain proprietor of the land until the name of the transferee is entered on the register in respect thereof. Notice to be given of intended transfer.
32. Upon completion of the registry of the transferee the Land Registrar shall deliver to him a fresh land certificate stating the incumbrances if any subsisting on the land and shall also in cases where part **30** only of the land is sold deliver to the transferor a fresh land certificate containing a description of the lands retained by him. Delivery of land certificate to transferee
33. A transfer of registered land in the form contained in the first Schedule hereto made for valuable consideration shall when registered **35** confer on the proprietor to whom the same is made an indefeasible estate in fee simple in the land transferred subject to the incumbrances if any appearing on the register and subject also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances except the estate or interest of a proprietor claiming the said land under a prior declaration of title or prior grant **40** registered under the provisions of this Act or under any certificate of title issued to any transferee in conformity therewith and except as regards the omission or misdescription of any right of way or other easement created in or existing upon the same land or the wrong description thereof or of its boundaries but free from all other estates incumbrances and **45** interests whatsoever including all estates claims and interests of Her Majesty Her Heirs and Successors. Estate of transferee on purchase.
34. A transfer of registered land in the like form as last aforesaid made without valuable consideration shall when registered confer on the proprietor to whom the same is made an estate in fee simple in the land **50** transferred but subject as follows that is to say to the incumbrances if any appearing on the register also unless the contrary is expressed on the register to such charges and interests if any as are hereinbefore declared not to be incumbrances also to any unregistered estates rights or equities subject to which the transferor held the same but free from all **55** other estates incumbrances and interests whatsoever including all estates claims and interests of Her Majesty Her Heirs and Successors. Estate of voluntary transferee.
35. A separate register shall be kept of charges and the registered proprietor of any charge may by indorsement on the certificate of charge **in the form contained in the first Schedule hereto transfer such charge to**
any Transfer of charges'

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any other person and the transfer shall contain a statement of the purchase money if any paid or agreed to be paid for such transfer set forth in words at full length and shall be attested by a solicitor of the Supreme Court as witness to the execution thereof by the transferor.

5 36. The instrument of transfer shall be delivered to the Land Registry of transfer. Registrar and retained by him and he shall thereupon enter the name of the transferee on the register as proprietor of the charge comprised in the instrument.

10 37. Previously to completing the transfer of any charge the Land Registrar shall give notice to the transferor of his intention to complete the same and the transferor shall be deemed to remain a proprietor of such charge until the name of the transferee is entered on the register in respect thereof. Notice to be given of intended transfer.

15 38. Upon completion of the registry of the transferee the Land Registrar shall deliver to him a fresh certificate of charge. Delivery of certificate.

20 39. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any land such person shall be registered in the place of the deceased proprietor or proprietors as may on the application of any person interested in the land be appointed by the Court. Transmission of land on death.

25 40. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any charge the executor or administrator of such sole deceased proprietor or of the survivor of such joint proprietors or if none such the Curator of Intestate Estates shall be entitled to be registered in his place. Transmission of charge on death.

30 41. Any person appointed by the Court or any executor or administrator when registered in the place of any deceased proprietor of any land or charge shall hold the land or charge in respect of which he is registered in trust for the persons and purposes to which it is applicable by law but he shall for the purpose of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof. Fiduciary proprietors.

35 42. Upon the insolvency of any registered proprietor of any land or charge his assignee shall be entitled to be registered in his place. Insolvency.

40 43. The husband of any female proprietor of land shall be entitled to be registered as co-proprietor with his wife but he shall be described on the register as co-proprietor in right of his wife and on his death the original registry of the wife with a change if necessary in the name shall revive and confer the same rights as if her husband had never been registered as co-proprietor with her. Marriage of female proprietor.

45 44. Where land is registered in the joint names of husband and wife no disposition of such land shall be registered until the wife has been examined by the Court or some officer authorized thereby apart from her husband and has assented to such disposition after full explanation of her rights in the land and of the effect of the proposed disposition. Title of husband and wife.

50 45. The assignee of any insolvent proprietor shall hold the land or charge in respect of which he is registered subject to the equities upon and subject to which the insolvent held the same but he shall for the purposes of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof. Nature of title of assignee.

