

LANDS REGISTRATION ORDINANCE

1924-1939. ⁽¹⁾

An Ordinance Relating to the Registration of the Title to, and the Dealing with, Estates in Land.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Lands Registration Ordinance 1924-1939*⁽¹⁾, and shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.⁽¹⁾

Short title and commencement.
Amended by No. 3 of 1934, s. 50.

(1) The *Lands Registration Ordinance 1924-1939* comprises the *Lands Registration Ordinance 1924*, as amended by the other Ordinances referred to in the following Table:—

TABLE.
PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

| Short title, number and year. | Date on which made by Gov.-Gen. in Council. | Date on which notified in <i>Cwltth. Gaz.</i> | Date on which took effect. |
|---|---|---|---|
| <i>Lands Registration Ordinance 1924</i> (No. 15 of 1924) | 2.4.1924 | 3.4.1924 | 1.6.1924 (<i>N.G. Gaz.</i> of 31.5.1924) |
| <i>Lands Registration Ordinance</i> (No. 2) 1924 (No. 20 of 1924) | 5.6.1924 | 12.6.1924 | 1.6.1924 (Sec. 2, <i>Lands Registration Ordinance</i> (No. 2) 1924) |
| <i>Lands Registration Ordinance</i> (No. 3) 1924 (No. 34 of 1924) | 15.10.1924 | 16.10.1924 | 16.10.1924 (<i>Cwltth. Gaz.</i> of 16.10.1924) |
| <i>Lands Registration Ordinance 1925</i> (No. 8 of 1925) | 25.2.1925 | 26.2.1925 | 26.2.1925 (<i>Cwltth. Gaz.</i> of 26.2.1925) |
| <i>Lands Registration Ordinance</i> (No. 2) 1925 (No. 22 of 1925) | 15.7.1925 | 6.8.1925 | 23.11.1925 (<i>N.G. Gaz.</i> of 16.11.1925) |
| <i>Lands Registration Ordinance</i> (No. 3) 1925 (No. 36 of 1925) | 19.8.1925 | 27.8.1925 | 27.8.1925 (<i>Cwltth. Gaz.</i> of 27.8.1925) |
| <i>Lands Registration Ordinance 1926</i> (No. 12 of 1926) | 6.5.1926 | 13.5.1926 | 13.5.1926 (<i>Cwltth. Gaz.</i> of 13.5.1926) |
| <i>Lands Registration Ordinance 1928</i> (No. 32 of 1928) | 7.12.1928 | 13.12.1928 | 13.12.1928 (<i>Cwltth. Gaz.</i> of 13.12.1928) |
| <i>Lands Registration Ordinance 1929</i> (No. 2 of 1929) | 11.3.1929 | 12.3.1929 | 12.3.1929 (<i>Cwltth. Gaz.</i> of 12.3.1929) |
| <i>Lands Registration Ordinance 1931</i> (No. 14 of 1931) | 14.4.1931 | 16.4.1931 | 16.4.1931 (<i>Cwltth. Gaz.</i> of 16.4.1931) |
| <i>Lands Registration Ordinance 1933</i> (No. 22 of 1933) | 26.4.1933 | 27.4.1933 | 27.4.1933 (<i>Cwltth. Gaz.</i> of 27.4.1933) |
| <i>Lands Registration Ordinance</i> (No. 2) 1933 (No. 23 of 1933) | 26.4.1933 | 27.4.1933 | 27.4.1933 (<i>Cwltth. Gaz.</i> of 27.4.1933) |

[Footnote continued on next page.]

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Parts.
Section 2
amended by
No. 22 of 1925,
s. 3 and
Schedule.

2. This Ordinance is divided into Parts as follows:—

- Part I.—Preliminary.
- Part II.—Administration.
- Part III.—Bringing Land under the Ordinance.
- Division 1.—Future Grants of Freehold.
- Division 2.—Freeholds already Alienated
or in Process of Aliena-
tion.
- Division 3.—Future Administration⁽²⁾
Leases.
- Division 4.—Existing Administration⁽²⁾
Leases.
- Part IV.—Register Book and Registration.
- Part V.—Administration⁽²⁾ Leases.
- Part VI.—Dealings.
- Division 1.—Transfers.
- Division 2.—Leases.
- Division 3.—Mortgages and Charges.
- Division 4.—Transfer and Encumbrance.
- Part VII.—Caveats.
- Part VIII.—Easements.
- Part IX.—Implied Covenants and Powers and Short
Forms.
- Part X.—Trusts and Transmissions.

(1)—continued.

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

| Short title, number and year. | Date of assent by Administrator. | Date of reservation by Administrator. | Date on which assent of Gov.-Gen. in Council published in <i>N.G. Gaz.</i> | Date on which came into operation. |
|---|----------------------------------|---------------------------------------|--|--|
| <i>Lands Registration Ordinance 1936</i> (No. 18 of 1936) | 26.2.1936 | — | — | 26.2.1936 (<i>Laws of T.N.G., Vol. XIII, p. 410</i>) |
| <i>Lands Registration Ordinance 1937</i> (No. 22 of 1937) | — | 4.3.1937 | 30.4.1937 | 30.4.1937 (<i>N.G. Gaz. of 30.4.1937</i>) |
| <i>Lands Registration Ordinance 1938</i> (No. 49 of 1938) | — | 24.8.1938 | 15.11.1938 | 15.11.1938 (<i>N.G. Gaz. of 15.11.1938</i>) |
| <i>Lands Registration Ordinance 1939</i> (No. 26 of 1939) | — | 5.9.1939 | 15.11.1939 | 15.11.1939 (<i>N.G. Gaz. of 15.11.1939</i>) |

(2) "Administration" was substituted for "Crown" by Section 3, and the Schedule, of the *Lands Registration Ordinance (No. 2) 1925* (No. 22 of 1925), Section 4 of which reads as follows:—

"This Ordinance shall not affect the validity of any document issued or anything done in pursuance of the law in force prior to the commencement of this Ordinance, and, where in any such document any reference is made to the Crown, that reference shall be read as a reference to the Administration."

Lands Registration Ordinance 1924-1939.

- Part XI.—Powers of Attorney.
- Part XII.—Fees and Assurance Fund.
- Part XIII.—Civil Rights and Remedies.
- Part XIV.—Cancellation and Correction of Instruments.
- Part XV.—Miscellaneous.

3. Sections five and six of the *Laws Repeal and Adopting Ordinance 1921-1923*⁽³⁾, and sub-sections (2.) and (3.) of section ten of the *Land Ordinance 1922-1923*⁽⁴⁾ shall be construed subject to the provisions of this Ordinance.

Enactments to be read subject to this Ordinance.

4. In this Ordinance unless the contrary intention appears—

Interpretation. Pap. R.P.O. 1913-1914, s. 5.

“Appraiser” means any person appointed by the Registrar to value land;

“Certificate of Title” means an instrument evidencing the seisin of the fee-simple or other estate of freehold in any land executed by the Registrar in the form in the Fifth Schedule to this Ordinance, or such other form as under the provisions of this Ordinance is authorized for the like purpose;

“Charge” means any charge on land created for the purpose of securing the payment of an annuity or sum of money other than a loan;

“Chargee” means the owner of a charge;

“Chargor” means the registered owner of land subject to a charge;

* * * * *

Definition of “Commissioner of Native Affairs” omitted by No. 22 of 1933, s. 3.

“Commissioner for Lands” means the Commissioner for Lands appointed under the *Land Ordinance 1922-1923*⁽⁴⁾;

“Consular Officer” includes Consul-General, Consul and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul or Vice-Consul;

“Court” means the Central Court⁽⁵⁾ or a judge thereof;

“Administration⁽²⁾ Land” includes all lands the right, title, estate, interest, control, privileges, or prerogatives of the Government in over or to which passed to the

Amended by No. 22 of 1925, s. 3 and Schedule.

(2) See footnote (2) printed on p. 2892.

(3) Now the *Laws Repeal and Adopting Ordinance 1921-1939*.

(4) Now the *Land Ordinance 1922-1941*.

(5) See Section 7A of the *Judiciary Ordinance 1921-1938*.

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Commonwealth in the terms of the *Laws Repeal and Adopting Ordinance 1921-1923*⁽³⁾; and all land which has or may become Administration⁽²⁾ land under the provisions of the *Land Ordinance 1922-1923*⁽⁴⁾;

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

“Administration⁽²⁾ lease” means any grant for years of Administration⁽²⁾ land or land belonging to the Administration⁽²⁾, and includes leases granted under the *Land Ordinance 1922-1923*, and also leases granted by the British Military Administration during or since the war and leases granted before the war by the Fiscus or by the former German Government of the Territory or by the Imperial German Government or by any organ or officer of either of those Governments;

“Curator of Intestate Estates” means the person for the time being appointed Curator of Intestate Estates for the Territory;

“Custodian” means the Custodian of Expropriated Property appointed in pursuance of Part II. of the Treaty of Peace Regulations made under the *Treaty of Peace (Germany) Act 1919-1920* of the Commonwealth of Australia;

Vic. T.L.A.
1915, s. 4.

“Encumbrance” includes all prior estates, interests, rights, claims and demands which can or may be had, made, or set up in, to, upon, or in respect of land;

“Encumbrancee” means the owner beneficiary or obligee of an encumbrance;

“Encumbrancer” means the registered owner of land subject to an encumbrance;

“Expropriated land” means any land the ownership of which has, through the operation of any Ordinance made for the purpose of giving effect to the Treaty of Peace signed at Versailles on the twenty-eighth day of June, One thousand nine hundred and nineteen, or of the Treaty of Peace signed at Saint-Germain-en-Laye on the tenth day of September, One thousand nine hundred and nineteen, become divested from the original owner and vested in the Custodian, and which remains vested in the Custodian or in some person claiming through him;

Pap. E.P.O.
1918-1914, s. 4.

“Fiscus” means the Fiscus of the Colony of German New Guinea;

(2) See footnote (2) printed on p. 2892.

(3) Now the *Laws Repeal and Adopting Ordinance 1921-1939*.

(4) Now the *Land Ordinance 1922-1941*.

“Grant” means the original grant of any land in fee-simple by the Administration; ⁽²⁾

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

“Instrument” includes any grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate, or exemplification of will, or any other document in writing relating to the transfer or other dealing with land or evidencing the title thereto;

“Land” includes messuages, tenements, and hereditaments corporeal or incorporeal of every kind and description, whatever may be the estate or interest therein; and, in every certificate of title, transfer and lease issued or made under this Ordinance, also includes all easements and appurtenances appertaining to the land therein described or reputed to be part thereof or appurtenant thereto;

“Land Register” means the Land Register (Grundbuch) formerly in use and kept under the laws in force in the Territory before the ninth day of May, One thousand nine hundred and twenty-one;

“Mortgage” means any charge on land created merely for securing a loan;

“Mortgagee” means the owner of a mortgage;

“Mortgagor” means the owner of land subject to a mortgage;

“Owner” means any person seised or possessed of any freehold or other estate or interest in land at law or in equity in possession or in futurity or expectancy, and includes any person in possession of or entitled to any charge or encumbrance upon any land;

“Person of unsound mind” means any person not an infant who is incapable from infirmity of mind of managing his own affairs;

“Registrar” means the Registrar of Titles; and includes any deputy registrar of titles appointed under the provisions of this Ordinance;

“The Administration” means the Government of the Commonwealth of Australia as Mandatory under the Mandate conferred by the Principal Allied and Associated Powers under the Treaty of Versailles and formulated by the Council of the League of Nations on the seventeenth day of December One thousand nine hundred and twenty;

Inserted by
No. 22 of 1925,
s. 3 and
Schedule.

“The Director” means the officer for the time being appointed to be or holding office as the Director of District Services and Native Affairs and includes the

Inserted by
No. 22 of 1933,
s. 3; amended
by No. 22 of
1937, s. 2.

(2) See footnote (2) printed on p. 2892.

officer for the time being appointed to be or holding office as the Assistant Director, Department of District Services and Native Affairs;

“The War” means the war between His Majesty the King and the German Emperor which commenced on the fourth day of August, One thousand nine hundred and fourteen;

“Transfer” means the passing of any estate or interest in land under this Ordinance whether for valuable consideration or otherwise;

“Transmission” means the acquirement of title to or interest in land consequent on the death, insolvency, or marriage of an owner;

“Owner”, “transferor”, “transferee”, “mortgagor”, “mortgagee”, “encumbrancer”, “encumbrancee”, “lessor”, “lessee”, “trustee”, “person seised of or having any estate or interest in any land” and the like shall include the heirs, executors, administrators and assigns of those persons respectively.

Variation of forms.
Pap. R.P.O.
1913-1914, s. 5.

5. Whenever a form in the Schedules to this Ordinance is directed to be used, any variation from the form, not being a variation in matter or substance, shall not affect its validity or regularity, but all such forms may be used with such alterations as the character of the parties or the circumstances of the case require.

PART II.—ADMINISTRATION.

Appointment of officers.
Pap. Ib. ss. 7, 9.

6.—(1.) For the purposes of this Ordinance the Governor-General may appoint—

- (a) a Registrar of Titles;
- (b) one or more deputy registrars of titles;
- (c) a Master of Titles to advise in connexion with the carrying out of the provisions of this Ordinance and to have and perform such other powers and functions as are by this Ordinance conferred or imposed on the Master of Titles; and
- (d) such other officers as are necessary for carrying out the provisions of this Ordinance.

(2.) The appointments shall be notified in the *Gazette* and in the *New Guinea Gazette*.

(3.) The Master of Titles shall be a barrister or solicitor of the Central Court⁽⁵⁾, but shall not practise as a barrister or solicitor while holding the office of Master of Titles.

(5) See Section 7A of the *Judiciary Ordinance* 1921-1938.

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(4.) Unless and until a Master of Titles is appointed, or when the office is vacant, the Crown Law Officer of the Territory shall be deemed to be the Master of Titles.

Sub-section (4.) amended by No. 32 of 1928, s. 2.

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Sub-section (5.) amended by No. 34 of 1924, s. 2; omitted by No. 32 of 1928, s. 2.

* * * * *

Sub-section (6.) omitted by No. 32 of 1928, s. 2.

7. Whenever by this Ordinance or any law anything is appointed to be done by the Registrar of Titles, it may be lawfully done by any deputy registrar of titles.

Deputy Registrar.
Pap. R.P.O.
1913-1914, s. 8.

8. Every Registrar of Titles and every deputy registrar of titles appointed under this Ordinance shall, before entering upon the execution of his office, take or make before a judge of the Central Court⁽⁵⁾ the following oath or affirmation:—

Oath of office.
Pap. *ib.* s. 10.

Oath.

I, A.B., do solemnly swear that I will faithfully and to the best of my ability execute and perform the office and duties of Registrar of Titles [*or* Deputy Registrar of Titles] for the Territory of New Guinea according to the provisions of the *Lands Registration Ordinance 1924*. So help me God.

Affirmation.

I, A.B., do solemnly and sincerely affirm and declare that I will faithfully and to the best of my ability execute and perform the office and duties of Registrar of Titles [*or* Deputy Registrar of Titles] for the Territory of New Guinea according to the provisions of the *Lands Registration Ordinance 1924*.

9. All documents purporting to be issued or written by or under the direction of the Registrar and purporting to be sealed with his seal of office or signed by him shall be received in evidence and shall, in the absence of proof to the contrary, be deemed to have been so issued or written and sealed or signed without further proof.

Proof of documents issued by Registrar.
Pap. *ib.* s. 11.

10. The Registrar of Titles shall have and use a seal of office bearing the impression of the Arms of the Commonwealth and having inscribed in the margin thereof the words "Registrar of Titles Territory of New Guinea"; and the imprint of the seal shall be valid whether impressed or made in wax, ink, or other substance.

Seal of office.
Pap. *ib.* s. 12.

11. The Registrar may—

Powers of Registrar.
Pap. R.P.O.
1913-1914,
ss. 13, 15.

Paragraph (a) substituted by No. 8 of 1925, s. 2.

(a) require any person to produce all deeds, wills or other instruments in his possession or within his control affecting any land or the title to any land which is about to be brought under this Ordinance, or in respect of which any transfer, lease, mortgage, encumbrance or other dealing or any release from any mortgage or other encumbrance is about to be effected or in respect of which any transmission is about to be registered under this Ordinance;

Paragraph (b) amended by No. 8 of 1925, s. 2.

(b) summon any person to appear and give evidence respecting the land or the instruments affecting the title thereto;

(c) administer oaths or in lieu thereof require any person to make and subscribe a declaration of the truth of the statements made by him in his examination;

Paragraph (d) amended by No. 18 of 1926, s. 2.

(d) upon such evidence as appears to him sufficient in that behalf correct errors in certificates of title, or in the Register Book, or in entries made therein, and supply entries omitted to be made under the provisions of this Ordinance:

Proviso amended by No. 14 of 1931, s. 2.

Provided that in the correction of any such error he shall not erase or render illegible the original words and shall affix the date on which the correction was made or entry supplied, together with his initials; and every certificate of title so corrected and every entry so corrected or supplied shall have the like validity and effect as if the error had not been made nor the entry omitted, except as regards any entry made in the Register Book before the actual time of correcting the error or supplying the omitted entry; and

Paragraph (e) amended by No. 22 of 1925, s. 3 and Schedule and by No. 14 of 1931, s. 2.

(e) lodge a caveat on behalf of—

(i) the Administration,⁽²⁾ or

(ii) any person under the disability of infancy, coverture, lunacy, unsoundness of mind, or absence from the Territory, or

(iii) any person whose rights are in his opinion likely to be endangered or affected by any misdescription of land or of its boundaries,
or

(2) See footnote (2) printed on p. 2892.

(iv) any person whose rights are in his opinion likely to be endangered by any fraud or improper dealing, to prohibit dealing with any land belonging or supposed to belong to the Administration⁽²⁾ or to any such person or to prohibit dealing with any land affected by the misdescription.

Sub-paragraph (iv) inserted by No. 14 of 1931, s. 2.

* * * * *

Paragraph (f) omitted by No. 14 of 1931, s. 2.

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

Penalty for obstructing Registrar. Pap. R.P.O. 1913-1914, s. 15.

(a) refuses or neglects to produce any instrument or to allow it to be inspected; or

(b) refuses or neglects to give any evidence; or

(c) knowingly misleads or deceives the Registrar,

he shall be guilty of an offence.

Penalty: One hundred pounds.

(2.) If any instrument or information so withheld appears to the Registrar to be material, he shall not be bound to proceed with the transaction.

13. The Registrar and the Master of Titles may, and upon the order of a judge shall, state any question of law in a special case for the opinion of the court, and the court may give judgment thereon, and any such judgment shall be binding on the Registrar.

Special case may be stated. Pap. 17. s. 16.

PART III.—BRINGING LAND UNDER THE ORDINANCE.

Division 1.—Future Grants of Freehold.

14.—(1.) The grants in fee of all Administration⁽²⁾ lands remaining unalienated at the commencement of this Ordinance shall be in duplicate and in addition to proper words of description shall refer to a map of the land on such scale as is prescribed.

Administration lands remaining unalienated to be registered under this Ordinance.

Vic. T.L.A. 1915, s. 16.

Sub-section (1.) amended by No. 22 of 1925, s. 3 and Schedule.

(2.) After payment of the fee for the grant and of the contribution to the assurance fund (where a contribution is payable), both parts of the grant shall be delivered to the Registrar, who after registration under this Ordinance shall deliver one part to the grantee.

(3.) The registration shall be deemed to be an enrolment of record of the grant, and the enrolment shall relate back to the date

(2) See footnote (2) printed on p. 2892.

of the grant, and either part of the grant when registered under this Ordinance shall be sufficient evidence of a duly enrolled grant of the land therein described to the person therein named on the date thereof.

Sub-section
(4.) added by
No. 18 of 1936,
s. 3.

(4.) Where a grant of an estate in fee simple by the Governor-General of Administration land is registered under this section and the grant relates to land in respect of which the Administration has been registered under this Ordinance as the owner or in respect of which a certificate of title has been issued in the name of the Administration in accordance with the provisions of this Ordinance, the Registrar shall cancel the registration of the Administration or the certificate of title, as the case may be, in so far as the registration or the certificate of title relates to the land the subject of the grant.

Director to be
trustee of
native reserves.

Sub-section
(1.) amended
by No. 20 of
1924, s. 3 and
No. 22 of 1933,
s. 2.

15.—(1.) For the purposes of this Ordinance and generally of holding and dealing with land, the Director shall be a corporation sole with perpetual succession and may sue and be sued in that name and may, with the written consent of the Administrator, take, purchase, hold, sell, lease, or otherwise deal with land or estates or interests in land under the authority of this or any other Ordinance or law in that behalf.

Sub-section
(2.) amended
by No. 22 of
1933, s. 4.

(2.) Where the Administrator makes any proclamation under the provisions of section seventy-two of the *Land Ordinance 1922-1923*⁽⁴⁾ in respect of land reserved, resumed or acquired as a native reserve, the Director shall be named therein as the sole trustee of the land.

Sub-section
(3.) amended
by No. 22 of
1933, s. 4.

(3.) Where in the Registrar's opinion the boundaries of any such reserve are sufficiently well defined to allow of a proper description and plan, he may upon application by the Director proceed to register him under this Ordinance as the owner of the land comprised in the reserve, and the certificate of title shall describe the Director as such trustee and shall expressly refer to the land as a native reserve.

*Division 2.—Freeholds already Alienated or in Process
of Alienation.*

Land registered
in Land Register
to be brought
under Ordinance.

16.—(1.) Where any land or any estate or interest in land or any right affecting land is registered in the Land Register, the Registrar shall without any application from any person interested proceed to bring that land under this Ordinance in accordance with the provisions thereof.

(2.) Every person who has in his possession or within his custody or control any authenticated or certified copy of any

(4) Now the *Land Ordinance 1922-1941*.

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entries in the Land Register shall on demand deliver the same to the Registrar who shall give a receipt therefor.

17.—(1.) Where any person (including the Fiscus or the Government of the German Empire or the late German Government of the Territory or any officer or organ of either of those Governments or the British Military Administration or any officer thereof) was before the ninth day of May, One thousand nine hundred and twenty-one, entitled, either immediately or in the future, and either absolutely or contingently, under the laws then in force, to be registered in the Land Register as the owner of any land or of any estate or interest in land or of any right affecting land, the Commissioner for Lands may at any time certify by writing under his hand that any such person or his successor in title is entitled to be registered in the Land Register as the owner of the land, estate, interest, or right which is described in the certificate.

Land not yet registered in Land Register to be certified:
Sub-section (1.) amended by No. 8 of 1925, s. 3.

(2.) The certificate shall be in duplicate, and one copy shall be forwarded by the Commissioner to the Registrar and one copy to the person entitled thereto.

(3.) The Commissioner shall at the same time forward to the Registrar for his inspection the file kept by the Commissioner relating to the land in question.

18. Upon receipt of the certificate, the Registrar shall proceed to bring the land affected under this Ordinance in accordance with the provisions of this Ordinance.

