

THE REGISTRATION OF TITLES ACT

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THE REGISTRATION OF TITLES ACT

[1st October, 1889.]

Caps. 340.
Law
60 of 1954
S. 64 (1).
Acts
25 of 1967,
42 of 1969
3rd Sch.,
10 of 1974,
25 of 2005
S. 13,
11 of 2015
Sch.

1. This Act may be cited as the Registration of Titles Act. Short title.

Preliminary

2. All laws and practice whatsoever, relating to freehold and other interests in land, so far as is inconsistent with the provisions of this Act, are hereby repealed, as far as regards their application to land under the provisions of this Act, or the bringing of land under the operation of this Act. Partial re-
peal of laws
and practice
as to interests
in land.

3. In this Act—

Interpreta-
tion.

“annuity” shall mean a sum of money payable periodically and charged on land under the operation of this Act by an instrument thereunder;

“charge” shall mean the instrument creating and charging an annuity;

“Commissioner for taking affidavits” shall mean a Justice or other officer or person authorized to take affidavits in the several Courts of Jamaica;

“endorsed” shall include anything written upon, or in the margin, or at the foot of, any document;

“grantor” shall include the proprietor of land charged with the payment of an annuity;

“incumbrance” shall include all estates, interests, rights, claims and demands, which can or may be had, made or set up, in, to, upon or in respect of the land adversely and preferentially to the title of the proprietor;

“instrument” shall include a conveyance, assignment, transfer, lease, mortgage, charge and also the creation of an easement;

“Judge” shall mean a Judge of the Supreme Court of Justice;

“land” shall include messuages, tenements and hereditaments, corporeal or incorporeal; and in every certificate of title, transfer and lease, issued or made under this Act, such word shall also include all easements and appurtenances appertaining to the land therein described, or reputed to be part thereof or appurtenant thereto;

“patent” shall mean the deed of grant from the Crown of any unpatented lands in Jamaica, or any lands which having once been patented have been adjudged forfeited or escheated to the Crown, or of any lands sold pursuant to the provisions of any law adjudging possession thereof to the Crown;

“person” shall include a corporation, whether aggregate or sole;

“proprietor” shall mean the owner solely, jointly or in common with any other person, whether in possession, remainder, reversion, expectancy or in tail, or otherwise, of land, or of a lease, mortgage or charge; and such word shall also include the donee of a power, or other person empowered or authorized to appoint or dispose;

“settlement” shall mean any document under or by virtue of which any land shall be so limited as to create partial or limited estates or interests;

“transmission” shall mean the devolution of an estate or interest in land under any will or settlement, or by descent, or on executors or administrators as such.

Appointment, Powers and Functions of Officers

4. The Governor-General may from time to time appoint by warrant under his hand and the Broad Seal of Jamaica a fit and proper person, being a member of the Bar of Jamaica, England, Scotland, or Northern Ireland or being a Solicitor of the Supreme Court or of the Supreme Court of Judicature of England, Scotland, or Northern Ireland, or a Writer to the Signet of Scotland, to be the "Registrar of Titles" (hereinafter called the Registrar), for investigating and dealing with applications for bringing land under the operation of this Act, and for other purposes hereinafter mentioned.

Registrar of
Titles, his
appointment.
42/1969
3rd Sch.

5.—(1) The Governor-General may appoint one or more fit and proper persons, each being a member of the Bar of Jamaica, England, Scotland or Northern Ireland, or being a Solicitor of the Supreme Court or of the Supreme Court of Judicature of England, Scotland, or Northern Ireland, or a Writer to the Signet of Scotland, to be a Deputy Registrar of Titles.

Appointment
and qual-
ification of
Deputy
Registrar.

42/1969
3rd Sch.
10/1974
S. 2(a), (b).

(2) A Deputy Registrar of Titles shall, subject to the general or special directions of the Registrar of Titles, assist the Registrar in the performance of the duties of Registrar under this Act and the Deputy Registrar shall, in the exercise of his office, have all and singular the like authorities, powers, duties, immunities and liabilities of the Registrar.

10/1974
S. 2(c).

(3) Everything by this Act, or any enactment amending or incorporated with the same, appointed or authorized, or required to be done, or signed, by a Registrar may be done or signed by a Deputy Registrar and shall be as valid and effectual as if done or signed by the Registrar.

10/1974
S. 2(d).

(4) If from any cause the office of Deputy Registrar of Titles is vacant, or if, owing to absence or inability to act from illness or any other cause a Deputy Registrar

10/1974
S. 2(f).

10/1974
S. 2(e).

of Titles is unable to perform the duties of his office, the Governor-General may, appoint some fit and proper person (whether or not such person is qualified under subsection (1) for an office of Deputy Registrar of Titles) to act temporarily as Deputy Registrar of Titles, and any person so appointed shall for the time being have all the authorities, powers, immunities and liabilities and perform all the duties of the office of Deputy Registrar of Titles.

Constitution
of panel of
Referees.

25/1967
S. 2.
25/2005
S. 13.

6.—(1) The Minister may appoint a panel of not less than three nor more than ten persons, qualified as aforesaid, each of whom shall be a Referee of Titles under this Act (hereinafter called a Referee) so, however, that the validity of the constitution of the panel shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

(2) The office of a Referee shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

Salary and
fees of
Registrar and
Referees.

7. The Registrar shall receive such annual salary as shall from time to time be determined by the Minister, and the Referees shall be paid fees in respect of each reference on such scale as shall from time to time be fixed by the Minister. Such salary and fees shall be paid out of the Consolidated Fund.

Salary of
Deputy
Registrar.
10/1974
S. 3.

8. A Deputy Registrar of Titles shall receive such annual salary as the Minister may with the sanction of the House of Representatives from time to time determine.

Acting
appoint-
ments.

9. In case of the illness, incapacity or absence, of any officer appointed under this Act, the Governor-General may appoint a person to act in lieu of such officer; the person so appointed shall have all the powers and perform all the

duties of the officer in whose stead he may have been appointed.

10. The Minister shall provide an office for the Registrar, which shall be called the Office of Titles; and it shall be lawful for the Minister from time to time to appoint any suitable place for such office.

Office of
Registrar

11.—(1) The Registrar may give authority in writing to any officer of the Office of Titles to sign anything authorized or required by this Act to be signed by the Registrar.

Registrar
may give
authority
to sign.

25/1967
S. 3.

(2) The Registrar may, in the instrument in which authority is given under subsection (1) to any officer—

(a) require that such authority shall be exercised in accordance with the general or specific directions of the Registrar;

(b) specify the period for which such authority shall be valid, so, however, that any such period may be extended from time to time and any authority given under this section may be revoked at any time.

(3) Anything signed by any officer to whom authority is given under this section and in accordance with such authority shall be as valid and effectual as if it were signed by the Registrar.

(4) Notice of every authority given under this section and of every extension thereof or the revocation thereof shall be published in the *Gazette* but failure to publish such notice shall not affect the validity of the authority conferred or any extension or revocation thereof, as the case may be.

12. All courts, Judges and persons acting judicially, shall take judicial notice of the seal of the Office of Titles, and of the signature of the Registrar and of any person appointed to act in his stead as aforesaid.

Judicial
notice of
seal of
Office and
signature of
Registrar.

Seal of the
Office of
Titles,
Jamaica.

13. The Registrar shall cause to be prepared, and shall keep and use, a seal bearing the impression of the Arms of Jamaica, and having inscribed in the margin thereof the words, "Office of Titles, Jamaica"; and all certificates of title and other documents purporting to be sealed with such seal, and to be signed by the Registrar, shall be admissible as evidence without further proof.

As to
Registrar
and Referees
practising.

14. The Registrar shall not directly or indirectly practise as a barrister or solicitor, or participate in the fees or remuneration of any other person so practising:

Provided that this section shall not apply to a person appointed under the provisions of section 9 to act as Registrar.

25/1967
S.4.

It shall be lawful for the persons appointed as Referees as aforesaid to practise their profession, but the Minister shall by rule, to be made as aforesaid, provide that no such Referee shall be consulted with respect to an application to be made by a client.

Powers and
duties of
Registrar
and
Referee.

15. The Registrar or the Referee to whom any application is referred may, by summons under his hand, require the proprietor or mortgagee or other person interested in any land under or proposed to be brought under the operation of this Act, in respect of which any transfer, lease, mortgage, charge or other dealing, or any discharge from any mortgage or charge, is proposed to be transacted or registered, or in respect of which any change of ownership by transmission is proposed to be registered or search certificate issued, to appear at a time and place to be appointed in such summons, and give any explanation concerning such land or any document affecting the title thereto, and to produce any deed of grant, certificate of title, will, mortgage, or other instrument or document, in his possession or within his control affecting such land, or the title

thereto; and the Registrar or Referee is hereby authorized to examine upon oath (which oath he is hereby empowered to administer) any such proprietor, mortgagee or other person as aforesaid, and any such proprietor, mortgagee or other person who shall fail, refuse or neglect, to attend the Registrar or Referee for the purpose of being examined, or to produce any such document, or to allow the same to be inspected, or shall refuse or neglect to give any such explanation as aforesaid shall be liable, on any such default, to be summoned before a Judge, and by him to be dealt with as in the case of a contempt of the Supreme Court; and if the information or document withheld appears to the Registrar or Referee to be material he shall not be bound to proceed with the transaction.

The Registrar may also exercise the following powers and duties, that is to say--

- (a) He may administer an oath, and may take and receive the declaration of any person voluntarily making the same (in this Act called a statutory declaration).
- (b) He shall correct errors in the Register Book, or in entries made therein, or in duplicate certificates or instruments, and may supply entries omitted to be made under the provisions of this Act; but in the correction of any such error he shall not erase or render illegible the original words, and he shall affix the date on which such correction was made or entry supplied, and initial the same; and every error or entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted; except as regards any entry made in the Register Book prior to the actual time of correcting the error, or supplying the omitted entry.

- (c) He shall, upon the direction of a Referee or when it shall appear to him necessary, lodge a caveat on behalf of Her Majesty, or on behalf of any person who shall be under the disability of infancy, coverture, lunacy, unsoundness of mind or absence from Jamaica, to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person, and also to prohibit the dealing with any land in any case in which it shall appear that an error has been made by misdescription of such land, or otherwise, in any certificate of title, or in any instrument, or for the prevention of any fraud or improper dealing.

Notice to
Deputy
Keeper
of the
Records of
land brought
under the
operation of
this Act.

16. When any land shall be brought under the operation of this Act the Registrar shall, in the case of all applications in which it appears that a deed or other document of title relating to the land is on record in the Record Office, forthwith notify the fact to the Deputy Keeper of the Records, and shall furnish him with particulars of the recording of such deed or document with regard to each parcel, if more than one, or the last of such deeds or documents, if more than one, and the Deputy Keeper of the Records shall thereupon make a memorandum of such fact on the margin of the record of the last such deed or document or deeds or documents.

Convey-
ances
or transfers
under the
Settled Land
Act, need
not be
recorded.

17. Conveyances or transfers of land under this Act executed under the authority of the Settled Land Act need not be recorded in the Record Office, but shall be registered in manner hereinafter provided.

Contribu-
tion to the
Assurance
Fund.
25/1967
S. 5 (a).
Eighteenth
Schedule.

18. Upon first bringing lands under the operation of this Act, there shall be paid to the Registrar, as an Assurance Fund, a sum not exceeding the sum specified in the Eighteenth Schedule:

Provided the value of any such land shall be deemed to be the value thereof at the time of lodging the application to bring the land under the operation of this Act and such value shall be ascertained by the statutory declaration of the applicant.

25/1967
S. 5 (b).

If the Registrar shall not be satisfied of the correctness of the value so declared, he may require such applicant to produce a certificate of such value under the hand of a Valuer appointed under this Act, which certificate shall be received as conclusive evidence thereof.

25/1967
S. 5 (c).

19. The Registrar shall keep a correct account of all sums of money which shall be received by him under the provisions of this Act, and shall pay the same to the Accountant-General at such times, and shall render accounts of the same to such persons and in such manner, as may be directed by any law or regulations for the time being in force relating to the collection and payment of the public moneys, and the audit of the public accounts.

Registrar to keep accounts and duly account for all moneys.

All penalties and fees received under the provisions of this Act (except sums received as contributions to the Assurance Fund or in augmentation thereof) shall be carried to and form part of the Consolidated Fund.

20. All sums of money which shall be received by the Registrar as contributions to the Assurance Fund, or in augmentation thereof, shall be paid to the Accountant-General, who shall place such sums to the credit of an account to be kept in his department, to be called the Assurance Fund, and shall from time to time invest the same, together with all dividends and profits accruing thereon, in Jamaica Government securities, or otherwise as the Minister may direct, to constitute an Assurance Fund for the purposes hereinafter mentioned :

Contributions to Assurance Fund, how to be dealt with.

25/1967
S. 6.

Provided however that the Minister may from time to time, authorize such sums of money as may be approved by resolution by the House of Representatives to be transferred from the Assurance Fund into the Consolidated Fund and money transferred as aforesaid shall be used for the purpose of a Trigonometrical Survey of Jamaica and for such other purposes as may be required for the advancement of the objects of this Act:

Provided further that at no time shall the Assurance Fund, by any such transfer, be reduced to an amount of less than thirty thousand dollars.

Power of Registrar to make regulations and alter forms in Schedules.

21. The Registrar may from time to time, with the consent of the Minister, make regulations respecting the parcels of land that may be included in one certificate of title, and may, with the like consent, revoke or alter such regulations; and he may also, with the like consent, from time to time make such alterations in the several forms and in the several Schedules hereto as he may deem requisite, and every form authenticated by the seal of the Office shall be taken to be the legally authorized form, unless the contrary be proved.

Power to state a case.

22. It shall be lawful for the Registrar, whenever any question shall arise with regard to the performance of any duty, or the exercise of any of the functions, by this Act conferred or imposed on him, to state a case for the opinion of the Court of Appeal; and thereupon it shall be lawful for the Court to give its opinion thereon, and such opinion shall be binding upon the Registrar.

Appointment of Valuers.

23. The Minister may appoint persons to be Valuers under this Act, and at pleasure annul the appointment of any such person.

*Procedure in bringing Land under the operation of
this Act*

24. Land may be brought under the operation of this Act by the Registrar registering the title of some person thereto as the proprietor thereof in manner hereinafter provided.

How land
brought
under this
Act,

25. The title of any person to land brought under the operation of this Act shall be registered either as an absolute or as a qualified title.

Registration
of title as
absolute or
qualified.

26. A person registered under this Act as proprietor of any land with an absolute title shall be entitled to hold such land in fee simple, together with all rights, privileges and appurtenances, belonging or appurtenant thereto, subject as follows—

Registra-
tion of
proprietor
with
absolute
title, effect
thereof.

- (a) to the incumbrances (if any) entered on the certificate of title; and
- (b) to such liabilities, rights and interests, as may under the provisions of this Act subsist over land brought under the operation of this Act without being entered on the certificate of title as incumbrances, but free from all other estates and interests whatsoever including estates and interests of Her Majesty, her heirs and successors, save only quit rents, property tax or other impost, charged generally on lands in this Island, that have accrued due since the land was brought under the operation of this Act.

27. A person registered under this Act as proprietor of any land with a qualified title shall be entitled to hold such land, except as against any person claiming any estate, right or interest therein arising before a specified date, or under a specified instrument, or otherwise particularly described

Registra-
tion of
proprietor
with a
qualified
title, effect
thereof.

in the certificate of title; and the registration of a person with a qualified title shall have the same effect as the registration of such person with an absolute title save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right or interest, appearing on the certificate of title to be excepted :

Provided always that a person registered as aforesaid with a qualified title may at any time thereafter apply to be registered with an absolute title, subject to all the provisions relating to an original application save and except that only half the fees payable on any such original application shall be payable, and that it shall not be obligatory on the Referee to cause the application to be advertised before directing the Registrar to register such applicant with an absolute title.

Who may
apply
to have
land brought
under this
Act.
First
Schedule.

28. Any of the following persons may, by an application addressed to the Registrar, in the form in the First Schedule, apply to have land brought under the operation of this Act, that is to say—

- (i) the person claiming to be the owner of the fee simple, either at law or in equity;
- (ii) persons who collectively claim to be the owners of the fee simple either at law or in equity;
- (iii) persons who have the power of appointing or disposing of the fee simple :

Provided that in the event of such land being brought under the operation of this Act such application shall be deemed both at law and in equity to be and to have been an exercise of such power;

- (iv) the person claiming to be the owner of the first estate of freehold, if the owner of the first vested estate of inheritance shall consent to the application;

- (v) trustees for the sale of the fee simple, but if any previous consent to their selling be requisite, the persons required to give such consent must consent to the application;
- (vi) the guardian of any infant, or the committee of the estate of any lunatic or person of unsound mind unable to manage his estate, so, however that the application be made on behalf of such infant, lunatic or person, and the certificate of title be directed to issue in his name;
- (vii) the Commissioner of Lands, or other officer duly authorized in writing by the Minister, applying to bring land the property of the Crown under the operation of this Act;
- (viii) the person or persons claiming to be the owner or owners of the fee tail upon a sale by him or them to a *bona fide* purchaser for value and directing the certificate of title to issue in the name of such purchaser;
- (ix) a tenant for life, within the meaning of the Settled Land Act or any enactment amending or incorporated with that Act, who has exercised his power of sale and who directs the certificate of title to be issued in the name of the purchaser:

Provided that the certificate of title shall not issue until there has been lodged with the Registrar, signed by the trustees of the settlement and attested by a witness to the satisfaction of the Registrar, a consent, or a receipt for the purchase money:

Provided always that a mortgagor shall not be entitled to make such application unless the mortgagee shall consent thereto, nor a mortgagee unless for the purpose of the exercise of his power of sale, and unless the certificate of title shall be directed to issue in the purchaser's name, nor

a married woman unless she shall be entitled to the land for her separate use or has a power to appoint the same, or unless her husband shall consent thereto and the application shall be acknowledged by her in the same manner as any deed or other instrument is at the date of the commencement of this Act required to be acknowledged by a married woman :

Provided also, that the attorney of any corporation howsoever and wheresoever incorporated, whether already constituted or hereafter to be constituted, appointed under a seal purporting to be the common seal of the corporation, may make such application for or on behalf of the corporation of which he is the attorney, and may make the requisite declaration to the best of his knowledge, information and belief, and may subscribe the application in his own name.

What
evidence,
particulars
and fees
must
accompany
application.

Eighteenth
Schedule.

29. Every such application shall be accompanied by the deeds and documents or other evidence that the applicant relies on in support of his title, and by an affidavit containing such particulars as may be prescribed, and by the fees set forth in the Eighteenth Schedule as payable on making application under this Act, and by a certificate from the proper officer that all quit rents and property tax affecting the land have been paid up to the date of the application, and by a receipt or receipts from the proper officer showing that all succession duties that have become payable in respect of the land have been paid :

Provided that if any such deed or documents are recorded it shall be sufficient for the applicant to give references to the same. The applicant may, if he conceives himself entitled to a qualified title only, state in his application the nature of the qualification subject to which he conceives himself entitled.

30. A person applying to have any land brought under the operation of this Act shall describe and identify the land in one or other of the following ways—

Identifica-
tion
of land.

- (a) by plat or diagram;
- (b) by metes and bounds.

31. The Registrar shall submit such application, together with the deeds, documents or other evidence as aforesaid, to one of the Referees for his direction; and if the Referee shall, on consideration of the deeds, documents or other evidence aforesaid, be of opinion that the applicant is a person entitled to make application under this Act, and that he is in possession by himself or a tenant of the land described or identified in the application and that he would be entitled to maintain and defend such possession against any other person claiming the same or any part thereof, he shall provisionally approve the registration of the title of the applicant or his nominee as an absolute title to the land described or identified in the application.

Reference
of applica-
tion and
evidence
to Referee,
and
proceedings
thereon.

If the Referee shall be of opinion that the applicant is entitled to make application as aforesaid, and that he is in possession as aforesaid substantially of the land described or identified as aforesaid, and that he would be entitled to maintain and defend such possession as against any other person claiming the same or any part thereof, and that the land of which the applicant is in such possession as aforesaid, though the evidence is insufficient as to the description or identification thereof given in the application, is capable of being described or identified in the other way in which it might have been described or identified in the application, he shall provisionally approve the registration of the title of the applicant or his nominee as an absolute title to land described or identified in the way in which it might have been described or identified in the application.