55 46. The fact of any person having become entitled to any land or charge in consequence of the death or insolvency of any registered proprietor or of the marriage of any female proprietor shall be proved in such manner as the Court may from time to time or by general order direct. Evidence of transmission of registered proprietorship.

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47. The following rules shall be observed with respect to registration :— Rules as to registration.

- (1.) No notice of any trust implied express or constructive shall be receivable by the Land Registrar or entered upon the register.
- 5 (2.) Upon the occasion of the registry of two or more persons as proprietors of the same land or of the same charge an entry may with their consent be made on the register to the effect that when a number of such proprietors is reduced below a certain specified number no registered disposition of such land or charge shall be made except with the **sanction of the Court.**
- 10 (3.) The Court may upon the application of any registered proprietor for the time being or of any person beneficially interested in the land or charge cause a transfer of the land to be made to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor or proprietors or make such order in the premises as the Court thinks just.
- 15 (4.) No alteration shall be made in the registered description of land except under the order of the Court.
- 20 (5.) Where any instrument is required by this Act to be attested by a solicitor of the Supreme Court such instrument if executed in any place out of the Colony may be attested either by a solicitor of the Court of Chancery of England or Ireland a Writer to the Signet a Consul Vice-Consul or Notary Public.
- 25

48. The Land Registrar shall on the request of the registered proprietor of any land or charge or of any person authorized by him certify in writing under his hand and under the Seal the state of the title of such registered proprietor specifying the name of such proprietor and the charges cautions inhibitions and other matters if any appearing on the register and relating to such land or charge. Certificate of title.

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49. For the purpose of authorizing or compelling a transfer to be made of any registered land or registered charge the Court may exercise all like powers as are vested in the Supreme Court by the Trustee Acts 1852 and 1853 or by any Act amending the same in relation to transfers of land. Trustee Acts 1852 and 1853 to apply to transfers of land.

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50. The registered proprietor alone shall be entitled to transfer or charge property by a registered disposition but any person whether the registered proprietor or not having a sufficient estate or interest in registered land may by any unregistered lease settlement will or other instrument create the same demises estates for life estates tail or other estates and interests as he might create if the land were not registered and any lessee or other person entitled to or claiming any right in such estates or interests may protect the same from being impaired by any act of the registered owner by entering on the register such notices cautions inhibitions or other restrictions as are hereinafter mentioned but subject to any notices of leases no purchaser for valuable consideration who shall become in virtue of such purchase the registered owner of any registered land or registered interest in land shall be affected by any notice express implied or constructive of any unregistered disposition. Effect of unregistered dispositions.

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51. Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land made subsequently to the last transfer of the land on the register where the term granted exceeds twenty-one years or where the occupation is not in accordance with such lease or agreement may apply to the Registrar to register notice of such lease or agreement and when so registered every registered proprietor of

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Lessee may apply for registry of notice of lease.

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the land and every person deriving title through him excepting proprietors of charges registered prior to the registration of such notice shall be deemed to be affected with notice of such lease or agreement.

52. In order to register notice of a lease or agreement for a lease
5 if the registered proprietor of the land does not concur in such registry the applicant shall obtain an order of the Landed Estates Court authorizing the registration of the notice of such lease and shall deliver such order to the Registrar accompanied with the original lease or a copy thereof and thereupon the Registrar shall make a note in the
10 register of the principal estate identifying the lease or copy so deposited and the lease or copy so deposited shall be deemed to be the instrument of which notice is given but if the registered proprietor concurs in such registry notice may be entered in such manner as may be agreed upon.

Manner of registering notice of leases.

53. Any person interested under any lease settlement will or other
15 unregistered instrument or by devolution in law or as a judgment creditor or otherwise howsoever in any land or charge registered in the name of any other party may lodge a caution with the Registrar to the effect that no dealing with such land or charge be had on the part of the registered proprietor until notice has been served upon the cautioner.

Caution how to be lodged.

20 54. Every such caution shall be supported by an affidavit made by the cautioner or his agent in such form as the Court directs stating the nature of the interest of the cautioner and such other matters as may be required by the said Court.

Caution to be supported by affidavit.