Land certified to be brought under Ordinance.

19. Where any land, estate or interest in land, or right affecting land is registered in the Land Register, or where any certificate has been issued by the Commissioner for Lands in pursuance of section seventeen of this Ordinance, the Registrar shall cause to be prepared a draft certificate of title in the form provided by this Ordinance.

Draft certificate of title to be prepared.

20. Where the land, estate, interest, or right in question is registered in the Land Register—

Description of draft.

(a) the description of the land in the draft certificate of title may be based on the description in the title page of the folio of the Land Register relating to the land or on any record of survey or other documents referred to therein, or on the duly authenticated record of any later survey;

(b) subject to paragraphs (e) and (f) of this section the person registered as the owner of the land in the Land Register shall be named as the owner in the draft certificate of title;

Paragraph (b) amended by No. 36 of 1925, s. 2.

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- (c) where under the second or third division of the Land Register a note or memorial of any permanent burden or limitation of the ownership or of any hypothec, land charge or rent charge is entered as affecting the land, the Registrar shall make such entries, endorsements, or memorials on the draft certificate of title as in his opinion will most nearly—
- (i) express the effect of that permanent burden or limitation or of that hypothec, land charge or rent charge as an encumbrance on the title, and
 - (ii) secure to the parties interested the same rights as were secured by the note or memorial in the Land Register;
- (d) subject to the next succeeding sub-section the person registered in the Land Register as the owner, beneficiary, or obligee of any such permanent burden or limitation or of any such hypothec, land charge or rent charge shall be named in the draft certificate of title as the encumbrancee entitled to the benefit of the rights secured by the entries, endorsements, or memorials made by the Registrar as aforesaid;
- (e) where it appears to the Registrar that any person registered in the Land Register as the owner of any land or as the owner, beneficiary or obligee of any permanent burden or limitation of the ownership or of any hypothec, land charge or rent charge is no longer entitled to the registration, he shall enter in the draft certificate the name of the person who in his opinion has become entitled to registration in the stead of the person so registered; and
- (f) where there have been vested in the Custodian under the provisions of the *Expropriation Ordinance* 1920-1924⁽⁶⁾ the properties, rights and interests of the person registered in the Land Register as the owner of any land, or as the owner, beneficiary or obligee of any permanent burden or limitation of the ownership, or of any hypothec, land charge or rent charge, the Registrar shall enter in the draft certificate the name of the Custodian instead of the person so registered.

Paragraph (d)
amended by
No. 36 of 1925,
s. 2.

Paragraph (f)
added by
No. 36 of 1925,
s. 2.

Power to
register
encumbrances
not in Land
Register.

Inserted by
No. 14 of 1931,
s. 3.

20A. The Registrar shall note on the draft certificate of title particulars of all existing mortgages, leases and other encumbrances not registered in the Land Register, to which in his opinion the land is subject.

(6) Now the *Expropriation Ordinance* 1920-1934.

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20B.—(1.) Where land is being brought under this Ordinance the Registrar may have a survey made of the land.

Power of Registrar to have land surveyed.

(2.) Where a survey is made under the last preceding subsection survey fees as prescribed under the *Land Ordinance 1922-1929*⁽⁴⁾ shall be payable to the Registrar by the person who is registered as the owner in the certificate of title.

Section 20B inserted by No. 14 of 1931, s. 3.

(3.) The Registrar may require a survey under this section to be made in such manner as he directs.

(4.) A survey made under this section shall be verified by the signature of the surveyor making it.

21.—(1.) The Registrar shall sign a notice in the form in the First Schedule to this Ordinance, and shall serve it and also a copy of the draft certificate of title on each of the following persons:—

Notices to be served by Registrar. First Schedule.

- (a) every person, not being a person whose property rights and interests are vested in the Custodian under the *Expropriation Ordinance 1920-1924*⁽⁶⁾, registered in the Land Register as the owner of the land or as the owner, beneficiary or obligee of any permanent burden or limitation of the ownership or of any hypothec, land charge or rent charge;
- (b) every person named in the draft certificate of title as the owner of any estate or interest in the land or as an encumbrancee;
- (c) the Custodian (in cases where the land or any right affecting the land has been expropriated);
- (d) the Director;
- (e) the occupiers of the land;
- (f) the occupiers of any contiguous land not being native land;
- (g) the owners of any such contiguous land; and
- (h) any other person who in the Registrar's opinion ought to be served.

Paragraph (a) amended by No. 36 of 1925, s. 3.

Paragraph (d) amended by No. 20 of 1924, s. 3 and by No. 22 of 1933, s. 2.

(2.) Service may be effected by sending through the post office a registered letter addressed to every such person and marked outside "Office of Titles" and containing a copy of the notice and draft certificate of title.

(3.) The Registrar shall also sign and cause to be inserted in the *New Guinea Gazette* a notice in the form in the Second Schedule to this Ordinance and shall post a copy of the notice in a conspicuous place at his office and may if he thinks fit cause the notice

Second Schedule.

(4) Now the *Land Ordinance 1922-1941*.

(6) Now the *Expropriation Ordinance 1920-1934*.

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to be advertised in any newspapers whether circulating within the Territory or not.

Sub-section
(4.) substituted
by No. 8 of
1925, s. 4.

(4.) The time to be limited in the notices referred to in sub-sections (1.) and (3.) of this section for the lodging of caveats shall be fixed by the Registrar at such period as in his opinion is sufficient to allow every person served a reasonable opportunity of lodging a caveat if he so desires:

Provided that if at any time after the service or publication of any such notice and before the land is brought under the Ordinance it appears to the Registrar that the time limited in the notice is not sufficient, he may extend the time by such period as he thinks necessary, and any such extension shall be made by notice which shall be served on the same persons and published in the same way as the original notice.

Director to
furnish
certificate or
refer question
to Court.

Section 22
amended by
No. 20 of 1924,
s. 3; substituted
by No. 36 of
1925, s. 4;
amended by
No. 22 of 1933,
s. 2.

22. Whenever the Director is served with the notice and draft certificate of title referred to in the last preceding section, he shall—

(a) forthwith cause a notice to be published in the *New Guinea Gazette* and to be posted at the office of the District Officer in the District in which the land is situated specifying that he has been so served and that claims by natives or native communities to rights over the land may be lodged with him within three months after the date of the publication of the notice in the *New Guinea Gazette*;

(b) cause to be made upon and in the locality of the land any inquiries which he thinks necessary; and

(c) at the expiration of the period of three months specified in the notice—

(i) certify to the Registrar by writing under his hand that, after careful inquiry, he is satisfied that there are no natives or native communities having any rights over the land, other than those appearing in the Land Register or in the draft certificate of title; or

(ii) forthwith refer the question of native rights in relation to the land to the Court for determination unless he has already made that reference in pursuance of section twenty-four of this Ordinance; or

(iii) forthwith refer the question of native rights over the land to the Administrator in accordance with the provisions of section twenty-four A of this Ordinance.

Paragraph (c)
amended by
No. 12 of 1926,
s. 2; substituted
by No. 2 of
1929, s. 2;
amended by
No. 22 of 1933,
s. 5.

Sub-paragraph
(iii) added by
No. 23 of 1933,
s. 2.

Lands Registration Ordinance 1924-1939.

23. As soon as may be after the commencement of this Ordinance, the Registrar shall forward to the Director a list of all lands entered in the Land Register of which any natives, or the Fiscus or any person, authority, or corporation on their behalf are registered as the owners, or in respect of which there are registered in the Land Register any native rights affecting the lands, together with the particulars of all entries relating to any such lands.

Registrar to supply list of native lands registered.

Amended by No. 20 of 1924, s. 3, No. 36 of 1925, s. 5, and by No. 22 of 1933, s. 2.

24. Whether he has been served with the notice and draft certificate referred to in section twenty-one of this Ordinance or not, the Director shall refer the question of possible native rights in relation to any land to the Court for inquiry and determination in every case where he is of the opinion that there are natives or native communities having rights of any description, other than those appearing in the Land Register or in the draft certificate, over any land owned, occupied, or used, by or for any person other than a native.

Director to refer question of native rights to Court.

Amended by No. 20 of 1924, s. 3 and by No. 36 of 1925, s. 6; substituted by No. 2 of 1929, s. 3; amended by No. 22 of 1933, s. 2.

24A.—(1.) Notwithstanding the provisions of sections twenty-two and twenty-four of this Ordinance, where a certificate in accordance with sub-paragraph (i) of paragraph (c) of section twenty-two of this Ordinance has not been given, the Director, if he is of the opinion that, for a period of at least twenty years immediately preceding—

Power of Director to refer question of native rights to Administrator in certain cases.

Section 24A inserted by No. 23 of 1933, s. 3.

- (a) the service upon him of the draft certificate of title to the land; or
- (b) where there is no draft certificate of title, the date of the completion of his inquiries relating to possible native rights over the land,

natives or native communities have not exercised, over land owned, occupied, or used by a person other than a native, rights other than those appearing in the Land Register or in the draft certificate of title, shall refer the question of native rights over the land to the Administrator.

(2.) Where a question of native rights is referred to the Administrator under the last preceding sub-section, the Administrator may instruct the Director—

- (a) to certify to the Registrar that the question of native rights over the land will not be referred to the Court; or
- (b) to refer the question of native rights over the land to the Court for determination.

(3.) Subject to the provisions of the next succeeding sub-section, the Director, on receipt of the instruction referred to in the last preceding sub-section, shall forthwith comply with it.

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(4.) Where under the provisions of this section the Administrator instructs the Director to refer the question of native rights over land to the Court for determination, the provisions of section twenty-four B of this Ordinance shall apply.

(5.) The provisions of this Ordinance relating to the procedure on reference to the Court under section twenty-two or twenty-four of this Ordinance shall, as far as applicable, apply to references to the Court under this section.

Power of
Director to
accept
compensation.
Section 24B
inserted by
No. 23 of 1933,
s. 3.

24B.—(1.) Notwithstanding the provisions of sections twenty-two and twenty-four of this Ordinance, in any case in which natives or native communities claim to have rights, other than those appearing in the Land Register or in the draft certificate of title, over land owned, occupied, or used by any person other than a native, the Director, if in his opinion it is practicable to compensate the claimants for the loss of the rights by some form of compensation, may, with the consent of the Administrator and on behalf of the claimants, accept in full settlement of the claim such compensation as he deems adequate.

(2.) Upon the compensation referred to in the last preceding sub-section being made, the Director shall sign, and forward to the Registrar, a memorandum of the names of the parties to and the terms of the settlement, together with a certificate that there are no native rights affecting the land the subject of the claim other than those appearing in the Land Register or in the draft certificate of title.

(3.) The Director shall pay to the Treasury all moneys accepted by him in settlement of claims respecting native rights.

(4.) The Director, with the consent of the Administrator, shall apply all moneys received under this section for the use and benefit of the claimants in such manner, and at such times as he thinks fit.

Procedure
on reference.

25.—(1.) Where any question of native rights is referred to the Court under sections twenty-two or twenty-four of this Ordinance, the reference shall be by summons.

(2.) There shall be filed with the summons an affidavit setting forth the substance of the entries in the Land Register referring to native ownership or rights or the nature and extent of the rights claimed by natives or other reason for the reference, as the case may be.

(3.) The summons shall be served on—

(a) the Registrar;

(b) every person, not being a person whose property, rights and interests are vested in the Custodian under the *Expropriation Ordinance 1920-1924*⁽⁶⁾, registered in

Paragraph (b)
amended by
No. 36 of 1925,
s. 7.

(6) Now the *Expropriation Ordinance 1920-1934*.

Lands Registration Ordinance 1924-1939.

the Land Register as the owner of the land or as the owner, beneficiary, or obligee of any permanent burden or limitation on the ownership or of any hypothec, land charge or rent charge;

- (c) where the land or any right affecting the land has been expropriated, the Custodian;
- (d) every person named in any draft certificate of title relating to the land which has been served on the Director as the owner of any estate or interest in the land or as an encumbrancee;
- (e) any person as to whom the Registrar by writing under his hand certifies that in his opinion that person ought to be served; and
- (f) the occupiers of the land.

Paragraph (d) amended by No. 20 of 1924, s. 3 and by No. 22 of 1933, s. 2.

(4.) The Registrar on being served with any such summons and with a list of the persons to be served shall forthwith certify by writing under his hand what further persons, if any, ought in his opinion to be served and, if he has not already prepared and served the draft certificate of title to the land to which the summons relates, he shall forthwith prepare a draft certificate, and shall take such other action as is described in section twenty-one of this Ordinance, inserting in the notices required to be served or published a statement that the reference to the court is pending.

Sub-section (4.) amended by No. 2 of 1929, s. 4.

(5.) The service of any summons under this section may be effected by sending an office copy thereof through the post in a registered letter addressed to the person to be served and marked on the outside with the words "Crown Law Office".

Sub-section (5.) added by No. 36 of 1925, s. 7.

26.—(1.) The Court shall have jurisdiction upon the return of the summons to hear and determine any question of the customary or other rights of any natives to or affecting the land to which the summons refers.

Court to determine questions.

(2.) The Court may adjourn the hearing of any summons and may view the land, may take evidence and give its decision upon, or in the vicinity of, the land, may require any witnesses to be called for examination, and in general shall take all measures which it deems fit in order to be informed as to any native rights or claims whatever affecting the land whether those rights or claims are mentioned in any affidavit or have been raised by any party or not.

Sub-section (2.) amended by No. 2 of 1929, s. 5.

(3.) The order to be made upon the hearing of any such summons shall either—

- (a) declare that no native rights exist affecting the land; or
- (b) define the nature and extent of the rights which the Court finds to exist, and direct that those rights shall

be protected by the necessary entries in the Register Book and on the certificate of title; or

Paragraph (c) added by No. 2 of 1929, s. 5.

(c) define the nature and extent of the rights which the Court finds to exist, and give directions as provided in section twenty-seven E of this Ordinance.

(4.) The fact that no native rights are registered in the Land Register, or that the registration of any such rights therein has been cancelled, shall not of itself be taken to be any evidence that those rights do not exist.

Director to represent natives.

Sub-section (1.) amended by No. 20 of 1924, s. 3 and by No. 22 of 1933, s. 2.

27.—(1.) At the hearing of every reference under section twenty-two or twenty-four of this Ordinance, the Director shall be charged with the duty of presenting the case for the natives whose interests are or may be affected, and he shall arrange for such legal or other representation of the natives as he considers necessary.

Sub-section (2.) amended by No. 22 of 1933, s. 6.

(2.) Where in the Director's opinion the claims of any natives are adverse to or inconsistent with those of any other natives, he shall arrange for separate representation of each such adverse or inconsistent claim.

Sub-section (3) amended by No. 22 of 1933, s. 6.

(3.) At the beginning of the hearing of every such reference the Court shall inquire concerning the natives interested, the nature of their claims, and the manner in which the Director proposes that they shall be represented, and may either approve of the manner of representation or give directions to vary it.

Court may mediate with a view to settlement.

Section 27A inserted by No. 2 of 1929, s. 6.

27A.—(1.) At the hearing of any reference under section twenty-two or section twenty-four of this Ordinance, the Court may, at any stage of the hearing, mediate between the parties in order to effect a settlement of any matters in dispute.

(2.) The Court may adjourn the hearing of any reference under section twenty-two or section twenty-four of this Ordinance if it appears that by doing so a settlement may be arrived at by the parties.

Court may dispense with rules of evidence and legal procedure.

Inserted by No. 2 of 1929, s. 6.

27B. At the hearing of any reference under section twenty-two or section twenty-four of this Ordinance, the Court shall not be bound by rules of evidence or legal procedure, but may inform itself by the best evidence which it is able to procure or which is laid before it.

Court not to be bound by principles and rules of common law and equity.

Inserted by No. 2 of 1929, s. 6.

27C. In the determination of any matters referred to it under section twenty-two or section twenty-four of this Ordinance, notwithstanding anything contained in the *Laws Repeal and Adopting Ordinance 1921-1928*⁽³⁾, the Court shall not be bound by the principles and rules of common law and equity which were in

(3) Now the *Laws Repeal and Adopting Ordinance 1921-1939*.

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force in England on the ninth day of May, One thousand nine hundred and twenty-one, but may be guided by such principles of right and good conscience as it deems to be applicable to the matters referred to it, having regard to the tribal institutions, customs and usages of the natives of the Territory and to the conditions existing in the Territory since its occupation by persons other than natives.

27D. Any person (not being a native), who is a party to any proceedings to be held by the Court in the exercise of its jurisdiction to adjudicate upon matters referred to it under section twenty-two or section twenty-four of this Ordinance may, by power of attorney, appoint a person to represent him at those proceedings, although the person appointed is not a barrister or solicitor.

Persons who are not barristers or solicitors may be appointed to represent any person except natives.

Inserted by No. 2 of 1929, s. 6.

27E. In the determination of any matter referred to it under section twenty-two or section twenty-four of this Ordinance, where the Court is of opinion that any person (hereinafter in this section referred to as the claimant) has succeeded in establishing a claim to a right over any land, but that the enforcement of that right may cause undue hardship to some other person, and that it is possible adequately to recompense the claimant for the loss of the right by some form of compensation, the Court may order that such compensation be constituted for the right established, and that, upon such compensation being made to the claimant by that other person, the right shall become vested in that other person.

Court may make order for compensation to claimant.

Inserted by No. 2 of 1929, s. 6.

28.—(1.) Any person claiming any estate or interest in or any right affecting the land may, before the registration of a certificate, lodge with the Registrar a caveat in the form in the Third Schedule to this Ordinance forbidding the registration of the draft certificate of title.

Parties interested may lodge caveat.

Third Schedule.

Cf. Vic. T.L.A.

1915, s. 29.

Cf. Q. R.P.A.

1861, s. 23.

(2.) Every such caveat shall be signed by the caveator or his agent, and shall particularize the estate or interest claimed.

(3.) The person lodging any such caveat shall if required by the Registrar support it by a statutory declaration stating the nature of the title under which the claim is made.

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

29.—(1.) If in any case the land actually and *bona fide* occupied differs in boundaries, area, or position from the land described in the draft certificate of title, or in the draft certificate of title and Land Register or other record or document upon which the draft certificate is based, the person entitled may, whether the land is or is not registered in the Land Register, and whether any conveyance or transfer from the Fiscus or the Government has taken place or not, lodge an application in the

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

Cf. Vic. T.L.A. 1915, s. 25.

Fourth Schedule.

LAND—

form in the Fourth Schedule to this Ordinance to have the draft certificate of title amended so as to bring under this Ordinance the land so occupied.

(2.) The applicant shall state in the application that the land occupied by him is substantially the land referred to in the draft certificate of title, but that the land so occupied is not correctly described in the draft certificate, or in the draft certificate and the Land Register or other record or document, and shall specify to the best of his knowledge and belief the reasons for the discrepancy between the land as occupied and the land as described in the draft certificate, or in the draft certificate and Land Register or other record or document.

Application to be treated as caveat.

30.—(1.) Every such application shall be dealt with in every respect as if it were a caveat.

(2.) Any such application may be granted if the discrepancy between the land as occupied and as described in the Land Register or draft certificate of title appears to be due to the inaccuracy of any survey or plan or description on the sale or conveyance of the land by the Fiscus or the Government, or on any subsequent dealing therewith, or to any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented or mentioned in any plan or description.

Title may be given to excess of land occupied over land described.

Cf. Vic. T.L.A. 1915, s. 27.

31. Whether any such application has been made or not, where it is found by survey or otherwise that, by reason of erroneous measurements in the original Government survey or in any later Government survey, the actual dimensions of the land as marked on the ground exceed or fall short of the dimensions given in the Land Register, or in any conveyance from the Fiscus or the Government, or in any permit or authorization to take up or occupy the land, the Registrar may prepare or amend the draft certificate of title in respect of that land as if the dimensions marked on the ground had been the dimensions given in the Land Register or in the conveyance or permit or authorization.

Registration where no caveat or reference.

32. Upon the expiration of the time limited for lodging caveats, the Registrar shall proceed to bring the land under the Ordinance by registering, in accordance with the provisions of this Ordinance, a certificate of title in the form of the draft, unless—

- (a) a caveat has been lodged; or
- (b) any question of native rights has been referred to the Central Court⁽⁵⁾ :

(5) See Section 7A of the *Judiciary Ordinance 1921-1938*.

Lands Registration Ordinance 1924-1939.

Provided that no land shall be brought under the Ordinance under this section unless the Registrar has first received a certificate by the Director referred to in section twenty-two, twenty-four A, or twenty-four B of this Ordinance.

Proviso amended by No. 20 of 1924, s. 3, No. 22 of 1933, s. 2, and by No. 23 of 1933, s. 4.

33. Upon receipt of a caveat, the Registrar shall notify the receipt to all the persons, other than the caveator, served by him with the draft certificate of title, and shall suspend proceedings in the matter until the caveat has been withdrawn or until an order in the matter has been obtained from the Court.

If caveat be received, proceedings suspended. Cf. Vic. T.L.A. 1915, s. 30. Cf. Q. R.P.A. 1861, s. 24.

34.—(1.) Upon the expiration of the time limited for lodging caveats, the Registrar shall, where a caveat has been received, apply to the Court for directions.

Registrar to apply to judge for directions where caveat lodged.

(2.) The application shall be made upon summons which shall be served upon the caveator and upon the other persons who were originally served with the draft certificate of title unless the Court orders that the last-mentioned service may be dispensed with.

(3.) Upon the return of the summons, any party may call and examine any witnesses or offer any evidence, and the Court may dispose of the matter forthwith, or may adjourn it, and may direct any further parties to be served.

(4.) Upon application by the Registrar in that behalf, the Court may require all persons having in their possession or custody any deeds instruments or evidences of title relating to or affecting the land to produce them at the Office of Titles for inspection by the Registrar upon such terms and for such charge or fee as he thinks just.

(5.) Upon the hearing of the summons, the judge shall deal with the claims of the caveator and shall also hear the Registrar and any other parties, and shall determine all questions in issue and make such order as to the form or contents of the certificate of title as he deems just.

(6.) The order shall have the effect of settling the rights of the parties to the same extent and in the same way as a judgment upon an action in the Court:

Provided that no such order shall be taken to conclude any question of native rights unless the order is made in respect of a caveat lodged in a case where the Director as a trustee for natives is named in the draft certificate of title as the owner of the land being brought under this Ordinance.

Proviso amended by No. 14 of 1931, s. 4 and by No. 22 of 1933, s. 2.

(7.) The service of any summons under this section on a person other than the caveator may be effected by sending an office copy thereof through the post in a registered letter addressed to the person to be served at his last known place of abode.

Sub-section (7.) added by No. 14 of 1931, s. 4.

Registration upon certificate from Director.

Sub-section (1.) amended by No. 20 of 1924, s. 3 and by No. 22 of 1933, s. 2.

35.—(1.) Where the Registrar has received from the Director a certificate under section twenty-two of this Ordinance, he shall proceed forthwith to bring the land under the Ordinance by registering, in accordance with the provisions of this Ordinance, a certificate of title in accordance with the order mentioned in the last preceding section.