In either of the two cases aforesaid, if the Referee shall be of opinion as aforesaid, except that the applicant does not satisfy him that he would be entitled to maintain and defend his possession against any person whose estate, right or interest, might arise before a specified date or under a specified instrument, or might be otherwise particularly described, he shall provisionally approve the registration of the title of the applicant or his nominee as a qualified title to land as aforesaid, and shall specify the nature of the qualified title to land as aforesaid, and shall specify the nature of the qualification to which such title is to be subject.

What
incum-
brances
shall not pre-
vent
approval
of title.

32. It shall be no objection to the Referee approving any title as aforesaid that the land is subject to any liabilities, rights or interests, which under the provisions of this Act, need not be entered on the certificate of title as incumbrances, or that the land is subject to any incumbrance (not being a mortgage the owner whereof shall not have consented to the application) which may be specified in the certificate of title and continue outstanding.

Notification
of provi-
sional
approval of
title.

33. When the Referee shall provisionally approve of the registration of any title as aforesaid, he shall communicate such provisional approval to the Registrar, and shall direct the Registrar to cause notification thereof to be given by advertisement or advertisements in the *Gazette*, or at least one newspaper published in the city of Kingston or circulating in the neighbourhood of the land, and to be served on any persons named by him, and all persons in possession or charge of the adjoining lands, and warning all such persons that, unless a caveat be lodged forbidding the same within such time as shall be appointed by the Referee (which shall not be less than two weeks or more than twelve months from the date of such advertisement or the first of such advertisements if more than one), the

title will be registered in accordance with such provisional approval.

34. When the Referee shall refuse his provisional approval, the Registrar shall communicate such refusal to the applicant, and when the Referee shall provisionally approve the title to land with a different description or identification to that contained in the application, or has approved it subject to any qualification other than such as may have been inserted in the application, the Registrar shall before giving any notices as aforesaid, communicate the provisional approval to the applicant, and shall not proceed further with the matter until he shall have been informed by the applicant that he acquiesces in the decision of the Referee.

In certain cases Referee not to proceed unless applicant acquiesces in his provisional decision.

35. If the applicant under such circumstances is dissatisfied with the decision of the Referee, it shall be lawful for him to proceed under the provisions of section 156.

Remedy of applicant if dissatisfied.

36. Subject to the foregoing provisions the Registrar shall, under such directions as aforesaid, cause notice to be published, in such manner as by such direction may be prescribed, of such provisional approval as aforesaid, with such description or identification thereof as shall have been approved of as aforesaid, and shall cause a copy of such notice to be posted in a conspicuous place in the office, and shall send through the Post Office a registered letter, marked outside "Office of Titles, Jamaica", containing a copy of such notice, addressed to every person whom the Referee shall have directed to be served with notice, and to the persons stated in the application to be occupiers of the land (if other than the applicant) and to the occupiers and owners of the lands contiguous thereto.

Publication and service of notice of provisional approval.

If no caveat
entered
title to be
registered.

37. If at the expiration of the time limited in the notice aforesaid for lodging a caveat the Registrar shall not have received a caveat forbidding the bringing of the land in question under the operation of this Act, he shall bring such land under this Act, in accordance with the directions of the Referee, in manner hereinafter mentioned, by registering the title of the applicant or of the person in whose name he may have directed the certificate of title to be issued thereto (in manner hereinafter provided) as an absolute or qualified title as may have been determined by the Referee, and with such description or identification of the land as may have been approved of by the Referee.

Where an applicant has directed a certificate of title to be issued in the name of a nominee the Registrar shall at the direction of the applicant and with the consent of the nominee issue the certificate of title to such person as shall be named in such direction and consent which direction and consent shall be liable to the stamp duties provided by section 174.

Authority
for pay-
ment to
solicitor.

38. The production by a Solicitor—

- (a) of a certificate of title issued in the name of a purchaser as a nominee; or
- (b) of an instrument having in the body thereof or endorsed thereon a receipt for consideration money, or other consideration, the instrument being executed or the endorsed receipt being signed by the person entitled to give a receipt for that consideration; or
- (c) of a certificate of title endorsed with a memorandum of an instrument of transfer, mortgage, lease, or other dealing for pecuniary or other consideration (whether or not such instrument may have contained or been endorsed with a receipt as aforesaid),

shall be sufficient authority to the person liable to pay or deliver the same for the payment or delivery of the consideration money, or other consideration, to the Solicitor, notwithstanding that the solicitor does not produce any separate or other direction or authority in that behalf from the person who is entitled to receive the consideration money, or other consideration, for the land mentioned in the certificate of title or from the person who signed the instrument or receipt.

39. Land leased for a term of years of which ten years are unexpired, or leased for years determinable with a life or lives, may be brought under the operation of this Act as near as may be in a similar manner, and subject to the same or similar provisions, as are hereinbefore contained with respect to freehold land.

Application
by lessees.

The application may be made by persons having such estate and interest in the leasehold land as are similar or correspondent to the estates and interests of the persons entitled to apply to bring freehold land under the operation of this Act.

Every certificate of title to leasehold land shall always be subject to the rights and powers of the lessor or his representatives, and of any person entitled to the inheritance in the land immediately expectant on the term as well as to the incumbrances hereinafter mentioned as not requiring special notification.

The several provisions of this Act with respect to freehold land shall apply to leasehold land, with such variations only as the difference in the nature of such property requires, or as may be necessary to render such provisions applicable to leasehold for years.

Production
of docu-
ments.

40. After an application has been made to have any land brought under the operation of this Act, a Judge may require all persons having in their possession, custody or control, any deeds, instruments or evidence of title, relating to or affecting the land the subject of such application, to produce the same at a time, and place appointed by such Judge to the Registrar or to a Referee for his inspection upon such terms and subject to such conditions, and for such charge or fee, as the Judge making the order may think just and shall fix. All orders to be made by a Judge under this section may be made in Chambers on summons at the instance of the person applying to have the land brought under this Act.

Withdrawal
of applica-
tion.

41. Any applicant for registration may withdraw his application at any time prior to the registration of the certificate, and the Registrar shall in such case return to the applicant, or to the person entitled thereto, all deeds, documents and other evidence of title, lodged in support of the application; but in such case, if the caveator shall have been put to expense without sufficient cause by reason of such application, he shall be entitled to receive from the applicant such compensation as a Judge on a summons in Chambers shall deem just and order.

As to the
possession of
and dealing
with documents
evidencing
title of
persons
registered.

42. Upon registering a certificate of title, the Registrar shall retain in his custody and possession all deeds, instruments and documents, evidencing the title of the person registered, and shall endorse upon the last of them, if there be more than one, a memorandum that the land included in the certificate has been brought under this Act, and shall sign such memorandum :

Provided always that if any such deeds, instruments or documents, relate to any property other than the land included in such certificate, the Registrar shall cause such deed, document or instrument (if unrecorded) to be copied

at the expense of the applicant, such copy to be retained by the Registrar, and shall return such deed, instrument or document to the person from whom he received the same, having first endorsed upon the same a memorandum signed by him to the effect that the land included in the certificate has been brought under the Act.

No person shall be entitled to inspection of any such deeds, instruments or documents, except upon the written order of the persons who originally deposited the same, or of some person claiming through or under him, or upon the order of a Judge.

No action or suit shall be brought or maintained upon any covenant or agreement for the production of the documents which shall be so retained, or upon any agreement to give or enter into a covenant for the production thereof; and if any such action or suit shall be commenced it shall be a sufficient answer thereto that such documents have been retained under this Act.

Caveat against Registration of Land

43. Any person claiming any estate or interest in the land described in the advertisement may, in person or by agent, within the time appointed by the Referee under section 33, lodge a caveat with the Registrar, in the form in the Second Schedule, forbidding the bringing of such land under this Act; every such caveat shall be signed by the caveator or by his agent, and shall particularize the estate or interest claimed; and the person lodging such caveat shall, if required by the Registrar, support the same by a statutory declaration, stating the nature of the title under which the claim is made, and also deliver an abstract of his title to such estate or interest.

Caveat
against
bringing
land
under this
Act.
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Second
Schedule.

No such caveat shall be received unless some address or place within the limits of the city of Kingston shall be appointed therein as the place at which notices and proceedings relating to such caveat may be served.

Notice of
caveat.

44. The Registrar, upon receipt of such caveat, shall notify the same to the applicant, and shall suspend proceedings in the matter until such caveat shall have been withdrawn or shall have lapsed as hereinafter provided, or until an order in the matter shall have been obtained from the Supreme Court or a Judge.

Procedure
for dealing
with same.

The applicant may, if he think fit, summon the caveator to attend before the Supreme Court, or a Judge in Chambers, to show cause why such caveat should not be removed, and such Court or Judge may, upon proof that such caveator has been summoned, make such order in the premises, either *ex parte* or otherwise, as to such Court or Judge may seem fit.

Lapse of
caveat if not
followed up
by proceed-
ings.

45. After the expiration of one month from the receipt thereof, such caveat shall be deemed to have lapsed unless the person by whom, or on whose behalf, the same was lodged shall within that time have taken proceedings, in a court of competent jurisdiction, to establish his title to the estate or interest specified in the caveat, and shall have given notice thereof to the Registrar, or shall have obtained and served on him an injunction or order of the Supreme Court or a Judge restraining him from bringing the land under the operation of this Act.

Caveat not
renewable.

A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest.

Death of
applicant
before
certificate.

46. In case the applicant, or the person in whose name the certificate of title has been directed to issue, shall die between the application and the registration of the certificate, it shall be registered in the name of such applicant

or of such person, as the case may be, and such land shall devolve or pass in like manner, as if the certificate had been registered prior to the death of such applicant or person.

Registration of Land with doubtful Title

47. Notwithstanding anything hereinbefore contained, a Referee may after the publication of such advertisement as he may deem fit direct the Registrar to bring any lands under the operation of this Act upon the applicant contributing to the Assurance Fund, in augmentation thereof, such an additional sum of money as the Referee shall certify under his hand to be in his judgment a sufficient indemnity by reason of the non-production of any document affecting the title, or of the imperfect nature of the evidence of title, or against any uncertain or doubtful claim or demand arising upon the title.

Bringing
land with
doubtful
title under
this Act,

Office Copy of Decree or Order as Evidence of Title

48. An office copy of any order heretofore made by the Supreme Court or any District Court, or which shall hereafter be made by the Supreme Court or any Resident Magistrate's Court (whether such order shall hereafter be in the form of an order confirming the Registrar's or Clerk's report or in any other form) confirming a person as the purchaser of any land sold in fee simple under or in pursuance of any decree or order of such Court, together with an office copy of such decree or order, and such certificate of payment as is hereinafter mentioned may, for the purpose of bringing land under the operation of this Act, be deemed by a Referee sufficient evidence of the title of the purchaser to such land, subject to any estate or interest appearing by the decree or order or order of confirmation, or subsequently created and registered.

How far
office
copy of
decree or
order of a
Court
accepted by
the Referee
as evidence
of title.

Every order of confirmation of a purchase which shall hereafter be made shall be drawn up so as to refer to a

REGISTRATION OF TITLES

schedule thereto, containing the name and addition of the purchaser and description of the land purchased by him, and the Registrar of the Supreme Court or Clerk of a Resident Magistrate's Court is hereby required, after payment and acceptance of all the money payable in respect of any particular purchase, to give upon any office copy of any such order of confirmation a written certificate that the purchase money and all interest in respect thereof, payable by any purchaser named in such certificate for any land therein referred to, have been wholly paid.

Purchaser requiring Registered Title

Purchaser
may require
registered
title under
this Act.

49. When any contract shall have been made for the sale and purchase of any land, then unless the person agreeing to sell such land shall have stipulated to the contrary, it shall be lawful for the purchaser at any time before the completion of the purchase, to require that the vendor shall instead of making a conveyance of such land, cause him to be registered as proprietor of the land, the subject of the contract, under the provisions of this Act, with an absolute title, in cases where the land has been agreed to be sold without any special conditions as to title, or with a title subject to such qualifications as may be in accord with the conditions under which the land was agreed to be sold :

Provided that nothing herein contained shall deprive any vendor of any right which may arise out of such contract for sale by reason of any rule of law and equity :

Provided also that the incidence of costs as provided for under the Conveyancing Act, shall be in no way affected.

Duties of
vendor if
purchaser
exercises
option.

50. If the purchaser shall exercise the option hereby vested in him, the vendor shall furnish him with the information which he is under the said Conveyancing Act bound to furnish, and shall submit the draft application form filled in with such particulars, and the purchaser shall

at his own expense make all such searches and investigations into the title as are required to make the application complete.

51. The costs of the application form, the fees payable under this Act and stamp duty, if any, shall be deemed to be the vendor's costs within the meaning of section 4 of the Conveyancing Act.

Costs, how to be paid.

Registration in lieu of Patent

52. In all cases in which prior to the 1st October, 1889, a "patent" as defined herein would have been the appropriate form of conveyance to any grantee of any lands, in lieu of such patent it shall be sufficient for the Minister to issue directions to the Registrar to register the proposed grantee as the proprietor of the land to be granted to him, and the Registrar shall thereupon, upon payment by the proposed grantee of the fee payable for a certificate of title, without reference to the Referees or observance of any of the forms required to be observed in other cases, forthwith bring the land described in such requisition under the operation of this Act, by registering the title of the person named in such requisition as the proprietor of the said land :

Registration of lands granted by the Crown in lieu of patent.

Provided always that the Assurance Fund under this Act shall not be answerable in respect of any claim thereafter arising in reference to the said land, but the Government shall be liable in the same way and to the same extent as in other cases under this Act the applicant or the said Assurance Fund would be liable; and a note of the liability of the Government shall be made on every certificate of title issued under this section.

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53. Any patent heretofore made may, for the purpose of bringing land under the operation of this Act, be deemed by the Registrar or a Referee sufficient evidence of the title of the grantee under any such patent to the land comprised

Patent sufficient evidence of title.

in such patent subject to any estate or interest appearing by such patent or subsequently created.

Re-registration of Registered Land by Plan

Registration
by plan of
registered
land.

54.—(1) Any person entitled to sell land, which shall have been registered otherwise than by plat or diagram, may apply to have such land registered by plat or diagram.

Mode of
application.

(2) An application under this section shall in all respects be treated and dealt with as if it were an original application to register land. The duplicate certificate of title shall accompany the application, and the same shall be retained and cancelled by the Registrar, and the original certificate of title shall also be cancelled by the Registrar, before the issue of a new certificate.

Direction by
Referee.

(3) The Referee, when communicating any provisional approval of the registration of such title to the Registrar, shall, besides giving such directions as are required in the case of original applications, direct the Registrar to cause notification of the application to be served on all persons other than the applicant who appear by the certificate of title to have any interest in the land.

*Register Book; Mode of Registering; and effect of
Registration*

How land to
be brought
under the
operation of
this Act.
Third
Schedule.
Forms A
and B.

55. Land shall be brought under the operation of this Act by the Registrar registering a certificate certifying, under his hand and the seal of the Office, that a person therein named is the proprietor of the land therein described or identified, either with an absolute title or with such qualified title as may have been directed and approved by the Referee, as the case may be.

Such a certificate (herein called "certificate of title") shall be in duplicate in the form in the Third Schedule; and the Registrar shall keep a book or file, to be called the Register

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Book, and shall enter by either binding up or filing therein one of the certificates of title, and shall deliver the other (hereinafter called the duplicate) to the proprietor, having previously marked thereon the volume and *folium* of the Register Book in which the same is entered.

Each certificate shall constitute a separate *folium* of such Book, and the Registrar shall endorse thereon, in such manner as to preserve their priorities, the particulars of all dealings and matters affecting the land by this Act required to be registered or entered.

56. Before the delivery of any certificate of title, a receipt for it in the handwriting of the proprietor of such estate in such land as shall be therein described or his agent may be required when practicable, so as to prevent, as far as may be, personation.

Receipt for
certificate
of title.

57. At the time of the registration of any grant in fee to two or more persons in joint tenancy for any public purpose, the Registrar shall endorse thereon, and on every subsequent certificate of title, the words "no survivorship", and sign his name thereto.

Grants for
public
purposes.

58. Every duplicate certificate of title shall be deemed and taken to be registered under this Act when the Registrar has marked thereon the volume and *folium* of the Register Book in which the certificate is entered; and every instrument purporting to affect land under the operation of this Act shall be deemed and taken to be registered at the time when produced for registration, if the Registrar shall subsequently enter a memorandum thereof as hereinafter described in the Register Book upon the *folium* constituted by the existing certificate of title and also upon the duplicate; and the person named in any certificate of title or instrument so registered as the proprietor of, or having any estate or interest in or power over, the land therein described or identified, shall be

What
constitutes
registration
under this
Act.

deemed and taken to be the duly registered proprietor thereof, or as duly registered in respect of such estate, interest or power:

Provided that if, before entering the memorandum hereinbefore mentioned, the Registrar shall, for any reason, return the instrument to the person producing the same, the time of reproduction of the instrument for registration, after the requirements of the Registrar have been complied with, shall be the time of production for registration.

Order and
priority of
registration.

59. Every instrument presented for registration may be in duplicate (except a transfer whereon a new certificate of title is required), and shall be registered in the order of, and as from, the time at which the same is produced for that purpose; and instruments purporting to affect the same estate or interest shall, notwithstanding any actual or constructive notice, be entitled to priority as between themselves according to the time of registration, and not according to the date of the instrument. Upon the registration of any instrument the Registrar shall bind up the original in his office in a book to be kept for that purpose and shall deliver the other (hereinafter called the duplicate) to the person entitled.

As to trusts.

60. The Registrar shall not enter in the Register Book notice of any trust, whether express, implied or constructive; but trusts may be declared by any document, and a duplicate or an attested copy thereof may be deposited with the Registrar for safe custody and reference; and the Registrar, should it appear to him expedient so to do, may protect in any way he may deem advisable the rights of the persons for the time being beneficially interested thereunder, or thereby required to give any consent; but the rights incident to any proprietorship or to any instrument, dealing

or matter, registered under this Act, shall not be in any manner affected by the deposit of such duplicate or copy, nor shall the same be registered.

61. Every memorandum entered in the Register Book shall state the nature of the instrument or document to which it relates, the time of registration or entry thereof, the name of the grantee, and shall refer by number or symbol to such instrument or document, and shall be signed by the Registrar.

Contents of memorandum entered in Register Book.

62. Whenever a memorandum of any instrument has been entered on a certificate of title in the Register Book, the Registrar shall enter the like memorandum on the duplicate certificate, and he shall endorse on every instrument registered a certificate of the time at which the memorandum was entered in the Register Book :

Entry of memorandum of instrument, proceedings thereon and effect thereof.

Provided always that the time at which the instrument was produced for registration, subject to the terms of the proviso contained in section 58, shall be deemed and shall be stated by the Registrar in his certificate, as the time at which the memorandum was entered in the Register Book. The Registrar shall authenticate such certificate by signing his name thereto and such certificate shall be received in all courts as conclusive evidence that such instrument has been duly registered and at the time stated in the said certificate.

63. When land has been brought under the operation of this Act, no instrument until registered in manner herein provided shall be effectual to pass any estate or interest in such land, or to render such land liable to any mortgage or charge; but upon such registration the estate or interest comprised in the instrument shall pass or, as the case may be, the land shall become liable in manner and subject to the covenants and conditions set forth and specified in the instrument, or by this Act declared to be implied in instru-

Effect of registration or non-registration of instruments affecting lands brought under this Act.

ments of a like nature; and should two or more instruments signed by the same proprietor, and purporting to affect the same estate or interest, be at the same time presented to the Registrar for registration, the Registrar shall register and endorse that instrument which shall be presented by the person producing the certificate of title.

Issue of
certificates
of title.

64. The proprietor of land under the operation of this Act shall be entitled to receive a certificate of title to the same; and if any certificate be issued to a minor, or to a person under any disability, the Registrar shall state the age of such minor, or the nature of the disability, so far as known to him.

Joint
tenants,
tenants in
common and
coparceners.

65. Two or more persons may be registered under this Act as joint tenants, tenants in common or coparceners of any land. In all cases where two or more persons are registered as tenants in common or as coparceners of any land one certificate for the entirety or separate certificates for the undivided shares may be issued; but in the case of persons registered as joint tenants, one certificate only shall be issued.

Procedure
as to
registration
of two or
more joint
proprietors.