25 55. After any such caution has been lodged in respect of any land or charge the Land Registrar shall not register any dealing with such land or charge until he has served notice on the cautioner warning him that his caution will cease to have any effect after the expiration of twenty-one days next ensuing the date of such notice And after the expiration of such period the caution shall cease unless an order to the contrary is made by
30 the Court and upon the caution so ceasing the land or charge shall be dealt with in the same manner as if no caution had been lodged.

Effect of caution.

35 56. If before the expiration of the said period of twenty-one days the cautioner or some other person on his behalf appears before the Court and enters into a bond with sufficient security conditioned to indemnify every party against any damage that may be sustained by reason of any dealing with the land being delayed the Court may thereupon if it thinks fit so to do make an order on the Registrar requiring him to delay registering any dealing with the property for such further period as is mentioned in the order.

Transfer to be further delayed on bond being given.

40 57. Where two or more cautions are lodged with respect to the same land or to the same charge the cautioners shall as between themselves have priority according to the dates at which their cautions are lodged and not according to the dates of the creation of the claims in respect of which they have lodged such cautions.

Priority of cautions.

45 58. If any person lodges a caution with the Land Registrar without reasonable cause he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just and such compensation shall be recoverable in an action at law by the person who has sustained damage from the person
50 who lodged the caution.

Compensation for improper lodging of caution.

55 59. The Court may upon the application of any person interested made in such manner as the Court directs issue an order inhibiting for a time or until the occurrence of an event to be named in such order or generally until further order any dealing by the Land Registrar with any registered land or registered charge.

Power of Court to inhibit transfers.

60. Previously to making any such inhibitory order as aforesaid the Court shall make such inquiries as to the circumstances of the land or charge in respect of which the same is made and of the parties interested therein

Duty of Court on application for inhibition.

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therein and direct such notice to be given as it thinks necessary to enable it to form a judgment as to the expediency of making such an order and shall hear any persons interested in such land who may apply to them to be heard.

- 5 61. The said Court may make or refuse any such order and annex thereto any terms or conditions it may think fit and discharge such order when granted with or without costs and generally act in the premises in such manner as the justice of the case requires And the Land Registrar without being made a party to the proceedings upon being served with
10 such order or an official copy thereof shall obey the same. Court may annex conditions to order.
62. Where the registered proprietor of any land or charge is desirous for his own sake or at the request of some person beneficially interested in such land or charge to place restrictions on transferring or otherwise dealing with such land or charge such proprietor may upon
15 application to the Land Registrar direct that no transfer shall be made of such land or charge unless the following things or such of them as he may prescribe are done (that is to say)—
Unless notice of any application for a transfer is transmitted by
20 post to such address as he may specify to the Land Registrar.
Unless the consent of some person to be named by such proprietor is given to the transfer.
Unless some such other matter or thing is done as may be required by the applicant and approved by the Land
25 Registrar.
63. The Land Registrar shall thereupon make a note of such directions on the register and no transfer shall be made except in conformity with such directions but it shall not be the duty of the Registrar to enter any of the above directions except upon such terms as to payment
30 and otherwise as the Registrar may with the sanction of the Court direct nor to enter any restriction that the said Court may deem unreasonable or calculated to cause inconvenience and any such directions may at any time be withdrawn or modified at the instance of the registered proprietor for the time being and be subject to be set aside by the order of the said
35 Court. Registrar to enter directions in book.
64. Every person whose name is entered on the register as proprietor of land or of a charge or as cautioner or as entitled to receive any notice or in any other character shall be required to furnish to the Land Registrar a place of address in the Colony.
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65. Every notice by this Act required to be given to any person shall be served personally or through the post in a registered letter marked outside "Land Registry" and directed to such person at the address furnished to the Registrar and such notice shall unless returned
45 be deemed to have been served on the cautioner at the time when it would be delivered to him in the ordinary course of the post But no proceeding shall be taken on the faith of such notice having been served until the expiration of such period not less than five days exclusive of the day of posting as the Court may by general order appoint.
66. The Postmaster General shall give directions for the immediate
50 return to the Land Registrar of all letters marked as aforesaid and addressed to any person who cannot be found. Notices to be returned by Post Office.
67. On the return of any letter containing any notice the Registrar shall not act in the matter requiring such notice to be given except under the direction of the Court who shall make such order as under the
55 circumstances may be proper. On return of notices Registrar to apply to Court.
68. No registered purchaser for valuable consideration shall be affected by the omission to send or by the non-receipt of any notice by this Act directed to be given. Purchasers not affected by omission to send notices.