(2.) Where any question of native rights has been referred to the Court, the Registrar shall bring the land under the Ordinance by registering, in accordance with the provisions of this Ordinance, a certificate of title in accordance with the order mentioned in the last preceding section and with the order made upon such reference as soon as the later of the two orders has been made.

Registration following order upon reference where no caveat lodged.

36. Where a question of native rights has been referred to the Court and no caveat has been lodged within the time limited therefor, the Registrar shall, immediately after the making of an order upon the reference, proceed to bring the land under the Ordinance by registering, in accordance with the provisions of this Ordinance, a certificate of title in accordance with the order.

Certificate of title to issue in name of deceased person. Q. R.P.A. 1861, s. 31.

37. In case the person, in whose name the draft certificate of title is made out or in whose name the certificate of title has been directed to issue, dies between the first service by the Registrar of the draft certificate of title and the registration of the certificate, it shall be registered in the name of that person; and the land shall devolve or pass in like manner as if the certificate had been registered prior to the death of that person.

Where natives, &c., are registered as owners.

Section 38 amended by No. 14 of 1931, s. 5.

38. The provisions of sections sixteen to thirty-seven of this Ordinance shall apply to cases where natives (or the Fiscus, or any person, authority, or corporation, on behalf of natives) are registered in the Land Register as the owners of any land, but subject to the following provisions:—

Paragraph (a) amended by No. 20 of 1924, s. 3, No. 8 of 1925, s. 5, and by No. 22 of 1933, s. 2.

(a) Notwithstanding the provisions of sub-section (1.) of section twenty-one of this Ordinance the persons to be served with the notice and draft certificate of title therein referred to shall be—

- (i) the Director;
- (ii) the owners and the occupiers, if any, of all contiguous land (not being native land); and
- (iii) any other person who in the Registrar's opinion ought to be served;

Paragraph (b) amended by No. 20 of 1924, s. 3, No. 14 of 1931, s. 5, and by No. 22 of 1933, s. 2.

(b) The Director shall not furnish any certificate under section twenty-two of this Ordinance in relation to any land affected by this section;

Lands Registration Ordinance 1924-1939.

(c) Notwithstanding anything contained in section twenty of this Ordinance, where any native or native community is registered in the Land Register as the owner of any land or of any right affecting land, the Director shall be named in the draft certificate of title as the owner of the land or as encumbrancee, as the case may be, and in every such case the Director shall be described in the entry as a trustee for natives, and where he is named as owner, the land shall be described as a native reserve; and

Paragraph (c) added by No. 8 of 1925, s. 5; amended by No. 14 of 1931, s. 5 and by No. 22 of 1933, s. 2.

(d) Notwithstanding anything contained in this Ordinance, where natives (or the Fiscus, or any person, authority, or corporation, on behalf of natives) are registered in the Land Register as the owners of any land, the Registrar may proceed to bring the land under this Ordinance by registering, in accordance with the provisions of this Ordinance, a certificate of title in the form of the draft certificate of title without having first received the certificate of the Director mentioned in section twenty-two of this Ordinance notwithstanding that the question of native rights has not been referred to the Court.

Paragraph (d) added by No. 14 of 1931, s. 5; amended by No. 22 of 1933, s. 2.

39.—(1.) Where the Fiscus or any other person authority or corporation is registered in the Land Register as the owner of any native reserve or is registered as the owner of any land or of any right affecting land which is held by or vested in the Fiscus or in any such person, authority or corporation on behalf of or for the benefit of any natives, or where the Fiscus or any such person authority or corporation or his or its successor in title is the unregistered owner of any such reserves or land or right, the Director shall, for the purpose of registration under this Ordinance, be considered as the successor in title of the Fiscus or of the person, authority or corporation.

Director to succeed to Fiscus, &c.

Sub-section (1.) amended by No. 20 of 1924, s. 3; substituted by No. 8 of 1925, s. 6; amended by No. 22 of 1933, s. 2.

(2.) In every such case, the certificate of title issued upon the bringing of that land under this Ordinance shall describe the Director as a trustee for natives.

Sub-section (2.) amended by No. 8 of 1925, s. 6 and by No. 22 of 1933, s. 7.

(3.) Where the Director is registered as owner the land shall in any case be described as a native reserve.

Sub-section (3.) amended by No. 22 of 1933, s. 7.

40. A native or group or community of natives shall not be registered in the Register Book as owner or part owner of any land or as an encumbrancee.

Natives not to be registered as owner or encumbrancee.

Substituted by No. 8 of 1925, s. 7.

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Native customs
of land tenure
not affected.

41.—(1.) Nothing contained in this Ordinance and no registration made thereunder shall affect any system or custom of land tenure or of succession to land or transmission of land in use amongst natives.

(2.) Notwithstanding anything contained in this Ordinance, no certificate of title or entry in the Register Book shall be of any force or validity as evidence in any dispute between native and native as to the ownership of land or of any interest in or right affecting land.

Administration
to be registered
as successor of
Fiscus, &c.
Section 42
substituted by
No. 8 of 1925,
s. 8.

42.—(1.) Subject to section thirty-nine of this Ordinance, where, immediately before the ninth day of May, One thousand nine hundred and twenty-one, the British Military Administration or any officer thereof, or where, immediately before the tenth day of January, One thousand nine hundred and twenty, the Fiscus or the Government of the German Empire or the late German Government of the Territory or any officer or organ of either of those Governments was registered or entitled to be registered in the Land Register as the owner of any land or of any encumbrance affecting land, the Administration of the Territory shall for the purposes of this Ordinance be deemed to be the successor in title of the British Military Administration or any such officer, or of the Fiscus or any such Government, officer, or organ as the case may be, and may be registered under that style as the owner of the land or as the owner beneficiary or obligee of the encumbrance, as the case may be.

Sub-section (2.)
amended by
No. 22 of 1925,
s. 3 and
Schedule.

(2.) Where any land or any estate or interest in land (other than land referred to in sub-section (1.) hereof) is or has been acquired by the Crown or the Administration or has become Crown land or Administration land⁽⁷⁾ under the provisions of any Ordinance or law, the Registrar, upon production of such evidence of title as he deems sufficient or as may be prescribed by any Ordinance, accompanied by a proper plan and description of the land, shall bring the land under this Ordinance by registering, in manner provided in this Ordinance, a Certificate of Title in the name of the Administration of the Territory.

Translation of
instruments
affecting land.

43.—(1.) Where any instrument referred to in any entry or indorsement on a certificate of title registered under the provisions of this division is not in the English language, the provisions of section sixty-five of this Ordinance shall not apply thereto, but shall apply to the translation thereof provided for in this section.

(2.) In every such case the Registrar shall, before registration of the certificate of title, cause a translation of the instrument to be prepared, and to be acknowledged, agreed upon, or decided to be

(7) The words "or Administration Land" were inserted by the *Lands Registration Ordinance* (No. 2) 1925. See now footnote (2) printed on p. 2892.

correct in the same way as is provided in Division 4 of this Part for the case of leases not in the English language, and the provisions of that division shall, as far as applicable, apply to the case of instruments so translated.

(3.) For the purpose of the last preceding sub-section any reference in Division 4 of this Part to the lessor or the lessee shall be deemed to be a reference to the parties to the instrument, and any reference to the Register of Administration⁽²⁾ Leases shall be deemed to be a reference to the Register Book.

Sub-section (3.) amended by No. 22 of 1925, s. 3 and Schedule.

43A.—(1.) The Registrar shall keep a book to be called the Index of Unregistered Administration⁽²⁾ Lands.

Index of Unregistered Administration Lands.

(2.) The Commissioner of Lands shall lodge with the Registrar an original of every proclamation, notice, lease, conveyance, agreement, or other instrument under or by virtue of which any land has become Administration⁽²⁾ land as soon as the same is made, published or executed as the case may be.

Section 43A inserted by No. 8 of 1925, s. 9; amended by No. 22 of 1925, s. 3 and Schedule.

(3.) The Registrar shall thereupon enter in the Index of Unregistered Administration⁽²⁾ Lands the particulars of the proclamation, notice, lease, conveyance, agreement or other instrument together with brief particulars of the land sufficient in his opinion to identify the same, and shall preserve the instrument in question for reference.

(4.) Where any land referred to in the Index of Unregistered Administration⁽²⁾ Lands is brought under the Ordinance by the registration of a Certificate of Title in respect thereof a note or memorial of the registration shall be entered in the Index of Unregistered Administration⁽²⁾ Lands with a reference to the volume and folio of the Certificate of Title.

(5.) No entry in the Index of Unregistered Administration⁽²⁾ Lands and no preservation of any proclamation, notice, lease, conveyance, agreement, or other instrument by the Registrar under this section shall give to the Administration⁽²⁾ any further or other title than that given by the said proclamation, notice, lease, conveyance, agreement or other instrument.

Division 3.—Future Administration⁽²⁾ Leases.

Heading amended by No. 22 of 1925, s. 3 and Schedule.

44. All Administration⁽²⁾ leases issued after the commencement of this Ordinance shall be in duplicate and after being duly executed shall be forwarded to the Registrar who after registration under this Ordinance shall deliver one part to the lessee.

Future Administration leases to be registered. Amended by No. 22 of 1925, s. 3 and Schedule.

(2) See footnote (2) printed on p. 2892.

Division 4.—Existing Administration⁽²⁾ Leases.

Heading amended by No. 22 of 1925, s. 3 and Schedule.

Leases by Fiscus, &c., or by British Military Administration to be brought under Ordinance.

45. All leases which have been granted by the Fiscus, or by the German Imperial Government, or by the former German Government of the Territory, or by any organ or officer of either of those Governments, or by the British Military Administration, and which are still in force at the commencement of this Ordinance, shall, unless the term thereof expires within one year after the commencement of this Ordinance, be brought under this Ordinance in accordance with the provisions thereof.

Administration deemed to be successor of Fiscus, &c.

46.—(1.) Where any lease has been granted by the Fiscus, or by the former German Government of the Territory, or by the Imperial German Government, or by any officer or organ of either of those Governments on its behalf, the Administration of the Territory of New Guinea shall for the purposes of this Ordinance be deemed to be the successor in title of the Fiscus or of that Government, organ, or officer, as the case may be.

(2.) Where any lease has been granted by the British Military Administration or by any officer of that Administration during or since the war, whether the lease is expressed to be granted on behalf of the Crown or of the Fiscus, or otherwise howsoever, the Administration of the Territory shall, for the purposes of this Ordinance, be deemed to be the successor in title of the lessor.

(3.) For the same purposes the Commissioner for Lands for the time being shall have power to represent and to bind the Administration of the Territory and to sign any conveyance, document or instrument and to do any act or thing on its behalf in relation to any such lease.

Existing leases to be produced to Registrar.

47.—(1.) Upon requisition in writing by the Registrar the lessor's part of every such lease shall be sent by the person having the custody thereof to the Registrar and shall be retained by him.

(2.) Upon the like requisition the lessee shall produce his part of the lease at the Registrar's office within a reasonable time.

(3.) The Registrar shall satisfy himself that both parts are duly executed and are exact copies of each other.

Lease if in English to be registered forthwith. Amended by No. 22 of 1925, s. 3 and Schedule.

48. The Registrar, upon being so satisfied, shall, if the lease is in the English language, bring it under this Ordinance by registering it in the Register of Administration⁽²⁾ Leases in manner provided in this Ordinance and shall return the lessee's part to him.

Leases to be translated.

49.—(1.) Where the lease is not in the English language the Registrar shall obtain a translation thereof.

(2) See footnote (2) printed on p. 2892.

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(2.) Upon being required thereto in writing by the Registrar, the Commissioner for Lands on behalf of the Administration, and the lessee, shall either acknowledge the correctness of the translation by writing indorsed thereon, or if either of them is unwilling to do so, he shall state his objections in writing.

(3.) Where any objections are so stated the Registrar may summon both parties before him and shall endeavour to have a translation agreed upon.

(4.) If no such agreement is made the Registrar shall apply to the Court upon summons to both parties for a decision that a particular translation is correct.

(5.) The Court may hear any evidence, expert or otherwise, and may decide what translation is correct.

(6.) The decision shall be final and shall have the same effect as if the Commissioner for Lands and the lessee had agreed upon a translation.

(7.) Every translation so acknowledged or agreed upon, or decided to be correct, shall be in duplicate, and both parts shall be indorsed with a reference to the previous lease sufficient to identify it, and also with a memorial of the acknowledgment or agreement or of the decision.

(8.) The memorial of any such acknowledgment or agreement shall be signed by the Commissioner for Lands and by the lessee, and the memorial of any such decision shall be authenticated in such manner as is required for the authentication of orders by a judge.

50.—(1.) The Registrar shall indorse upon both originals of every such lease a memorial to the effect that a translation thereof has been acknowledged or agreed upon or decided to be correct, as the case may be, and shall sign the memorial.

Originals to be indorsed and lessee to have copy of translation.

(2.) After registration under this Ordinance, the Registrar shall forward to the lessee one copy of the translation.

Sub-section (2.) amended by No. 18 of 1936, s. 4.

(3.) The Registrar shall preserve both originals of every such lease but shall not bind them up in the Register of Administration Leases.

Sub-section (3.) substituted by No. 18 of 1936, s. 4.

51.—(1.) The translation so acknowledged, agreed upon, or decided to be correct shall take the place of the original lease in all respects as if it had been executed by the parties on the date of the original lease.

Authority of translation.

(2.) The translation may be produced in evidence as if it were the original.

(3.) After registration the original lease shall not be referred

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to except in case of patent ambiguity or manifest error in the translation appearing on the face thereof.

Registration of translation.

Sub-section (1.) amended by No. 22 of 1925, s. 3 and Schedule.

52.—(1.) The Registrar shall bring all such leases under the Ordinance by registering the translation in the Register of Administration⁽²⁾ Leases in accordance with the provisions of this Ordinance.

Sub-section (2.) amended by No. 22 of 1925, s. 3 and Schedule.

(2.) Every such translation shall for purposes of registration be deemed to be an Administration⁽²⁾ lease within the meaning of Part V. of this Ordinance.

(3.) The provisions contained in this division as to the registration or the translation and registration of leases shall apply *mutatis mutandis* to any instruments evidencing a transfer or other dealing with or a transmission of any such lease, and to any indorsement upon any existing lease evidencing any dealing or transmission.

Sub-section (4.) amended by No. 22 of 1925, s. 3 and Schedule.

(4.) The Registrar, upon registering any lease under this division, shall at the same time make any entries in the Register of Administration⁽²⁾ Leases which in his opinion are necessary to express the effect of any dealing or transmission which has taken place since the execution of the lease.

PART IV.—REGISTER BOOK AND REGISTRATION.

Certificates of title to be in duplicate.

Fifth Schedule.

Pap. R.P.O. 1913-1914, s. 18.

53. Every certificate of title shall be in duplicate and in the form in the Fifth Schedule to this Ordinance.

One certificate may be issued for lands not contiguous.

Vic. T.L.A. 1915, ss. 48, 49.

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

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

Sub-section (3.) amended by No. 14 of 1931, s. 6.

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

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

(2) See footnote (2) printed on p. 2892.

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55.—(1.) The Registrar shall record upon both duplicates of every grant and of every certificate of title, so as to preserve their priorities, the particulars of every encumbrance and of every instrument, dealing or matter affecting the land required by this Ordinance to be registered or entered.

Indorsements on grants and certificates of title.
Cf. Pap. R.P.O. 1913-1914, ss. 17, 18.

(2.) If the grant or certificate is issued to a minor or a person otherwise under disabilities the Registrar shall also record in the same way the age of the minor or the nature of the disability so far as known to him.

56.—(1.) The Registrar shall keep a book to be called the "Register Book", and shall register or enter, by binding up therein, one duplicate of every grant and of every certificate of title.

Register Book and registration.
Cf. Pap. *Ib.* s. 17.
Cf. Vic. T.L.A. 1915, s. 47.

(2.) Each grant and each certificate of title shall constitute a separate folio of the Register Book.

(3.) The other duplicate grant or certificate of title shall upon registration be delivered by the Registrar to the person entitled thereto.

57. Every certificate of title duly authenticated under the hand and seal of the Registrar shall, subject to section forty-one of this Ordinance, be received in all courts of justice as evidence of the particulars therein set forth and of their being entered in the Register Book, and shall be conclusive evidence that the person named in the certificate of title or in any entry thereon as seised of or taking any estate or interest in, or as being entitled to any encumbrance on the land therein described, is seised or possessed of the land for the estate or interest therein specified or is entitled to the encumbrance, and that the property comprised in the certificate of title is under the provisions of this Ordinance.

Certificate of title to be conclusive evidence of particulars set forth therein.
Pap. *Ib.* s. 19.

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

Grant or certificate conclusive evidence as to title to easements.
Ninth Schedule.
Vic. *Ib.* ss. 68, 69.

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

59.—(1.) Every grant and every certificate of title shall be deemed to be registered under the provisions and for the purposes of this Ordinance as soon as it has been marked by the Registrar with the volume and folio of the Register Book in which it is entered.

When instruments are deemed to be registered.
Vic. *Ib.* s. 20.
Cf. Pap. *Ib.* s. 24.

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(2.) Every instrument purporting to affect land under the provisions of this Ordinance shall be deemed to be so registered as soon as a memorial thereof has been entered in the Register Book upon the folio constituted by the grant or certificate of title relating to the land.

(3.) Every such memorial shall state the day and hour of the production for registration of the instrument to which it relates, and shall contain such other particulars as the Registrar directs, and shall be signed by the Registrar.

(4.) The person named in any grant, certificate of title or other instrument so registered as seized of or taking any estate or interest, or as entitled to any encumbrance, shall be deemed to be the registered owner of the estate, interest, or encumbrance.

Upon entry of particulars, instrument deemed to be part of Register Book.

Pap. R.P.O. 1913-1914, s. 24.

60.—(1.) So soon as a memorial thereof has been entered on the proper folio of the Register Book, every instrument drawn in any of the forms provided in the Schedules to this Ordinance or in any authorized form shall for the purposes of this Ordinance be taken to be embodied in the Register Book.

(2.) Any such instrument, when so constructively embodied, shall impose the like obligations on the persons signing it, and for the like period of time, as if it had been sealed and delivered.

Directions as to instruments presented for registration.

Pap. Ib. ss. 24, 25.

61.—(1.) Transfers of an estate in fee simple in land under this Ordinance may be executed in a single original.

(2.) Leases of land subject to the provisions of this Ordinance shall be in triplicate.

(3.) All other instruments presented for registration shall be in duplicate.

(4.) Every instrument, except a grant or lease from the Administration⁽²⁾, presented for registration shall be attested by a witness.

(5.) Upon registration of any instrument, the Registrar shall file it (if single) in his office, and, if in duplicate or triplicate, shall file one original in his office and deliver the other or others to the person entitled thereto.

Sub-section (4.) amended by No. 22 of 1925, s. 3 and Schedule.

Priorities of registration. Pap. Ib. s. 21.

62.—(1.) Subject to the provisions of sub-section (3.) of this section, all instruments shall be registered in the order in which they are produced to the Registrar for that purpose, and all instruments purporting to affect the same estate, interest or security shall, notwithstanding any express implied or constructive notice, be entitled to priority according to the dates of the production of the instruments for registration, and not according to the dates of the instruments.

(2) See footnote (2) printed on p. 2892.

(2.) For the purpose of determining priorities the Registrar shall indorse on every instrument registered by him the day and hour when it was produced for registration.

(3.) If any instrument produced to the Registrar for registration cannot be registered because of the non-production of the instruments of title relating to the estate or interest or security proposed to be dealt with, and, before the registration thereof, any other instrument executed by the same owner and purporting to transfer or otherwise deal with the same estate or interest or the same security is produced to the Registrar for registration and is accompanied by the instruments of title, the last-mentioned instrument shall be registered first.

63.—(1.) All instruments, when registered, shall take effect from the date when they were produced to the Registrar for registration, which date shall be mentioned in the certificate of title or other instrument issued by him.

Instrument to take effect from date of production for registration.

Pap. R.P.O. 1913-1914, s. 22.

(2.) The date of production of any instrument to the Registrar for the purpose of registration shall be deemed to be the date of registration of the instrument.

64.—(1.) Where a memorial of any instrument has been entered in the Register Book, the Registrar shall record the like memorial on the duplicate grant, certificate of title, or other instrument evidencing title to the estate or interest intended to be dealt with or in any way affected, unless in any case he dispenses with the production thereof; and he shall indorse on every instrument so registered a memorandum of the day and hour on which the memorial was entered in the Register Book, and shall authenticate each such indorsement by signing his name and affixing his seal thereto.

Memorial to be recorded on duplicate grant or other instrument unless production dispensed with.

Cf. Pap. *ib.* s. 26.

(2.) The Registrar, if he sees reasonable cause for so doing, may dispense with the production of any instrument for the purpose of making the record and indorsement thereon, and in that case may require proof to be made by statutory declaration or otherwise of the identity of the person transferring or otherwise dealing with the land with the person who is registered as the owner thereof.

(3.) Where production has been so dispensed with, the Registrar shall notify in the memorial in the Register Book that no indorsement of the memorial has been made on the duplicate instrument, and the dealing shall thereupon be as valid and effectual as if the indorsement had been made.

(4.) The Registrar, before so dispensing with production, shall give three months' notice in the *New Guinea Gazette* of his intention so to do.

(5.) Every instrument so indorsed and authenticated shall be received in all courts of justice as conclusive evidence of the particulars therein set forth and of all covenants, conditions, and matters therein expressed or declared by this Ordinance to be implied, and of the fact that the instrument has been duly registered.

Certain instruments deemed to be registered upon registration of title.
Sub-section (1.) amended by No. 14 of 1931, s. 7.

65.—(1.) Where any certificate of title registered in pursuance of sections thirty-two, thirty-five, or thirty-six of this Ordinance is indorsed under the provisions of paragraph (c) of section twenty or under section twenty A of this Ordinance with a memorial of any instrument, the instrument shall be deemed to have been registered upon the registration of the certificate of title.

(2.) The Registrar shall indorse a memorial of the fact and time of registration upon the instrument, and shall file the instrument in his office.

(3.) The Registrar shall also indorse the like memorial upon any duplicate of the instrument if it is produced to him for that purpose.

(4.) Every such instrument shall upon registration as mentioned in this Ordinance be taken to be embodied in the Register Book, and shall have full force and effect according to its tenor, notwithstanding that it is not of a nature or in a form prescribed or authorized by this Ordinance.

Reversions expectant on leases.

Pap. R.P.O. 1913-1914, s. 27.

Cf. Vic. T.L.A. 1915, s. 74.

66. The person named in any certificate of title as seized of the land therein described shall be held in every court of justice to be seized of the reversion expectant upon any lease that is noted by memorial thereon, and to have all powers, rights, and remedies to which a reversioner is by law entitled, and shall be subject to all the covenants and conditions in the lease to be performed and observed by on⁽⁸⁾ the part of the lessor.