66. Upon the transfer of any land, and upon the lease of any freehold land, to two or more persons as joint proprietors, with the words, "no survivorship" endorsed thereon, the Registrar shall enter such words in the memorandum of such transfer or lease, and also upon any certificate of title issued to such joint proprietors pursuant to such transfer, and sign his name thereto.

Where two or more persons are joint proprietors of any land or of any such lease, or of any charge, they may, by writing under their hands, direct the Registrar to enter the words "no survivorship" upon the certificate of title or instrument relating to the property. In every case after such words shall have been signed by the Registrar, whether

under this or section 57 it shall not be lawful for any persons other than all the proprietors registered to transfer or otherwise deal with the property without the order of the Supreme Court or a Judge thereof obtained on motion or petition or in cases where the value of the land affected shall not exceed four hundred dollars, then of the Resident Magistrate's Court of the parish in which the land is situated :

Provided that nothing hereinbefore contained shall prevent the surviving or remaining trustee or trustees from transferring the land so as to give effect to any valid appointment of a new trustee or trustees or the Registrar from registering in the usual manner, such transfer.

67. Before the Court or Judge or Resident Magistrate shall make any such order, it or he may cause notice of the application for the same to be advertised once at least in one newspaper published in the city of Kingston, or circulating in the neighbourhood of the land, and shall appoint a time within which it shall be lawful for any person interested to show cause against such order being made, after the expiration of which time it shall be lawful for the said Court or Judge or Resident Magistrate to give directions for the transfer of such land or lease or charge to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor or proprietors, or to make such order in the premises as shall be just for the protection of any person beneficially interested in such property, or in the proceeds thereof; and on such order being deposited with the Registrar he shall make such entries and perform such acts for giving effect thereto as the provisions of this Act may render necessary.

Proceedings to obtain order of the Court for transfer of land.

68. No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registra-

Certificate of title conclusive evidence of title.

tion of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.

Use of
certificate of
title in
actions
between
vendor and
purchaser.

69. In any suit for specific performance, or in any action for damages, brought by a proprietor of any land under the operation of this Act against a person who may have contracted to purchase such land, not having notice of any fraud or other circumstances which, according to the provisions of this Act, would affect the right of the vendor, the certificate of title of such proprietor shall, if such proprietor is registered with an absolute title, be held to be conclusive evidence that such proprietor has a good and valid title to the land for the estate or interest therein mentioned or described, and shall in any such suit entitle such proprietor to a decree for the specific performance of such contract. And if such proprietor is registered with a qualified title the certificate shall be conclusive evidence that he has a good and valid title, subject to the qualification therein set forth.

Preferential
and prior
rights
defeated in
favour of
registered
proprietor.

70. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified

on the *folium* of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser:

Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any), contained in the patent thereof, and to any rights acquired over such land since the same was brought under the operation of this Act under any statute of limitations, and to any public rights of way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit rents or taxes, that have accrued due since the land was brought under the operation of this Act, and also to the interests of any tenant of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument.

Incumbrances not specially notified to which registered land to be subject.

71. Except in the case of fraud, no person contracting or dealing with, or taking or proposing to take a transfer, from the proprietor of any registered land, lease, mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwith-

Protection to parties dealing with registered proprietor.

standing; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

Rights, etc., of registered proprietor of an estate of freehold subject to a lease.

72. The person named in any certificate of title as the proprietor of any estate of freehold in possession in the land therein described shall be held, in every court to be seised of the reversion and inheritance in the land immediately expectant upon the term of any lease that may be mentioned as an incumbrance in such certificate, and to have all powers, rights and remedies, to which such a reversion by law is entitled, and shall be subject to all the covenants and conditions in such lease to be performed and observed by or on the part of the lessor.

Rights and liabilities of person for time being registered as proprietor.

73. Without lessening or prejudicing any of the other rights, powers and remedies, by this Act given and conferred every proprietor, and every transferee, when registered, of any land, lease, mortgage or charge shall whilst continuing so registered have the same estates, rights, powers and remedies, and be subject to the same engagements, obligations and liabilities, and may sue and be sued in his own name in respect thereof or thereupon in like manner as if he had been the original proprietor of the land by or with whom the engagement, obligation or liability, sued upon was entered into or incurred, or the original mortgagee, lessee or annuitant.

Use by beneficiary in any action of the name of any proprietor.

74. The proprietor of any land, or any lease, mortgage or charge, shall, on the application of any beneficiary or person interested therein, be bound to allow his name to be used by such beneficiary or person in any action, suit or proceeding, which it may be necessary or proper to bring or institute in the name of such proprietor concerning such land, lease, mortgage or charge, or for the protection or benefit of the title vested in such proprietor, or of the

interest of any such beneficiary or person; but nevertheless such proprietor shall, in any such case, be entitled to be indemnified in like manner as if, being a trustee, he would before the commencement of this Act have been entitled to be indemnified in a similar case of his name being used in any such action, suit or proceeding, by his *cestui que trust*.

75. When land shall have been brought under the operation of this Act, and a certificate shall have been issued subject to a mortgage or other incumbrance made or given before the issuing of such certificate, such mortgage or other incumbrance may be discharged in like manner as if it were a mortgage or other incumbrance made in the manner prescribed by and registered under this Act, and the mortgagee or other person claiming under such mortgage or incumbrance may exercise the same rights and remedies as if the mortgage or other incumbrance had been made and registered in the form and manner prescribed by this Act.

Effect of a certificate subject to a mortgage or other incumbrance as preserving all rights of such incumbrancer.

Inspection of Register Book

76. Any person may, on payment of the fee for the time being payable in that behalf, inspect the Register Book during the hours and upon the days of business.

Inspection of Register Book and copies of documents.

The Registrar, on payment of the fee for the time being payable for a certified copy, shall furnish to any person applying for the same a certified copy of any certificate of title, filed plan, deposited plan, caveat or registered instrument, affecting land under the operation of this Act; and every such certified copy, signed by him and authenticated by the seal of the Office of Titles, shall be received in evidence in any court of justice, or before any person having by law, or by consent of parties, authority to receive evidence as *prima facie* proof of the original certificate, caveat or instrument, and of all the matters contained or recited in or endorsed thereon respectively.

Provisions as to Certificates

As to
exchanging
certificates.

77. On the application of any proprietor of land held under one or more certificates of title, or of land so held and of land about to be brought under this Act and on his delivering up the duplicate certificates of title the Registrar may register one certificate of title for the whole of such land, or several certificates for the several portions thereof in the name of such person in accordance with such application, so far as the same may be done consistently with any regulations for the time being in force respecting the parcels of land that may be included in one certificate of title, and upon registering any certificate under this section the Registrar shall cancel the previous certificate and the duplicate thereof and shall endorse thereupon a memorandum setting forth the occasion of such cancellation and referring to the new certificate.

References
to be noted
in Register
to enable
title to be
traced.

78. Such references shall be noted in the Register Book and on instruments filed hereunder, as will allow the title to be traced either downwards from or upwards to the original certificate; but it shall not be necessary, in any certified copy of any certificate or instrument, to insert such references; and every such copy shall be deemed complete notwithstanding the omission of such references.

What
Registrar
may require.

79. The Registrar, if in his opinion the number or nature of the entries on any certificate of title or the condition of the certificate of title or the duplicate or special certificate of title render it expedient so to do, may require that the duplicate or special certificate of title be surrendered for cancellation and upon such surrender the Registrar shall proceed as if an application had been made to him under section 77 for the registration of a new certificate of title for the land comprised in the surrendered certificate.

80. On the occasion of the registration of a certificate of title to registered land or at any time thereafter the Registrar, after such enquiry and notices, if any, as he may consider proper and upon the production of such evidence and the compliance with such requests, if any, as he may think necessary to require or make, may—

Registrar's
power to
amend.
25/1967
S. 10 (1).

- (a) amend the description of the land by the omission of any general words of description or in such other manner as he may think proper;
- (b) omit such entries or portions of entries as he is satisfied no longer affect the land or the title thereto;
- (c) insert, amend or delete the name of any road and the number by which any land on such road is designated;
- (d) substitute the correct name, address or occupation of any person whose name, address or occupation was incorrectly entered.

81.—(1) Whenever any transaction or transmission under this Act is proposed to be registered, and it is required by this Act that a memorandum of such transaction or transmission shall be endorsed upon the duplicate certificate of title, the Registrar may dispense with the production of such duplicate and the making of such endorsement thereon.

Power of
Registrar to
dispense
with the
production
of the
duplicate
certificate of
title and the
certificate
of title in
certain
cases.

(2) In every such case, upon the registration of the transaction or transmission the Registrar shall notify, in the memorandum in the Register Book, that no entry of such memorandum has been made on the duplicate, and such transaction or transmission shall thereupon be as valid and effectual as if such memorandum had been entered thereon.

(3) Provided always that the Registrar before registering such transaction or transmission shall require

proof to his satisfaction by statutory declaration that the duplicate is not deposited or held as security or otherwise, and whether it is subject to any lien, and shall give at least fourteen days' notice of his intention to register such transaction or transmission in at least one newspaper and such other notice, if any, as he may think fit.

Proceedings
on certificate
of title being
lost, etc.

82.—(1) Whenever a duplicate certificate of title or special certificate of title is lost or destroyed the registered proprietor of the land or some person claiming through him may apply to the Registrar to cancel the certificate of title and to register a new certificate in duplicate in the name of the registered proprietor or his transferee in place of such certificate and duplicate or special certificate. On proof being furnished to his satisfaction of such loss or destruction, and on such requisitions, if any, which he may make being complied with, and on the expiration of the notice to be given as hereinafter provided without sufficient cause having been shown against the application, the Registrar shall cancel the certificate and register a new certificate in duplicate in the name of the registered proprietor or his transferee in place of the former certificate and duplicate or special certificate, both of which shall thereupon be deemed to be cancelled.

(2) Before disposing of the application the Registrar shall give at least fourteen days' notice thereof in at least one newspaper and such other notice, if any, as he may think fit.

(3) An application under this section may be combined with an application under section 81 to dispense with the production of a duplicate certificate.

Construction
of certificate
of title.

83. Every certificate of any person or corporation, sole or aggregate, being the proprietor of an estate in fee simple, whether in possession, remainder or reversion, and every

instrument transferring or creating such an estate to or in favour of any person or corporation shall imply and be deemed to include the heirs of such person, or the successors of such corporation.

84. A married woman who is registered as a “proprietor” within the meaning of this Act shall for all the purposes of this Act be deemed to be a *feme sole*.

Married women.

Title acquired by possession of registered land

85. Any person who claims that he has acquired a title by possession to land which is under the operation of this Act may apply to the Registrar to be registered as the proprietor of such land in fee simple or for such estate as such person may claim.

Who may apply for registration of title acquired by possession.
25/1967
S. 11.

86.—(1) Every application under section 85 shall—

- (a) be in the form set out in the First Schedule, substituting for the words “hereby apply to have the lands hereinafter described brought under the operation of the Registration of Titles Act”, the words “hereby apply to be registered as the proprietor of the lands hereinafter described, such lands having already been brought under the operation of the Registration of Titles Act,” and with such other modifications as the case may require;

Procedure for making and dealing with applications under section 85.
First Schedule.
25/1967
S. 11.

(b) be accompanied by—

- (i) the evidence upon which the applicant relies in support of his application;
- (ii) an affidavit containing such particulars as may be prescribed;

Eighteenth
Schedule.

- (iii) the fees set forth in the Eighteenth Schedule as payable on an application to bring land under the operation of this Act;
- (iv) a certificate from the proper officer that all quit rents and property tax affecting the land have been paid up to the date of the application.

(2) The provisions of sections 31 to 36 (both inclusive) and sections 43 to 46 (both inclusive) shall apply, *mutatis mutandis*, in relation to an application under section 85 as they apply in relation to an application to have land brought under the operation of this Act.

Cancellation of existing title and registration of title acquired by possession.
25/1967
S. 11.

87. If at the expiration of the time appointed by the Referee under section 33 for the lodging of a caveat the Registrar has not received a caveat forbidding the registration of the title of the applicant the Registrar shall do any of the following, namely—

- (a) cancel any existing certificate of title or rectify such certificate so as to conform with the registration of the title of the applicant;
- (b) issue any new certificate of title with such description or identification of the land as may have been approved by the Referee.

Transfers

Transfer of registered land.

Fourth
Schedule.
Forms A,
and C.

88. The proprietor of land, or of a lease, mortgage or charge, or of any estate, right or interest, therein respectively, may transfer the same, by transfer in one of the Forms A, B or C in the Fourth Schedule hereto; and a woman entitled to any right or contingent right to dower in or out of any freehold land shall be deemed a proprietor within the meaning hereof. Upon the registration of the transfer, the estate and interest of the proprietor as set forth in such instrument, or which he shall be entitled or able to

transfer or dispose of under any power, with all rights, powers and privileges thereto belonging or appertaining, shall pass to the transferee; and such transferee shall thereupon become the proprietor thereof, and whilst continuing such shall be subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if he had been the former proprietor, or the original lessee, mortgagee or annuitant.

89. By virtue of every such transfer as is herein mentioned the right to sue upon any mortgage or other instrument, and to recover any debt, sum of money, annuity or damages, thereunder (notwithstanding the same may be deemed or held to constitute a chose in action), and all interest in any such debt, sum of money, annuity or damages, shall be transferred so as to vest the same at law as well as in equity in the transferee thereof :

Effect of
such
transfer.

Provided always that nothing herein contained shall prevent a court from giving effect to any trusts affecting such debt, sum of money, annuity or damages, in case the transferee shall, as between himself and any other person hold the same as a trustee.

90. The proprietor of land, or of any estate or interest in land, under the operation of this Act, whether of the nature of real or personal property, may transfer such land, estate or interest, to his wife or if such proprietor be a married woman it shall be lawful for her to make such transfer to her husband, or it shall be lawful for such proprietor to make such transfer directly to himself and another person, or if seised or possessed jointly with any other person then jointly with such person to himself alone, or to create or execute any power of appointment or disposition, or to create or limit estates in remainder, or otherwise, as legal estates of or concerning land the subject thereof, without the intervention of any precedent or particular estate, and

Powers of
transfer by
proprietor
of registered
land.

also like estates as legal estates without the employment or intervention of any form of use; and upon the registration of such transfer, the land, estate or interest, shall vest in the transferee solely or jointly, as the case may be, or in the person in whose favour any such power may have been executed, or who may take under any such limitation or otherwise, according to the intent and meaning of such instrument, and she, he or they, shall become and be deemed the proprietor or proprietors thereof.

How trans-
fer
registered.

91. Whenever by a transfer, or by any other lawful mode, a portion only of the land comprised in any certificate of title passes to any person other than the registered proprietor thereof, the Registrar, having duly registered the instrument under which such portion passes, shall, on payment of the fee payable under the provisions of this Act, register the title of the person to whom such interest has passed in manner hereinbefore provided in the case of land being first brought under the operation of this Act; but when the whole of the land passes to any person other than as aforesaid, it shall not be incumbent on the Registrar to make out a new certificate of title in the name of such person, but such person shall be deemed to be duly registered as proprietor of such land when a memorandum of the transfer or other legal mode as aforesaid shall have been registered under this Act:

Provided always that if the transferee desire it, the Registrar shall cancel the certificate of title and the duplicate, and shall retain such duplicate, and issue a new certificate of title in the name of the transferee:

Provided also that where a portion only of the land comprised in a certificate of title passes to any person other than the registered proprietor thereof the Registrar may, if he considers that the description of the portion so passing is inadequate to enable the boundaries thereof to be easily

ascertained, refuse to register the title of the person to whom such portion passes unless the portion so passing is described and identified by plat or diagram.

92. In every transfer of land under the operation of this Act subject to a mortgage or charge, there shall be implied a covenant with the mortgagee or annuitant by the transferee binding the latter and his heirs, executors, administrators and transferees, that he or they will pay the interest secured by such mortgage, after the rate, and at the time and in the manner therein specified, or will pay the annuity at the times and in the manner specified in the charge, and in the case of land subject to a mortgage, a covenant with the transferor similarly binding that he or they will indemnify and keep harmless the transferor and his representatives from and against the principal sum secured by the mortgage, and from and against all liability in respect of any of the covenants therein contained, or by this Act declared to be implied therein, on the part of the transferor:

Implied
covenants
by transferee
of land
subject to a
charge.

Provided that no such transfer shall be registered unless duly executed by the transferee.

93. Whenever any transfer or lease of freehold land shall contain the words "Together with a right of carriage way over *[specifying or describing the road or roads over which the easement is created, and referring to a map endorsed whereon such road or roads is or are coloured]* such words shall have the same effect, and be construed as if there had been inserted in such transfer or lease the words contained in Forms A and B respectively in the Fifth Schedule.

Easements
and rights
of way.

Fifth
Schedule,
Forms
A and B.

A memorandum of any transfer or lease creating any easement over or upon or affecting any land under the operation of this Act shall be entered on the *folium* of the Register Book, constituted by the existing certificate of title

of such land, in addition to any other entry concerning such instrument required by this Act.

Leases

Lease of
registered
land.

Sixth
Schedule.

94. Any freehold land under the operation of this Act may be leased for any term not being less than one year by the execution of a lease thereof in the form in the Sixth Schedule, and the registration of such lease under this Act; but no lease of any land subject to a mortgage or charge shall be valid or binding against the mortgagee or annuitant unless he shall have consented in writing to such lease prior to the same being registered.

Implied
covenants by
lessee.

95. In every lease made under the provisions of this Act there shall be implied the following covenants with the lessor and his transferees by the lessee, binding the latter and his heirs, executors, administrators and transferees, that is to say—

- (a) that he or they will pay the rent reserved by the lease at the times therein mentioned, and all rates and taxes which may be payable by the occupier of such leased property during the continuance of the lease unless otherwise specially provided;
- (b) that he or they will keep and yield up the leased property in good and tenantable repair, accidents and damages from storm and tempest, or other acts of God and the Queen's enemies, and reasonable wear and tear, excepted.

Implied
powers in
lessor.

96. In every lease made under this Act there shall also be implied in the lessor and his transferees the following powers, that is to say—

- (a) that he or they may, with or without surveyors, workmen or others, once in every year during the term, at a reasonable time of the day, enter upon

the leased property, and view the state of repair thereof;

- (b) that in case the rent or any part thereof shall be in arrear for the space of one month, although no legal or formal demand shall have been made for payment thereof, or in case of any breach or non-observance of any of the covenants expressed in the lease, or by this Act declared to be implied therein, on the part of the lessee or his transferees, and such breach or non-observance continuing for the space of one month, it shall be lawful for the lessor or his transferees to re-enter upon and take possession of the leased property.

97. Whenever, in any lease made under this Act, the lessee shall employ any of the forms of words contained in column one of the Seventh Schedule, and distinguished by any number therein, such lease shall be taken to have the same effect and be construed as if he had inserted therein the form of words contained in column two of the same Schedule, and distinguished by the corresponding number, and every such form shall be deemed a covenant with the lessor and his transferees by the lessee, binding the latter and his heirs, executors, administrators and transferees, but it shall not be necessary in any such lease to insert any such number. There may be introduced into or annexed to any of the forms in the first column any express exceptions from or express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

Adoption of short forms of provisions and covenants. Seventh Schedule.

98. In every transfer of a lease made under this Act, and in every transfer of a grant for years, there shall be implied a covenant with the lessor by the transferee binding him and his heirs, executors, administrators and transferees, that he or they will thenceforth pay the rent by the lease or grant

Implied covenants in transfer of lease or of a grant for years.

reserved, and perform and observe all the covenants contained in the lease or grant, or by this Act declared to be implied in the lease, and on the part of the lessee or his transferees to be performed and observed, and a covenant with the transferor that he will indemnify and keep harmless the transferor and his representatives against all actions, suits, claims, and expenses, in respect of the non-payment of such rent, or the breach or non-observance of such covenants or any of them:

Provided that no such transfer shall be registered unless the same is duly executed by the transferee.

Entry of
recovery of
land by
lessor.

99. The Registrar, upon proof to his satisfaction of re-entry by the lessor or his transferees in manner prescribed by the lease or by virtue of the power conferred by subparagraph (b) of section 96, or of recovery of possession by a lessor or his transferees by any proceeding in law, shall note the same by entry in the Register Book and on the duplicate certificate of title and thereupon the term for which the land was leased and the estate of the lessee shall determine but without releasing the lessee from his liability in respect of the breach or non-observance of any covenant expressed in the lease or by this Act declared to be implied therein.