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69. All applications to the Land Registrar in respect of any entry or alteration to be made in the register shall be made by a solicitor of the Supreme Court and the Land Registrar shall with the sanction of the Court frame and cause to be printed and circulated or otherwise promulgated as he sees occasion forms of applications and directions indicating the particulars of the information to be furnished to the Land Registrar when any application is made to him under this Act including plans according to such scale as he shall think fit and also forms of registered instruments and such other forms and directions as the Land Registrar may deem requisite or expedient for facilitating proceedings under this Act.

Registrar to frame and promulgate forms.

70. The Land Registrar shall not individually nor shall any person acting under his authority be liable to any action suit or proceeding for or in respect of any act or matter *bonâ fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act.

Registrar not to be liable in respect of acts done *bonâ fide*.

71. If any person shall sustain any damage loss or injury by reason of any mistake omission or error which may happen or be made in or respecting any registration effected or certificate issued under this Act the person aggrieved his heirs executors or administrators may bring an action against the Colonial Treasurer of the Colony and also against any person not being himself a party lawfully entitled to indemnity in respect of such mistake omission or error who shall derive benefit from such registration or certificate shall be so effected or issued his heirs executors or administrators if resident in the Colony but if not then against the Colonial Treasurer alone to recover full compensation for any such damage loss or injury and upon proof of such damage loss or injury the plaintiff in such action shall recover such compensation as aforesaid against the defendants therein And in every such action the Colonial Treasurer and his co-defendant or either of them may plead in bar any tender which may have been made on paying into Court in the usual way according to the practice of the Court the amount of the money tendered or to pay money into Court and plead such payment in bar of the further maintenance of the action and whichever party shall succeed in such action shall be entitled to costs to be awarded and recovered according to the practice of the Court ~~Provided that the Colonial Treasurer shall be reimbursed out of the Consolidated Revenue Fund all moneys which he may pay or incur for or in respect of damages or costs in any such action Provided also that in all such cases the Colonial Treasurer shall be entitled to recover by action in the Supreme Court from the person by whom or in whose favour such registration or certificate shall have been effected or issued his heirs executors or administrators all moneys so paid or incurred as last aforesaid with costs of suit.~~

Indemnity for error in registration or certificate.

72. In order to create an indemnity fund to the Government for or towards meeting the liabilities created by the next preceding section there shall in addition to the fees of Court be payable upon the issue of any first certificate of registration the sum of _____ in the pound on the estimated value of the land in respect of which such certificate shall be issued and no such certificate shall be issued or take effect until payment thereof and the same shall be paid over to the Colonial Treasurer and by him carried to the account of the Consolidated Revenue Fund and such value shall be ascertained in like manner as hereinafter provided in respect of fees of Court.

Indemnity fund.

72. The Court shall with the approval of the Governor and Executive Council determine the amount of fees to be paid to the Land Registrar with respect to the following matters—

Court to determine amount of fees to be paid for registration.

The first entry on the register of land and of incumbrances on land.

The

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The registry of transfers and transmissions of land and charges. And the said Court may with the like approval from time to time alter any amounts so determined ~~But all such fees shall be paid to the Colonial Treasurer to be carried to the account of the Consolidated Revenue Fund of the Colony.~~

73. In determining the amount of fees payable as aforesaid regard shall be had to the following matters— Principle on which fees to be determined.

- 10 (1.) In the case of the registry of land or of any transfer of land on the occasion of a sale—to the value of the land as determined by the amount of purchase money.
- (2.) In the case of the registry of land or of any transfer of land not upon a sale to the value of the land to be ascertained in such manner as the Court by any general order directs.
- 15 (3.) In the case of registry of a charge or any transfer of a charge to the amount of such charge.
- Subject nevertheless to the qualifications following—
- (1.) The amount of fees payable shall not in any case exceed five per cent. on the value of the land or the amount of charge.
- 20 (2.) A maximum amount shall be fixed and in cases where the value of any land or the amount of any charge exceeds such maximum the Court may make payable in respect of such excess fees on such a reduced scale as the Court thinks expedient.
- 25 (3.) Where increased labor is thrown on the Registrar by reason of the severance of the parcels of an estate the entry of a new description of parcels or of any other matter an increased sum may be charged.