Instruments not effectual until entry in Register Book.
Pap. Ib. s. 28.

67.—(1.) No instrument shall be effectual to pass any estate or interest in any land under the provisions of this Ordinance, or to render the land liable as security for the payment of money, or otherwise to encumber the land, until the instrument has been registered in accordance with the provisions of this Ordinance.

(2.) Upon the registration of any instrument the estate or interest specified therein shall pass or the land shall become liable as security or shall be encumbered in the manner and subject to the covenants and conditions set forth in the instrument or declared by this Ordinance to be implied in instruments of a like nature.

(3.) If two or more instruments executed by the same owner, purporting to transfer or encumber the same estate or interest, are presented at the same time to the Registrar for registration and

(8) The words "by on" appeared in the original Ordinance. They have now been omitted and the words "by or on" inserted in their stead by the First Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

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indorsement, he shall register and indorse that instrument under which property is claimed by the person who produces to him the grant or certificate of title of the land.

68. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Administration⁽²⁾ or otherwise, which, but for this Ordinance, might be held to be paramount or to have priority, the registered owner of land or of any estate or interest in land shall, except in case of fraud, hold it absolutely free from all encumbrances whatsoever, except—

Estate of registered owner paramount. Pap. R.P.O. 1913-1914, s. 29. Section 68 amended by No. 22 of 1925, s. 3 and Schedule.

- (a) the encumbrances notified by entry or memorial on the folio of the Register Book constituted by the grant or certificate of title of the land;
- (b) the estate or interest of an owner claiming the same land under a prior certificate of title or under a prior grant or Administration⁽²⁾ lease registered under the provisions of this Ordinance;
- (c) in case of the omission or misdescription of any right-of-way or other easement created in or existing upon the same land;
- (d) in case of the wrong description of the land or of its boundaries;
- (e) as to any tenancy from year to year or for any term not exceeding three years created either before or after the issue of the certificate of title of the registered owner;
- (f) any leases, licences, or other authorities granted by the Governor-General or the Administrator or any department or officer of the Administration or any public corporate body, and in respect of which no provision for registration is made; and
- (g) any unpaid rates, taxes, or other moneys which, without reference to registration under this Ordinance, are expressly declared by any Ordinance or law to be a charge upon land in favour of the Crown or the Administration or of any department or officer of the Administration or of any public corporate body.

Vic. T.L.A. 1915, s. 72.

69.—(1.) A transferee, whether voluntary or not, of land under the provisions of this Ordinance shall not, except in case of fraud, be affected by actual or constructive notice of any claims, rights, titles or interests other than those which have been notified or protected by entry in the Register Book according to the provisions

Transferee not affected by notice. Pap. Ib. s. 30.

(2) See footnote (2) printed on p. 2892.

of this Ordinance, any rule of law or equity to the contrary notwithstanding.

(2.) Nothing contained in the last preceding sub-section shall be held to deprive creditors of any rights or remedies given or provided by the *Mercantile Ordinance* 1912 of the Territory of Papua adopted as an Ordinance of the Territory of New Guinea.

Certificate to be conclusive evidence in action for specific performance.
Pap. R.P.O. 1913-1914, s. 31.

70. In any action for specific performance brought by the registered owner of any land against a person who has contracted to purchase the land, the certificate of title of the registered owner shall be held to be conclusive evidence that he has a good and valid title to the land therein mentioned or described, and shall entitle him to a decree for the specific performance of the contract.

Single certificate may be obtained instead of several and vice versa.
Pap. Ib. s. 118.

71.—(1.) On the application of any owner or of any person entitled to become an owner of land under one or more separate grants or certificates of title, and on his delivering up the grants or certificates, the Registrar may issue to him a single certificate of title for the whole of the land, or several certificates as to portions thereof, in accordance with the application, so far as it may be done conveniently and consistently with any regulations respecting the parcels of land that are included in one certificate of title.

(2.) Upon registering any certificate under this section, the Registrar shall cancel the grant or previous certificate, and shall indorse thereon a memorandum setting forth the occasion of the cancellation and referring to the new certificate.

Power to issue new certificate of title.
Section 71A inserted by No. 26 of 1939, s. 2.

71A.—(1.) The Registrar may, upon the delivery to him of a duplicate grant or certificate of title, issue a new certificate of title in the place of the existing grant or certificate of title.

(2.) Whenever the condition of a duplicate grant or certificate of title lodged with the Registrar is such that the Registrar deems it inadvisable to re-issue it, he may require a new certificate of title to be taken out.

(3.) Upon registering any certificate of title under this section, the Registrar shall cancel the grant or previous certificate of title, and shall indorse thereon a memorandum setting forth the occasion of the cancellation and referring to the new certificate of title.

Provision in case of lost grant or certificate.
Pap. Ib. s. 119.

72.—(1.) If the grant or certificate of title of land under the provisions of this Ordinance is lost, mislaid or destroyed, the owner of the land and any other persons having knowledge of the circumstances may make a declaration before the Registrar, or before any of the persons appointed under this Ordinance as persons before whom the execution of instruments may be proved, stating the facts of the case, the name and description of the registered

owner, and the particulars of all mortgages, charges or other matters affecting the land or the title thereto to the best of the declarant's knowledge and belief.

(2.) If the Registrar is satisfied as to the truth of the declaration and the *bona fides* of the transaction, he may issue to the owner a provisional certificate of title, which shall contain an exact copy of the original grant or certificate of title bound up in the Register Book and of every memorandum or indorsement thereon, and shall also contain a statement of the circumstances under which the provisional certificate is issued.

(3.) The Registrar shall at the same time enter in the Register Book notice of the issuing of the provisional certificate and the date thereof and the circumstances under which it was issued.

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

(5.) The Registrar, before issuing the provisional certificate, shall by advertisement in the *New Guinea Gazette* give not less than sixty clear days' notice of his intention so to do.

72A. The provisions of the last preceding section shall, *mutatis mutandis*, apply to any Administration lease registered under this Ordinance of which the duplicate has become defaced, obliterated, or dilapidated and is delivered to the Registrar for cancellation, but in such case the declaration referred to in sub-section (1.), and the notice referred to in sub-section (5.), of that section shall not be necessary.

Provision
in case of
defaced &c.
Administration
lease.

Inserted by
No. 26 of 1939,
s. 3.

73.—(1.) Every draft certificate of title from which an original certificate is drawn shall be completed so as to accord in all particulars with the certificate (except that the map referred to in the certificate as "the map in the margin" need not appear thereon), and shall be preserved in the office until the cancellation of the certificate; and, when the certificate is registered, a corresponding number to that upon the certificate shall be put upon the draft, and the draft shall be signed by the person signing the certificate.

Substitution of
copy for
certificate lost
from Register
Book.

Vic. T.L.A.
1915, s. 32.

(2.) In the event of any original certificate being lost or destroyed, or so obliterated as to become illegible, the Registrar may cause another certificate to be prepared from the draft, and to be indorsed with all the entries which were upon the original as far as they can be ascertained from the records of the office and inspection of the duplicate original.

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(3.) The Registrar shall make and sign a memorandum upon the certificate so prepared, stating that it is a substituted certificate, to be used in place of the original, and what has become of the original so far as known or supposed.

(4.) The copy, after being so signed, may be bound up in the Register Book and used in place of the original for the purpose of dealings and transmissions.

(5.) If the draft certificate cannot be found, the Registrar may prepare the substituted certificate from the duplicate original or such other evidence as is available as to the contents of the original.

Persons registered as joint owners to be deemed joint tenants.
Pap. R.P.O. 1913-1914, s. 108.

74.—(1.) Where two or more persons are registered as joint owners of an estate or interest in land under the provisions of this Ordinance, they shall be deemed to be entitled thereto as joint tenants.

(2.) Where two or more persons are entitled as tenants in common to an estate of freehold in any land, they may receive one certificate of title for the entirety describing them as tenants in common, or each may receive a separate certificate for his undivided share.

Registration of remainderman, &c., upon determination or merger of life estate.
Pap. Ib. s. 109.

75.—(1.) Upon proof to the satisfaction of the Registrar that any less estate than an estate in fee simple in respect of which a certificate of title has been issued is determined, or has become vested in the person entitled to the land for the estate next in remainder, or that the person to whom the certificate has been issued, or a purchaser, is absolutely entitled to the land for a present estate in fee simple in possession, the Registrar may, upon the application of the person entitled, register him as the owner of the appropriate estate or interest in the manner prescribed for the registration of a like estate or interest upon a transfer or transmission.

(2.) Before the registration the Registrar may require the title of the applicant to be investigated, and may cause advertisements to be published as provided in the case of applications for registration upon the transmission of an estate of freehold in land, and shall receive the same fees and payments including the sum payable to the assurance fund as are required to be paid upon those applications.

Remainderman or reversioner may be registered as such.
Pap. Ib. s. 110.
Of. N.S.W. 25 of 1900, s. 102.

76.—(1.) Where a certificate of title has been issued in respect of any estate less than an estate in fee simple, the person entitled in reversion or remainder may apply to be registered as so entitled.

(2.) The Registrar shall thereupon cause the title of the applicant to be investigated, and may cause advertisements to be published in the manner provided in the case of transmission of

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estates of freehold, and thereafter may either reject the application altogether, or may direct that the applicant be registered for the estate or interest to which he appears to be entitled unless a caveat forbidding the registration is received within the time limited in the direction or by any order of the Court.

(3.) The Registrar shall indorse upon the certificate of title of the land, if produced to him for that purpose, a memorandum setting forth that the applicant has been entered in the Register Book as remainderman or reversioner, as the case may be, with the day and hour when the entry was made.

77.—(1.) Any owner subdividing any land under the provisions of this Ordinance, for the purpose of selling it in allotments, shall deposit with the Registrar a plan of the subdivision.

Plan to be deposited on subdivision.
Pap. R.P.O. 1913-1914, s. 120.

(2.) The plan shall exhibit distinctly delineated all roads, streets, passages, thoroughfares, squares or reserves appropriated or set apart for public use, and also each allotment marked with a distinct number or symbol.

(3.) Every such plan shall be certified as accurate by the declaration of a licensed surveyor before the Registrar or a District Officer.

78.—(1.) The Registrar may require any owner transferring or otherwise dealing with land under the provisions of this Ordinance, or any portion thereof, to deposit at his office a map or plan of the land certified as accurate by the declaration of a licensed surveyor before the Registrar or a District Officer.

Registrar may require map to be deposited.
Pap. *Id.* s. 121.

(2.) The minimum scale of the map or plan shall vary, according to the area of the land or the portion thereof proposed to be transferred, as follows:—

- (a) For an area not exceeding one hectare, one in one thousand;
- (b) For an area exceeding one hectare but not exceeding forty hectares, one in two thousand five hundred;
- (c) For an area exceeding forty hectares but not exceeding eighty hectares, one in five thousand; and
- (d) For an area exceeding eighty hectares, one in ten thousand.

(3.) If the owner neglects or refuses to deposit the map or plan upon being required to do so, the Registrar shall not be obliged to proceed with the registration of the transfer or other dealing.

(4.) Subsequent subdivisions of the same land may be delineated on the map or plan so deposited if the map or plan is on the scale required by this section.

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(5.) The correctness of the delineation of every such subsequent subdivision shall be certified in the same way as the original map or plan.

Certified copies
to be furnished
and to be
evidence.

Pap. R.P.O.
1913-1914,
s. 122.

Sixth Schedule.

79.—(1.) The Registrar, upon payment of the fee specified in the Sixth Schedule to this Ordinance, shall furnish to any person applying for it at a reasonable time a certified copy of any registered instrument affecting land under the provisions of this Ordinance.

(2.) Every certified copy, signed by the Registrar, and sealed with his seal, shall be received in evidence, in any court of justice or before any person having by law or by consent of parties authority to receive evidence, as *prima facie* proof of all the matters contained in or indorsed on the original instrument.

Searches in
Register Book
and copies of
instruments.

Pap. *Ib.*
ss. 123, 124.

Sixth Schedule.

80.—(1.) Any person may, upon payment of the fee specified in the Sixth Schedule to this Ordinance, have access to the Register Book for the purpose of inspection during the hours and upon the days appointed for search.

(2.) Any person, upon payment of the fee specified in the Sixth Schedule to this Ordinance, may search for and obtain copies of any instrument affecting land under the provisions of this Ordinance which has been lodged or deposited in the office of the Registrar, whether the instrument has been cancelled or not.

Certificate
required of
correctness of
instruments.

Pap. *Ib.* s. 125.

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

(2.) The Registrar shall not be required to compare the instrument with the duplicate (if any) thereof, and shall not incur or become subject to any liability, action or other proceeding in consequence of any error, mistake or discrepancy therein.

(3.) Any person falsely or negligently certifying to the correctness of any instrument shall be guilty of an offence.

Penalty: Fifty pounds.

(4.) The imposition of a penalty under the last preceding subsection shall not prevent a person who has sustained any damage or loss in consequence of falsehood or mistake in any certified instrument from recovering damages against the person who has certified the instrument.

Unregistered
instrument to
confer right to
registration.

Pap. *Ib.* s. 126.

82.—(1.) Every instrument signed by an owner, or by another claiming through or under him, purporting to pass an estate or interest in or a security or encumbrance upon land for the registration of which provision is made in this Ordinance shall,

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until registered, be deemed to confer on the person intended to take under the instrument or other person claiming through or under him a right to the registration of the estate, interest, security or encumbrance.

(2.) If any person, other than the person immediately claiming under or in respect of the instrument signed by an owner, applies to be registered as the owner of the land, estate, interest, security or encumbrance, the Registrar may either reject the application altogether, or may register the applicant forthwith or at the expiration of some defined period of time, and may further direct any other entries to be made which are in his opinion necessary.

(3.) No registration or entry under the last preceding subsection which would interfere with the right of any person claiming under any instrument previously registered under this Ordinance shall be made except subject to that instrument.

83.—(1.) The Registrar may, in the event of great loss or inconvenience being in his opinion likely to arise, register any document signed by a registered owner or by any person claiming through or under a registered owner, although the document is not in any of the forms prescribed by this Ordinance or otherwise in accordance with the provisions thereof.

Informal documents may be registered in some cases.
Pap. R.P.O. 1913-1914, s. 126B.

(2.) No such document shall be registered unless it purports to create an estate or interest in land or an encumbrance on land for the registration of which provision is made in this Ordinance, and unless it would in equity, apart from the provisions of this Ordinance, be regarded as vesting the estate, interest or encumbrance in the person intended to take under the document.

(3.) The Registrar, upon application for the registration being made, may reject it altogether, or may register the applicant as owner of the estate, interest or encumbrance forthwith or at the expiration of some defined period of time, and may direct such other entries to be made in the Register Book, and such notices and advertisements to be published, as he deems necessary.

83A.⁽⁹⁾—(1.) Notwithstanding anything contained in this Ordinance, the Administrator may disallow the registration of any instrument purporting to pass any estate, right, title, or interest in any land, and thereupon the instrument shall be void and of no effect for any purpose whatsoever.

Disallowance of registration of instruments.

(2.) Where the registration of an instrument is disallowed under this section, any payment made or consideration given in pursuance of the instrument shall be recoverable by the person who made the payment or gave the consideration.

(9) Section 83A was in the original Ordinance.

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PART V.—ADMINISTRATION⁽²⁾ LEASES.

Heading amended by No. 22 of 1925, s. 3.

Register of Administration Leases.

Pap. R.P.O. 1913-1914, s. 82.

Sub-section (1.) amended by No. 22 of 1925, s. 3 and Schedule.

Sub-section (2.) amended by No. 22 of 1925, s. 3 and Schedule.

Sub-section (3.) amended by No. 22 of 1925, s. 3 and Schedule.

Sub-section (4.) amended by No. 22 of 1925, s. 3 and Schedule.

Application of Ordinance to Register of Administration Leases and to Administration leases.

Amended by No. 22 of 1925, s. 3 and Schedule.

Registrar to enter forfeiture. Pap. *ib.* s. 33.

Amended by No. 22 of 1925, s. 3.

84.—(1.) The Registrar shall keep a book, to be called the “Register of Administration⁽²⁾ Leases”, and shall register every Administration⁽²⁾ lease by binding one copy therein, and shall mark on both copies the volume and folio as appearing in the Register of Administration⁽²⁾ Leases.

(2.) Every Administration⁽²⁾ lease, upon that registration, shall be deemed to be subject to the provisions of and to be registered under this Ordinance, and may be transferred, mortgaged and dealt with for the same purposes and in like manner (subject to the provisions of the *Land Ordinance* 1922-1923⁽⁴⁾), as if it had been granted by a registered owner of land under this Ordinance and registered in the Register Book.

(3.) Any entries which in the case of a lease granted by a registered owner of land under this Ordinance would require to be made in the Register Book shall in the case of an Administration⁽²⁾ lease be made in the Register of Administration Leases⁽²⁾ and on the folio constituted by the Administration⁽²⁾ lease.

(4.) Notwithstanding anything contained in this section, every transfer of an Administration⁽²⁾ lease shall be made by separate instrument and not by indorsement.

85. Except where the context is inconsistent therewith, the provisions of this Ordinance, and in particular the provisions of Part IV. thereof relating to the Register Book and registration, shall, where applicable, apply to the Register of Administration⁽²⁾ Leases and to Administration⁽²⁾ leases as if the Register of Administration⁽²⁾ Leases were the Register Book and as if an Administration⁽²⁾ lease were a grant or certificate of title respectively.

86. The Registrar, upon notification appearing in the *New Guinea Gazette* that an Administration⁽²⁾ lease has been forfeited, shall make an entry to that effect in the Register of Administration⁽²⁾ Leases, and the forfeiture shall thereupon have effect.

PART VI.—DEALINGS.

Division 1.—Transfers.

87.—(1.) Where land under the provisions of this Ordinance is intended to be transferred, the transferor shall execute a transfer in the form in the Seventh Schedule to this Ordinance.

Transfer. Seventh Schedule. Pap. *ib.* s. 34.

(2) See footnote (2) printed on p. 2892.

(4) Now the *Land Ordinance* 1922-1941.

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(2.) Every transfer shall, for description of the land intended to be transferred, refer to the grant or certificate of title, or shall give a description sufficient to identify the portion of the land to be transferred, and shall contain a statement of the estate or interest to be transferred, and a memorandum of all mortgages and other encumbrances affecting the land, and, if the land is leased, the name and description of the lessee and a memorandum of the lease.

88.—(1.) The transfer, together with the grant, certificate or other instrument evidencing title to the land, shall be delivered to the Registrar.

Certificate of title to be produced to Registrar.

Cf. Pap. R.P.O. 1913-1914, ss. 35, 36.

(2.) The Registrar shall register the transfer in manner provided by this Ordinance.

(3.) The Registrar shall enter upon the grant, certificate or other instrument evidencing title a memorandum cancelling the grant, certificate or other instrument either partially or altogether, and setting forth the particulars of the transfer.

(4.) If the transfer exhausts the whole estate or interest of the transferor in the land, the Registrar shall retain the cancelled grant, certificate or other instrument evidencing title.

(5.) If the transferor retains any estate or interest in any part of the land included in the grant, certificate or other instrument evidencing title, the grant, certificate or other instrument shall be returned to him:

Provided that the Registrar may, at his discretion, instead of returning a partially-cancelled grant, certificate or other instrument to the transferor, require the transferor to take out a new certificate for the land comprised in the partially-cancelled grant, certificate or other instrument.

Proviso added by No. 18 of 1936, s. 5.

(6.) Notwithstanding the last preceding sub-section, the Registrar shall, if required thereto at any time by the owner of any untransferred portion of land or of any untransferred estate or interest or by a transferee thereof, issue to the owner or transferee a new certificate of title for the untransferred portion or estate or interest, in which case he shall retain the original grant or certificate, and shall enter thereon a memorandum cancelling it.

89.—(1.) Where the transferor retains any estate or interest in any part of the land, or where any tenancy in common is created or cancelled by the transfer, the Registrar shall issue to the transferee a new certificate of title to the land, estate or interest transferred.

New certificate to be issued to transferee.

Cf. Pap. 1b. ss. 35, 36.

(2.) Where the transfer exhausts the whole estate or interest

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of the transferor, the Registrar shall (subject to the last preceding sub-section) at the option of the transferee, either—

(a) issue to him a new certificate of title in his own name; or

(b) issue to him the grant, certificate or other instrument evidencing the title of the transferor (or in the case of a sale by a mortgagee, the grant, certificate or other instrument evidencing the title of the mortgagor), in which case, notwithstanding sub-section (3.) of the last preceding section, the grant, certificate or other instrument shall not be cancelled, but the Registrar shall enter thereon a memorial of the transfer.

(3.) Every successive transferee (if any) of the whole estate or interest of the registered owner may in like manner at his option take out a certificate of title in his own name, or may receive the same grant, certificate of title or other instrument, upon which the memorials of any previous transfers have been entered, in pursuance of the last-preceding sub-section.

(4.) Notwithstanding the last-preceding sub-section the Registrar may, whenever in his opinion any grant, certificate of title or other instrument cannot conveniently contain any further indorsement, require the person applying to be registered to receive a new certificate of title in his own name.

(5.) Every new certificate of title shall refer to the original grant of the land, and to the transfer upon which it is issued.

Transfer of mortgage, lease or charge.
Eighth Schedule.
Pap. R.P.O. 1913-1914, s. 37.

90.—(1.) A registered mortgage, lease or charge may be transferred to any person by transfer as provided in this Division or by an instrument in the form in the Eighth Schedule to this Ordinance, which instrument may be indorsed upon the mortgage, lease or charge.

(2.) Upon the transfer or instrument being registered, the estate or interest of the transferor, as set forth therein, with all rights, powers and privileges thereto belonging shall pass to the transferee, and the transferee shall become subject to and liable for the same requirements and liabilities to which he would have been subject and liable if he had been named originally in the mortgage, lease or charge as the mortgagee or lessee or as the owner of the charge.

Transfer of mortgage, lease or charge includes transfer of right to sue thereunder.
Pap. Ib. s. 38.

91.—(1.) By virtue of every transfer in either of the forms prescribed in this Division, the right to sue upon any mortgage, lease, charge or other instrument, and to recover any debt, sum of money, annuity or damages thereunder (notwithstanding that that right is held to constitute a *chose in action*), and all interest in any

such debt, sum of money, annuity or damages shall be transferred so as to vest it in the transferee both at law and in equity.

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

92. Where any land subject to an encumbrance has been transferred to the person entitled to the encumbrance, the Registrar shall issue to him upon demand a certificate of title to the land discharged from the encumbrance.

Case of purchase of land by mortgagee, &c.
Pap. R.P.O. 1913-1914, s. 39.

93.—(1.) The registered owner of any estate or interest in land, whether of the nature of real or personal property, may by any of the forms of instruments of transfer provided by this Ordinance, modified as may be necessary, transfer the estate or interest or any part thereof to his or her wife or husband or to himself and any other person or persons as joint tenants or tenants in common, or jointly with any other person to himself alone, and may create or limit any estates in remainder or otherwise without limiting any use or executing any re-assignment.