Trans-
mission on
bankruptcy
of lessor.

100. Upon the bankruptcy of the proprietor of any lease made under this Act subject to one mortgage only, or to several mortgages, if owned by the same person, the Registrar on the application in writing of the mortgagee or his transferees, accompanied by a statement signed by the trustee of such bankrupt refusing to accept such lease, shall enter in the Register Book a note of such refusal; and such entry shall operate as a foreclosure, and as a transfer of the interest of the bankrupt in such lease to the mortgagee or his transferees; and if he or they shall neglect or refuse to make such application as aforesaid within forty-two days after notice in writing in that behalf from the lessor or his

transferees shall have been served on the mortgagee or his transferees, by being given to him or them, or by being sent through the post office by a registered letter directed to him or them at his or their address, as stated in the mortgage or transfer thereof, the Registrar, on the application in writing of the lessor or his transferees to be registered as a surrenderee or surrenderees of the lease, accompanied by such a statement as aforesaid, and proof of such neglect or refusal, shall enter in the Register Book notice of such statement and of such neglect or refusal; and such entry shall operate as a surrender of such lease discharged from the mortgage or several mortgages as aforesaid, but without prejudice to any action or cause of action which shall previously have been commenced or accrued in respect of any breach or non-observance of any covenant expressed in the lease, or by this Act declared to be implied therein.

101. A lease made under this Act may be surrendered and determined as well by operation of law or under any enactment now or hereafter to be in force relating to bankrupts and their estates, as by the word "Surrendered" with the date being endorsed upon such lease or on the duplicate thereof (if any) and signed by the lessee or his transferee and by the lessor or his transferee and attested by a witness. The Registrar shall enter in the Register Book a memorandum recording the date of such surrender, and shall likewise endorse upon the duplicate (if any) a memorandum recording the fact of such entry having been made.

Surrender
of lease.

Upon such entry in the Register Book, the estate and interest of the lessee or his transferee shall vest in the lessor, or in the proprietor for the time being of the reversion and inheritance in the land immediately expectant on the term; and production of such lease, or duplicate (if any) bearing such endorsement and memorandum, shall be sufficient evidence that such lease has been legally surrendered:

Provided that no lease subject to a mortgage or charge shall be so surrendered without the consent in writing of the proprietor of such mortgage or charge.

Under-
leases.
25/1967
S. 12.

102.—(1) The lessee of land under the operation of this Act may by instrument in the prescribed form make under this Act an under-lease out of his leasehold interest with a leasehold reversion.

(2) The registration of an under-lease shall be effected by the Registrar entering, on the instrument of the appropriate head lease lodged with him, a memorandum of such under-lease.

(3) The determination of a registered head lease by forfeiture or operation of law, or by surrender under any enactment relating to bankruptcy shall also have effect as a determination of the under-lease derived therefrom.

(4) In every under-lease granted under this Act there shall be an implied covenant that the under-lessor will, during the term of such under-lease, pay the rent reserved by and perform and observe the covenants and agreements contained in the head lease and required on his part to be paid, performed and observed, as the case may be.

(5) All the provisions of this Act relating to leases, lessors and lessees shall, subject to the provisions of this section, apply *mutatis mutandis* to under-leases, under-lessors and under-lessees, respectively.

Mortgages and Charges

Mortgages
and charges
affecting
land.
Eighth
Schedule.
Ninth
Schedule.

103. The proprietor of any land under the operation of this Act may mortgage the same by signing a mortgage thereof in the form in the Eighth Schedule, and may charge the same with the payment of an annuity by signing a charge thereof in the form in the Ninth Schedule.

104. The proprietor of any land under the operation of this Act may mortgage the same to any building society by signing a mortgage thereof in the form in the Tenth Schedule.

Mortgages
to building
society.
Tenth
Schedule.

105. A mortgage and charge under this Act shall, when registered as hereinbefore provided, have effect as a security, but shall not operate as a transfer of the land thereby mortgaged or charged; and in case default be made in payment of the principal sum, interest or annuity secured, or any part thereof respectively, or in the performance or observance of any covenant expressed in any mortgage or charge, or hereby declared to be implied in any mortgage, and such default be continued for one month, or for such other period of time as may therein for that purpose be expressly fixed, the mortgagee or annuitant, or his transferees, may give to the mortgagor or grantor or his transferees notice in writing to pay the money owing on such mortgage or charge, or to perform and observe the aforesaid covenants (as the case may be) by giving such notice to him or them, or by leaving the same on some conspicuous place on the mortgaged or charged land, or by sending the same through the post office by a registered letter directed to the then proprietor of the land at his address appearing in the Register Book.

Effect of
registering a
mortgage.

106. If such default in payment, or in performance or observance of covenants, shall continue for one month after the service of such notice, or for such other period as may in such mortgage or charge be for that purpose fixed, the mortgagee or annuitant, or his transferees, may sell the land mortgaged or charged, or any part thereof, either altogether or in lots, by public auction or by private contract, and either at one or at several times and subject to such terms and conditions as may be deemed fit, and may buy in or vary or rescind any contract for sale, and resell in manner

Power of
sale in cases
of default.

aforesaid, without being liable to the mortgagor or grantor for any loss occasioned thereby, and may make and sign such transfers and do such acts and things as shall be necessary for effectuating any such sale, and no purchaser shall be bound to see or inquire whether such default as aforesaid shall have been made or have happened, or have continued, or whether such notice as aforesaid shall have been served, or otherwise into the propriety or regularity of any such sale; and the Registrar upon production of a transfer made in professed exercise of the power of sale conferred by this Act or by the mortgage or charge shall not be concerned or required to make any of the inquiries aforesaid; and any persons damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy only in damages against the person exercising the power.

Application
of purchase
money.

107. The purchase money arising from the sale of the mortgaged or charged land shall be applied as follows—

If the sale be by the mortgagee or his transferee—

First, in payment of the expenses of and incidental to such sale and consequent on such default; secondly, in payment of the moneys which may be due or owing on the mortgage, thirdly in payment of subsequent mortgages and of any money which may be due or owing in respect of any subsequent charge in the order of their respective priorities; and the surplus (if any) shall be paid to the mortgagor:

Provided always that if the sale be made by a mortgagee or his transferees, and there is a subsequent charge, the purchase moneys, after there shall have been made thereout all proper prior payments, shall be deposited by him or them in the manner and names, and for the purposes, corresponding with those after mentioned.

If the sale be by the annuitant or his transferees—

First, in payment of the expenses of and incidental to such sale and consequent on such default; then in payment of the moneys which may be due or owing to the annuitant or his transferees; and the residue shall be deposited by him or them at interest in the Workers Savings and Loan Bank, in the joint names of the annuitant or his transferees and of the Registrar, to satisfy the accruing payments of the charge, and, subject thereto, for the benefit of the persons who may be or become entitled to the residue of the deposited money.

108. Upon the registration of any transfer signed by a mortgagee or annuitant, or his transferees, for the purpose of such sale as aforesaid, the estate and interest of the mortgagor or grantor in the land therein described at the time of the registration of the mortgage or charge, or which he was then entitled or able to transfer or dispose of under any power of appointment or disposition, or under any power herein contained, shall pass to and vest in the purchaser, freed and discharged from all liability on account of such mortgage or charge, and of any mortgage, charge or incumbrance, registered subsequently thereto, excepting a lease to which the mortgagee or annuitant, or his transferees, shall have consented in writing; and the purchaser when registered as the proprietor shall be deemed a transferee of such land, and shall be entitled to receive a certificate of title to the same.

Effect of
registration
of a transfer
by mort-
gagee
or annuitant.

109. The mortgagee or annuitant, or his transferees, upon default in payment of the principal sum or interest or annuity, or any part thereof respectively, at the time mentioned in the mortgage or charge, may enter into possession of the mortgaged or charged land by receiving the rents and profits thereof, and may distrain upon the occupier or

Power of
entry and
foreclosure
by mort-
gagee
or annuitant.

tenant of the land under the power to distrain hereinafter contained, or may bring an action of ejectment to recover the land either before or after entering into the receipt of the rents and profits thereof, or making any distress, and either before or after any sale of such land shall be affected under the power of sale aforesaid, in the same manner in which he or they might have brought such action if the mortgage money or annuity had been secured to him or them by an assurance of the legal estate in the land mortgaged or charged and any mortgagee or his transferee shall be entitled to foreclose the right of the mortgagor or his transferees to redeem the mortgaged land in manner hereinafter provided.

Power of
distress in
cases of
interest or
annuity
being in
arrear.

110. Besides his other remedies, every mortgagee or annuitant for the time being, and every transferee of a mortgage or charge for the time being, shall be entitled, as often as it shall happen that the interest or annuity or any part thereof respectively shall be in arrear for twenty-one days, and after seven days shall have elapsed from an application to the occupier or tenant for the payment thereof, to enter upon the mortgaged or charged land and distrain the goods and chattels of such occupier or tenant for the arrears of the said interest or annuity, and the distress and distresses then and there found to dispose of in like manner as landlords may do in respect of distresses for rent reserved upon common demises, and out of the sale moneys to retain the moneys which shall be so in arrear and all costs and expenses occasioned by such distress and sale :

Provided that no occupier or tenant shall be liable to pay to any such mortgagee or annuitant or transferee a greater sum than the amount of rent which at the time of making such application for payment shall be due from such occupier or tenant; and any amount so paid, as well as any amount which shall be paid by him to any such

mortgagee or annuitant or transferee during the time he may be in receipt of the rents and profits, shall be held to be *pro tanto* satisfaction of the rent :

And provided also that if there be more than one mortgage or charge on any land the mortgagees or annuitants shall be entitled to exercise the remedy given by this section according to their priorities.

111. In every mortgage made under the provisions of this Act there shall be implied covenants with the mortgagee and his transferees by the mortgagor, binding the latter, and his heirs, executors, administrators and transferees, that he or they will pay the principal money therein mentioned on the day therein appointed, and will, so long as the principal money or any part thereof shall remain unpaid, pay interest thereon or on so much thereof as shall for the time being remain unpaid, at the rate, and on the days and in manner therein specified; also that he or they will repair and keep in repair all buildings or other improvements which shall have been or shall be erected or made upon the mortgaged land, and that the mortgagee and his transferees may at all reasonable times until such mortgage be redeemed, enter into and upon such land, with or without surveyors or others, to view and inspect the state of repair of such buildings or improvements.

Covenants implied in mortgages.

112. A mortgagee of or annuitant upon land leased under this Act, and his transferees, after entering into possession of the land, or the receipt of the rents and profits thereof, shall during such possession or receipt, and to the extent of any benefit, rents and profits, which may be received, become and be subject and liable to the lessor of the said land or his transferees, or the person for the time being entitled to the reversion and inheritance expectant on the term of the lease, for the payment of the rent reserved by the lease, and the performance and observance of the

Liability of mortgagees or annuitants entering on leased land.

covenants therein contained or by this Act declared to be implied therein, on the part of the lessee or his transferees.

Short
covenant for
insurance.

Eleventh
Schedule.

113. Whenever in any mortgage made under this Act the mortgagor shall employ the form of words contained in column one of the Eleventh Schedule, such mortgage shall be taken to have the same effect and be construed as if he had inserted therein the form of words contained in column two of the same Schedule, and every such form shall be deemed a covenant with the mortgagee and his transferees by the mortgagor, binding the latter and his heirs, executors, administrators and transferees. There may be introduced into or annexed to the said form in the first column any express exception from or express qualification thereof, and the like exception or qualification shall be taken to be made from or in the form in the second column.

Rights of
mortgagees
reserved
until dis-
charge or
transfer is
registered.

114. In addition to and concurrently with the rights and powers conferred on mortgagees and on transferees of mortgagees by this Act, every mortgagee for the time being of land under this Act and every transferee of a mortgage for the time being upon any such land shall, until a discharge from the whole of the money secured, or until a transfer upon a sale or an order for foreclosure, as the case may be, shall have been registered, have the same rights and remedies at law and in equity as he would have had or been entitled to if the legal estate in the land or term mortgaged had been actually vested in him, with a right in the mortgagor of quiet enjoyment of the mortgaged land until default in payment of the principal and interest money secured or some part thereof respectively, or until a breach in the performance or observance of some covenant expressed in the mortgage or to be implied therein by the provisions of this Act.

Nothing contained in this section shall affect or prejudice the rights or liabilities of any such mortgagee or transferee after an order for foreclosure shall have been entered in the

Register Book, or shall, until the entry of such an order, render a mortgagee of a lease made under this Act, or the transferee of his mortgage, liable to or for the payment of the rent reserved by the lease, or for the performance or observance of the covenants expressed or to be implied therein.

115. A mortgagor or his transferee shall not, either before or after such default or breach as aforesaid, commence in his own name any action at law for or in respect of any cause of action for which a mortgagee or his transferee may sue under the last preceding section, without obtaining the previous consent in writing of such mortgagee or transferee, or his agent, to the commencement of such action, after giving which consent such mortgagee or transferee shall not be entitled to bring in his name any action in respect of the cause of action specified in such consent.

As to
consent of
mortgagee to
action by
mortgagor.

If a mortgagor or his transferee shall bring any such action in his own name, and the defendant shall prove the existence of a mortgage, the plaintiff shall not be non-suited, nor shall there be a verdict or judgment against him, if he prove in reply that the action was brought with the written consent of the mortgagee, or of the transferee of his mortgage, or his agent.

116. Any sum of money which shall become payable to the mortgagor or his transferee under any judgment, decree or order in any action by him, in the Supreme Court or in any Resident Magistrate's Court for or on account of any waste or damage of or to the land mortgaged, shall be paid to the first mortgagee or his transferee, in reduction or satisfaction of the moneys secured; and if he shall not be willing to receive the same, or shall thereby be fully paid off the same, or the balance shall be paid to any subsequent mortgagee or his transferee, according to priority, in like reduction or satisfaction, and if no mortgagee or his

Application
of money
awarded to
mortgagor
for waste or
damage to
mortgaged
land.

transferee shall be willing or be entitled to receive the same, then to the mortgagor or his transferee for his own benefit.

Summons by mortgagee for payment of money according to section 116.

117. Any mortgagee or his transferee entitled to be paid any sum of money under section 116 may, either before or after judgment or execution obtained under any decree or order as aforesaid, apply to the Judge of the court in which such action was brought for a summons, calling on the plaintiff and defendant, or their solicitors or agents, to attend before the Judge to show cause why any such sum which shall have been recovered as damages in respect of any waste or damage as aforesaid, or which shall become payable on the settlement thereof, shall not be paid to such persons and for such purposes as in the next preceding section mentioned; and the Judge hearing the summons shall determine the matter thereof in a summary manner, and shall make such order therein as to costs and all other matters as may appear to be just and reasonable, and the decision of such judge shall be final and conclusive against all parties:

Provided always that every order made in pursuance of this section shall be liable to be rescinded or altered by the court in like manner as other orders made by a single Judge.

The Bailiff or other officer who shall have the execution of any writ of seizure and sale issued in such action shall, on being served with a copy of such order, obey the same.

Application of money recovered by mortgagee.

118. Any money received by a first mortgagee or his transferee under any proceeding commenced in his name at law or in equity shall, after payment thereof of his costs, be applied in reduction or satisfaction of the moneys secured and, subject thereto, shall be disposed of according to the equities of the parties interested.

119. Whenever default has been made in payment of the principal or interest money secured by a mortgage and such default shall be continued for six months after the time for payment mentioned in the mortgage, the mortgagee or his transferee may make application in writing to the Registrar for an order for foreclosure; and such application shall state that such default has been made and has continued for the period aforesaid, and that the land mortgaged has been offered for sale at public auction by a licensed auctioneer after notice of sale served as hereinbefore provided, and that the amount of the highest bidding at such sale was not sufficient to satisfy the moneys secured by such mortgage, together with the expenses occasioned by such sale, and that notice in writing of the intention of the mortgagee or his transferee to make an application for foreclosure has been served on the mortgagor or his transferee, by being given to him or them, or by being left on the mortgaged land, or by the same being sent through the post office by a registered letter directed to him or them at his or their address appearing in the Register Book, and also that a like notice of such intention has been served on every person appearing by the Register Book to have any right, estate or interest, to or in the mortgaged land subsequently to such mortgage, by being given to him or sent through the post office by a registered letter directed to him at his address appearing in the Register Book.

Proceedings
for fore-
closure
before the
Registrar.

Such application shall be accompanied by a certificate of the auctioneer by whom such land was put up for sale, and such other proof of the matters stated by the applicant as the Registrar may require, and the statements made in such application shall be verified by statutory declaration.

120. Upon such application the Registrar may cause notice to be published once in each of three successive weeks, in at least one newspaper published in the city of Kingston, offering such land for private sale, and shall appoint a time

Order for
foreclosure,
effect
thereof.

(not less than one month from the date of the first of such advertisements) upon or after which the Registrar shall issue to such applicant an order for foreclosure, unless in the interval a sufficient amount has been obtained by the sale of such land to satisfy the principal and interest moneys secured, and all expenses occasioned by such sale and proceedings, and every such order for foreclosure under the hand of the Registrar when entered in the Register Book, shall have the effect of vesting in the mortgagee or his transferee the land mentioned in such order, free from all right and equity of redemption on the part of the mortgagor or of any person claiming through or under him subsequently to the mortgage; and such mortgagee or his transferee shall, upon such entry being made, be deemed a transferee of the mortgaged land, and become the proprietor thereof, and be entitled to receive a certificate of title to the same, in his own name, and the Registrar shall cancel the previous certificate of title and duplicate thereof and register a new certificate.

Discharge of
mortgage
claims or
other charge
on lands.
25/1967
S. 13 (a).

121.—(1) Upon production of a memorandum signed by the mortgagee or annuitant, or his transferees, and attested by a witness to the satisfaction of the Registrar, discharging the land from the whole or part of the moneys or annuity secured or discharging any part of the land from the whole of such moneys or annuity, the Registrar shall make an entry in the Register Book, stating the time at which it was made that such mortgage or charge is discharged wholly or partially, or that part of the land is discharged as aforesaid, as the case may be; and upon such entry being made, the land or the portion of the land described in such memorandum shall cease to be subject to or liable for such moneys or annuity, or for the part thereof mentioned in such entry as discharged, and the Registrar shall make a corresponding entry on the duplicate certificate of title when produced to him for that purpose.

(2) If a mortgagor produces to the Registrar ^{25/1967}
evidence to the satisfaction of the Registrar— S. 13 (b).

- (a) that the whole of the moneys secured on the mortgaged land and all arrears of interest thereon have been paid; and
- (b) that the mortgagor is unable to produce a memorandum of the kind referred to in subsection (1) by reason of the fact that before such memorandum could be signed the mortgagee or his transferees died or left Jamaica or disappeared and could not be found,

the Registrar shall make an entry in the Register Book, stating the time at which it was made that such mortgage is discharged; and upon such entry being made the land shall cease to be subject to or liable for such moneys and the Registrar shall make a corresponding entry on the duplicate certificate of title when produced to him for that purpose.

122. Upon proof to the satisfaction of the Registrar of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any charge, the annuity thereby secured shall cease to be payable, and upon proof to the like satisfaction that all arrears of the annuity and all costs occasioned by non-payment thereof have been paid or satisfied, he shall make an entry in the Register Book that such annuity is satisfied and upon such entry being made the land shall cease to be subject to or liable for such annuity; and the Registrar shall make the like entry on the duplicate as is mentioned in section 121. ^{Discharge of annuity.}

Discharge
when
mortgagee
dead, or
absent from
Jamaica or
cannot be
found and
unrepresented.

25/1967
S. 14 (a) (b).

123. In case a mortgagee or his transferee is dead or absent from Jamaica or cannot be found and no person is known by the mortgagor to be authorized to give a receipt for the mortgage money at or after the date appointed for payment thereof, it shall be lawful for the mortgagor to pay such mortgage money, with all arrears of interest due thereon to the Accountant-General, in trust for the mortgagee or other person entitled thereto, and thereupon the interest upon such mortgage shall cease to run or accrue; and the Registrar shall, upon production of the receipt of the Accountant-General for the amount of the mortgage money and interest, make an entry in the Register Book discharging the land from such mortgage, stating the time at which such entry was made; and such entry shall be a valid discharge from such mortgage, and the Registrar shall make a corresponding entry on the duplicate grant or certificate of title when produced to him for that purpose.