30 74. The Court with the concurrence of the Chief Justice may from time to time fix a scale of costs to be paid to solicitors in respect of any work to be done by them in any matter relating to registered land and may from time to time alter any such scale when fixed and such scale of costs may be based either wholly or in part on an *ad valorem* principle and upon publication in the *Gazette* shall have the force of law. Scale of costs to be fixed.

35 75. The forms in the first Schedule hereto shall be used in all matters to which they refer but the Court may from time to time make such alterations in such forms and such additional forms as it deems requisite and shall publish any altered or additional form in the *Gazette* and upon such publication being made it shall have the force of law. Forms to be used.

40 76. Subject to such regulations as may be imposed and to the payment of such sums as may be fixed by the Court with the assent of the Chief Justice any person registered as proprietor of any land or charge and any person authorized by any such proprietor or by an order of the Court but no other person may inspect and make copies of and 45 extracts from any register or document in the custody of the Land Registrar relating to such land or charge. Inspection of documents by authority of registered proprietor.

50 77. If any person fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of any order of the Court in relation to registered land or fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of the entry on the register of any caution or notice of a lease or of the erasure from the register or alteration on the register of any caution or notice of a lease such person shall be guilty of a misdemeanor and any order procured by fraud and any act consequent on such order and 55 any entry erasure or alteration so made by fraud shall be void as between all parties or privies to such fraud. Certain offences to be felony.

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78. No proceeding or conviction for any act hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such act may be entitled to either at law or in equity against the person who has committed such act. Conviction not to affect civil remedy.

5 79. If any person is guilty of the following offences or any of them Forgery to be a felony.
(that is to say)—

10 (1.) Forges or procures to be forged or assists in forging the seal of the office or the name signature or handwriting of any officer of the land registry in cases where such officer is by this Act expressly or impliedly authorized to affix his signature

(2.) Stamps or procures to be stamped or assists in stamping any document with any forged seal of the land register

15 (3.) Forges or procures to be forged or assists in forging the name signature or handwriting of any person whomsoever to any instrument which is by this Act or in pursuance of any power contained in this Act expressly or impliedly authorized to be signed by such person

20 (4.) Uses with an intention to defraud any person whomsoever any document upon which any impression or part of the impression of any seal of the land registry has been forged knowing the same to have been forged or any document the signature to which has been forged knowing the same to have been forged

25 such person shall be guilty of felony.

80. Any person convicted of felony under this Act shall be liable to be kept to hard labor on the roads for the term of his life or any term not less than seven years or to imprisonment for any term not exceeding three years with or without hard labor. Punishment of felony.

30 81. Nothing in this Act contained shall entitle any person to refuse to make a complete discovery by answer to any Bill in Equity or to answer any question or interrogatory in any Civil proceeding in any Court of Law or Equity or of Insolvency but no answer to any such Bill question or interrogatory shall be admissible in evidence against such person in any criminal proceeding under this Act. Enactment of penalty not to exclude obligation to make discovery.

35 82. The Court may with the concurrence of the Chief Justice make rules for establishing the best and most effectual system of registration under this Act and generally for carrying into complete execution all matters hereby contemplated but not expressly or sufficiently provided for. General Rules to be made.

40 83. All such rules when published in the *Gazette* shall have the force of law and they shall be laid before both Houses of Parliament forthwith if then in Session and if not within fourteen days after the opening of the then next Session. When gazetted to be law and to be laid before Parliament.

45 84. This Act shall be styled and may be cited as the "Land Transfer and Registry Act of 1861" and shall commence and take effect on and from a day to be fixed by the Governor by Proclamation. Short Title and commencement

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FIRST SCHEDULE.

FORM OF LAND CERTIFICATE.

Dated the _____ day of _____

I hereby certify that *A. B.* is the registered proprietor of the lands described in the Schedule annexed to this certificate and that such lands are free from incumbrances (*subject to the incumbrances hereinafter mentioned.*) 5

C. D.
Registrar.

 FORM OF CHARGE.