Owner may vest estate in various ways without limiting use or executing re-assignment.
Pap. Ib. s. 40.
Of. Vic. T.L.A. 1915, s. 123.

(2.) Upon the registration of the transfer the estate or interest thereby dealt with or transferred shall vest in the transferee or transferees according to the intent of the instrument of transfer.

94. In any transfer or lease of freehold land the words—“Together with a right of carriage-way over the road delineated and coloured brown on the said map”, or words to the like effect shall have the same effect as if the words contained in the Ninth Schedule to this Ordinance had been used instead thereof.

Short words for creation of right-of-way.
Vic. Ib. s. 128.
Ninth Schedule.

Division 2.—Leases.

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

Land, how leased.
Pap. Ib. s. 41.
Tenth Schedule.

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

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

Right of purchase or covenant to purchase may be inserted.
Pap. Ib. s. 41.

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

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

Mortgagee &c.
not bound by
lease unless
he consents.
Pap. R.P.O.
1913-1914,
s. 41.

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

Certain
unregistered
leases valid,
but not rights
of purchase or
renewal
thereunder.
Pap. *ib.* s. 42.

98.—(1.) Every registered dealing with land shall be subject to any prior unregistered lease or any agreement for a lease or for letting for a term not exceeding three years to a tenant in actual possession thereunder.

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

Lease may be
surrendered by
indorsement
signed by
lessee and
lessor.
Pap. *ib.* s. 43.

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

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

(3.) The Registrar shall thereupon enter in the Register Book a memorandum recording the date of the surrender, and shall indorse upon the lease a memorandum recording the fact of the entry having been made in the Register Book.

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

(5.) The production of the lease or counterpart bearing the indorsement and memorandum mentioned in sub-section (3.) of

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this section shall be sufficient evidence that the lease has been surrendered.

(6.) No lease subject to a mortgage or charge shall be surrendered without the consent of the mortgagee or the owner of the charge.

100. Where any lease is disclaimed by the trustee under the provisions of the *Insolvency Ordinance 1912* of the Territory of Papua adopted as an Ordinance of the Territory of New Guinea the Registrar, upon proof to his satisfaction by statutory declaration or otherwise that the trustee has declined to accept the lease, shall enter in the Register Book a memorandum to that effect, and shall also indorse upon the lease a memorandum of the fact that the entry has been made.

Procedure when lease disclaimed by trustee in insolvency.
Pap. R.P.O. 1913-1914, s. 44.

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

Registration of re-entry by lessor.
Pap. *ib.* s. 45.

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

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

102.—(1.) The owner of any lease under the provisions of this Ordinance may, subject to any provisions in his lease affecting his right to do so, sublet for a term not less than three years by signing a sub-lease in the form in the Eleventh Schedule to this Ordinance.

Lessee may sublet.
Vic. T.L.A. 1915, s. 139.
Eleventh Schedule.

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

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

Provisions as to leases to apply to sub-leases.
Vic. *ib.* s. 142.

104. If the lease is determined by forfeiture or operation of law or by surrender under any law relating to insolvents and their estates, the determination or surrender shall determine the sub-lease.

Determination of lease to determine sub-lease.
Vic. *ib.* s. 142.

Covenants implied in sub-lease.
Vic. T.L.A. 1915, s. 143.

105. In addition to the covenants declared by this Ordinance to be implied in every lease, there shall be implied in every sub-lease the following covenant with the sub-lessee and his transferees by the sub-lessor, binding the latter and his executors, administrators and trustees (that is to say) :—

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

Division 3.—Mortgages and Charges.

Manner of mortgaging or charging lands.
Pap. R.P.O. 1913-1914, s. 46.
Twelfth and Thirteenth Schedules.

106.—(1.) Where any land or any estate or interest in land under the provisions of this Ordinance is intended to be charged or made security in favour of any mortgagee, the mortgagor shall execute a mortgage in the form in the Twelfth Schedule to this Ordinance and the mortgage shall be registered.

(2.) Where any such land, estate or interest is intended to be charged with or made security in favour of any chargee for the payment of an annuity, rent charge or sum of money, the owner of the land, estate or interest shall execute a charge in the form in the Thirteenth Schedule to this Ordinance and the charge shall be registered.

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

Mortgage or charge not to operate as transfer.
Pap. Ib. s. 47.

107. Every mortgage and every charge shall be construed and have effect only as security for the sum of money, annuity or rent charge intended to be secured thereby, and shall not operate as a transfer of the land, estate or interest mortgaged or charged.

Remedy when mortgagor or chargor is in default.
Pap. Ib. s. 48.

108.—(1.) If default is made—

- (a) for the space of one calendar month in payment of the principal money or interest or any part thereof secured by any registered mortgage; or
- (b) in the observance of any covenant expressed in any registered mortgage or declared to be implied therein under the provisions of this Ordinance; or
- (c) for the space of one calendar month in payment of the annuity, rent charge, principal money or interest or any part thereof secured or charged by any registered charge; or

- (d) in the observance of any covenant expressed in any registered charge or declared to be implied therein against the chargor under the provisions of this Ordinance,

the mortgagee or chargee may give to the mortgagor or chargor notice in writing to pay the money then due or owing on the mortgage or charge, or to observe the covenants therein expressed or implied, as the case may be, or may leave the notice on the mortgaged or charged land, or at the usual or last-known place of abode in the Territory of the mortgagor or chargor or other person claiming to be entitled to the land.

(2.) If the default in payment or in the observance of covenants continues for the further space of one calendar month from the date of the notice mentioned in the last preceding sub-section, the mortgagee or chargee may sell the land so mortgaged or charged or any part thereof and all the estate and interest therein of the mortgagor or chargor.

(3.) The land may be sold either altogether or in lots, by public auction or by private contract or both, and subject to any conditions of sale which the mortgagee or chargee thinks fit, and he may buy in and resell it without being liable for any loss occasioned thereby, and may make and execute all instruments necessary for effecting the sale.

(4.) All sales, contracts, matters and things authorized by this section shall be as valid and effectual as if the mortgagor or chargor had made, done or executed the same, and in particular the receipt in writing of the mortgagee or chargee shall be a sufficient discharge to the purchaser of the land, estate or interest or any portion thereof for so much of his purchase-money as is thereby expressed to be received.

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

(6.) The purchase-money arising from the sale of any such land, estate or interest shall be applied—firstly, in payment of the expenses occasioned by the sale; secondly, in payment of the moneys which are then due to the mortgagee or chargee; and the surplus (if any) shall be paid to the mortgagor or chargor.

109. Where a sale takes place under the provisions of the last preceding section by reason of default in the payment of interest only or of any instalments, the mortgagee or chargee may retain out of the purchase-money received all principal moneys intended to be secured by the mortgage or charge, whether those moneys are actually due or not.

Mortgagee on sale for default in interest may retain principal.
Pap. R.P.O. 1913-1914, s. 49.

Estate of mortgagor &c. to pass to purchaser.
Pap. R.P.O.. 1913-1914, s. 50.

110. Upon the registration of any transfer executed by a mortgagee or chargee in pursuance of any sale under section one hundred and eight of this Ordinance, the estate or interest of the mortgagor or chargor therein specified shall pass to and vest in the purchaser freed and discharged from all liability on account of the mortgage or charge or of any other mortgage or charge registered subsequent thereto; and if the transfer purports to pass an estate of freehold the purchaser shall be entitled to receive a certificate of title for the estate.

Payments by instalments.
Pap. Ib. s. 51.
Twelfth and Thirteenth Schedules.

111. The payment of any sum of money by weekly instalments or other periodical payments may be secured on any land or on any estate or interest therein by mortgage or charge in the form in the Twelfth or Thirteenth Schedule to this Ordinance by varying the form so as to express fully the terms and modes of payment of the sum of money.

Power to vary times of enforcing payment.
Pap. Ib. s. 51.

112.—(1.) The period of time, limited by section one hundred and eight of this Ordinance as the period after which it shall be lawful for a mortgagee or chargee to sell the land in the event of default in any payment or in the performance or observance of any covenant, may, by condition expressed in any mortgage or charge, be extended or shortened, and for that purpose the necessary variations may be made in the forms prescribed in this Ordinance.

(2.) Subject to the express provisions of any such variations, the same covenants, rights, powers and obligations shall be implied thereunder both against the mortgagor or chargor and against the mortgagee or chargee as if no such variations had been made.

In case of default mortgagee may enter and take possession or distrain or bring action of ejectment.
Pap. Ib. s. 52.

113.—(1.) The mortgagee or chargee upon default in payment of the principal sum, interest, annuity or rent charge secured by the mortgage or charge, or any part thereof, may—

- (a) enter into possession of the mortgaged or charged land by receiving the rents and profits thereof; or
- (b) distrain upon the occupier or tenant of the land under the power to distrain contained in the next succeeding section; or
- (c) bring an action of ejectment to obtain possession of the land either before or after entering into the receipt of the rents and profits thereof or making any distress in pursuance of this sub-section, and either before or after any sale of the land is effected under the power of sale given or implied in the mortgage or charge.

(2.) Any registered mortgagee or chargee shall be entitled by action or other proceedings in the Central Court⁽⁵⁾ to foreclose the

(5) See Section 7A of the *Judiciary Ordinance* 1921-1938.

right of the mortgagor or chargor to redeem the mortgaged or charged land.

114.—(1.) In addition to his other remedies every mortgagee or chargee shall be entitled, after any principal sum or interest due under any mortgage, or any principal sum, interest, annuity or rent charge due under any charge has been in arrear for twenty-one days, and after application in writing for the payment thereof has been made to the occupier or tenant, to enter upon the mortgaged or charged land and distrain and sell the goods and chattels of the occupier or tenant, and to detain out of the proceeds the moneys in arrear and all costs and expenses occasioned by the distress and sale.

Power of
distrain.
Pap. R.P.O.
1913-1914,
s. 53.

(2.) No occupier or tenant occupying the land shall be liable to pay to any mortgagee or chargee a greater sum than the amount of rent which at the time of making the distress is due from him to the mortgagor or chargor or to the person claiming the land under the mortgagor or chargor.

(3.) Any amount paid by the occupier or tenant to the mortgagee or chargee upon application in writing or realized by distress in pursuance of this section shall be deemed *pro tanto* a satisfaction of the rent.

115. Any mortgagee or chargee of a leasehold interest in land under the provisions of this Ordinance, or any person claiming through the mortgagee or chargee, shall, upon entering into possession of the land or the rents and profits thereof, become liable to the lessor of the land, or the person for the time being entitled to the lessor's estate or interest in the land, for the payment of the rent and for the performance and observance of the covenants contained in the lease or implied under the provisions of this Ordinance, to the same extent as the lessee or tenant was liable therefor.

Mortgagee &c.
entering into
possession of
rents and
profits to
become liable
to lessor.
Pap. *ib.* s. 54.

116.—(1.) Upon the production of a discharge of any registered mortgage or charge, signed by the mortgagee or chargee and attested by a witness, discharging the estate or interest thereby pledged or subjected as security from the whole or part of the principal sum or annuity thereby secured or discharging any part of the land comprised in the mortgage or charge from the whole of the principal sum or annuity, the Registrar shall make an entry in the Register Book noting that the mortgage or charge is discharged wholly or partially, or that part of the land is discharged, as the case requires.

Discharge of
mortgages and
charges.
Pap. *ib.* s. 55.

(2.) Upon the entry being made, the estate or interest which, by the mortgage or charge, had been pledged or subjected as security for any principal sum or annuity, or the portion of land mentioned in the indorsement as being discharged from the principal sum or annuity shall cease to be subject to or liable for the

payment of the principal sum or annuity or the part thereof noted in the entry as being discharged.

(3.) Where an annuity or sum of money is secured by a registered charge during the life of the chargee or of some other person, or contingently upon the occurrence of any event, the Registrar upon production of the charge together with proof of the death of the person or the occurrence of the event upon which the annuity or sum of money ceases to be payable, and upon proof that all arrears of the annuity or sum of money and of all interest thereon have been paid, shall make an entry in the Register Book noting that the annuity or sum of money is satisfied and discharged, and shall cancel the charge.

(4.) Upon the entry being made in the Register Book, the land, estate or interest which has been pledged or subjected as security for the payment of the annuity or sum of money shall cease to be subject to or liable for the payment or any charges incident thereon.

(5.) Where the Registrar makes an entry in the Register Book in pursuance of sub-section (1.) or (3.) of this section, he shall indorse, on the grant, certificate of title or other instrument evidencing the title of the mortgagor or chargor to the land, estate or interest mortgaged or charged, a memorandum of the date of the entry in the Register Book and the particulars of the entry whenever the grant, certificate of title or other instrument is produced to him for that purpose.

117.—(1.) If any mortgagee of land under the provisions of this Ordinance is absent from the Territory, and if there is no person in the Territory authorized to give a receipt to the mortgagor for the mortgage money at or after the date appointed for the redemption of the mortgage, it shall be lawful for the Treasurer of the Territory to receive the mortgage money, with all arrears of interest then due, in trust for the mortgagee or other person entitled thereto.

(2.) Upon the receipt of the mortgage money by the Treasurer the interest on the mortgage shall cease to run or accrue.

(3.) Upon production of the Treasurer's receipt for the amount of the mortgage money and interest, the Registrar shall make an entry in the Register Book discharging the mortgage, stating the day and hour on which the entry is made and the fact that it is made upon the Treasurer's receipt.

(4.) The entry shall be a valid discharge of the mortgage, and shall have the same force and effect as the like entry made upon production of a mortgage with the receipt of the mortgagee.

(5.) The Registrar shall indorse on the grant, certificate of title or other instrument evidencing title, and also on the mortgage, whenever those instruments are produced to him for the purpose,

If mortgagee absent from Territory money may be paid to Treasurer and mortgage discharged.
Pap. R.P.O. 1913-1914, s. 56.

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a memorandum of the date and particulars of the entry in the Register Book.

118.—(1.) Where there is inserted in any mortgage or charge the words “The money to be secured belongs to the mortgagees (or chargees, as the case may be) upon joint account”, there shall be transmitted to the survivors and survivor of the mortgagees or chargees the joint right both at law and in equity to recover and receive and give discharges for the money and interest thereon or the annuity or rent charge secured by the mortgage or charge, and to exercise and enjoy in respect of the mortgage or charge all the powers and privileges vested in mortgagees or chargees by this Ordinance.

Survivorship
in respect of
moneys lent on
joint account.
Pap. R.P.O.
1913-1914,
s. 57.

(2.) No such transmission shall take effect until it has been registered as provided in section one hundred and fifty-six of this Ordinance.

119.—(1.) An equitable mortgage or lien upon land under the provisions of this Ordinance or upon any estate or interest therein or any security thereupon or upon any instrument affecting the land may be created by deposit of the instrument of title.

Equitable
mortgage
may be created
and protected
by caveat.
Pap. *ib.* s. 58.

(2.) Subject to this Ordinance, the deposit shall have the same effect on the estate, interest or security to be charged as a deposit of title deeds would have had in the State of Queensland before the fifth day of November, One thousand eight hundred and seventy-seven.

(3.) Any equitable mortgagee may lodge a caveat forbidding any dealings with the estate, interest or security except subject to the mortgage or lien. Every such caveat shall state the amount and nature of the charge or lien.

Division 4.—Transfer and Encumbrance.

120. Land under the provisions of this Ordinance may be transferred subject to a mortgage, charge, easement or other encumbrance.

Land may be
transferred
subject to an
encumbrance.
Pap. *ib.* s. 59.

121.—(1.) Where land is to be transferred subject to any encumbrance the transferor and transferee shall execute a transfer and encumbrance in one of the forms in the Fourteenth Schedule to this Ordinance.

Transfer subject
to encumbrance,
how effected.
Pap. *ib.* s. 60.
Fourteenth
Schedule.

(2.) Every transfer and encumbrance shall be attested by a witness, and for description of the land shall refer to the grant or certificate of title thereof, or shall give a description sufficient to identify the portion of land to be transferred, and shall contain a statement of the estate or interest to be transferred and of the encumbrance to be created and also a memorandum of all mortgages,

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charges and other encumbrances affecting the land, and also (if the land is leased) the name and description of the lessee with a memorandum of the lease.

(3.) Notwithstanding the provisions of section sixty-one of this Ordinance, every transfer and encumbrance shall be in duplicate, and the Registrar shall register it, and after registration shall retain one copy and shall deliver the other to the person in whose favour the encumbrance has been created.

Transfer and encumbrance to have same effect as mortgage.
Pap. R.P.O. 1913-1914, s. 61.

122. Every transfer and encumbrance creating a mortgage, charge, or other security shall, when registered, have the same effect so far as relates to the security therein mentioned as a mortgage or other appropriate instrument would have had if executed by the transferee to the person in whose favour the mortgage, charge or other security has been created.

Particulars of encumbrance to be noted on certificate.
Pap. Ib. s. 62.

123. The Registrar shall note on the certificate of title made out to the transferee under any registered transfer and encumbrance the particulars of the mortgage, charge, easement or other encumbrance created thereby.

PART VII.—CAVEATS.

Caveat may be lodged.
Pap. Ib. s. 63.
Fifteenth Schedule.

124. Any person claiming an estate or interest in any land may, by a caveat in the form in the Fifteenth Schedule to this Ordinance, or as near thereto as circumstances will permit, forbid the registration of any instrument affecting the land, estate or interest either absolutely or until after notice of intention to register the instrument has been served as provided by section one hundred and twenty-six of this Ordinance.

Notice of caveat.
Pap. Ib. s. 64.

125.—(1.) Upon receipt of any caveat the Registrar shall notify the receipt to the person against whose right to deal with land the caveat is lodged.

(2.) Any such person, or any other person claiming any estate or interest in the land, may summon the person signing the caveat to attend before the Court to show cause why the caveat should not be removed.

(3.) It shall be lawful for the Court, upon proof that the person signing the caveat has been summoned, to make such order in the premises, either *ex parte* or otherwise, as the Court deems fit.

(4.) Notification by the Registrar under this section may be sent by post in a prepaid registered letter, addressed to the person entitled to the notice at his last known place of abode.

126.—(1.) Every caveat left with the Registrar under the provisions of this Part shall—

Contents of
caveat.
Pap. R.P.O.
1913-1914,
s. 65.

- (a) state the name of the person by whom or on whose behalf the caveat is lodged;
- (b) state, so far as the caveator can do so, the name and address of the person whom the Registrar is required to notify under the last preceding section; and
- (c) contain a description sufficient to identify the land affected and the estate or interest claimed therein.

(2.) Every such caveat shall be signed by the person by whom or on whose behalf it is lodged, or by his solicitor, agent or attorney.

(3.) All notices relating to the caveat or to any proceedings in respect thereof may be served by being left either at the place of address mentioned in the caveat or at the office of the solicitor, agent or attorney who has signed the caveat.

127. So long as any caveat forbidding the transfer of or other dealing with land remains in force, the Registrar shall not register any transfer or other instrument purporting to deal with or affect the land, estate or interest in respect of which the caveat is lodged, unless in accordance with some provision of the caveat or with the written consent of the caveator, which consent shall be attested as provided in this Ordinance.

No dealings to
be registered
while caveat
is in force.
Pap. Ib. s. 66.
Amended by
No. 18 of 1936,
s. 6.

128.—(1.) The owner against whose title to deal with any estate or interest in land a caveat has been lodged, or any person claiming under any transfer or other instrument signed by the owner, may summon the caveator to attend before the Court to show cause why the caveat should not be removed, and the Court may, upon proof that the caveator has been summoned, make such order in the matter and as to costs, either *ex parte* or otherwise, as it deems just.

Caveator may
be summoned to
show cause.
Vic. T.L.A.
1915, s. 134.

(2.) Any caveat may be cancelled by the Registrar upon its being proved to his satisfaction and that of the Master of Titles that the estate, interest or claim of the caveator has ceased or been abandoned or withdrawn, or that the caveator's rights are satisfied or arranged, or that the nature of the caveator's estate, interest or claim does not entitle him to forbid the sale or mortgage or other dealing with the land, estate or interest referred to in the caveat.

Pap. Ib. s. 67.

(3.) At least seven days before cancelling any caveat on the ground last mentioned in the last preceding sub-section, the Registrar shall cause notice to be served, in the manner provided by section one hundred and twenty-six of this Ordinance, upon the person by whom the caveat is lodged.

Damages where caveat lodged without reasonable cause. Pap. R.P.O. 1913-1914, s. 68.

129. Any person lodging a caveat with the Registrar without reasonable cause shall be liable to pay such damages as may be recovered in an action at law by any person aggrieved thereby.

Caveat lapses after twelve months with certain exceptions. Pap. Ib. s. 69.

130. After the expiration of twelve calendar months from the lodging of any caveat under this Part, the caveat shall be deemed to have lapsed, unless either—

- (a) it has been lodged with the written consent of an equitable mortgagee or of the registered owner of the land affected thereby, or
- (b) the caveator has within that time taken proceedings in any court of competent jurisdiction to establish his title to the estate or interest therein specified, and has given written notice thereof to the Registrar.

Caveat not to be renewed on same grounds. Pap. Ib. s. 70.

131. Where any caveat has lapsed or has been ordered to be removed by the Court, it shall not be lawful for the same person to lodge another caveat upon substantially the same grounds.

Withdrawal of caveat. Inserted by No. 14 of 1931, s. 8.

131A. Any caveat lodged under this Ordinance may be withdrawn, before the commencement of any proceedings in the Court in respect thereof, by the caveator or by his solicitor or attorney by giving notice in accordance with the prescribed form and on payment of the prescribed fee.

PART VIII.—EASEMENTS.

Easements to be registered with dominant tenement. Pap. Ib. s. 71. Vic. T.L.A. 1915, s. 73.

132.—(1.) Where any easement or any incorporeal right other than an annuity or rent charge affecting any land under the provisions of this Ordinance is created for the purpose of being annexed to or used and enjoyed together with other land under the provisions of this Ordinance, the Registrar shall enter a memorial of the instrument creating the easement or incorporeal right upon the folio of the Register Book constituted by the grant or certificate of title of the last-mentioned land.

(2.) Without prejudice to the provisions of section sixty-eight of this Ordinance as to easements omitted or misdescribed, the Registrar shall enter, in the Register Book and upon the duplicate grant or certificate of title of any land, as an encumbrance affecting the land, a memorial of any easement over or upon or affecting the land which has been created by any deed or writing.

Creation and registration of native rights. Inserted by No. 18 of 1936, s. 7.

132A. Notwithstanding any law to the contrary, any right, privilege, or advantage over or affecting land may, with the consent of the Director, be created by the registered owner of the land in the name of the Director as a trustee for natives, and the Registrar shall enter a memorial of the instrument creating the right,

privilege, or advantage upon the folio of the Register Book constituted by the grant or certificate of title and upon the duplicate grant or certificate of title.

133. Where an easement is created by a transfer and encumbrance or otherwise, it shall be lawful for the Registrar, upon the application of the transferor or other person in whose favour the land is charged with the easement, to deliver to him a certificate of title for the easement.