The Accountant-General shall from time to time invest all mortgage money and interest which shall be received by him under this section, together with all dividends and interest which shall accrue thereon, in duly authorized Government securities in Jamaica, or otherwise as a Judge shall direct, for the benefit of the persons who shall for the time being be entitled thereto; but nothing herein contained shall render any Accountant-General in any manner liable for not investing the same respectively. The Registrar shall address to the Accountant-General requisitions to pay to such persons the moneys to which they may be entitled hereunder, and such moneys shall be issued in like manner as moneys are now issued from the Consolidated Fund.

Leases by
mortgagees.

124.—(1) A mortgagee of land under this Act while in possession thereof, shall, as against all prior incumbrances, if any, and as against the mortgagor, have by virtue of this

Act, power to make from time to time any of the following leases—

- (a) an agricultural or occupation lease for any term not exceeding twenty-one years; and
- (b) a building lease for any term not exceeding ninety-nine years.

(2) Every person making a lease under this section, may execute and do all assurances and things necessary or proper in that behalf.

(3) Every such lease shall be made to take effect in possession, not later than twelve months after its date.

(4) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(5) Every such lease shall be registered in the manner required by this Act for the registration of instruments affecting lands under this Act, if wholly executed in Jamaica within ninety days of its execution, or if wholly or partly executed out of Jamaica, within twelve months of its execution.

(6) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed or agreeing to execute within that time on the land leased, an improvement for or in connection with building purposes.

(7) In any such building lease a pepper corn rent, or a nominal or other rent, less than the rent ultimately payable may be made payable for the first five years, or any less part of the term.

(8) A contract to make or accept a lease under this section may be enforced within six months of the making thereof by or against every person on whom the lease if granted, would be binding.

(9) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage, or otherwise in writing, and subject to the provisions therein contained.

(10) Nothing in this section shall prevent the mortgage from reserving to or conferring on the mortgagee, any further or other powers of leasing, or having reference to leasing; and any further or other powers so reserved or conferred, shall be exercisable, as far as may be, as if they were conferred by this section, and with all like incidents, effects and consequences, unless a contrary intention is expressed in the mortgage.

(11) Nothing in this section shall be construed to enable a mortgagee to make a lease for any longer term, or on any other conditions than such as could have been granted or imposed by the mortgagor with the concurrence of all the incumbrancers, if this section had not been passed.

(12) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Appoint-
ment of
receiver by
mortgagee.

125.—(1) A mortgagee of any land under this Act shall have power, whenever he shall be entitled to sell the mortgaged property, or any part thereof, by writing under his hand, to appoint a receiver of the income of the mortgaged property, or any part thereof.

(2) The appointment shall be registered in manner hereinbefore provided, before or within thirty days of its being acted upon.

(3) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(4) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise in the name either of the mortgagor, or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same.

(5) A person paying money to the receiver shall not be concerned to enquire whether any case has happened to authorize the receiver to act.

(6) The receiver may be removed, and a new receiver may be appointed from time to time by the mortgagee, by writing under his hand and registered as aforesaid.

(7) The receiver shall be entitled to retain, out of any money received by him, for his remuneration and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five *per centum* on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five *per centum* on that gross amount, or at such higher rate as the court thinks fit to allow, on application made by him for that purpose.

(8) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire out of the money received by him, any building, effects or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(9) The receiver shall apply all money received by him as follows, namely—

- (a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property; and
- (b) in keeping down all annual sums or other payments, and the interest on all principal sums having priority to the mortgage in right whereof he is receiver; and
- (c) in payment of his commission and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed, or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (d) in payment of the interest accruing due in respect of any principal money due under the mortgage, and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Subdivision for Sale by Lots

Subdivision
of land for
selling out
in lots.

126. Any proprietor subdividing any land under the operation of this Act for the purpose of selling the same in allotments shall deposit with the Registrar a map or diagram of such land exhibiting distinctly delineated all roads, streets, passages, thoroughfares, squares or reserves, appropriated or set apart for the use of purchasers and also all allotments into which the said land may be divided, marked with distinct marks or symbols, and showing the areas and declared to be accurate by a statutory declaration of a Commissioned Land Surveyor :

Provided always that when any such land is situated within any portion of a parish to which the provisions of the Local Improvements Act and any enactment amending the

same shall apply the proprietor shall deposit with the Registrar copies, certified by the Clerk of the Board under that Act, of the map deposited with the Board and the resolution of the Board sanctioning the subdivision, and no transfer or other instrument effecting a subdivision of any such land otherwise than in accordance with the sanction of the Board shall be registered.

Execution of Instruments by Corporations

127. A corporation, for the purpose of transferring or otherwise dealing with any lands under the operation of this Act, or any lease, mortgage or charge, may, in lieu of signing the instrument for such purpose required, affix thereto its common seal.

Execution
of
instruments
by
corpora-
tions.

The seal of the attorney of any corporation whose chief or head office of business shall be out of the Island whether such attorney shall have been already constituted, or shall hereafter be constituted, by a power of attorney under a seal purporting to be the common seal of the corporation giving the power, shall be deemed to be the common seal of such corporation within the meaning and for the purposes of this section.

Implied Powers and Covenants

128. Every covenant and power to be implied in any instrument by virtue of this Act may be negatived or modified by express declaration in the instrument, or endorsed thereon, and in the pleadings in any action for breach of any such covenant it shall be lawful to allege that the party against whom, or against whose real or personal representatives, such action is brought did so covenant, precisely in the same manner as if such covenant had been expressed in words at length in such instrument, any law or practice to the contrary notwithstanding; and every such implied covenant shall have the same force and effect as if

Implied
covenants
and powers
and
modifica-
tions.

it had been set out at length in such instrument; and where in any instrument there shall be more than one covenantor, such covenants as are by this Act declared to be implied in instruments of the like nature shall be construed to be several as well as joint.

Compulsory Registration

Circumstances in which registration shall be compulsory.
25/1967
S. 15.

129.—(1) Where the Director of Surveys has completed a cadastral plan of the whole or any part of any parish, the Minister may by order declare that such cadastral plan has been completed.

(2) Every order made under this section shall—

- (a) define the area in respect of which the cadastral plan has been completed; and
- (b) specify the date on and after which the provisions of subsection (3) shall have effect in relation to all lands in that area.

(3) Where any order is made under this section no conveyance made on or after the date specified by such order shall be effective to pass by way of sale, exchange or gift an estate in fee simple absolute in any land within the area defined by such order unless such conveyance is made—

- (a) by an instrument registered in accordance with the provisions of this Act; or
- (b) on an application to bring such land under the operation of this Act.

Registration on Transmission

Registration of title by transmission.

130.—(1) When registered land or any registered lease, mortgage, or charge of or upon registered land shall have been acquired by transmission the person claiming to have acquired the same shall apply in writing to the Registrar to be registered as the proprietor thereof and shall furnish such evidence of his claim as the Registrar shall deem to be

necessary. Upon such claim being proved to his satisfaction the Registrar shall enter a memorandum of the change of proprietorship accordingly upon the certificate of title for the said land, and also (unless he has dispensed with the production thereof) upon the duplicate of the said certificate. Upon such entry being made the person so entitled by transmission shall become the transferee of such land, lease, mortgage or charge, and be deemed to be the proprietor thereof, and shall hold the same for the purposes for which it may be applicable by law and subject to any qualification under which the previous proprietor held the same, but for the purpose of any dealings therewith under the provisions of this Act he shall be deemed to be the absolute proprietor thereof.

(2) The title of every person becoming a transferee under this section shall, upon such entry being made, relate back to and be deemed to have arisen upon the happening of the event upon which such registered land, lease, mortgage or charge shall have been acquired by transmission as if there had been no interval of time between the happening of such event and such entry.

(3) The Registrar may enter a caveat for the protection of the interests of any other persons interested in such land, lease, mortgage or charge.

131. If there shall be any doubt, dispute or litigation under section 130 as to the true construction or legal validity or effect of any will or settlement relating to any registered land, lease, mortgage or charge, or if the person entitled to any registered land, lease, mortgage or charge under any will, settlement or instrument cannot be ascertained, a Judge may appoint a person to be registered as the representative of such land, lease, mortgage or charge and such person when registered shall become the transferee and be deemed to be the proprietor thereof for the purposes

Procedure where there is any doubt, etc., under section 130 as to the true construction, etc., of any will, etc.

of this Act, subject, however, to any directions which shall from time to time be given by a Judge by order duly registered touching the disposition thereof or the dealing therewith. Such registration shall be made by the Registrar entering a memorandum of change of proprietorship as hereinbefore provided and of such order on the certificate of title and on the duplicate thereof.

Registration
of pro-
prietorship.

132.—(1) If the personal representatives of a deceased proprietor of registered land assent to a devise thereof, or if such land has been appropriated to a legatee or other beneficiary under the provisions of the Real Property Representative Act, such devisee, legatee or beneficiary shall, if the personal representatives have not been registered as proprietors of the land, be entitled to apply to be registered as proprietor thereof. Such an application shall be made in like manner and the fees payable in respect thereof shall be the same as on an application for registration by the personal representatives.

(2) If the personal representatives have become registered as proprietors of the land no devisee, legatee or other beneficiary shall be registered as proprietor thereof unless and until a transfer thereof under the provisions of section 88 shall have been executed to him and duly registered anything contained in sections 5 and 6 of the said Real Property Representative Act to the contrary notwithstanding.

Payment of
succession
duty and
estate duty.
60/1954
S. 64 (1).

133. The Registrar before entering a memorandum of change of proprietorship by transmission in respect of land upon the certificate of title shall require the person applying for the entry to produce to him a receipt from the proper officer, or other evidence satisfactory to him showing that all estate duty payable in respect of the land has been paid, or a certificate from the proper officer showing that the land

is not liable for the payment either immediately or at all of any estate duty. Any liability for estate duty not immediately payable shall be noted on the certificate of title.

*Registration of Transfer on Sale under a Writ or
Order and of Vesting Orders*

134. No execution registered prior to or after the commencement of this Act shall bind, charge or affect any land or any lease, mortgage or charge, but the Registrar, on being served with a copy of any writ or order of sale issued out of any court of competent jurisdiction, or of any judgment, decree or order of such court, accompanied by a statement signed by any party interested, or his attorney, solicitor or agent, specifying the land, lease, mortgage or charge, sought to be affected thereby, shall, after marking upon such copy the time of such service, enter the same in the Register Book; and after any land, lease, mortgage or charge, so specified shall have been sold under any such writ, judgment, decree or order, the Registrar shall, on receiving a certificate of the sale thereof in such one of the Forms A, B, or C in the Twelfth Schedule hereto as the case requires (which certificate shall have the same effect as a transfer made by the proprietor), enter such certificate in the Register Book; and on such entry being made the purchaser shall become the transferee, and be deemed the proprietor of such land, lease, mortgage or charge:

Register of
transfer on
sale under a
writ, decree
or order,
effect
thereof.

Twelfth
Schedule.
Forms A,
B and C.

Provided always that until such service as aforesaid no sale or transfer under any such writ or order shall be valid as against a purchaser for valuable consideration, notwithstanding such writ or order had been actually issued at the time of the purchase, and notwithstanding the purchaser had actual or constructive notice of the issuing of such writ or order.

Upon production to the Registrar of sufficient evidence of the satisfaction of any writ or order a copy whereof shall

have been served as aforesaid, he shall make an entry in the Register Book of a memorandum to that effect, and on such entry being made such writ or order shall be deemed to be satisfied.

Every such writ or order shall cease to bind, charge or affect any land, lease, mortgage or charge, specified as aforesaid, unless a certificate of the sale under such writ shall be left for entry upon the register within three months from the day on which such copy was served, or such longer time as the court shall direct.

Registration
of vesting
orders.

135. Whenever any person interested in land under the operation of this Act, or any estate or interest therein, shall appear to the Supreme Court or to any Resident Magistrate's Court to be a trustee of such land, estate or interest, within the intent or meaning of any law or statute now or hereafter to be in force relating to trusts and trustees, and any vesting order shall be made in the premises by the said court, the Registrar, on being served with such order, or an office copy thereof, shall enter in the Register Book on the certificate of title and duplicate instrument (if any) the date of the said order, the time of its production to him, and the name and addition of the person in whom the said order shall purport to vest the said land, estate or interest; and upon such entry being made in the Register Book, such person shall become the transferee, and be deemed to be the proprietor thereof.

Unless and until such entry shall be made, the said order shall have no effect or operation in transferring or otherwise vesting the said land, estate or interest.

*Registration of Marriage of Female Proprietor and of
Transmission by death of Party having an Interest*

Endorsation
of marriage
of female
proprietor.

136. The Registrar, upon production of sufficient proof of the marriage of a female registered as a proprietor of any

land or of any lease, mortgage or charge shall register the marriage by endorsing the certificate of title with a note of the fact of the marriage.

137. Whenever the fact of any marriage has been so endorsed as aforesaid, then upon the death of the wife leaving her husband entitled as tenant by the curtesy of land comprised in the certificate of the title upon which the said endorsement has been made, and in any case upon the death of any person registered with any other person as joint proprietor of any land or of any lease or charge or as joint proprietors of any mortgage owned on a joint account in equity, the Registrar, on the application of the husband, or person entitled by survivorship as aforesaid, and proof to his satisfaction of such events as aforesaid, may register such applicant as the proprietor thereof, and he shall, upon being registered in the manner herein prescribed for the registration of a like estate or interest, become the transferee of such land, lease, mortgage or charge, and be deemed the proprietor thereof, but as regards any tenancy by the curtesy for the lifetime only of such husband.

Registration
of trans-
mission of
title by
death of
party having
an interest,

Bankruptcy

138. When upon the bankruptcy of the proprietor of any land, lease, mortgage or charge, the estate or interest of such proprietor in such land, lease, mortgage or charge, vests in the trustee in bankruptcy, such trustee shall be entitled to be registered in respect of the same; and the Registrar, upon the receipt of an office copy of the provisional or absolute order in bankruptcy against such proprietor, accompanied by an application in writing under the hand of the trustee to be registered in respect of any land, lease, mortgage or charge, of such bankrupt therein described, shall enter in the Register Book, upon the folium constituted by the certificate of title of such land, a memorandum notifying such order in bankruptcy; and upon such

Registration
of trans-
mission to
trustee in
bankruptcy.

Proceedings
as to
property of
bankrupt.

entry being made the trustee shall become the transferee, and be deemed to be the proprietor of such land, lease, mortgage or charge, estate or interest, and shall hold the same subject to the equities upon and subject to which the bankrupt held the same; but for the purpose of any dealings therewith under the provisions of this Act such trustee shall be deemed to be the absolute proprietor thereof. If the trustee shall omit or neglect to make the application aforesaid, or to lodge a caveat under the general provision relating to caveats hereinafter contained, within seven days after the Registrar shall have notified to him, by a letter delivered or registered, that application has been made for the registration of an instrument concerning property (to be in such notice described) standing in the Register Book in the name of the bankrupt, such instrument may be registered, and thereupon shall not be affected by the order of adjudication either at law or in equity.

If a caveat shall be lodged pursuant to such notice the same shall be dealt with, and be subject to the same provisions as other caveats with this variation, that the fourteen days' notice required in general cases need not actually be given to the caveator, but shall be deemed to have been given on the day on which the caveat was lodged.

Caveats

Caveat
against
dealings.

Thirteenth
Schedule.

139. Any beneficiary or other person claiming any estate or interest in land under the operation of this Act, or in any lease, mortgage or charge, under any unregistered instruments, or by devolution in law or otherwise, may lodge a caveat with the Registrar in the Form in the Thirteenth Schedule, or as near thereto as circumstances will permit, forbidding the registration of any person as transferee or proprietor of, and of any instrument affecting, such estate or interest, either absolutely or until after notice of the intended registration or dealing be given to the

intended caveator, or unless such instrument be expressed to be subject to the claim of the caveator, as may be required in such caveat.

Every such caveat shall state the name and addition of the person by whom or on whose behalf the same is lodged, and except in case of a caveat lodged by order of the Supreme Court, or a Judge thereof, or by the Registrar as in this Act provided, shall be signed by the caveator or his agent.

The person lodging such caveat shall, if required support the same by a statutory declaration, stating the nature of the title under which the claim is made, and may withdraw any such caveat.

No caveat shall be received—

- (a) unless some address or place within the city of Kingston shall be appointed therein as the place at which notice and proceedings relating to such caveat may be served;
- (b) unless some definite estate or interest be specified and claimed by the caveator; and if such claim be under any document or writing, unless such caveat is accompanied by a copy of such document or writing, or in cases in which there is a mortgage or lease on the title sought to be affected, unless it is stated whether the claim is against the registered proprietor of the land or of the mortgage or of the lease. A caveator may, however, give an additional address out of the said city at the foot of such caveat, in which case a registered letter shall be sent through the post office to such address on the same day as that on which any notice relating to such caveat is served in Kingston. Every notice relating to such caveat, and any

proceedings in respect thereof if served at the address or place appointed as aforesaid, shall be deemed to be duly served.

Effect of
lodging
caveat
with
the Regis-
trar, and
proceedings
thereon.

140. Upon the receipt of any caveat under this Act, the Registrar shall notify the same to the person against whose application to be registered as proprietor, or as the case may be, to the proprietor against whose title to deal with the estate or interest such caveat has been lodged, and such applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he thinks fit, summon the caveator to attend before the Supreme Court, or a Judge in Chambers, to show cause why such caveat should not be removed, and such Court or Judge may, upon proof that such caveator has been summoned, make such order in the premises, either *ex parte* or otherwise, and as to costs as to such Court or Judge may seem fit.

Except in the case of a caveat lodged by or on behalf of a beneficiary under disability claiming under any will or settlement, or by the Registrar, every caveat lodged against a proprietor shall be deemed to have lapsed as to the land affected by the transfer or other dealing, upon the expiration of fourteen days after notice given to the caveator that such proprietor has applied for the registration of a transfer or other dealing, unless in the meantime such application has been withdrawn.

A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest, but if before the expiration of the said period of fourteen days or such further period as is specified in any order made under this section the caveator or his agent appears before a Judge, and gives such undertaking or security, or lodges such sum in court, as such Judge may consider sufficient to indemnify every person against any damage that may be sustained by

reason of any disposition of the property being delayed, then and in such case such Judge may direct the Registrar to delay registering any dealing with the land, lease, mortgage or charge, for a further period to be specified in such order, or may make such other order as may be just, and such order as to costs as may be just.

141. In every case in which prior to a person becoming a registered proprietor of any land, lease, mortgage or charge under this Act, an order of sequestration of his estate, or an adjudication in bankruptcy shall have been or shall hereafter be made, and any instrument affecting such land, lease, mortgage or charge, is presented for registration, the Registrar shall forthwith notify to the trustee of such estate, by a letter delivered or registered (in which shall be mentioned the bankrupt's name) that application has been made for the registration of such instrument; and unless a caveat forbidding such registration shall be lodged within seven days after the service or posting of such letter such instrument may be registered, and thereupon shall not be affected by such order of sequestration or adjudication in bankruptcy either at law or in equity.

Effect of an order for the sequestration of the estate of, and the bankruptcy of, the intended registered proprietor.

If a caveat shall be lodged under this section, the same shall be dealt with and be subject to the same provisions as if it had been a caveat lodged under section 140, with this variation that the fourteen days' notice therein mentioned need not actually be given to the caveator, but shall be deemed to have been given on the day on which the caveat was lodged.

142. So long as any caveat shall remain in force prohibiting any registration or dealing with the estate or interest in respect to which such caveat may be lodged, the Registrar shall not enter in the Register Book any change in the proprietorship or any transfer or other instrument

Duty of Registrar so long as caveat in force.

presented for registration subsequent to the date on which such caveat was lodged purporting to transfer or otherwise deal with or affect the estate or interest in respect of which such caveat may be lodged, unless such transfer or other instrument or dealing be expressly exempted from the operation of the caveat or unless the caveator shall consent thereto in writing.

Effect of
lodging
caveat
without
reasonable
cause.

143. Any person lodging any caveat with the Registrar, either against bringing land under this Act or otherwise, without reasonable cause, shall be liable to make to any person who may have sustained damage thereby such compensation as a Judge on a summons in Chambers shall deem just and order.

Search Certificates and Stay Orders

Application
for search
certificate.

Fourteenth
Schedule.