Dated _____ day of _____

10

I *A. B.* being the registered proprietor of the lands described in the accompanying land certificate hereby charge the same with the payment of ten thousand pounds to *John Jones* on the _____ day of _____ next and also with payment of interest thereon at the rate of *five pounds per centum per annum* payable to the said *John Jones* or his assigns on the *first of January and the first of July* in every year so long as the said principal sum or any portion thereof remains unpaid The said *John Jones* shall have power to sell the land at the expiration of six months from the _____ day of _____ if whole moneys not then or sooner paid. 15

A. B.

20

Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales.

 FORM OF CERTIFICATE OF CHARGE.

Dated the _____ day of _____

I hereby certify that *John Jones* is proprietor of a charge of *ten thousand pounds* on the lands described in the Schedule annexed to the certificate and that the interest is payable to the said *John Jones* on the *first day of January and the first day of July* in every year at the rate of *five pounds per centum* The said *John Jones* has a power in default of payment to sell the land at the expiration of six months from the _____ day of _____ 25

C. D.
Registrar. 30

 FORM OF TRANSFER OF LAND.

Dated the _____ day of _____

I the within named *A. B.* in consideration of seven hundred pounds paid to me transfer to *C. D.* the within mentioned lands or the portion of the within mentioned lands hereinafter described viz. :— 35

(Signed) *A. B.*

Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales.

 FORM OF TRANSFER OF CHARGE.

Dated the _____ day of _____

40

I the within named *John Jones* in consideration of ten thousand pounds this day paid to me hereby transfer to *John Smith* the within mentioned charge.

(Signed) *John Jones.*

Witness *C. D.* of _____ solicitor of the
Supreme Court of New South Wales. 45

 SECOND

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SECOND SCHEDULE.

COLUMN I.

COLUMN II.

| | |
|---|--|
| 1. The said A. B. covenants with the said C. D. | 1. And the said A. B. doth hereby for himself his heirs executors and administrators covenant with the said C. D. his heirs and assigns in manner following (that is to say)— |
| 2. That the said A. B. has notwithstanding any act of his the right to grant the said lands to the said C. D. | 2. That notwithstanding any act deed matter or thing by the said A. B. done executed committed permitted or suffered to the contrary he the said A. B. now hath in himself good right full power and absolute authority to grant release or otherwise assure the said lands and other the premises hereby assured or intended so to be with their and every of their appurtenances unto the said C. D. in manner aforesaid and according to the true intent of these presents. |
| 10 3. and that the said C. D. shall have quiet possession of the said lands. | 3. And that it shall be lawful for the said C. D. his heirs and assigns from time to time and at all times hereafter peaceably and quietly to enter upon have hold occupy possess and enjoy the said lands and premises hereby conveyed or intended so to be with their and every of their appurtenances and to have receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any suit denial eviction interruption claim or demand whatsoever of from or by him the said A. B. or his heirs or any person claiming or to claim by from under or in trust for him them or any of them. |
| 20 4. free from all incumbrances. | 4. And that free and clear or freely and absolutely acquitted exonerated and for ever discharged or otherwise by the said A. B. or his heirs well and sufficiently kept harmless and indemnified from and against every former and other gift grant bargain sale trust and any and every other estate right title interest charge and incumbrance whatsoever made executed created or suffered by the said A. B. or his heirs or by any person claiming or to claim by from under or in trust for him them or any of them. |
| 25 5. And that the said A. B. will execute further assurances if requisite. | 5. And that the said A. B. his heirs executors or administrators and all and every other person whosoever having or claiming or who shall or may hereafter have or claim any estate right title or interest whatsoever at law or in equity in to or out of the said lands and premises hereby granted released or otherwise assured or intended so to be or any of them or any part thereof by from under or in trust for him them or any of them shall and will from time to time and at all times hereafter upon every reasonable request and at the costs and charges of the said C. D. his heirs or assigns make do execute or cause to be made done or executed all such further and other lawful acts deeds things conveyances and assurances in the law whatsoever for the better more perfectly and absolutely conveying and assuring the said lands and premises hereby granted released or otherwise assured or intended so to be and every part thereof with their appurtenances unto the said C. D. his heirs and assigns in manner aforesaid as by the said C. D. his heirs and assigns his or their counsel in the law shall be reasonably advised or required so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same and his heirs executors or administrators only and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof to go or travel from his usual place of abode. |
| 35 6. And that the said A. B. has done no act to incumber. | 6. And that the said A. B. hath not at any time heretofore made done committed executed or knowingly suffered any act deed matter or thing whatsoever whereby or by means whereof the said lands and premises hereby granted released or otherwise assured or intended so to be or any part or parcel thereof are is or shall or may be in anywise impeached charged incumbered or affected in title estate or otherwise howsoever. |
| 40 50 60 7. And the said A. B. releases to the said C. D. all his claims upon the said land. | 7. And the said releasor doth by these presents remise release and for ever quit claim unto the said releasee his heirs and assigns all and all manner of right title interest claim and demand whatsoever at law and in equity into and out of the said lands and premises hereby granted or intended so to be and every part and parcel thereof so that neither he nor his heirs executors administrators or assigns shall nor may at any time hereafter have claim pretend to challenge or demand the said lands and premises or any part thereof in any manner howsoever but the said releasee his heirs |