Certificate may be issued for easement.
Pap. R.P.O. 1913-1914, s. 72.

PART IX.—IMPLIED COVENANTS AND POWERS AND SHORT FORMS.

134. In every instrument creating or transferring any estate, interest, or encumbrance for valuable consideration under the provisions of this Ordinance, there shall be implied a covenant by the person creating or transferring the estate, interest or encumbrance that he will, at the cost of the person requiring the acts to be done or the instruments to be executed, do all acts and execute all instruments which are necessary to give effect to the covenants, conditions and purposes expressly set forth in the instrument or declared by this Ordinance to be implied therein.

General covenant to be implied in instruments.
Pap. Ib. s. 73.

135. In every instrument transferring an estate or interest in land under the provisions of this Ordinance subject to a mortgage or charge there shall be implied the following covenant by the transferee:—

Transferee of land subject to mortgage or charge to indemnify transferor.
Pap. Ib. s. 74.

That he will pay the interest or annuity secured by the mortgage or charge at the rate and times therein mentioned, and will indemnify the transferor against the principal sum or sums secured by the mortgage or charge, and against all liability in respect of any of the covenants therein contained or declared by this Ordinance to be implied on the part of the transferor.

136. In every mortgage there shall be implied against the mortgagor the following covenants:—

Covenants to be implied in mortgages.
Pap. Ib. s. 75.

- (a) That he will pay the principal money and interest thereby secured at the rate and times therein mentioned without any deduction whatsoever; and
- (b) That he will repair and keep in repair all buildings or other improvements erected and made upon the land, and that the mortgagee may at all convenient times until the mortgage is redeemed be at liberty with or without surveyors or other persons to enter upon the land to view and inspect the state of repair of the buildings or improvements.

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Covenants to be implied in leases:—
Pap. R.P.O. 1913-1914, s. 76.

137. In every lease there shall be implied the following covenants against the lessee:—

- (a) That he will pay the rent thereby reserved at the times therein mentioned, and will pay all rates and taxes which are payable in respect of the demised property during the continuance of the lease; and
- (b) That he will keep and yield up the demised property in good and tenable repair.

If buildings destroyed rent and obligation to repair to be suspended.
Pap. Ib. s. 77.

138. If any buildings erected upon any demised property under the provisions of this Ordinance are destroyed by fire, storm, flood or tempest, or otherwise by the act of God and without any default on the part of the lessee, then, unless the lease stipulates otherwise, the covenants to pay rent and to keep and yield up the demised property in good and tenable repair specified in the last preceding section shall be suspended until the lessor has reinstated the buildings in good and tenable repair.

Powers to be implied in lessor.
Pap. Ib. s. 78.

139. In every lease there shall also be implied the following powers in the lessor:—

- (a) That he may by himself or his agents at all reasonable times enter upon the demised property and view the state of repair thereof, and may serve upon the lessee or leave at his last or usual place of abode in the Territory or upon the demised property a notice in writing of any defect, requiring him within a reasonable time, specified in the notice to repair the property; and
- (b) That in case the rent or any part thereof is in arrear for the space of six calendar months, or in case default is made in the fulfilment of any covenant whether expressed or implied in the lease on the part of the lessee and is continued for the space of six calendar months, or in case the repairs required by the notice are not completed within the time therein specified, the lessor may re-enter upon and take possession of the demised premises.

Short form of words for covenants to be effectual.
Pap. Ib. s. 80.

140. Any of the covenants set forth in this section which are expressed in any lease or mortgage in the short form of words prescribed in this section in each case shall be implied against the lessee or mortgagor as fully and effectively as if they were set forth fully and in words at length in the lease or mortgage, that is to say:—

- (a) The words "that he will insure" shall imply as follows:—that he will insure, and so long as the term expressed in the mortgage or lease has not expired will keep insured, in some public insurance office to be

approved by the mortgagee or lessor, against loss or damage by fire to the full amount specified in the lease or mortgage, or, if no amount is specified, to their full value, all buildings, tenements or premises erected on the land which are of a nature or kind capable of being insured against loss or damage by fire; and that he will at the request of the mortgagee or lessor hand over to and deposit with him the policy of every such insurance, and produce to him the receipt or receipts for the annual or other premiums payable on account thereof:

Provided that all moneys to be received under or by virtue of any such insurance shall in the event of loss or damage by fire be laid out and expended in making good the loss or damage:

Provided further that, if default is made in the observance or performance of the covenant mentioned in this paragraph, the mortgagee or lessor may, without prejudice to and concurrently with the powers granted him by his mortgage or lease in manner in and by this Ordinance provided, insure the building; and the costs and charges of the insurance shall, until the mortgage is redeemed or the lease expires, be a charge upon the land;

- (b) The words "and paint outside every alternate year" shall imply as follows:—and also will in every alternate year during the currency of the lease paint all the outside woodwork and ironwork belonging to the hereditaments and premises mentioned in the lease with two coats of proper oil-colours in a workmanlike manner;
- (c) The words "and paint and paper inside every third year" shall imply as follows:—and will in every third year during the currency of the lease paint the inside wood, iron and other works now or usually painted with two coats of proper oil-colours in a workmanlike manner, and also re-paper with paper of a like quality as at present such parts of the premises as are now papered, and also wash stop and whiten or colour such parts of the premises as are now whitened or coloured respectively;
- (d) The words "and will fence" shall imply as follows:—and also will during the continuance of the lease erect, put up and maintain on the boundaries of the land therein mentioned, or upon the boundaries upon which

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no substantial fence now exists, a good and substantial fence;

- (e) The words “and cultivate” shall imply as follows:—and will at all times during the lease cultivate use and manage all such parts of the land therein mentioned as are or shall be broken up or converted into tillage in a proper and husbandlike manner and will not impoverish or waste the land;
- (f) The words “That the lessee will not use the said premises as a shop” shall imply as follows:—and also that the lessee will not convert use or occupy the hereditaments and premises mentioned in the lease or any part thereof into or as a shop, warehouse or other place for carrying on any trade or business whatsoever, or permit or suffer the said hereditaments and premises or any part thereof to be used for any such purpose or otherwise than as a private dwelling-house without the consent in writing of the lessor;
- (g) The words “and will not carry on offensive trades” shall imply as follows:—and also that no noxious, noisome or offensive art, trade, business, occupation or calling shall at any time during the term of the lease be used, exercised, carried on, or permitted, or suffered in or upon the hereditaments and premises above-mentioned, and that no act, matter or thing whatsoever shall at any time during the said term be done in or upon the said hereditaments and premises or any part thereof, which shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the occupiers or owners of the adjoining lands and hereditaments;
- (h) The words “and will not without leave assign or sublet” shall imply as follows:—and also that the lessee shall not, without the consent in writing of the lessor first had and obtained, during the term of the lease, assign, transfer, demise, sublet or set over or otherwise by any act or deed procure the lands or premises therein mentioned or any of them or any part thereof to be assigned, transferred, demised, sublet or set over unto any person whomsoever;
- (i) The words “and will not cut timber” shall imply as follows:—and also that the lessee shall not, without the consent in writing of the lessor, cut down, fell, injure or destroy any growing or living timber or timber-like trees standing and being upon the hereditaments and premises above-mentioned;

- (j) The words “and will carry on the business of a publican and conduct the same in an orderly manner” shall imply as follows:—and also that the lessee will at all times during the currency of the lease use, exercise and carry on in and upon the premises therein mentioned the trade or business of a licensed victualler or publican and keep open and use the messuage, tenement or inn and building, 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 it and manage and conduct the said trade or business in a quiet and orderly manner, and will not do or commit or permit or suffer to be done or committed any act, matter or thing whatsoever whereby or by means whereof any licence shall or may be forfeited or become void or liable to be taken away, suppressed or suspended in any manner howsoever;
- (k) The words “and will apply for renewal of licence” shall imply as follows:—and also shall, from time to time during the continuance of the term of the lease, at the proper times for that purpose, apply for and endeavour to obtain at his own expense all such licences as are or may be necessary for carrying on the trade or business of a licensed victualler or publican in and upon the said hereditaments and premises, and for keeping the said messuage, tenement or inn open as and for an inn or public-house as aforesaid;
- (l) The words “and will facilitate the transfer of licence” shall imply as follows:—and also shall, and will, at the expiration or other sooner determination of the said lease, sign and give such notice or notices and allow such notice or notices of a renewal or transfer of any licence, as are required by law to be affixed to the said messuage, tenement or inn, to be thereto affixed and remain so affixed during such time or times as are necessary or expedient in that behalf, and generally to do and perform all such further acts, matters and things as are necessary to enable the lessor or any other person authorized by him to obtain the renewal of any licence or any new licence or the transfer of any licence then existing and in force.

Implied covenants to be several.

Pap. R.P.O. 1913-1914, s. 81.

Implied covenants may be alleged as if expressed.

Pap. *Ib.* s. 81.

Implied covenants to have same force as if expressed.

Pap. *Ib.* s. 82.

Implied covenants may be negatived or modified.

Pap. *Ib.* s. 83.

141. Where any transfer or other instrument in accordance with the provisions of this Ordinance is executed by more parties than one, the implied covenants shall be construed to be several and not to bind the parties jointly.

142. In any action for a breach of any implied covenants it may be alleged that the party against whom the action is brought did so covenant precisely in the same manner as if the covenant had been expressed in words in the transfer or other instrument, any law or practice to the contrary notwithstanding.

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

144. Every covenant and power to be implied in any instrument by virtue of this Ordinance may be negatived or modified by express declaration contained in the instrument or endorsed thereon.

PART X.—TRUSTS AND TRANSMISSIONS.

145. The Registrar shall not enter in the Register Book any memorial or entry of any trust, whether express, implied or constructive, except as provided in sections fifteen, thirty-nine, and one hundred and thirty-two A of this Ordinance.

No entry of trust to be made in Register Book.

Cf. Pap. *Ib.* s. 86(1.).

Amended by No. 49 of 1938, s. 2.

Lands may be vested in trustees by instrument of nomination.

Cf. Pap. *Ib.* s. 84.

Sixteenth Schedule.

146.—(1.) Where any registered owner of land under the provisions of this Ordinance or of any estate or interest in land is desirous of vesting it in trustees, he may by an instrument in the form in the Sixteenth Schedule to this Ordinance nominate any persons to be trustees of the land, estate or interest.

(2.) Every such instrument shall be attested by a witness, and shall contain an accurate statement of the estate or interest intended to be vested in the trustees, and shall refer to the description given in the grant or certificate of title of the land, or shall give any other description which is necessary to identify the land.

(3.) Every such instrument shall on application in that behalf be registered as provided in this Ordinance, and the trustees may be described as such in the entry in the Register Book.

Trustees to deal with land as if beneficial owners and their receipt to be sufficient discharge.

Cf. Pap. *Ib.* s. 86.

147.—(1.) Any trustees after the entry in the Register Book of the nomination of trustees in manner provided in the last preceding section shall, notwithstanding any trust affecting the land or estate or interest in land comprised in the instrument of nomination, be entitled to sell, transfer, mortgage or otherwise deal with the land, estate, or interest in like manner as if the trustees had been the beneficial owners thereof.

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(2.) Where an estate of freehold in land is settled or vested in trustees they may receive a certificate of title therefor at their desire.

(3.) The receipt of the trustees, or (except in the case where "no survivorship" is stipulated as provided in section one hundred and forty-nine of this Ordinance) the receipt of the surviving trustees or trustee or of the legal personal representative of the last surviving trustee, shall be a sufficient discharge to any purchaser or mortgagee of the land, estate or interest, whether the purchaser or mortgagee has or has not had notice of the trusts.

(4.) No such purchaser or mortgagee shall be bound to see to the appropriation of any purchase-money or mortgage-money paid by him.

148.—(1.) Nothing contained in this Ordinance shall be construed to take away or affect the legal or equitable jurisdiction of the Central Court⁽⁵⁾ or of any other court established by law on the ground of actual fraud or over contracts or agreements for the sale or other disposition of land, or over equitable interests generally.

Saving of jurisdiction.
Pap. R.P.O.
1913-1914,
s. 87.

(2.) The intention of this Ordinance is that, without prejudice to the provisions therein contained for preventing the particulars of any trusts from being entered in the Register Book, and without prejudice to the powers of disposition or other powers conferred by this Ordinance on owners of land or of any estate or interest in or security upon land, equities may be enforced against those owners in respect of their estate, interest or security in the same manner as if this Ordinance had not been passed.

(3.) Notwithstanding anything contained in this section, no unregistered estate, interest, security, contract or agreement shall prevail against the title of any subsequent purchaser for valuable consideration duly registered under this Ordinance.

149.—(1.) Where the registered owner of any land under the provisions of this Ordinance or of any estate or interest therein inserts the words "no survivorship" in any instrument intended by him to operate as a nomination of trustees, it shall not be lawful for any less number of trustees than the number named in the instrument to sell, transfer, mortgage or otherwise deal with the land, estate or interest without obtaining an order of the Court, which may be granted in a summary way on motion or petition by or on behalf of any person beneficially interested in the land, estate or interest.

Effect of words
"no survivorship"
in nomination of
trustees.
Pap. Ib. s. 88.
Sixteenth
Schedule.

(2.) It shall be lawful for the Court by any such order to give any directions for the investment or application of the purchase-money or mortgage-money as the Court thinks fit, or to direct the appointment of any new trustee in the place of any former trustee.

(5) See Section 7A of the *Judiciary Ordinance 1921-1938.*

(3.) The Registrar shall enter a memorial of every such order in the Register Book, and upon the receipt of any transfer or other instrument executed in accordance with the order he shall register the instrument in manner provided in this Ordinance.

(4.) Nothing contained in this section shall prevent any less number of trustees than the number named in any instrument operating as a nomination of trustees from filling up any vacancy which arises by nominating any other person to be co-trustee with the acting or continuing trustees; and the new trustee may be nominated by any instrument in the form in the Sixteenth Schedule to this Ordinance.

(5.) Upon the registration of any instrument so nominating a new trustee, or upon entry in the Register Book of the memorial of any order appointing new trustees, any such new trustee shall have the like estate, interest, power and authority as if he had been originally nominated a trustee by the registered owner of the land, estate or interest.

"No survivorship" to be written on certificate if on instrument of nomination.
Pap. R.P.O. 1913-1914, s. 89.

150. Where the words "no survivorship" are written upon any instrument intended to operate as a nomination of trustees, the Registrar shall during the existence of the trust cause the words "no survivorship" to be written on every certificate of title of land issued to the trustees, and also on the duplicate of every such certificate bound up in the Register Book.

Vesting order to be registered.
Cf. Pap. Ib. ss. 90, 92.

151.—(1.) Where the Court makes any order, either under the provisions of any law now or hereafter in force relating to trustees, or otherwise, to the effect that any land under the provisions of this Ordinance or any estate or interest therein or security thereon shall vest in any person, the Registrar, on being served with an office copy of the order, shall enter in the Register Book, and also on the instrument evidencing title to the land, estate, interest or security in case the instrument is produced to him, the particulars of the order with the date thereof and also the day and hour of its production and shall make and issue all certificates of title and other instruments which are necessary to give full effect to the order.

(2.) Unless and until the entry mentioned in the last preceding sub-section is made no such order shall have any effect or operation in transferring or otherwise vesting the land, estate, interest or security, but after the entry has been made the person named in the order as the person in whom the land, estate, interest or security is to vest shall be deemed to be the registered owner thereof.

Order for sale to be registered.
Pap. Ib. s. 90.

152.—(1.) Where any land under the provisions of this Ordinance or any estate, or interest therein is sold under any order of the Court, the Registrar, on being served with an office copy of the

order, shall enter in the Register Book, and also on the instrument evidencing title to the land, estate or interest in case the instrument is produced to him, the particulars of the order with the date thereof and also the day and hour of its production.

(2.) Unless and until the entry mentioned in the last preceding sub-section is made no sale or transfer under any such order shall be valid or effectual, but after the entry has been made the person thereto authorized by the order may do all such acts and execute all such instruments as under the provisions of this Ordinance are necessary to transfer the land, estate or interest.

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

Beneficiary may bring action in name of trustee but must indemnify him.
Pap. R.P.O. 1913-1914, s. 91.

(2.) Every person so entitled or interested shall be entitled to be indemnified in like manner as a trustee would, before the commencement of this Ordinance, have been entitled to be indemnified in a similar case of his name being used by his *cestui que trust* in any such action or proceeding.

154.—(1.) Upon the insolvency of the registered owner of any land, estate or interest under the provisions of this Ordinance, the trustee of the insolvent shall be entitled to be registered as owner in respect of the land, estate or interest.

Transmission upon insolvency.
Cf. Pap. Ib. s. 93.

(2.) The Registrar, upon the receipt of an office copy of the order of the Court adjudging the registered owner to be insolvent, shall enter a memorandum of the order in the Register Book; and upon the receipt of a duly certified copy of the appointment of an elected trustee, or any other evidence of the appointment which he requires, the Registrar shall enter in the Register Book a memorandum of the appointment.

(3.) Upon those entries being made, in the first case the official trustee, and in the second case the elected trustee, may transfer to any purchaser or other person the land, estate or interest of the insolvent; and every transfer or other instrument executed for that purpose by the official or elected trustee in accordance with the provisions of this Ordinance shall have the same validity and effect as a like instrument would have had if executed by the registered owner before his insolvency.

(4.) Nothing contained in this section shall alter the position of the official or elected trustee of an insolvent trustee of any land as between the official or elected trustee and any person who is beneficially interested in any land of which the insolvent trustee

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is the registered owner, but the rights of any such persons, as between them and the official or elected trustee, in respect of the land shall remain entirely unaffected, notwithstanding the insolvency of the registered owner of the land; and the insolvent shall transfer the land to the persons beneficially interested therein, and shall do and execute all acts which are necessary for nominating a new trustee or new trustees of the land, and for carrying into effect any trusts affecting the land at the date of his insolvency.

Effect of annulment of adjudication of insolvency.
Pap. R.P.O. 1913-1914, s. 94.

155.—(1.) Where transmission takes place by reason of an adjudication of insolvency on which a transmission has been entered being annulled, an office copy or other duly certified copy of the order annulling the adjudication shall be left with the Registrar, and he shall thereupon enter a memorandum of the particulars of the order in the Register Book against any property undisposed of under the previous entry.

(2.) Upon the entry being made the person named in that behalf in the order annulling the adjudication, or, if no person be so named, the person who was adjudged insolvent, shall be deemed to be the owner of the property so undisposed of.

Transmission of mortgage, charge or lease.
Pap. *ib.* s. 97.

156.—(1.) Where any mortgage, charge or lease is transmitted in consequence of the death of the registered owner thereof, an office copy of the probate of his will or of letters of administration or of an order of the Court authorizing the Curator of Intestate Estates to administer his estate, accompanied by an application in writing from the executor, administrator or curator claiming to be registered as owner of the mortgage, charge or lease shall be left with the Registrar.

(2.) The Registrar shall thereupon enter in the Register Book and upon the mortgage, charge or lease the date of the will (if any) and of the probate, letters of administration or order of the Court, as the case may be, and also the day and hour of the production of the same to him, and the name of the executor or administrator, and, where it can be ascertained, the date of the death of the registered owner together with any other particulars which he deems necessary.

(3.) Upon the entry being made the executor or administrator or Curator of Intestate Estates, as the case may be, shall be deemed to be the registered owner of the mortgage, charge or lease.

Transmission of estates of freehold.
Pap. *ib.* s. 98.

157.—(1.) An executor or administrator with or without the will annexed of a deceased registered owner, or the Curator of Intestate Estates where the Court has made an order authorizing the Curator to administer the estate, may apply in writing to the Registrar to be registered as owner of any estate of freehold in the land of any such deceased registered owner.

(2.) The applicant shall deposit with the Registrar the certificate of death together with the probate of the will of the deceased owner, or letters of administration of his estate, or the order of the Court authorizing the Curator to administer, or an office copy of the certificate, probate, letters or order, as the case may be.

(3.) The Registrar may dispense with the certificate of death on the production of such other evidence of death as appears to him sufficient.

(4.) The application shall state the estate or interest in the land which the applicant claims, and the nature of every estate or interest in the same land held by other persons at law or in equity within the applicant's knowledge, and that he verily believes himself to be entitled to the estate or interest in respect of which he applies to be registered; and the statement shall be verified by the statutory declaration of the applicant.

(5.) The applicant shall produce the existing grant or certificate or other instrument of title of the land before he is entered in the Register Book in accordance with the next succeeding section, unless the production thereof is duly dispensed with.

158.—(1.) The Registrar shall consider the application and may either—

- (a) reject it altogether; or
- (b) cause notice thereof to be published in the *New Guinea Gazette*, and give the application any further publicity which he thinks fit, whether by advertisement or by the serving or posting of notices; or
- (c) if so advised, or he thinks fit so to do, dispense with the publication of all or any such notices.

(2.) Any notice so given or published shall fix a time, not less than two months after the date of the advertisement in the *New Guinea Gazette*, after which the Registrar may, unless he has received a caveat forbidding him so to do, register the applicant as the owner of the land.

(3.) Where notices are dispensed with, the Registrar shall, unless he has received a caveat forbidding him so to do, register the applicant as owner at the expiration of such time, not being more than one month, as he thinks fit.

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

Application,
how to be
dealt with.
Pap. R.P.O.
1913-1914,
s. 99.

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grant or certificate of title of the deceased owner with a memorial of the transmission endorsed thereon.

(5.) Where the Registrar is of the opinion that the grant or certificate of title cannot conveniently contain any further endorsements, he may compel the person applying for registration to receive a certificate of title in his own name.

Trustee to be deemed absolute owner for purposes of the Ordinance.
Cf. Pap. R.P.O. 1913-1914, s. 100.

159. Every person registered under the provisions of the last three preceding sections or any of them in respect of any mortgage, charge or lease, or of any estate of freehold shall hold the mortgage, charge, lease or estate in trust for the persons and purposes to which it is applicable by law; but for the purposes of any dealing with any such encumbrance or estate under the provisions of this Ordinance he shall be deemed to be the absolute owner thereof.

Devisee may apply to be registered as owner.
Section 159A inserted by No. 18 of 1936, s. 8.

159A.—(1.) Where an estate or interest in land of a deceased registered owner is devised to any person, the devisee may, with the consent of the executor or administrator with the will annexed, or of the Curator of Intestate Estates where the Court has made an order authorizing the Curator of Intestate Estates to administer the estate, apply in writing to the Registrar to be registered as owner of the estate or interest of the deceased registered owner.

(2.) The provisions of sections one hundred and fifty-six, one hundred and fifty-seven, and one hundred and fifty-eight of this Ordinance which are applicable to the estate or interest devised shall apply as if the application had been made by the executor or administrator with the will annexed, or by the Curator of Intestate Estates.

Registration of surviving joint owner.
Inserted by No. 18 of 1936, s. 8.