144. Any person desiring information as to whether a proprietor is able to deal with the land comprised in his certificate free from obstruction caused by any caveat, instrument lodged for registration, order, injunction, or other cause known to the Registrar, but not appearing upon the certificate, may sign an application for search certificate in the form in the Fourteenth Schedule; and on payment of the fee in that behalf provided, the Registrar shall cause the necessary searches and inquiries to be made for the purpose of affording the information required; and the result thereof shall be certified in the form in the said Schedule contained by affixing the seal of the Office with the initials of the officer attaching the same, and the day, hour, and minute at which the seal is affixed.

Effect of
search
certificate.

145. Such search certificate shall refer to the dealing or encumbrance last noted on the certificate of title for the purpose of showing the state of the register at the time of issuing the search certificate, but not of informing the person applying for the search certificate as to what is upon

the certificate of title; and such person shall be entitled to inspect the certificate of title, and shall be deemed to know all of which an inspection of the certificate of title would have informed him.

146. Any person proposing to deal for value with a proprietor may, with the consent in writing of such proprietor or his agent authorized in writing in that behalf, and on stating the particulars of the proposed dealing, lodge with the application for search certificate an application for stay of registration in the form in the Fifteenth Schedule; and if the result of the search shows that the proprietor is free to deal, the Registrar shall on payment of the fee in that behalf provided, sign an order in the form in the said Schedule staying registration of any instrument affecting the land to be comprised in the proposed dealing forty-eight hours from the time mentioned in the search certificate; and the said order shall be affixed to the certificate and a copy thereof given to the applicant.

Application for stay of registration of instrument affecting land comprised in proposed dealing. Fifteenth Schedule.

147. If within the said period of forty-eight hours a properly perfected instrument affecting the proposed dealing be duly lodged for registration, such instrument shall have priority over any other instrument which may be lodged for registration after the time mentioned in the search certificate, and the same shall be registered notwithstanding any caveat, copy of writ, or application by a trustee in bankruptcy which may have been lodged in the office after the time mentioned in such search certificate.

Priority of properly perfected instrument lodged during stay of registration.

148. Subject to the lodging of such duly perfected instrument within such period, any other instrument, and any caveat, copy of writ, or application received in the office during such period, shall be dealt with in the same manner, shall have the same priority as between themselves, and shall be as effectual as if no stay of registration had been obtained.

Other instruments lodged during stay of registration to have same priority as if no stay of registration.

Powers of Attorney

Power of
attorney.

149. The proprietor (including a married woman) of any land under the operation of this Act, or of any lease, mortgage or charge, may appoint any person to act for him in transferring the same, or otherwise dealing therewith, by signing a power of attorney in the Form or to the effect contained in the Sixteenth Schedule.

Sixteenth
Schedule.

Every such power or a duplicate or attested copy thereof, shall be deposited with the Registrar, who shall note the effect thereof in a book to be kept for the purpose.

Effect of
power of
attorney.

150. A power of attorney given by a person before as well as after becoming a proprietor of any land, or of any lease, mortgage or charge, shall be deemed to be within the meaning of section 149; and every power of attorney heretofore given, or which shall hereafter be given when the same or a duplicate shall have been deposited and noted as aforesaid shall, while continuing in force, be valid and available within the scope and to the extent of the powers and authorities given or to be given by such power concerning the lands, tenements and chattels real generally, of the principal for similar or corresponding dealings under this Act with any land under the operation hereof, or with any lease, mortgage or charge.

Powers of
attorney and
Convey-
ancing Act.

151. The provisions of sections 48, 49 and 50 of the Conveyancing Act shall apply to powers of attorney deposited with the Registrar under section 149 and the protection afforded by such sections to purchasers and persons making payments or doing acts in pursuance of a power of attorney shall apply to the Registrar and to the Assurance Fund.

Attestation of Instruments

Attestation
of instru-
ments.

152. Instruments and powers of attorney under this Act signed by any person and attested by one witness shall be

held to be duly executed; and such witness may be—

within this Island—the Governor-General, any of the Judges of the Supreme Court, or any Justice of the Peace, or the Registrar under this Act, or a Notary Public, or a Solicitor of the Supreme Court;

in Great Britain or Northern Ireland—the Mayor or Deputy Mayor, or the Chief Magistrate or Deputy Chief Magistrate, of any city, borough or town corporate, or a Notary Public;

in any other Commonwealth country—the Governor or person exercising the functions of Governor, the Commander-in-Chief, a Judge of any Court, the Mayor or Chief Magistrate of any city or town, or a Notary Public;

in any Foreign State or Country—the Jamaican or the British Consular Officer (which expression shall include Consul-General, Consul and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul, or Vice-Consul), or a Notary Public.

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Sch.

Such witness, whether within or without this Island, may also be any other person, but in such case he shall appear

Seventeenth
Schedule.

11/2015
Sch.

before one of the officers or persons aforesaid, who, after making due enquiries of such witness, shall endorse upon the instrument or power a certificate in the Form in the Seventeenth Schedule and such certificate shall be deemed sufficient proof of the due execution of such instrument or power.

Where an instrument or power of attorney shall be witnessed or certified out of this Island by any of the officers aforesaid the seal of office of such officer shall be affixed to his attestation or certificate on such instrument or power of attorney.

Procedure and Practice

Procedure in
cases of
error or mis-
descrip-
tion in
certificate of
title or of its
being in
possession
of wrong
person.

153. In case it shall appear to the satisfaction of the Registrar that any certificate of title or instrument has been issued in error, or contains any misdescription of land or of boundaries, or that any entry or endorsement has been made in error on any certificate of title or instrument, or that any certificate, instrument, entry or endorsement, has been fraudulently or wrongfully obtained, or that any certificate or instrument is fraudulently or wrongfully retained, he may by writing require the person to whom such document has been so issued, or by whom it has been so obtained or is retained, to deliver up the same for the purpose of being cancelled or corrected, or given to the proper party, as the case may require; and in case such person shall refuse or neglect to comply with such requisition, the Registrar may apply to a Judge to issue a summons for such person to appear before the Supreme Court or a Judge, and show cause why such certificate or instrument should not be delivered up for the purpose aforesaid, and if such person, when served with such summons, shall refuse or neglect to attend before such Court or a Judge

thereof, at the time therein appointed, it shall be lawful for a Judge to issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the Supreme Court or a Judge for examination.

154. Upon the appearance before the Court or a Judge of any person summoned or brought up by virtue of a warrant as aforesaid, it shall be lawful for the Court or Judge to examine such person upon oath and, in case it shall seem proper, to order such person to deliver up such certificate of title or instrument as aforesaid and, upon refusal or neglect by such person to deliver up the same pursuant to such order, to commit such person to prison for a period not exceeding six months unless such certificate or instrument shall be sooner delivered up; and in such case, or in case such person cannot be found so that a requisition and summons may be served upon him as hereinbefore directed, the Registrar shall, if the circumstances of the case require it, issue to the proprietor of the land such certificate of title as is herein provided to be issued in the case of any certificate of title being lost or destroyed, and shall enter in the Register Book notice of the issuing of such certificate, and the circumstances under which the same was issued, and thereupon the certificate of title or instrument as aforesaid, so refused or neglected to be delivered up as aforesaid, shall be deemed for all purposes to be null and void as far as the same shall be inconsistent with the certificate or instrument so issued in lieu thereof.

Order for delivering up of certificate of title and enforcement thereof and procedure if person wrongfully holding certificate cannot be found.

155. If the Registrar is satisfied upon production to him of sufficient evidence—

- (a) that land under the operation of this Act has been sold by the registered proprietor thereof; and
- (b) that the whole of the purchase money has been paid; and

Transfer when vendor is dead, absent, etc., and unrepresented. 25/1967 S. 16.

- (c) that by virtue of such sale the purchaser or any person claiming through him has entered upon the land and taken possession thereof and the vendor or his representative has acquiesced in such entry and taking of possession; and
- (d) that the land cannot be transferred to the purchaser or any person claiming through him either because the registered proprietor or his representative is dead or absent from Jamaica or cannot be found or because it is, for any other reason, impracticable to obtain the signature of the registered proprietor or his representative within a reasonable time,

the Registrar may in his discretion make a vesting instrument in the prescribed form and shall thereafter enter a memorandum thereof in the Register Book and issue a new certificate of title and the duplicate thereof in the name of the person in whom the instrument vests the land and that person shall become the transferee and the registered proprietor thereof.

Proceedings
if Registrar
refuses an
application,
or if appli-
cant dis-
satisfied with
directions,
etc., given by
Registrar or
Referee.

156. If, upon the application of any owner or proprietor to have land brought under the operation of this Act, or to have any transaction or transmission registered or recorded, or to have any certificate of title, foreclosure, order or other document, issued, or to have any act or duty done or performed which by this Act is required to be done or performed by the Registrar, the Registrar shall refuse to accede to such application, or if such owner or proprietor shall be dissatisfied with the direction upon his application, given by the referee, it shall be lawful for such owner or proprietor to require the Registrar or Referee, as the case may be, to set forth in writing, under his hand, the grounds of his refusal, or the ground upon which such direction was given; and such owner or proprietor may, if he think fit, at his own costs, summon the Registrar or Referee, as the case may be,

to appear before a Judge to substantiate and uphold the grounds of his refusal, or of such direction as aforesaid; such summons to be issued under the hand of a Judge, and to be served upon the Registrar or Referee six clear days at least before the day appointed for hearing the complaint of such owner or proprietor.

Upon such hearing the Registrar or Referee or his counsel shall have the right to reply, and the said Judge may, if any question of fact be involved, direct an issue to be tried to decide such fact, and thereafter the said Judge shall make such order in the premises as the circumstances of the case may require, and the Registrar shall obey such order, and all expenses attendant upon any such proceedings shall be borne and paid by the applicant, or other person preferring such complaint, unless the Judge shall certify that there was no probable ground for such refusal or direction as aforesaid.

157. Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory, in any action or proceeding in any court; but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act. Discovery.

158.—(1) Upon the recovery of any land, estate or interest, by any proceeding at law or equity, from the person registered as proprietor thereof, it shall be lawful for the court or a Judge to direct the Registrar— Court or a Judge may direct cancellation, etc., of certificate, etc.
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S. 17.

- (a) to cancel or correct any certificate of title or instrument or any entry or memorandum in the Register Book, relating to such land, estate or interest; and

(b) to issue, make or substitute such certificate of title, instrument, entry or memorandum or do such other act, as the circumstances of the case may require, and the Registrar shall give effect to that direction.

(2) In any proceeding at law or equity in relation to land under the operation of this Act the court or a Judge may, upon such notice, if any, as the circumstances of the case may require, make an order directing the Registrar—

- (a) to cancel the certificate of title to the land and to issue a new certificate of title and the duplicate thereof in the name of the person specified for the purpose in the order; or
- (b) to amend or cancel any instrument, memorandum or entry relating to the land in such manner as appears proper to the court or a Judge.

Rules and
practice in
actions
under
this Act.

159. In all actions and suits brought under this Act, the same rules of procedure and practice shall apply, and there shall be the same right of appeal, as shall be in force or exist for the time being in respect of ordinary actions in the court in which such action may be tried :

Provided that rules of court may be made for regulating proceedings in the Supreme Court under this Act, and from time to time to rescind, alter or add to such rules and orders.

Actions and other Remedies

Registrar's
and
Referee's
protection
against
actions.

160. The Registrar shall not, nor shall the Referee or any person acting under the authority of either of them, be liable to any action, suit or proceeding, for or in respect of any act or matter *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act.

161. No action of ejectment or other action, suit or proceeding, for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say—

Certificate of title a bar to all actions of ejectment against registered proprietor with certain exceptions.

- (a) the case of a mortgagee as against a mortgagor in default;
- (b) the case of an annuitant as against a grantor in default;
- (c) the case of a lessor as against a lessee in default;
- (d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee *bona fide* for value from or through a person so registered through fraud;
- (e) the case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of such other land, or of its boundaries, as against the registered proprietor of such other land not being a transferee thereof *bona fide* for value;
- (f) the case of a registered proprietor with an absolute title claiming under a certificate of title prior in date of registration under the provisions of this Act, in any case in which two or more certificates of title or a certificate of title may be registered under the provisions of this Act in respect of the same land,

and in any other case than as aforesaid the production of the certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or

lessee of the land therein described any rule of law or equity to the contrary notwithstanding.

Action for damages by any person wrongfully deprived of land.

162. Any person deprived of land, or of any estate or interest in land, in consequence of fraud, or through the bringing of such land under the operation of this Act, or by the registration of any other person as proprietor of such land, estate or interest, or in consequence of any error or misdescription in any certificate of title, or in any entry or memorandum in the Register Book, may bring and prosecute an action for the recovery of damages against the person on whose application such land was brought under the operation of this Act, or such erroneous registration was made, or who acquired title to the estate or interest through such fraud, error or misdescription :

Provided always that, except in the case of fraud or of error occasioned by any omission, misrepresentation or misdescription, in the application of such person to bring such land under the operation of this Act, or to be registered as proprietor of such land, estate or interest, or in any instrument signed by him, such person shall upon a transfer of such land *bona fide* for valuable consideration, cease to be liable for the payment of any damage beyond the value of the consideration actually received, which damage but for such transfer might have been recovered from him under the provisions herein contained; and in such last mentioned case, and also in case the person against whom such action for damages is directed to be brought as aforesaid shall be dead, or shall have been adjudged bankrupt, or cannot be found within the jurisdiction of the Supreme Court, then and in any such case, such damages, with costs of action, may be recovered out of the Assurance Fund by action against the Registrar as nominal defendant :

Provided that in estimating such damages, the value of all buildings and other improvements erected or made subsequent to the making of a contract of sale binding on the parties thereto, or subsequent to the deprivation shall be excluded.

163. Nothing in this Act contained shall be so interpreted as to leave subject to an action for the recovery of the land, or to an action for recovery of damages as aforesaid, or for deprivation of the estate or interest in respect to which he is registered as proprietor, any purchaser *bona fide* for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under whom he claims may have been registered as proprietor through fraud or error, or may have derived from or through a person registered as proprietor through fraud or error, and this whether such fraud or error shall consist in wrong description of the boundaries or of the parcels of any land, or otherwise howsoever.

Protection of *bona fide* purchaser of registered land against actions.

164. Any person sustaining loss through any omission, mistake or misfeasance, of the Registrar, or any other officer or clerk, in the execution of their respective duties under the provisions of this Act or by an error, omission or misdescription in any certificate of title, or any entry or memorandum in the Register Book, or by the registration of any other person as proprietor, and who by the provisions of this Act is barred from bringing an action for the recovery of the land, estate or interest, may, in any case in which the remedy by action for recovery of damages as herein provided is inapplicable, bring an action against the Registrar as nominal defendant for recovery of damages.

Action against Registrar in certain cases.

Provided that in estimating such damages, the value of all buildings and other improvements erected or made subse-

quent to the making of a contract of sale binding on the parties thereto, or subsequent to the deprivation, shall be excluded.

Persons claiming shall before action brought apply to Registrar in writing for compensation.

165. Any person sustaining loss or damage in any case in which he is entitled to bring an action to recover damages under the provisions of sections 162 and 164 shall before commencing proceedings make application in writing to the Registrar for compensation, and such application shall be supported by affidavits or statutory declaration. If the Registrar, with the approval of the Attorney-General, admits the claim or any part thereof and certifies accordingly to the Minister, the Minister may if he thinks fit issue a warrant to the Accountant-General for the amount so certified to be paid out of the Assurance Fund, and the Registrar shall be entitled, as though he were a person deprived of land, to proceed under section 162 against the person liable under the said section for the amount so paid and any amount recovered shall be lodged with the Accountant-General to the credit of the Assurance Fund.

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Notice of action against Registrar. Costs if plaintiff fails.

166. In any case in which an action for recovery of damages is permitted to be brought against the Registrar as nominal defendant, notice in writing of such action and of the cause thereof shall be served upon such nominal defendant, one month at least before the commencement of such action, and if in any such action judgment be given in favour of the nominal defendant, or the plaintiff discontinue or become nonsuit, the plaintiff shall be liable to pay the full costs of defending such action, and the same, when taxed, shall be recovered in the name of the nominal defendant by the like process of execution as in other actions.

Payment of amount of judgment if plaintiff succeeds.

167. If in any such action the plaintiff recover final judgment against such nominal defendant, then the Judge before whom such action may be tried, or the Supreme

Court, shall certify the fact of such judgment, and the amount of damages and costs recovered; and the amount of such damages and costs shall be paid to the person recovering the same, and shall be charged to the account of the Assurance Fund; and in case the balance to the credit of the Assurance Fund shall be inadequate to defray the amount specified, such sum as may be necessary for that purpose shall be advanced out of the Consolidated Fund. and the amount so advanced shall be repaid from the Assurance Fund as the same may thereafter accrue.

168. No action for recovery of damages sustained through deprivation of land, or of any estate or interest in land, shall lie or be sustained against the Registrar or against the Assurance Fund, or against the person upon whose application such land was brought under the operation of this Act, or against the person who applied to be registered as proprietor in respect of such land, unless such action shall be commenced within the period of six years from the date of such deprivation:

Limitation
of actions
for
damages
through
deprivation
of land
under
this Act.

Provided, nevertheless, that any person being under the disability of coverture, infancy or unsoundness of mind, may bring such action within six years from the date on which such disability shall have ceased; so, however, that such action be brought within thirty years next after the date of such deprivation. The plaintiff in any such action, at whatever time it may be brought, and the plaintiff in any such action for the recovery of land shall be nonsuited in any case in which the deprivation complained of may have been occasioned through the bringing of land under the operation of this Act, if it shall be made to appear to the satisfaction of the Judge before whom such action shall be tried that such plaintiff, or the persons through or under whom he claims title, had actual notice that application had

Nonsuit if
plaintiff or
those
through
whom he
claims had
notice of
proceedings
under this
Act.

been made to bring such land under the operation of this Act, and had wilfully, or collusively or negligently omitted to lodge a caveat forbidding the same, or had allowed such caveat to lapse.

Proceedings
to recoup the
Assurance
Fund such
money as
may be paid
thereout.

169. Whenever any amount has been paid out of the Assurance Fund on account of any person who may be dead such amount may be recovered from the estate of such person by action or suit against his personal representatives in the name of the Registrar; and whenever any such amount has been paid on account of a person who shall have been adjudged bankrupt, the same shall be considered to be a debt due from the estate of such bankrupt, and a certificate signed by the Accountant-General certifying the fact of such payment out of the Assurance Fund, and delivered to the trustee, shall be sufficient proof of such debt; and whenever any amount has been paid out of the Assurance Fund on account of any person who may have absconded or who cannot be found within the jurisdiction of the Supreme Court, and may have left any real or personal estate within Jamaica, it shall be lawful for the said Court or a Judge thereof, upon the application of the Registrar, and upon the production of a certificate signed by the Accountant-General certifying that the amount has been paid in satisfaction of a judgment against the Registrar as nominal defendant, to allow the Registrar to sign judgment against such person forthwith for the amount so paid out of the Assurance Fund, together with the costs of the application; and such judgment shall be final, and signed in like manner as a final judgment by confession or default in an action and execution may issue immediately; and if such person shall not have left real or personal estate within Jamaica sufficient to satisfy the amount for which execution may have been issued as aforesaid, it shall be lawful for the Registrar to recover such amount, or the unrecovered

balance thereof, by action against such person at any time thereafter, if he shall be found within the jurisdiction of the Supreme Court.

170. The Assurance Fund shall not under any circumstances be liable for compensation for any loss, damage or deprivation occasioned by the breach by a proprietor of any trust, whether express, implied or constructive, nor in any case in which such loss or deprivation has been occasioned by any land being included in the same certificate of title with other land through misdescription of boundaries or parcels of any land, unless in the case last aforesaid it shall be proved that the person liable for compensation and damages is dead, or has absconded, or has been adjudged bankrupt, or the bailiff shall certify that such person is unable to pay the full amount awarded in any action for the recovery of such compensation and damages:

Non-liability
of Assurance
Fund in
certain cases,

Provided always that any amount paid out of the Assurance Fund on account of any person who may have absconded may be recovered from such person, by action in the name of the Registrar at any time thereafter, if such person shall be found within the jurisdiction of the Supreme Court:

Provided also that the said fund shall be liable for such amounts only as the bailiff shall fail to recover from the person liable as aforesaid.