and

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COLUMN I.

COLUMN II.

| | |
|--|---|
| | and assigns and the same lands and premises shall from henceforth and for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor might or could have upon him in respect of the said lands or upon the said lands. |
| <p>5</p> <p>8. That he will insure.</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> | <p>8. That he the said A. B. his executors administrators or assigns will so long as any money shall remain on this security keep all the buildings on the said land insured against loss or damage by fire in the amount of the principal sum hereby secured at the least and will pay all premiums and sums of money necessary for such purpose on the first day on which the same respectively ought to be paid and will on demand produce to the said C. D. his executors administrators and assigns the policy or policies of such insurance and the receipt for every such payment and also that if default shall be made in keeping the said premises so insured it shall be lawful for the said C. D. his executors administrators and assigns out of his or their own moneys to insure and keep insured the said premises in any sum not exceeding the amount of the said principal sum and that the said A. B. his executors administrators or assigns will repay to the said C. D. his executors administrators or assigns all moneys expended for that purpose by him or them with interest thereon at the rate aforesaid from the time of the same respectively having been advanced and paid and that until such repayment the same shall be a charge upon the said premises hereinbefore expressed to be hereby assured.</p> |
| <p>9. That the said (mortgagee) may sell after any default</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p> <p>65</p> | <p>9. And it is hereby declared that the said (mortgagee) his executors administrators or assigns may at any time after any default shall have been made in the observance of any of the covenants herein contained without any further consent on the part of the said (mortgagor) his heirs or assigns sell the said premises or any part thereof either together or in parcels and either by public auction or private contract and may buy in or rescind any contract for sale and re-sell without being responsible for loss occasioned thereby and may execute and do all such assurances and things for effecting any such sale as he or they shall think fit and that upon a sale by any person or persons who may not be seised of the legal estate the person on whom the legal estate shall be vested shall execute and do such assurances and things for carrying the same into effect as the person or persons by whom the sale shall be made shall direct Provided that upon any sale purporting to be made in pursuance of the aforesaid power no purchaser shall be bound to inquire whether any money remains upon the security of these presents nor as to the propriety or regularity of such sale and notwithstanding any impropriety or irregularity whatsoever in any such sale the same shall as regards the purchaser or purchasers be deemed to be within the aforesaid power and be valid accordingly And it is hereby declared that the receipt of the said (mortgagee) his executors administrators or assigns for the purchase moneys of the premises sold or only part thereof shall effectually discharge the purchaser or purchasers therefrom and from being concerned to see to the application thereof And that the said (mortgagee) his executors administrators and assigns shall out of the moneys arising from any sale in pursuance of the aforesaid power in the first place pay the expenses incurred on such sale or otherwise in relation to the premises and in the next place apply such moneys in or towards satisfaction of the moneys for the time being owing on the security of these presents and then pay the surplus if any of the moneys arising from such sale to the said (mortgagor) his heirs or assigns and that the aforesaid power of sale and other powers may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys then owing on the security of these presents Provided also that the said (mortgagee) his executors administrators or assigns shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts or any of them.</p> |