159B. Upon the death of any person registered together with any other person as joint owner of the same estate or interest in any land, the Registrar may, on the application of the person entitled and on proof of the death to his satisfaction, register the person entitled as proprietor of the estate or interest, in the manner prescribed for the registration of a like estate or interest upon a transmission.

Proceedings where executor &c. refuses to transfer.
Pap. *Id.* s. 101.

160. Where an executor or administrator or the Curator of Intestate Estates is registered as the owner of any land, and refuses, or, after tender of a transfer, unnecessarily delays to transfer the land to the devisee, next of kin or other person entitled thereto, the person entitled to the land may by motion or summons before the Court apply for an order that the executor, administrator or Curator of Intestate Estates shall transfer the land to him.

Court may order transfer to person entitled.
Pap. *Id.* s. 102.

161. The Court may either refuse the application with or without costs to be paid by the applicant, or may make an order for the transfer, and may direct the transferor to pay all the costs of

the application and any damages the person aggrieved has sustained, or may order the costs to be paid out of the estate of the deceased registered owner or in such other manner as the Court thinks proper.

162. The Court may on any such application decide any questions relating to the title of any person who is a party to the application or proceeding, and generally may decide any question which it is necessary or expedient to decide for the purpose of ordering the land to be transferred, or may direct an action to be brought in which the rights of the parties may be decided or any question of law settled.

Court may decide any questions or direct action to be brought.
Pap. R.P.O. 1913-1914, s. 103.

163.—(1.) If any person entitled to be registered as the owner of any land, estate or interest in land under the provisions of this Ordinance dies before becoming registered, the land, estate or interest shall be transmitted in like manner as if the deceased person had actually been registered as the owner thereof.

Transmission of land of deceased unregistered owner.
Pap. *Ib.* s. 104.

(2.) Any person claiming an estate or interest in land under the provisions of this Ordinance by virtue of unregistered instruments or other documents purporting to pass the estate or interest shall be deemed a person entitled to be registered within the meaning of this section.

(3.) The Registrar upon application to register any estate or interest under this section may either reject the application altogether or register the applicant as owner of the estate or interest forthwith or at the expiration of some defined period of time, and may direct any further entries to be made and notices to be published which in his opinion are necessary.

(4.) No such registration or entry which would interfere with the right of any person claiming under any instrument previously registered under this Ordinance shall be made except subject thereto.

PART XI.—POWERS OF ATTORNEY.

164.—(1.) The owner of any land under the provisions of this Ordinance, or any person registered as having any estate or interest therein, may, by a power of attorney in any form in use prior to the commencement of this Ordinance for the like purpose or in the form in the Seventeenth Schedule to this Ordinance, authorize and appoint any person to act for him or on his behalf in respect of the leasing of the land or the transfer or mortgage of his estate or interest therein, or otherwise lawfully to deal with the land, estate or interest in accordance with the provisions of this Ordinance.

Registration and effect of powers of attorney.
Pap. *Ib.* s. 105.
Seventeenth Schedule.

(2.) An original or an attested copy of every such power of attorney shall be deposited with the Registrar.

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(3.) A separate register of powers of attorney affecting lands under the provisions of this Ordinance shall be kept by the Registrar.

(4.) Upon any such power being brought to the Registrar he shall enter a memorial thereof in the register, and from and after that entry all acts lawfully done or performed by the attorney under the authority of, and within the limits prescribed by, the power, shall have the same force and effect and be equally binding on the owner as if the acts had been done or performed by him.

(5.) Every such power bearing an endorsement, signed by the Registrar, that the memorial thereof has been so entered, shall be received in evidence as sufficient proof that the person to whom the power has been granted is duly authorized to make all contracts, to sign all instruments, and to perform all other lawful acts in accordance with the powers therein limited and appointed.

(6.) It shall not be necessary for the Registrar to require proof that at the time of the registration of any instrument executed under any such power and tendered to him for registration the power was unrevoked.

General rules
as to powers
of attorney.
Pap. R.P.O.
1913-1914,
s. 106.

165. The following rules shall be observed as to powers of attorney:—

- (a) The power shall be exercised in conformity with the directions contained therein;
- (b) No transfer, mortgage, lease or charge *bona fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of the transfer, mortgage, lease or charge;
- (c) No transfer, mortgage, lease or charge *bona fide* made to a purchaser, mortgagee, lessee or chargee without notice shall be impeached by reason of the insolvency of the person by whom the power was given;
- (d) Upon proof at any time to the satisfaction of the Registrar that any power of attorney is lost or is so obliterated as to be useless, and that the powers thereby given have never been exercised, or, if they have been exercised, upon proof of the several matters and things that have been done thereunder, it shall be lawful for the Registrar, as circumstances require, either to issue a new power of attorney or to direct such entries to be made in the Register Book or such other matter or thing to be done as might have been made or done if no such loss or obliteration had taken place.

166.—(1.) The registered owner for the time being of any land in respect of which a power of attorney has been issued may, for the purpose of revoking the power, execute an instrument in the form in the Eighteenth Schedule to this Ordinance, and the Registrar shall enter the particulars thereof in the register of powers of attorney, and shall record upon the instrument of revocation the day and hour in which the entry was made, and shall file it in his office.

Revocation of power of attorney.
Pap. R.P.O. 1913-1914, s. 107.
Eighteenth Schedule.

(2.) From and after the date of the entry the Registrar shall not give effect to any transfer or other instrument executed pursuant to the power of attorney.

(3.) If the holder of the power neglects or refuses to surrender it to the owner or his agent exhibiting the instrument of revocation, he shall on conviction be liable to a penalty not exceeding One hundred pounds, unless it appears to the satisfaction of the Court before which the case is tried that the powers given therein had been exercised before the presentation of the instrument of revocation.

PART XII.—FEES AND ASSURANCE FUND.

167.—(1.) The Registrar shall charge and recover such fees as are prescribed⁽¹⁰⁾ not exceeding the fees specified in the Sixth Schedule to this Ordinance, and, in addition, such fees as are prescribed⁽¹⁰⁾ for any other service not specified in the Sixth Schedule.

Fees to be charged.
Pap. *Id.* s. 139.
Sixth Schedule.
Sub-section (1.) amended by No. 14 of 1931, s. 9, and by No. 49 of 1938, s. 3.

(2.) Where any land or estate or interest in land which is brought under the provisions of this Ordinance in pursuance of the provisions of Division 2 or 4 of Part III. of this Ordinance is registered subject to any mortgage or charge or to any other encumbrance by which money payments are secured, the fees and contribution to the assurance fund mentioned in this Ordinance or in the Sixth Schedule to this Ordinance shall be apportioned between the registered owner and the encumbrancee in proportion to the value of their interests.

(3.) All fees and contributions in respect of land or estates or interests in land brought under this Ordinance in pursuance of Division 2 or 4 of Part III. of this Ordinance shall be debts due jointly and severally to the Administration⁽²⁾ by the registered owner and the encumbrancee (if any), and may be recovered by the Registrar in any court of competent jurisdiction, and shall be a charge upon the land in priority to any registered encumbrance.

Sub-section (3.) amended by No. 22 of 1925, s. 3 and Schedule.

(2) See footnote (2) printed on p. 2892.

(10) The Sixth Schedule contains the maximum fees which may be prescribed to be charged and recoverable by the Registrar. The fees actually prescribed are contained in the *Lands Registration Regulations*, printed on p. 2988.

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Contribution for assurance of title on bringing land under Ordinance.

Cf. Q. R.P.A. 1861, s. 41.

Sub-section (1.) amended by No. 22 of 1925, s. 3 and Schedule and by No. 14 of 1931, s. 10.

Sub-section (2.) amended by No. 22 of 1925, s. 3 and Schedule and by No. 14 of 1931, s. 10.

Paragraph (b) substituted by No. 14 of 1931, s. 10.

168.⁽¹¹⁾—(1.) Upon the bringing under the provisions of this Ordinance, either upon the first alienation thereof by the Administration⁽²⁾ or otherwise, of any estate of freehold in land or of any estate for years under an Administration⁽²⁾ lease originally granted for any term not less than twenty-five years, there shall be paid to the Registrar for the assurance fund the sum specified in the Sixth Schedule to this Ordinance.

(2.) For the purpose of levying the sum payable under the last preceding sub-section and the fees payable under section one hundred and sixty-seven of this Ordinance the value of the estate brought under the Ordinance shall be ascertained as follows:—

- (a) In the case of land brought under the Ordinance upon alienation from the Administration⁽²⁾ in fee simple or for any estate of freehold, the price paid for the land shall be deemed to be the value thereof;
- (b) In the case of land brought under this Ordinance upon the first issuing of an Administration⁽²⁾ lease under the *Land Ordinance 1922-1929*⁽⁴⁾ for a term exceeding twenty-five years, the value shall be deemed to be the value at the time the application for the lease was granted by the Administrator and shall be fixed as prescribed; and
- (c) In all other cases, the value shall be ascertained by the statutory declaration of the person in whose name the land or estate or interest is registered upon the bringing of it under this Ordinance.

(3.) If the Registrar is not satisfied as to the correctness of the value declared in any case mentioned in paragraph (c) of the last preceding sub-section, he may require the person making the declaration to produce a certificate of the value under the hand of a sworn appraiser, which certificate shall be received as conclusive evidence of the value for the purpose of this section.

(4.) If the person concerned fails to produce the statutory declaration or the appraiser's certificate required by this section, the Registrar may himself appoint a sworn appraiser, whose certificate shall be received as conclusive evidence of the value for the purpose of this section.

(2) See footnote (2) printed on p. 2892.

(4) Now the *Land Ordinance 1922-1941*.

(11) See Section 15. of the *Lands Registration Ordinance 1931*, printed on p. 2987.

169.—(1.) Upon the registration of the title to an estate of freehold, or to an estate for years under any Administration⁽²⁾ lease originally granted for any term not less than twenty-five years, in any land under the provisions of this Ordinance, derived through the will or intestacy of a previous owner, there shall be paid to the Registrar for the assurance fund the sum specified in the Sixth Schedule to this Ordinance.

Contribution for assurance of title on registration of transmission.
Pap. R.P.O. 1913-1914, s. 140.
Sixth Schedule.
Sub-section (1.) amended by No. 22 of 1925, s. 3 and Schedule and by No. 14 of 1931, s. 11.

(2.) For the purpose of levying that sum the value of the estate so derived shall be ascertained by the statutory declaration of the applicant or person deriving the land by transmission.

(3.) If the Registrar is not satisfied as to the correctness of the value so declared, he may require the applicant or person deriving the land by transmission to produce a certificate of the value under the hand of a sworn appraiser, which certificate shall be received as conclusive evidence of the value for the purpose of this section.

170.—(1.) All sums of money received under the last two preceding sections shall be paid to the Treasurer, who shall from time to time invest them in Government securities of the Commonwealth of Australia or of any State thereof or in securities of the Administration guaranteed by the Commonwealth, together with all interest and profits which accrue thereon, to constitute an assurance fund out of which shall be made good the full amount awarded by any verdict, judgment or decree of Court to any person deprived of any land or of any estate or interest therein by the issue of any certificate of title or by the registration of any transmission, transfer or other dealing with land under the provisions of this Ordinance, failing recovery from the person who derived benefit thereby.

Assurance fund.
Pap. *Ib.* s. 141.
Sub-section (1.) amended by No. 49 of 1938, s. 4.

(2.) In case of the insufficiency of the assurance fund, the full amount so awarded shall be made good to the person entitled thereto out of the public revenue of the Territory, and shall be repaid to the public revenue from the assurance fund as that fund thereafter accrues.

171. No person shall be entitled to be indemnified out of the assurance fund or public revenue of the Territory for any loss occasioned by any breach of trust or default committed by any trustee, guardian, committee of a lunatic or of a person of unsound mind, executor, administrator or other person standing in the relation of trustee to any other person.

Fund not liable for breach of trust.
Pap. *Ib.* s. 141.

172.—(1.) The Registrar shall keep a correct account of all sums of money received by him in accordance with the provisions of this Ordinance, and shall pay them into the public treasury of the Territory at such times and shall render accounts thereof to such persons and in such manner as the Administrator directs.

Disposal and accounting for moneys received by Registrar.
Pap. *Ib.* s. 142.

(2) See footnote (2) printed on p. 2892.

(2.) The Registrar shall address to the Treasurer requisitions to pay moneys received by him or by the Treasurer in trust or otherwise on account of absent mortgagees or other persons entitled in accordance with the provisions of this Ordinance, and the Treasurer shall obey all such requisitions when proved and audited in such manner as the Administrator directs, and accompanied by warrant, under the hand of the Administrator, for payment thereof.

(3.) All fines and fees received under the provisions of this Ordinance, except contributions to the assurance fund, shall be carried to account by the Treasurer as general revenue.

172A. Notwithstanding anything contained in this Part, fees or contributions to the assurance fund shall not be payable under this Ordinance by the Administration or the Director.

Exemption from payment of fees, &c.
Inserted by No. 14 of 1931, s. 12; amended by No. 22 of 1933, s. 2.

PART XIII.—CIVIL RIGHTS AND REMEDIES.

173.—(1.) If, upon the application of any owner to have any dealing or transmission registered or recorded or to have any instrument issued or to have any act or duty performed, which by this Ordinance is prescribed to be done or performed by the Registrar, the Registrar refuses so to do, or if the owner is dissatisfied with the direction upon his application given by the Registrar, the owner may require the Registrar to set forth in writing the grounds of his refusal or the grounds upon which the direction was given; and the owner may, if he think fit, at his own cost summon the Registrar to appear before the Court to substantiate and uphold the grounds of his refusal or direction.

Owner may summon Registrar to show cause if dissatisfied.
Pap. R.P.O. 1913-1914, s. 143.

(2.) The summons shall be issued under the hand of a judge of the Central Court,⁽⁵⁾ and shall be served on the Registrar six clear days at least before the day appointed for the hearing, and upon the hearing the Registrar or his counsel shall open and shall have the right of reply.

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

(4.) All expenses of and incidental to the proceedings shall be borne by the person instituting them, unless the Court certifies that there were no reasonable grounds for the refusal or direction by the Registrar.

(5) See Section 7A of the Judiciary Ordinance 1921-1938.

174. No action of ejectment shall lie against a registered owner for the recovery of land under the provisions of this Ordinance except in the following cases:—

No action of
ejectment
except in
certain cases.
Pap. R.P.O.
1913-1914,
s. 144.

- (a) The case of a mortgagee or chargee against a mortgagor or chargor;
- (b) The case of a lessor against a lessee or tenant;
- (c) The case of a person deprived of any land by fraud as against a person registered as owner through fraud or as against a person deriving otherwise than as a purchaser or mortgagee *bona fide* for value from or through a person registered as owner through fraud;
- (d) The case of a person deprived of any land by reason of a wrong description of any land or of its boundaries;
- (e) The case of a registered owner claiming under a prior certificate of title or under a prior grant registered under the provisions of this Ordinance, in any case in which two grants or two certificates or a grant and a certificate are registered under this Ordinance in respect of the same land; and
- (f) The case of a registered owner claiming under a prior Administration⁽²⁾ lease registered under the provisions of this Ordinance, in any case in which two Administration⁽²⁾ leases are registered under this Ordinance in respect of the same land;

Paragraph (f)
amended by
No. 22 of 1925,
s. 3 and
Schedule.

and in any other case the grant or certificate of title shall be held in every court of law or equity to be an absolute bar and estoppel to any such action against the person named in the grant or certificate of title as seized of or entitled to the land.

175.—(1.) Where an action of ejectment is brought against a registered owner in any case (other than in the case of a fraudulent owner) in which an action of ejectment is not barred by the last preceding section, if the defendant or any person through whom he claims has made improvements on the land since obtaining a certificate of title thereto, he may, whether he admits or denies the plaintiff's title, give notice to the plaintiff of the fact of the improvements being made, and may set a value thereon and also on the land as distinct therefrom, and may give evidence thereof at the trial.

Rules for action
of ejectment
where allowed.
Pap. Ib. s. 145.

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

(2) See footnote (2) printed on p. 2892.

(3.) No writ of possession shall issue in the circumstances mentioned in the last preceding sub-section unless the plaintiff first pays into court for the use of the defendant the value of the improvements so assessed, deducting only the costs (if any) to which he is entitled in the action.

(4.) If the plaintiff fails to make the payment mentioned in the last preceding sub-section within three months after verdict, he shall have judgment to recover the sum separately assessed as the value of the land together with costs of suit, and no more; and the defendant shall upon satisfaction thereof be entitled to retain the land and improvements.

(5.) In either case the Registrar may, under the powers contained in this Ordinance, require delivery to him of any grant or certificate of title held by the party whose right to the land has been determined.

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

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

In action of
ejectment
registration
equivalent to
possession.
Pap. R.P.O.
1913-1914,
s. 146.

176. For the purpose of bringing an action of ejectment against any person against whom the action is not barred, or for the purpose of suing for damages as provided in the next succeeding section, the registration as owner of the person against whom the action or suit is brought shall be equivalent to possession by him of the land in respect of which the action or suit is brought.

Person deprived
of land may
bring action
for damages.
Pap. *Ib.* s. 147.

177. Any person deprived of land or of any estate or interest in land in consequence of fraud, or in consequence of the issue of a certificate of title to any other person, or in consequence of any entry in the Register Book, or of any error or omission in any certificate of title, or in any entry in the Register Book, may bring and prosecute an action in the Court for the recovery of damages against the person who derived benefit by the fraud or in consequence of the issue of the certificate of title or of the entry or of the error or omission.

Purchaser or
mortgagee for
value not to be
liable.
Pap. *Ib.* s. 147.

178. Nothing in this Ordinance shall be interpreted to subject to any action of ejectment or for recovery of damages any purchaser or mortgagee *bona fide* for valuable consideration of any land under the provisions of this Ordinance, although his vendor or mortgagor may have been registered as owner through fraud or error, or may

have derived from or through a person registered as owner through fraud or error, whether by wrong description of land or of its boundaries or otherwise.

179. If the person against whom an action for damages may be so brought is dead, or has been adjudged insolvent, or has absconded out of the jurisdiction of the court, an action for damages may be brought against the Registrar as nominal defendant for the purpose of recovering the damages and costs against the assurance fund.

Where proper defendant cannot be made liable action to be against Registrar as nominal defendant.
Pap. R.P.O. 1913-1914, s. 148.

180. In the case mentioned in the last preceding section, and also in any case where damages are awarded under section one hundred and seventy-eight of this Ordinance and the Sheriff or other proper officer makes a return of *nulla bona* or certifies that the full amount with costs awarded cannot be recovered from the judgment debtor, the Treasurer of the Territory, upon receipt of a certificate of a judge of the Central Court⁽⁵⁾ and of a warrant under the hand of the Administrator as provided shall pay the amount of the damages and costs or the unrecovered balance thereof, as the case may be, and shall charge the amount to the account of the assurance fund.

Recourse to assurance fund for unrecovered damages.
Pap. *ib.* s. 148.

181.—(1.) Every action brought by any person to recover damages for or by reason of any loss or damage occasioned by any omission, mistake or misfeasance of the Registrar or any of his officers or clerks in the execution of their duties under the provisions of this Ordinance shall be brought against the Registrar as nominal defendant.

Action for damages for mistakes of Registrar, &c.
Pap. *ib.* s. 149.

(2.) If the plaintiff recovers final judgment against the nominal defendant, any judge of the Central Court⁽⁵⁾ shall, upon the application of the plaintiff, certify to the Treasurer the fact of the judgment having been recovered and the amount of damages and costs recovered.

(3.) The Treasurer shall thereupon, or before the expiration of two calendar months after the judgment is certified, upon receipt of a warrant under the hand of the Administrator, pay the amount of the damages and costs to the person recovering the same or his executors or administrators, and shall charge the amount to the account of the assurance fund.

(4.) Notice in writing of every such action and of the cause thereof shall be served upon the Treasurer and also upon the Registrar at least one calendar month before the action is commenced.

(5.) The Registrar shall not be personally chargeable upon any judgment so recovered, nor shall any process or notice in or relating to any such action (except as provided in the last preceding

(5) See Section 7A of the Judiciary Ordinance 1921-1938.

LAND—

sub-section) be served upon the Registrar, but all such processes and notices shall be served upon the Treasurer.

If plaintiff fails or discontinues, nominal defendant to have costs.
Pap. R.P.O. 1913-1914, s. 150.

182. If in any such action judgment is given in favour of the nominal defendant, or if the plaintiff discontinues or becomes nonsuited, the plaintiff shall be liable to pay the full costs of defending the action, and the costs when taxed shall be levied in the name of the nominal defendant by the same process of execution as in other actions on the case.

Limitation of actions.
Pap. *Ib.* s. 151.

183. No action under this Ordinance for recovery of damages sustained through deprivation of land or of any estate or interest in land shall lie against the Registrar, or against the assurance fund, or against the person who applied to be registered as owner in respect of the land, or against the person certifying any instrument, unless the action is commenced within the period of six years after the date of the deprivation.

Money paid out of assurance fund may be recovered from estate of deceased person or insolvent or absconder.
Pap. *Ib.* s. 152.

184.—(1.) Where any amount has been paid out of the assurance fund or in case of its insufficiency out of the public revenue on account of any person who is dead, the amount may be recovered from the estate of the deceased by action against his personal representatives in the name of the Registrar.

(2.) Where any amount has been so paid on account of an insolvent, the amount paid shall be considered to be a debt due from the insolvent's estate, and a certificate of the payment signed by the Treasurer and delivered to the trustee of the insolvent's estate shall be sufficient proof of the debt.

(3.) Where any amount has been so paid on behalf of any person who has absconded and has left any real or personal estate within the Territory, the Court, upon the application of the Registrar and upon production of a certificate signed by the Treasurer certifying that the amount has been paid in satisfaction of a judgment against the Registrar as nominal defendant, may allow judgment for the Registrar to be entered up against that person forthwith for the amount so paid together with the costs of the application.

(4.) The judgment shall be final and shall be entered up in the same way as a judgment pronounced in court in an adverse action, and execution may issue immediately.

(5.) If the person absconding has not left real or personal estate within the Territory sufficient to satisfy the amount for which execution has been so issued, the Registrar may recover the amount or the unrecovered balance thereof by action against the absconder at any time thereafter when he is within the jurisdiction.

185. The Registrar shall not except as provided in this Ordinance be subject to be sued or prosecuted by any person whomsoever, nor shall his person, goods or lands be liable to execution of any legal process by reason of any act or default done or made by him *bona fide* in his character of Registrar; but he shall be indemnified out of the assurance fund, or out of the public revenue of the Territory if the assurance fund proves insufficient, in respect of all losses, costs or damages which are incurred or recovered by any person under any action or suit brought under the provisions of this Ordinance touching any matter or thing relating to the execution of this Ordinance and the powers thereby granted.

Indemnity of Registrar.
Cf. Pap. R.P.O. 1913-1914, s. 153.

186. Every person summoned to attend before the Registrar as a witness in respect of any instrument required to be produced or any act, matter or thing by this Ordinance authorized to be done, proceeded with or inquired into by or before the Registrar, shall have his necessary expenses tendered to him as required by law upon service of a subpoena to a witness in an action.