Rules and Forms

171. The Minister may from time to time make rules—
- (a) for regulating practice and procedure under this Act;
 - (b) as to the distribution of business among the Referees;
 - (c) in respect of such other matters as he may think necessary or expedient for carrying out the purposes of this Act;

Rules.
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S. 19.

- (d) prescribing any other matter or anything which may be, or is required by this Act to be, prescribed.

Modification
of forms in
Schedules.

172. The forms contained in the several Schedules, and the forms for the time being in force under this Act, may be modified or altered in expression to suit the circumstances of every case; and any variation from such forms respectively in any respect, not being matter of substance, shall not affect their validity or regularity.

Fees and Duties

Fees.

Eighteenth
Schedule.

173.—(1) Subject to any order made under subsection (2) the appropriate fees specified in the Eighteenth Schedule to this Act shall be paid to the Registrar.

(2) The Minister may by order amend, vary or add to the Eighteenth Schedule.

Stamp duty
where
applicant
directs
certificate of
title to issue
in name of
any other
person.

174.—(1) On every application to bring land under the operation of this Act or to re-register land with a plan wherein or in respect of which the applicant shall direct the certificate of title to issue in the name of any other person there shall be chargeable and paid the following stamp duty—

- (a) where the direction operates or is intended to operate as a transfer upon the sale of the land for valuable consideration one third of the *ad valorem* duty payable under the heading “Conveyances” in the Schedule to the Stamp Duty Act;
- (b) where the direction operates or is intended to operate as a transfer of the land whether voluntarily or gratuitously or for good or valuable consideration other than a *bona fide* pecuniary consideration upon a sale one-third of the *ad valorem* duty payable under the heading “Settlements” in the Schedule to the Stamp Duty Act:

Provided, however, that in any case where the application is refused any stamp duty paid under this section shall be refunded.

(2) On every such application it shall be the duty of the Registrar to enquire into the nature of the transaction in order to ascertain the proper duty (if any) payable in respect thereof, and he may require evidence to be produced to his satisfaction for this purpose; and the Registrar shall not submit any such application to a Referee of Titles unless and until the duty hereby imposed shall have been paid and duly impressed on such application.

175. Where on an application to bring land under the operation of this Act the applicant claims to be the owner of the fee simple in equity such application shall be liable to the like stamp duty (if any) as under section 174 and shall be chargeable accordingly. The facts and circumstances from which it can be ascertained what amount of duty (if any) is payable on such application shall be proved by a statutory declaration to the satisfaction of the Registrar, and the declaration shall be lodged with the application. Any such application liable to stamp duty shall not be submitted to a Referee of Titles until it has been duly stamped.

Stamp duty where applicant claims to be owner of fee simple in equity.

176. The Registrar is hereby required to see that every transfer of land, or of an estate or interest therein, excepting only as is hereby excepted, is impressed with a stamp denoting payment of the duty imposed by the Stamp Duty Act.

Registrar to see that transfers are duly stamped

177. The full value of the consideration which shall be directly or indirectly paid or secured, or agreed to be paid or secured, for any transfer as aforesaid, shall be truly expressed and set forth in words at length in the instrument of transfer required to be registered, and if in any such case the purchase-money or consideration shall be

Full consideration for transfer to be expressed therein.

untruly or fraudulently stated or set forth, the purchaser or purchasers, seller or sellers, shall each forfeit and pay the sum of one hundred dollars, and shall also be chargeable with and holden liable to the payment of five times the amount of the excess duty which would have been payable in respect of the full purchase or consideration money, in case the same had been truly set forth or expressed in the instrument of transfer as aforesaid, beyond the amount of the duty actually paid for the same. And in the event of no money or consideration being stated for the transfer the same shall be accompanied by a declaration setting out the real and actual value of the premises transferred.

Offences

Offences
against this
Act. Mis-
demeanours.

178. If any person wilfully makes any false statement or declaration in any application to bring land under the operation of this Act, or in any application to be registered as proprietor, whether in possession, remainder, reversion or otherwise, on a transmission, or in any other application to be registered under this Act as proprietor of any land, lease, mortgage or charge; or suppresses, withholds or conceals, or assists or joins in or is privy to the suppressing, withholding or concealing, from the Registrar or a Referee, any material document, fact or matter of information, or wilfully makes any false statutory declaration required under the authority or made in pursuance of this Act; or if any person in the course of his examination before the Registrar or a Referee, wilfully and corruptly gives false evidence; or if any person fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or instrument, or of any entry in the Register Book, or of any erasure or alteration in any entry in the Register Book; or knowingly misleads or deceives any person hereinbefore authorized to require information or explanation in respect to any land, or the

title to any land under the operation of this Act, or in respect to which any dealing or transmission is proposed to be registered, such person shall be guilty of a misdemeanour, and shall incur a penalty not exceeding one thousand dollars, or may at the discretion of the Court by which he is convicted, be imprisoned with or without hard labour for a period not exceeding two years; and any certificate of title, entry, erasure or alteration so procured or made by fraud shall be void as against all parties or privies to such fraud.

179. No proceeding or conviction for any act hereby declared to be a misdemeanour shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law or in equity against the person who has committed such act, or against his estate.

Conviction
not to bar
any remedy
against
convict or
his estate.

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

Prosecutions
and suits.

**(Sections
28, 86)**

To the Registrar of Titles—

I (*insert name and addition*) hereby apply to have the land hereinafter described brought under the operation of the Registration of Titles Act, and I declare—

1. That I am the owner of an estate in fee simple in possession (or of an estate of freehold in possession for my life or otherwise, as the case may require) in all that (*here identify the land in accordance with the provisions of section 30 of the Act*).
2. That such land, including all buildings and other improvements thereon, is of the value of _____ dollars and no more.
3. That the deeds, documents or other evidence on which I rely in support of my title to the said land are set forth in the Schedule hereto to the best of my knowledge and belief, and there are no deeds, documents or evidences invalidating my title to the said land.
4. That I am not aware of any mortgage or incumbrance affecting the said land, or that any other person hath any estate or interest therein at law or in equity, in possession, remainder, reversion, contingency or expectancy (*if there be any, add, other than as follows, and set the same forth*).
5. That the said land is _____ occupied (*if unoccupied prefix "un" to occupied, if occupied add by whom and state the name and addition of the occupant and the nature of his occupancy*).
6. That the names and addresses, so far as is known to me, of the occupants of all lands contiguous to the said lands are as follows—
7. That the names and addresses, so far as is known to me, of the owners of all lands contiguous to the said lands are as follows—
(*If the certificate of title is not to issue to the applicant, add And I direct the certificate of title to be issued in the name of (insert name and addition).*)

Made and subscribed on the _____ day of _____ at _____
in the presence of _____ *(The applicant, if within the
Island, to sign before the Registrar or a Notary Public or a Justice of
the Peace; if abroad, before a Mayor, Provost, Notary Public, Consul,
Consular Agent or Justice of the Peace).*

SECOND SCHEDULE

(Section 43)

Caveat forbidding land to be brought under the Registration of Titles Act

To the Registrar of Titles:

Take notice that I (*insert name and addition*) claim (*particularize the the estate or interest claimed*) in the land described as (*copy description from the advertisement*) in the advertisement relating to the application of (*state applicant's name and addition*) and I forbid the bringing of such land under the operation of the Registration of Titles Act. I appoint _____ as the place at which notices and proceedings relating hereto may be served.

Dated the _____ day of _____ 19 ____
Signed in the presence of _____ }
(*name and address of witness*). }

THIRD SCHEDULE

(Section 55)

FORM A

JAMAICA—REGISTER BOOK, VOL. _____, FOL. _____

Certificate of Title under the Registration of Titles Act

(*Insert name and addition*) is now the proprietor (*here state whether sole or otherwise*) of an estate in fee simple (*if not in fee simple, state the nature of the estate, and if the property be leasehold say of a leasehold estate for _____ years from the _____ day of _____, 19 ____*) subject to the incumbrances notified hereunder in all that (*here insert the description or identification, and if the grant was for any public purpose, shortly mention it*).

Dated the _____ day of _____, 19 ____

Registrar of Titles.
(Seal of Office.)

INCUMBRANCES REFERRED TO—

FORM B

(Section 55)

JAMAICA—REGISTER BOOK, VOL. _____, FOL. _____

Certificate of Qualified Title under the Registration of Titles Act

(*Insert name and addition*), is now the proprietor (*insert identification or description of land*) subject to any estate, right, interest arising (*here insert the specified date or instrument, etc.*) and subject to the incumbrances notified hereunder in all that (*here insert description or identification of the land*).

Dated the _____ day of _____, 19 ____

Registrar of Titles.
(Seal of Office.)

INCUMBRANCES REFERRED TO—

REGISTRATION OF TITLES

(Section 88)

FOURTH SCHEDULE

FORM A

JAMAICA

Transfer of Land

I (*insert name and addition*), being registered as the proprietor of an estate in fee simple (*if not in fee simple, state the nature of the estate; and if the property be leasehold say "of a leasehold estate for years from the day of , 19 "*), by Certificate of Title dated the day of 19 , incumbered in the land hereinafter described. (*If the transfer be by mortgagee or annuitant under his power of sale say being the proprietor of a mortgage or charge as the same may be from C.D. Registered the day of and numbered upon the land hereafter described*) subject to the incumbrances notified hereunder, in consideration of the sum of paid to me by *E.F.* (*insert addition*) do hereby transfer to the said *E.F.* all my estate and interest in (*if the transfer be by a mortgagee or annuitant under his power of sale, say "all the estate and interest of the said C.D. on the said day of 19 , or which he was then entitled or able to transfer or dispose of in"*) all that (*if the transferred land be part only of the land comprised in the existing certificate set forth the description or identification of such part*).

Dated the day of , 19

Signed by the said }
 in the presence of }
 Signed by the said *E.F.*, in the }
 presence of }

INCUMBRANCES REFERRED TO—

(Section 88)

FORM B

JAMAICA

Transfer of a Lease, Mortgage or Charge

I (*insert name and addition*), being registered as the proprietor of a lease (*or mortgage or charge as the case may be*) numbered of (*or upon*) the land hereinafter described, subject to the incumbrances notified hereunder, in consideration of the sum of paid to me by *C.D.* (*insert addition*) do hereby transfer to the said *C.D.* all my estate and interest as such registered proprietor in ALL THAT (*or otherwise, according to the description of the lease*)

mortgage or charge, or describe the land in general terms by reference to the registered instrument).

Dated the _____ day of _____ 19____
 Signed by the said _____ }
 in the presence of _____ }
 Signed by the said *C.D.*, in the _____ }
 presence of _____ }

INCUMBRANCES REFERRED TO—

FORM C

(Section 88).

JAMAICA

Transfer of Land, Mortgage or Charge by Endorsement

I, the within named (*insert name*), in consideration of the sum of _____ paid to me by *G.H* (*insert addition*), hereby transfer to the said *G.H.* the within-mentioned land (*or lease or mortgage or charge as the case may be*), subject, however, to the incumbrances notified or endorsed on the within certificate (*or in the Register Book*).

Dated the _____ day of _____, 19____
 Signed by the said _____ }
 in the presence of _____ }
 Signed by the said *G.H.* in the _____ }
 presence of _____ }

FIFTH SCHEDULE

(Section 93)

FORM A

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

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

FORM B

(Section 93)

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

Together with full and free right and liberty to and for the said lessee and his transferees, proprietors for the time being of the land hereby leased or any part thereof, and his, her or their tenants,

REGISTRATION OF TITLES

servants, workmen and visitors, to go, pass and repass, at all times hereafter during the continuance of this lease, and for all purposes, and either with or without horses or other animals, carts or other carriages, into and out of and from the said land, or any part thereof, through, over and along, the road or way or several roads or ways delineated and coloured on the said map.

(Section 94)

SIXTH SCHEDULE

JAMAICA

Lease under the Registration of Titles Act

A.B. (insert addition), hereinafter called the lessor, and who is registered as the proprietor of an estate (*here state nature of the estate*) in the land hereinafter described, subject to the incumbrances notified hereunder, hereby leases to *C.D. (insert addition)* hereinafter called the lessee, all that (*here describe or identify the land*) to be held by the lessee for the term of _____ years from the _____ day of _____, 19____, at the clear yearly rent of: _____ payable (*here insert terms of payment*), subject to the covenants and powers implied under the Registration of Titles Act, unless hereby negatived or modified; and also to the covenants and conditions hereinafter contained (*here set forth any special ones*).

The following covenants by the lessee are to be construed according to section 97 of the Registration of Titles Act—

- The lessee will not transfer or sublet.
- The lessee will fence.
- The lessee will cultivate.
- The lessee will not cut timber.
- The lessee will insure against fire in the name of the lessor.
- The lessee will paint outside every third year.
- The lessee will paint and paper inside every fourth year.
- The lessee will not use the premises as a shop.
- The lessee will not carry on any offensive trade.
- The lessee will carry on the business as a publican, and conduct the same in an orderly manner.
- The lessee will apply for renewal of licence.
- The lessee will facilitate the transfer of licence.

Dated the _____ day of _____, 19____

Signed by the said lessor }
in the presence of }
Signed by the said lessee }
in the presence of }

INCUMBRANCES REFERRED TO—

SEVENTH SCHEDULE

(Section 97)

COLUMN ONE	COLUMN TWO
1. The lessee will not transfer or sublet.	1. The lessee, his executors, administrators or transferees, will not during the said term transfer, assign or sublet the premises hereby leased, or any part thereof, or otherwise by any act or deed procure the said premises, or any part thereof, to be transferred or sublet, without the consent in writing of lessor or his transferees first had and obtained.
2. The lessee will fence.	2. The lessee, his executors, administrators or transferees, will during the continuance of the said term, erect and put up on the boundaries of the said land, or on those boundaries upon which no substantial fence now exists a good and substantial fence, and will, during the continuance of the said term, maintain in good order and condition all such fences, and all other fences whatsoever on the said land.
3. The lessee will cultivate.	3. The lessee, his executors, administrators or transferees, will at all times during the said term cultivate, use and manage, in a proper and husband-like manner, all such parts of the land as are now or shall hereafter with the consent in writing of the said lessor be in cultivation, and will not impoverish or waste the same.
4. The lessee will not cut timber.	4. The lessee, his executors, administrators or transferees, will not cut down, fell, injure or destroy any growing or living timber, or timber-like trees standing and being upon the said land, without the consent in writing of the said lessor or his transferees.
5. The lessee will insure against fire in the name of the lessor to the amount of \$.	5. The lessee, his executors, administrators or transferees, will insure and during the said term keep insured, against loss or damage by fire, in the name of the lessor or his transferees, in some public insurance office approved of by him or them, to the amount of \$., all buildings, fixtures and machinery, which shall for the time being be erected on the said land, and which shall be of a nature or kind capable of being insured against damage by fire, and will, when required, deposit with the lessor or his transferees the policy of such insurance, and within seven days after each premium shall become payable the receipt of such premium, and on any breach or non-observance of this covenant the lessor or his transferees may, without prejudice to and concurrently with the powers granted to him and them by this lease, and by the Registration of

REGISTRATION OF TITLES

Titles Act, insure such buildings, and the costs of effecting such insurance shall during the said term be a charge upon the said land. All moneys which shall be received under or by virtue of any such insurance shall be laid out and expended in making good the loss or damage.

6. The lessee will paint outside every year.

6. The lessee, his executors, administrators or transferees will, in every year during the continuance of the said term, paint all the outside woodwork and ironwork belonging to the leased property, with two coats of proper oil colours, in a workmanlike manner.

7. The lessee will paint and paper inside every year.

7. The lessee, his executors, administrators or transferees will, in every year during the continuance of the said term, paint the inside wood, iron and other work now or usually painted, with two coats of proper oil colours in a workmanlike manner and also re-paper with paper of the same quality as at present such parts of the premises as are now papered and also whiten or colour such parts of the said premises as are now whitened or coloured respectively.

8. The lessee will not use the premises as a shop.

8. The lessee, his executors, administrators or transferees, will not convert, use or occupy the said premises, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or permit or suffer the said premises or any part thereof, to be used for any such purpose, otherwise than as a private dwelling-house without the consent in writing of the said lessor or his transferees.

9. The lessee will not carry on any offensive trade.

9. The lessee, his executors, administrators or transferees, will not at any time during the said term use, exercise or carry on, or permit or suffer to be used, exercised or carried on, in or upon the said premises, or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the said premises, or any part thereof, which shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the occupiers, or of the adjoining lands and properties.

10. The lessee will carry on the business of a publican and conduct the same in an orderly manner.

10. The lessee, his executors, administrators, or transferees, will at all times during the continuance of the said term use, exercise and carry on, in and upon the premises, the trade and business of a licensed victualler or publican, and seller of fermented and spirituous liquors, and keep open and use the house, inn and buildings, standing and being upon the land as and for an inn or public-house for the reception, accommodation and entertainment of travellers, guests and other persons resorting thereto or frequenting the same, and manage or conduct such trade or business in a quiet and orderly manner, and will not do or commit, or suffer to be done or committed, any act or matter or thing whatsoever, whereby or by means whereof any licence shall be allowed to expire, or to become void, or shall or may be liable to be forfeited, suspended, taken away or refused.

11. The lessee will apply for renewal of licence.

11. The lessee, his executors, administrators or transferees, will from time to time during the continuance of the said term, at the proper times for that purpose, apply for and endeavour to obtain such licence or licences as is or are or may be necessary for carrying on the said trade or business of a licensed victualler or publican, in and upon the said premises, and keeping the said house or inn open as and for an inn or public-house as aforesaid.

12. The lessee will facilitate the transfer of licence.

12. The lessee, his executors, administrators or transferees, will at the expiration or other sooner determination of the said term, sign and give such notice or notices, and allow such notice or notices, of a transfer or renewal of any licence as may be required by law to be affixed to the said house or inn to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf, and generally will do and perform all such acts, matters and things as shall be necessary to enable the said lessor or his transferees, or any person authorized by him or them, to obtain the transfer of any licence then existing and in force, or the renewal of any licence or any new licence.

REGISTRATION OF TITLES

(Section 103)

EIGHTH SCHEDULE

JAMAICA

Mortgage under the Registration of Titles Act

I, *A.B. (insert addition)*, being registered as the proprietor of an estate (*here state nature of the estate*) in the land hereinafter described, subject to the incumbrances notified hereunder in consideration of the sum of _____, this day lent to me by *C.D. (insert addition)* hereinafter called the mortgagee, do hereby covenant with the said mortgagee—

Firstly, to pay to the said mortgagee or his transferee the said principal sum of _____ dollars, on the _____ day of _____, 19 ____.

Secondly, to pay to the said mortgagee or his transferee, so long as the said principal sum or any part thereof shall remain unpaid, interest on the said sum, or on so much thereof as shall for the time being remain unpaid, at the rate of _____ *per centum per annum*, by equal payments on the _____ day of _____, 19 ____, and on the _____ day of _____ in every year.

Thirdly, that I will insure against fire in the name of the mortgagee.

Fourthly (*here set forth any special covenant*).

And for better securing the payment in manner aforesaid of the said principal sum and interest, I hereby mortgage to the said mortgagee all my estate and interest, and all the estate and interest which I am entitled to transfer or dispose of, in all that (*insert if applicable part of or otherwise according to the certificate*) of (*if the land mortgaged be part only of the land comprised in the existing certificate, set forth in links or feet the boundaries, and refer to a map*).

Dated the _____ day of _____, 19 ____.

Signed by the said *A.B.* in the }
presence of }

Signed by the said *C.D.* in the }
presence of }

INCUMBRANCES REFERRED TO—

(Section 103)

NINTH SCHEDULE

JAMAICA

Charge under the Registration of Titles Act

I, *A.B. (insert addition)*, being registered as the proprietor of an estate (*here state nature of estate*), in all that (*here describe or identify the land*), subject to the incumbrances notified hereunder, and desiring to render the said land available for the purpose of securing to, and for the benefit of *C.D. (insert addition)* the annuity hereinafter mentioned

do hereby charge the said land for the benefit of the said *C.D.* with an annuity of _____ to be paid at the times and in manner following; that is to say (*here state the time appointed for the payment of the annuity, and the events on which it shall cease to be payable; also any special covenants or powers and any modification of the powers or remedies given to an annuitant by the Act*).

And subject as aforesaid the said *C.D.* shall be entitled to all powers and remedies given to an annuitant by the Registration of Titles Act.

Dated the _____ day of _____, 19 _____

Signed by the said *A.B.*, in the }
presence of }
Signed by the said *C.D.*, in the }
presence of }

TENTH SCHEDULE

(Section 104)

JAMAICA

I, *A.B.* (*insert addition*), being the holder of _____ shares of \$ _____ each in (*insert name of society*), and being registered as proprietor of an estate (*here state nature of estate*), subject to such incumbrances, liens and interest, as are notified by memorandum (if any) endorsed hereon, in all that (*insert description of land according to the certificate, or if the land mortgaged be part only of the land comprised in the existing certificate, state the fact, describe or identify the land*) in consideration (*here set forth the consideration*), do hereby covenant with the said society that I will pay to the said society, or the person appointed to receive the same, all repayments, subscriptions, fines, interest and other payments (and the costs and expenses attending the recovery of the same) which shall become due according to the rules of the said society in respect of the said share (*or shares*) and also that I will observe all the rules and regulations of the said society, until with the consent of the said society I shall pay off such balance as according to the rules and regulations of the said society may be owing to the said society in respect of the said share (*or shares*), all arrears of subscriptions, repayments, fines and other payments hereby covenanted, and that I will insure against fire in the name of the mortgagee to the amount of \$ _____ (*here set out any special covenants*); and for the better securing to the said society the payment of such subscriptions, repayments, fines, interest and other payments as aforesaid, I hereby mortgage to the said society all my estate and interest in the said lands before described; and I empower the said society to sell the estate and interest hereby pledged to them as security whenever I shall make default for the space of three calendar months in payment of the said subscriptions, repay-

ments, fines, interests or other payments to become due in respect of the said share (or shares) according to the rules and regulations of the said society, without serving me with any written demand for payment of such moneys pursuant to the provisions contained in the Registration of Titles Act, or complying with the other requirements and provisions of the said Act in reference to the power of sale conferred on mortgagees claiming under any mortgage. And I do hereby further covenant with the said society, that they may from time to time under the power of distress conferred on a mortgagee by the Registration of Titles Act, recover and reimburse themselves all such payments, subscriptions, fines and other moneys as aforesaid, and all costs, damages and expenses incurred in the enforcement hereof.

Dated the _____ day of _____, 19 ____
 Signed by the said C.D. in the }
 presence of _____ }

(Section 113)

ELEVENTH SCHEDULE

That I will insure against fire in the name of the mortgagee to the amount of \$

That I, my heirs, executors, administrators or transferees, will insure, and so long as any money shall remain secured by this mortgage keep insured, against loss or damage by fire, in the name of the mortgagee or his transferees, in some public insurance office to be approved of by him or them, all buildings, fixtures and machinery which shall for the time being be erected on the said land, and which shall be of a nature of kind capable of being so insured, to the amount of \$ _____, and will when required deposit with the mortgagee or his transferees the policy of such insurance, and within seven days after each premium shall become payable the receipt of such premium, and that the moneys which shall be received on account of such insurance, shall, at his or their option, be applied either in or towards satisfaction of the moneys secured by the mortgage, or rebuilding, or reinstating under the superintendence of his or their surveyor, the buildings destroyed or damaged. And that on any breach or non-observance of this covenant he or they shall be at liberty to effect such insurance and continue the same for such period as may be deemed fit, and the costs and expenses paid on account thereof shall be a charge upon the said land and bear interest at the same rate as if principal money overdue.

TWELFTH SCHEDULE

(Section 134)

JAMAICA

FORM A

Form of Certificate of Land sold under a Writ or Order of Sale

I, _____, in pursuance of writ of sale tested the _____ day of _____, 19____, and issued out of the Supreme Court in an action wherein _____ is the plaintiff, and _____ the defendant, which said _____ is registered as the proprietor of an estate (*here state nature of the estate*) in land hereinafter described, subject to the incumbrances notified hereunder, and to effectuate the sale made under such writ, do hereby, in consideration of the sum of _____ paid to me by *E.F. (insert addition)* transfer to the said *E.F.* all the estate and interest of the said _____ in all that _____ (*If the land transferred be part only of the land comprised in the grant, or existing certificate, set forth in links or feet the boundaries, and refer to a map.*)

Dated the _____ day of _____, 19____

Signed by the said _____
in the presence of _____

Signed by the said _____
in the presence of _____

INCUMBRANCES REFERRED TO—

FORM B

(Section 134)

Form of Certificate of Lease, Mortgage or Charge, under Writ of Fieri Facias

I, _____, in pursuance of a writ of *feri facias* tested the _____ day of _____, 19____, and issued out of the Supreme Court in an action wherein _____ is the plaintiff, and _____ the defendant, which said _____ is registered as the proprietor of a lease (*or mortgage or charge, as the case may be*), numbered _____ of (*or upon*) the land hereinafter described, subject to the incumbrances notified hereunder, and to effectuate the sale made under such writ, do hereby, in consideration of the sum of _____ paid to me by *E.F. (insert addition)*, transfer to the said *E.F.* all the estate and interest of the said _____ as such

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registered proprietor in all that (or otherwise,
according to the description in the lease, mortgage or charge, or describe
the land in general terms by reference to the registered instrument).

Dated the day of , 19 .

Signed by the said }
in the presence of }

Signed by the said *E.F.* in the }
presence of }

INCUMBRANCES REFERRED TO—

(Section 134)

FORM C

*Form of Certificate of Sale of Registered Land under Decree or Order
of a Court of Competent Jurisdiction*

This is to certify that *A.B.* of etc., has been
declared the purchaser on the day of ,
of the right, title and interest of *C.D.* in the land mentioned and
described in Certificate of Title registered in Volume Folio
 of the Register Book and that the land aforesaid was sold
pursuant to an order of the (*name of Court*).

Dated the day of , 19 .

Given under my hand and the seal of the Court this
day of , 19 .

Registrar of the Supreme Court
or Clerk of the Resident Magistrate's Court
for the parish of

(Section 139)

THIRTEENTH SCHEDULE

*Caveat forbidding Registration of any change in Proprietorship or any
dealing with Estate or Interest*

To the Registrar of Titles:

Take notice that I (*insert name and addition*) claim (*particularize the
estate or interest claimed*) in the land described in Certificate of Title
registered in Volume , Folio , and I forbid the registration of
any person as transferor or proprietor of and of any instrument affecting
such estate or interest (*or until after notice of the intended registration
or dealing be given to me or unless such instrument be expressed to be
subject to my said claim*). I appoint
as the place at which notices and proceedings relating hereto may be
served.

Dated this day of , 19 .

Signed in the presence of

FOURTEENTH SCHEDULE

(Section 144)

JAMAICA

Application for Search Certificate

I hereby request to be informed whether there is any, and, if any, what obstacle to a dealing by *A.B.* the proprietor of and described in Certificate of Title in Volume Folio of the Register Book with the land comprised in Certificate aforesaid.

Search Certificate No.

The last registered dealing or encumbrance affecting the title of the proprietor to the land comprised in the above Certificate of Title is noted upon the Certificate as follows—(*Refer to the last entry upon the Certificate in such a way as distinctly to identify, or, if the title be clear, state that there is no dealing or incumbrance mentioned upon the Certificate*).

At the time of issuing this Certificate there is nothing to prevent the registration of a dealing by the registered proprietor except—(*If the title be clear and there is nothing to prevent dealing, strike out the word "except"*).

(*If there be any caveat, dealing lodged for registration, application by official assignee, notice of fi. fa. or other obstacle to dealing not noted on the Certificate of Title, refer to such obstacle in such a way as to give the applicant notice of it and to enable him to ascertain particulars by inspection*).

The information above given refers only to the present state of the register and the present right to register a dealing with the interest of the proprietor appearing on the register.

The seal of the Office of Titles was affixed to this search certificate at the hour of o'clock on the day of , 19 .

FIFTEENTH SCHEDULE

JAMAICA

(Section 146)

Application for stay of registration as to title of A.B., to land comprised in Certificate of Title registered in Volume Folio of the Register Book, as to which search certificate No. has been applied for

I, *C.D.*, of , now dealing *bona fide* for value with the above-named *A.B.*, as to land comprised in the above certificate, in order to protect such dealing, hereby apply for a stay of registration of any instrument affecting the land proposed to be dealt with for forty-eight hours from the time named in the search certificate. The particulars of the proposed dealing are as follows—

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The transaction is—(State whether sale, mortgage, exchange, lease, or other dealing for value).

The consideration is—(State the price to be paid or amount to be lent, rent to be paid, or other consideration).

The land to be comprised in the dealing is all the land comprised in the above certificate—(If not all, strike out the words following "is" and describe the land in such a manner as distinctly to identify it.)

Signature of the applicant or his solicitor.

I consent to the above application for stay of registration, and certify that the proposed dealings is as above stated.

Signature of proprietor or of his authorized agent.

Order for Stay of Registration

I hereby direct that for forty-eight hours from o'clock on the
day of , 19 , nothing
is to be entered on the register as to the land above described, except
an instrument giving effect to the above dealing, which if lodged for
registration within that time is to have priority over all other instru-
ments which may be lodged for registration during such forty-eight
hours.

Registrar of Titles.

(Section 149)

SIXTEENTH SCHEDULE**Form of Power of Attorney**

I, *A.B.*, do hereby appoint my attorney,
to sell to any person all or any lands, leases, mortgages or charges,
whether now belonging to me or which shall hereafter belong to me
under or by virtue of the Registration of Titles Act, or of which I
am now or shall hereafter be the proprietor or owner under the said
Act. Also to mortgage all or any such lands or leases for any sum
at any rate of interest. Also to charge the same with any annuity
of any amount. Also to lease all or any such lands as shall be of
freehold tenure for any term of years not exceeding twenty-one years
in possession at any rent. Also to surrender, or obtain or accept the
surrender, of any lease in which I am or may be interested. Also
to exercise and execute all powers which now are or shall hereafter
be vested in or conferred on me as a lessor, mortgagee or annuitant
under the said Act (or otherwise according to the nature and extent of
the powers intended to be conferred). And for me and in my name to

sign all such transfers and other instruments, and do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given, and for recovering all sums of money that are now or may become due or owing to me in respect of the premises, and for enforcing or varying any contracts, covenants or conditions binding upon any lessee, tenant or occupier of the said lands, or upon any other person in respect of the same, and for recovering and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass.

Dated this day of , 19 .
Signed by the said *A.B.*, in the }
presence of }

SEVENTEENTH SCHEDULE

(Section 152)

Appeared before me, at the day
of , 19 , *C.D.*, the attesting witness to this
instrument, and declared that he personally knew *A.B.*, the person
signing the same, and whose signature the said *C.D.* attested, and
that the name purporting to be the signature of the said *A.B.*, is his
own handwriting, and that he was of sound mind and freely and
voluntarily signed such instrument.

EIGHTEENTH SCHEDULE

Fees payable under this Act exclusively of advertisement

(Sections 18,
L.N.
150A/1983,
886, 173)
L.N.
46B²/1995.

Fee No. 1

On making application to bring land under
the operation of the Act—

When the applicant is the original grantee
under any patent or under deed of convey-
ance from the Commissioners for the sale
of incumbered estates, or under any Act
declaring the title acquired by such grantee
to be indefeasible, or under any order of
the Supreme Court or Resident Magis-
trate's Court, and no transaction affecting
the land has taken place since the date of
such patent, deed or conveyance or order \$ 100.00

When the Title is of any other description and
the value of the land does not exceed
\$10,000 \$ 100.00

[The inclusion of this page is authorized by L.N. 95/1997]

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The like when the value exceeds \$10,000 and does not exceed \$20,000 ...	\$ 200.00
The like when the value exceeds \$20,000 and does not exceed \$40,000 ...	\$ 400.00
The like when the value exceeds \$40,000 and does not exceed \$60,000 ...	\$ 600.00
The like when the value exceeds \$60,000 and does not exceed \$80,000 ...	\$ 800.00
The like when the value exceeds \$80,000 and does not exceed \$100,000 ...	\$1,000.00
The like when the value exceeds \$100,000 and does not exceed \$120,000 ...	\$1,200.00
For every \$2,000 or part of \$2,000, in excess of \$120,000 ...	\$ 20.00

Fee No. 2 On making application for re-registration by
plan—

When the value of the land does not exceed \$20,000 ...	\$ 120.00
When the value exceeds \$20,000 but not \$40,000 ...	\$ 240.00
When the value exceeds \$40,000 but not \$100,000 ...	\$ 600.00
For every \$5,000 or part of \$5,000 after the first \$100,000 ...	\$ 30.00

Fee No. 3 On making application for the entry of a
person as proprietor on transmission in
respect of land or a lease, mortgage or
charge—

When the value does not exceed \$1,000	\$ 20.00
When the value exceeds \$1,000 and does not exceed \$2,000 ...	\$ 40.00
For every \$2,000 or part of \$2,000, after the first \$2,000 ...	\$ 10.00
Provided always that the fee in no case shall exceed ...	\$1,000.00

Fee No. 4 Contribution to Assurance Fund—

(a) Upon first bringing land under this Act; for every \$1,000 in value of the land	\$ 5.00
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- (b) Upon the re-registration of any land by plan;
for every \$1,000 in value of the land \$ 2.50

Fee No. 5 (1) For every certificate of title—

- When the value of the land does not exceed \$10,000 ... \$ 120.00
When the value of the land exceeds \$10,000 and does not exceed \$50,000 \$ 150.00
When the value of the land exceeds \$50,000 and does not exceed \$100,000 \$ 250.00
For every \$10,000, or part of \$10,000 in excess of the first \$100,000 in the value of the land ... \$ 30.00

Provided that the maximum fee shall be—

- (a) \$500.00 in the case of a new certificate issued on a transfer of a portion of registered land or on re-registration;
(b) \$300.00 in the case of a new certificate in place of a lost Certificate of Title; and
(c) \$100.00 in the case of a new certificate in place of a Certificate of Title surrendered under the provisions of section 79 of this Act.
- (2) When land is identified by plan to be attached to, or form part of the Certificate of Title there shall be paid for preparing the plan to be referred to in the certificate an additional fee equal to that prescribed for a Certificate of Title for land of corresponding value, restricted however to \$500.00 or such larger sum as the Registrar shall consider to be reasonable for the amount of work involved.

Fee No. 6 On lodging for registration of—

- (a) a lease or a transfer thereof; or
(b) a transfer not for value; or
(c) a transfer in consideration of marriage; or
(d) a transfer by way of partition; or
(e) a transfer of a mortgage or charge for value or otherwise ... \$ 200.00

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Fee No. 7	On lodging a caveat against bringing land under the operation of the Registration of Titles Act	\$ 100.00
Fee No. 8	On the lodging for registration of a transfer on sale or exchange of land, or a mortgage or charge, or on the lodging of a caveat against dealing with land—	
	When the value of the land or interest or amount of mortgage or charge does not exceed \$2,000	\$ 10.00
	On every \$1,000 or part of \$1,000 in excess of \$2,000	\$ 5.00
	For the purpose of this item the value of the land or interest affected shall be the value of the consideration directly or indirectly paid or secured or agreed to be paid or secured as set out in the instrument to be registered, and in the case of a caveat the value of the estate or interest specified and claimed therein either as set out in the document under which the estate or interest is claimed and a copy whereof accompanies the caveat or in a statutory declaration by the caveator which shall accompany such caveat.	

Abatements

The following abatements of fees specified in Fee No. 8 shall be made—

- (1) Where a mortgage or charge by an Applicant for first registration of title is lodged with the application for registration or if lodged subsequent to the date of first registration but before the issue of the Certificate of Title there shall be paid on the mortgage or charge a fee \$ 50.00
- (2) Where a mortgage or charge by the transferee under a transfer for value is lodged with the transfer, the fee on the mortgage or charge (whether paid on the amount at the time of first registration or on further advances thereunder subsequent to registration) shall be reduced to one-half and further mortgages or charges by the

same mortgagor to the same mortgagee on the security of the same property shall fall under this abatement.

- (3) Where a mortgage or charge is secured on un-registered land or other property as well as on registered land, the fee shall be assessed on the sum which bears the same proportion to the whole sum secured as the value of the registered land bears to the value of the whole security.
 - (4) The fee on a mortgage or charge by way of additional or substituted security and for no additional consideration shall be \$100.00
 - (5) Where, on the registration of the discharge of a mortgage or charge or the withdrawal of a caveat, a new mortgage or charge affecting the same land or any part thereof is lodged in favour of the proprietor of the former mortgage or charge, or the caveator, the fee payable on the new mortgage or charge, in so far as the amount secured does not exceed the maximum amount at any time secured by the former mortgage or charge or the document copy whereof accompanied the caveat shall be \$100. 00
 - (6) Where withdrawal of a caveat against a Certificate of Title in respect of an advance is lodged with a mortgage to be registered on or caveat to affect the same certificate within eighteen months of the date of the lodging of the caveat, the fee on lodging the mortgage or new caveat (up to the amount secured by the caveat being withdrawn) shall be \$ 50.00
- and for each additional one thousand dollars ... \$ 5.00

Where two or more abatements of fees are applicable to the same case, their effect shall not be cumulative, and the applicant shall be required to pay the greater fee.

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Fee No. 9	On lodging a caveat by a lender under the Agricultural Loans Act— for every two thousand dollars or part thereof of the amount of his loan \$ 5.00 Provided that in no such case shall the fee exceed \$ 100.00	
Fee No. 10	On lodging for registration of a discharge of a mortgage or charge, wholly or partially or a satisfaction of an annuity or a surrender of lease \$ 100.00	
Fee No. 11	On lodging for registration of— (a) an Instrument appointing a Receiver \$ 100.00 (b) a Power of Attorney \$ 100.00	
Fee No. 12	On lodgement of an attested copy of a Power of Attorney and noting the original and copy ... \$ 120.00	
Fee No. 13	On lodging application for cancellation of lost Certificate of Title \$ 100.00	
Fee No. 14	For a Search Certificate for every Certificate of Title mentioned therein \$1,000.00	L.N. 84/2003.
Fee No. 15	For an Order for stay of registration for every Certificate of Title mentioned therein ... \$ 50.00	
Fee No. 16	For withdrawal of caveat \$ 20.00	
Fee No. 17	For giving notice to caveator under paragraph 2 of section 140 \$ 50.00	
Fee No. 18	On lodging an application for an entry of foreclosure \$ 300.00	
Fee No. 19	For every search in one matter only \$ 500.00	L.N. 84/2003.
Fee No. 20	For every general search \$ 800.00	L.N. 84/2003.
Fee No. 21	For every map deposited \$ 250.00	
Fee No. 22	Fee depositing documents declaratory of trusts \$ 200.00	
Fee No. 23	For registering recovery of possession or registering the lessee or surrenderee \$ 50.00	
Fee No. 24	For registering vesting of lease in mortgagee on refusal of trustee to accept same \$ 50.00	

Fee No. 25	For entering notice of Marriage or Death including Death of joint proprietor of land, lease or mortgage— For every Certificate of Title in which entered	\$ 100.00
Fee No. 26	For entering notice of Writ of Seizure and Sale or an Order of a Court	\$ 100.00
Fee No. 27	For entering satisfaction of any such Writ	\$ 100.00
Fee No. 28	For Order dispensing with production of any duplicate grant Certificate or Instrument	\$ 100.00
Fee No. 29	For Order for and inspection of any documents permanently retained to include all the documents mentioned in any Order	\$ 100.00
Fee No. 30	When any application, Instrument, Caveat, Order, Writ, Notice, Declaration of Trust, or other entry to be registered purports to deal with land comprised in more than one Certificate of Title an additional fee in respect of each such Certificate after the first	\$ 20.00
Fee No. 31	For copy of or extract from any document deposited in support of an application to bring land under the Act and retained, or from any caveat— for each 100 words	\$ 5.00
Fee No. 32	For every certified copy, first 100 words	\$ 5.00
Fee No. 33	For every 100 words or part after the first	\$ 2.00
Fee No. 34	For every Summons	\$ 20.00
Fee No. 35	For examination thereunder for every 15 minutes occupied	\$ 20.00
Fee No. 36	For statement of grounds under section 156	\$ 500.00
Fee No. 37	For entry of the Trustee of a Bankrupt, as a Transferee or proprietor	\$ 100.00
Fee No. 38	On lodging an application for amendment of the Register, etc.	\$ 50.00
Fee No. 39	For making the amendment such further fee (if any) as the Registrar shall consider to be reasonable.	