Tender of expenses to witness.
Pap. *Id.* s. 154.

PART XIV.—CANCELLATION AND CORRECTION OF INSTRUMENTS.

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

- (a) any certificate of title or other instrument has been issued in error, or contains any misdescription of land or boundaries; or
- (b) any entry or indorsement has been made in error on any grant, certificate of title or other instrument; or
- (c) any grant, certificate, instrument, entry or indorsement has been fraudulently or wrongfully obtained; or
- (d) any grant, certificate or instrument is fraudulently or wrongfully retained,

Holder of certificate, &c., may be required to show cause against cancellation or correction.
Pap. *Id.* s. 155.

he may summon the person to whom the grant, certificate or instrument has been issued, or by whom it has been obtained or is retained, to deliver it up for the purpose of being cancelled or corrected, as the case requires.

(2.) If any such person refuses or neglects to comply with the summons, or cannot be found, the Registrar may apply to a judge of the Central Court⁽⁵⁾ to issue a summons for that person to appear before the Court and show cause why the grant, certificate or other instrument should not be delivered up to be cancelled or corrected.

(3.) If any such person when served with the summons mentioned in the last preceding sub-section neglects or refuses to attend

(5) See Section 7A of the *Judiciary Ordinance* 1921-1938.

before the Court at the time therein appointed, the Court may issue a warrant directing the person so summoned to be apprehended and brought before the Court for examination.

Court may order delivery of instrument, or Registrar may issue new certificate.
Pap. R.P.O. 1913-1914, s. 156.

188.—(1.) Upon the appearance before the Court of any person so summoned or brought up by virtue of a warrant, the Court may examine him upon oath, and may order him to deliver up the grant, certificate of title or other instrument.

(2.) Upon refusal or neglect by the person to deliver up the grant, certificate of title or other instrument, pursuant to the order, the Court may commit him to prison for any period not exceeding six months unless the grant, certificate or other instrument is sooner delivered up.

(3.) Upon that refusal or neglect or in case the person has absconded or keeps out of the way so that the summons cannot be served upon him, the Registrar shall, if the circumstances of the case require it, issue to the owner of the land a certificate of title or other instrument as provided in this Ordinance in the case of a grant or certificate of title being lost or destroyed, and shall enter in the Register Book notice of the issuing of the certificate of title or other instrument and the circumstances under which it was issued and any other particulars which he thinks necessary.

Court may order cancellations or fresh entries, &c., upon recovery of land by action of ejectment.
Pap. *Ib.* s. 157.

189. In the event of the recovery of any land by action of ejectment from a fraudulent owner or from any of the persons against whom an action of ejectment is not barred by this Ordinance, it shall be lawful for the Court to make an order for cancelling or altering any certificate of title or other instrument or any entry in the Register Book relating to the land, and for substituting any fresh certificate of title or instrument or entry in lieu thereof, and directing such other acts and instruments to be done and executed as the Court thinks just; and the Registrar shall give effect to any such order.

PART XV.—MISCELLANEOUS.

Partition of coparcenership or joint tenancy or tenancy in common.
Pap. *Ib.* s. 111.

190. Where it is intended that partition shall be made by coparceners, joint tenants or tenants in common of any land under the provisions of this Ordinance or of any estate or interest therein, the coparceners, joint tenants or tenants in common may execute a transfer, lease or such other instrument as, in accordance with the provisions of this Ordinance, the nature of the estate or interest requires.

Provisions relating to writs of execution.
Pap. *Ib.* s. 112.
Nineteenth Schedule.

191.—(1.) No writ of execution issued in pursuance of any judgment, notwithstanding that any purchaser, mortgagee or creditor has had actual or constructive notice thereof, shall bind or affect, as to purchasers, mortgagees or creditors, any land under the provisions of this Ordinance or any estate or interest therein,

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unless and until a memorial of the writ has been entered in the Register Book.

(2.) Upon proof to his satisfaction that any such writ of execution has been discharged or satisfied, the Registrar may enter in the Register Book a memorandum to that effect, and upon the entry being made the writ of execution shall be deemed to be discharged or satisfied.

(3.) No writ of execution, although duly entered in the Register Book in accordance with sub-section (1.) of this section, shall affect, as to purchasers, mortgagees or creditors, any land under the provisions of this Ordinance or any estate therein, unless the writ is executed and put in force within three months after the date of the entry.

(4.) Where any land under the provisions of this Ordinance or any estate or interest therein or security thereon is sold under any writ of execution so registered, the officer or person appointed to execute the writ shall execute a transfer thereof to the purchaser in the form in the Nineteenth Schedule to this Ordinance.

(5.) Every such transfer shall be subject to all equitable mortgages and liens notified by any caveat lodged with the Registrar before the date of the registration of the writ of execution, and to all other encumbrances notified by memorandum entered in the Register Book.

(6.) The Registrar on receiving the transfer shall make an entry thereof in the Register Book, and thereupon the purchaser shall subject to this section be deemed the transferee or owner of the land, estate, interest or security.

192. A corporation, for the purpose of transferring or otherwise dealing with land under the provisions of this Ordinance, in lieu of signing the proper instrument, may affix thereto its common seal with a certificate that the seal was affixed by the proper officer verified by his signature.

Execution of instruments by corporation.
Pap. R.P.O. 1913-1914, s. 113.

193.—(1.) Instruments executed under the provisions of this Ordinance shall be attested by one witness to whom the person executing the instrument shall be personally known.

Attestation of instruments.
Cf. Pap. Ib. ss. 114 and 115.
Twentieth Schedule.

(2.) The witness may be—

(a) where the parties executing the instrument are resident within the Territory, the Registrar, a practitioner of the Central Court,⁽⁵⁾ a notary public, a justice of the peace, a District Officer, a bank manager, or a commissioner for taking affidavits;

Paragraph (a) amended by No. 12 of 1926, s. 3 and by No. 18 of 1936, s. 9.

(5) See Section 7A of the *Judiciary Ordinance 1921-1938.*

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- (b) where the parties are resident in the United Kingdom, the Mayor or other chief officer of any corporation, or a notary public;
- (c) where the parties are resident in any other British Possession, a judge of any superior court thereof, the Governor, Government Resident, or Chief Secretary, or a notary public, justice of the peace, or commissioner for taking affidavits; and
- (d) where the parties are resident at any foreign place, the British consular officer resident at or nearest to that place.

(3.) The witness may also be any other person, but in that case the execution of the instrument shall be proved before one of the officers or persons mentioned in the last preceding sub-section by the witness acknowledging his signature to the instrument and declaring that the party executing it was personally known to him, that the signature is in that party's handwriting, and that he signed the instrument freely and voluntarily; and the officer or person shall thereupon indorse upon the instrument a certificate in the form in the Twentieth Schedule to this Ordinance.

Powers of Court under statute relating to persons deemed to be deceased.
Of. Pap. R.P.O. 1913-1914, s. 127.

194. For the purpose of registration of an estate or interest in land under the provisions of this Ordinance, or on any application for the issuing by the Registrar of a certificate of title under the provisions of this Ordinance, the Court may, upon motion or petition, exercise all such powers as are conferred or as are applicable for any of the purposes mentioned in this Ordinance under a statute passed in the sixth year of the reign of Queen Anne and entitled:—"An Act for the More Effectual Discovery of the Deaths of Persons Pretended to be Alive to the Prejudice of those who claim Estates after their Deaths".

Transferor not to have lien for unpaid purchase money.
Pap. *Ib.* s. 128.

195. No transferor of land under the provisions of this Ordinance shall have any equitable lien thereon by reason of the non-payment of the purchase money or any part thereof.

Consent or direction may be indorsed on instrument.
Pap. *Ib.* s. 129.

196. If the consent or direction of any person is required upon a sale or other disposition of land under the provisions of this Ordinance or any estate or interest therein, the consent or direction may be indorsed upon the transfer or other instrument executed for the purpose of transferring or otherwise dealing with the land or estate or interest therein in the words "I consent hereto", which consent or direction when signed by the consenting or directing party and attested as provided in this Ordinance shall have full validity and effect.

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197.—(1.) If any person interested in any land or in any estate or interest in land under the provisions of this Ordinance is, by reason of infancy, unsoundness of mind, or other disability, incapable of making any declaration or doing anything required or permitted by this Ordinance to be made or done by an owner, the representative of the incapable person may make the declaration and do the thing in his name and on his behalf, and all acts done by the representative shall be as effectual as if done by the incapable person himself.

Provision for representation in case of incapacity.
Cf. Pap. R.P.O. 1913-1914, s. 130.

(2.) The representative of any such incapable person within the meaning of the last preceding sub-section shall be the guardian or committee (if any) of the incapable person, or if there be none, then any person appointed by any Court or judge having jurisdiction in respect of the property of incapable persons upon the petition of any person on behalf of the incapable person or upon the petition of any other person interested in the making of the declaration or the doing of the thing.

198. Upon the application of any person producing a certificate of competency signed by the Chief Government Surveyor or other officer appointed for that purpose by the Administrator, the Registrar shall license that person as a surveyor for the purposes of this Ordinance.

Surveyors may be licensed.
Pap. *Ib.* s. 131.

199. The Registrar shall prepare and cause to be published before the end of February in each year in the *New Guinea Gazette* a list containing the names and addresses of all surveyors so licensed.

List of surveyors to be published annually.
Pap. *Ib.* s. 132.

200. Every person licensed as a surveyor for the purposes of this Ordinance who makes an error in any work intrusted to him to be executed and which is required by this Ordinance to be done by a licensed surveyor shall be liable, at the request of the person intrusting the work to him or of the Registrar, to correct the error at his own expense.

Surveyors to correct errors at own expense.
Pap. *Ib.* s. 133.

201. The licences of persons licensed as surveyors for the purposes of this Ordinance may be suspended or cancelled by the Registrar for negligence, want of skill, untrustworthiness or inability to perform their duties; and no person whose licence is cancelled shall receive a fresh licence at any time thereafter.

Surveyors' licences may be suspended or cancelled.
Pap. *Ib.* s. 134.

202. The Administrator may appoint a Board consisting of not more than three persons, to whom an appeal shall lie by any person aggrieved by any action of the Registrar under the last preceding section; and the decision of the Board shall be final.

Board of Appeal.
Pap. *Ib.* s. 135.

Regulations.
Pap. R.P.O.
1913-1914,
s. 136.

203. The Registrar may, subject to the approval of the Administrator, make such regulations as are necessary to carry out the provisions of the last four preceding sections.

Registrar may
appoint
appraisers.
Pap. *Ib.* s. 137.

204. The Registrar may from time to time, subject to the approval of the Administrator, by an instrument under his hand and the seal of his office appoint fit and proper persons to be appraisers to value land under this Ordinance.

Appraiser's
oath.
Pap. *Ib.* s. 138.

205. Every appraiser shall before performing any duties under this Ordinance take the following oath before the Registrar or a justice of the peace or a District Officer, any of which persons are hereby authorized to administer the same:—

I, _____ do solemnly swear that
I will faithfully and honestly and to the best of my skill
and ability make any valuation required of me under the
provisions of the *Lands Registration Ordinance* 1924.

Offences and
penalties
how prosecuted.
Pap. *Ib.* s. 158.

206. Except where otherwise provided in this Ordinance, all offences against the provisions of this Ordinance may be prosecuted, and all penalties or sums of money imposed or declared to be due or owing by or under the provisions of the same may be sued for and recovered in the name of the Registrar before any court in the Territory having jurisdiction for the punishment of offences of the like nature or for the recovery of penalties or sums of money of the same amount.

Regulations.
Section 207
added by
No. 14 of 1931,
s. 13.
Sub-section
(1.) amended
by No. 49 of
1938, s. 5.

207.—(1.) The Administrator in Council may make regulations,⁽¹²⁾ not inconsistent with this Ordinance, prescribing all matters, which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular for—

- (a) regulating the practice of the office of the Registrar under this Ordinance; and
- (b) the alteration, as occasion requires, of the forms of instruments prescribed in the Schedules to this Ordinance.

Sub-sections
(2.) and (3.)
omitted by
No. 49 of 1938,
s. 5.

* * * * *

(12) See the *Lands Registration Regulations*, printed on p. 2988.

THE SCHEDULES.

Section 21(1).

THE FIRST SCHEDULE.

TERRITORY OF NEW GUINEA.

NOTICE OF BRINGING LAND UNDER THE ORDINANCE.

Take notice that it is proposed to register the land known as situated in the district and hereinafter described under the provisions of the *Lands Registration Ordinance* 1924, and to issue a certificate of title for the said land in the form of the draft attached hereto. If you object for any reason whatever to the registration of the land and the issue thereupon of a certificate of title in the form of the draft, you are hereby required to send to me at the Office of Titles at Rabaul a caveat in the form or to the effect of the Third Schedule to the said Ordinance. Unless a caveat is received on or before the day of , 19 , registration will be proceeded with in accordance with the provisions of the said Ordinance.

Dated at Rabaul the day of , 19 .
(L.S.) Registrar of Titles.

LAND REFERRED TO.

To

Section 21(3).

THE SECOND SCHEDULE.

TERRITORY OF NEW GUINEA.

GENERAL NOTICE OF BRINGING LAND UNDER THE ORDINANCE.

To all whom it may concern.

Take notice that it is proposed to register, under the provisions of the *Lands Registration Ordinance* 1924, the land or lands named and described in the Schedule as the property of the person or persons named in the same Schedule as the owners thereof. Draft certificates of title may be inspected at the Office of Titles at Rabaul. Any person objecting for any reason whatever to the registration of any land in the terms of the draft certificate must send to me at the Office of Titles at Rabaul a caveat in the form or to the effect of the Third Schedule to the said Ordinance. If no caveat is received on or before the day of , 19 , registration will be proceeded with forthwith in accordance with the provisions of the said Ordinance.

Dated at Rabaul the day of , 19 .
(L.S.) Registrar of Titles.

SCHEDULE.

| Volume and Folio of Draft Certificate of Title. | Name, Situation, Area, and Description of Land. | Name of Owner as shown in Draft Certificate of Title. | Mortgages and other Encumbrances. |
|---|---|---|-----------------------------------|
| | | | |

LAND—

Section 28.

THE THIRD SCHEDULE.

TERRITORY OF NEW GUINEA.

CAVEAT FORBIDDING REGISTRATION OF DRAFT CERTIFICATE OF TITLE.

To the Registrar of Titles,

Take notice that I [*insert name, address, and description*] claim [*particularize the estate or interest claimed*] in the land described as [*copy description from draft certificate*] in the draft certificate of title Volume Folio wherein A.B. is named as the owner of the said land, and I forbid the registration of the said draft certificate and the bringing of the land under the *Lands Registration Ordinance 1924*. I appoint as the place at which notices and proceedings relating hereto may be served.

Dated this _____ day of _____, 19 _____.

Signed by [*or on behalf of*]
the caveator at
in the presence of—

Section 29.

THE FOURTH SCHEDULE.

TERRITORY OF NEW GUINEA.

APPLICATION TO BRING UNDER LANDS REGISTRATION ORDINANCE 1924 LAND BONA FIDE OCCUPIED.

To the Registrar of Titles,

I, [*insert name, address, and description*] hereby apply to have the draft certificate of title relating to the land hereinafter described amended so as to bring under the Ordinance not only the said land but also any excess of land now actually and *bona fide* occupied by me. And I solemnly and sincerely declare that:—

1. I am the person named in the draft certificate of title Volume Folio as the owner of an estate in fee simple [*or as the case may be*] in the land therein described, and the land actually and *bona fide* occupied by me is substantially the same as the land therein described.
2. The land actually and *bona fide* occupied by me differs nevertheless in boundaries, area, and position [*or as the case may be*] from the description in the said draft certificate, and the proper description of the whole of the land so occupied by me is as follows:—[*insert description*].
3. The land described in the said draft certificate is delineated and coloured red on the plan indorsed hereon, and the land actually and *bona fide* occupied is delineated thereon and such parts thereof as are not included in the land described in the said draft certificate are coloured blue. Such parts of the land described in the said draft certificate as are not included in the land so occupied are shaded with parallel lines.
4. The total area of the excess applied for above and beyond the area of the land described in the draft certificate is
5. The total value of such excess is _____ pounds.

Lands Registration Ordinance 1924-1939.

6. The names and addresses, so far as known to me, of the occupants of all lands contiguous to the portions of land coloured blue on the map are as follows:—
7. The names and addresses, so far as known to me, of the owners of all lands contiguous to the said portions of land are as follows:—
8. The reasons for the discrepancies referred to in paragraphs 2 and 3 hereof are, so far as I know, as follows:—

And I appoint _____ as the place at which notices and proceedings relating hereto may be served.

Dated this _____ day of _____, 19 _____.

Declared and signed at }
in the }
presence of—

Section 53.

THE FIFTH SCHEDULE. (13)

TERRITORY OF NEW GUINEA.

Register Book Vol. _____ Folio _____.

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

CERTIFICATE OF TITLE.

[*Insert name, address and occupation*] pursuant to No. _____, produced the _____ day of _____, 19 _____, is now seised of an estate in fee simple [*if not in fee simple state the nature of the estate*] subject to the encumbrances notified hereunder in All That piece of land delineated and coloured _____ on the map in the margin situated in _____ containing by admeasurement more or less commencing [*insert description*] being [*insert if applicable*] part of Administration allotment No. _____ [*or other description according to the Administration grant*] originally granted the _____ day of _____, 19 _____, by Administration Grant No. _____ under the seal of the Territory of New Guinea and the hand of _____ Administrator of the said Territory [*or as the case requires*] to [*insert name, address, and occupation of original grantee*].

Saving always to the Administration all the rights and interests reserved to it by the said Administration Grant.

In witness whereof I have hereunto signed my name and affixed my seal this _____ day of _____, One thousand nine hundred and _____.

Signed, sealed, and delivered the }
day of _____, 19 _____, }
in the presence of—

Registrar of Titles.

ENCUMBRANCES REFERRED TO.

(13) The symbols and words "[Royal Arms]" were omitted by Section 3, and the Schedule, of the *Lands Registration Ordinance* (No. 2) 1925. See now Section 4 of that Ordinance, printed on p. 2986.

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Sections 79, 80, 167, 169.

Amended by
No. 14 of 1931,
s. 14.

THE SIXTH SCHEDULE.

TERRITORY OF NEW GUINEA.

FEES.

For bringing land under the provisions of this Ordinance, to be paid to the Registrar, over and above the cost of all advertisements authorized or directed to be published—

| | £ | s. | d. |
|--|---|----|----|
| Where the value does not exceed £150 | 1 | 10 | 0 |
| Where the value exceeds £150 but does not exceed £300 | 2 | 0 | 0 |
| Where the value exceeds £300 but does not exceed £450 | 3 | 0 | 0 |
| Where the value exceeds £450 but does not exceed £600 | 4 | 0 | 0 |
| Where the value exceeds £600 but does not exceed £750 | 5 | 0 | 0 |
| Where the value exceeds £750 but does not exceed £1,000 | 6 | 0 | 0 |
| For every additional £1,000 or fractional part of £1,000 | 1 | 0 | 0 |
| Contribution to assurance fund upon bringing land under the Ordinance—in the pound sterling .. | 0 | 0 | 0½ |
| And upon transmission by will or intestacy—in the pound sterling | 0 | 0 | 0½ |

Other Fees—

| | | | |
|--|---|----|---|
| For every certificate of title issued to owner for balance of land left upon a transfer of portion of the land included under a former grant or certificate of title | 0 | 10 | 0 |
| For certificates of title issued under other circumstances | 1 | 0 | 0 |
| For registering transfer, mortgage, charge, lease, or nomination of trustees, or any direction, licence, or order of the Central Court, ⁽⁵⁾ or any writ .. | 0 | 10 | 0 |
| For registering transfer of mortgage or of charge or release of mortgage or charge, or the transfer or surrender of a lease or discharge or satisfaction of any writ | 0 | 10 | 0 |
| For registering a declaration of ownership taken by transmission | 0 | 10 | 0 |
| For every power of attorney | 0 | 10 | 0 |
| For cancelling power | 0 | 5 | 0 |
| For every revocation of power of attorney | 0 | 10 | 0 |
| Receipt and noting of caveat | 0 | 10 | 0 |
| For every search when the volume and folio is given .. | 0 | 2 | 6 |
| For every general search | 0 | 3 | 6 |
| For every map or plan deposited | 0 | 5 | 0 |
| For certified copy, first five folios, per folio of seventy-two words | 0 | 5 | 0 |
| For every folio or part folio after the first five .. | 0 | 0 | 8 |
| For every instrument drawn on parchment (extra) .. | 0 | 2 | 6 |

(5) See Section 7A of the *Judiciary Ordinance* 1921-1938.

THE SEVENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

TRANSFER.

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

I, [name, address, and occupation of transferor] being the registered owner of an estate [here state the nature of the estate or interest] subject to the encumbrances notified hereunder in all that piece of land situated in the district [or town of] containing [here state area] more or less being [the whole or part as the case may be] of the land comprised in [Administration grant or certificate of title or Administration lease] dated , Register Book Volume Folio [these references will suffice alone if the whole land in the Administration grant, certificate of title or Administration lease is transferred; but if a part only, (unless a plan has been deposited, in which case a reference to the number of the allotment and to the plan will be sufficient) a description and plan will be required and may be inserted or annexed with this prefix: "as delineated in the plan hereon (or annexed hereto) and described as follows, namely". If the plan or description be annexed the annexure should be identified as part of the instrument by a memorandum thereon referring hereto and signed by the same parties and witnesses] in consideration of the sum of [if the consideration is not pecuniary alter accordingly] paid to by the receipt of which sum hereby acknowledges, do hereby transfer to the said all estate and interest in the land above described.

In witness whereof name this day of 19 have hereunto subscribed

Signed on the day abovenamed }
by the said }

Signature of Transferor.

in the presence of—

Correct for the purpose of registration.

Signature of purchaser.

ENCUMBRANCES REFERRED TO.

THE EIGHTH SCHEDULE.

TERRITORY OF NEW GUINEA.

TRANSFER OF MORTGAGE, LEASE, OR CHARGE TO BE INDORSED ON ORIGINAL MORTGAGE, LEASE, OR CHARGE.

I, the within-mentioned C.D. in consideration of £ this day paid to me by X.Y., of , the receipt of which sum I hereby acknowledge, hereby transfer to him the estate or interest in respect of which I am registered owner as set forth and described in the within-written instrument, together with all my rights, powers, estate and interest therein.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the abovementioned C.D. }
in the presence of— }

Accepted by the above X.Y., the }
transferee, in the presence of— }

LAND—

Section 94.

THE NINTH SCHEDULE.

TERRITORY OF NEW GUINEA.

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 owner or owners 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 repossess at all times hereafter and for all purposes and either with or without horses or other animals, carts, or other carriages into and out of and from the said land or any part thereof through, over, and along the road or way or several roads or ways delineated and coloured brown on the said map.

CREATION OF RIGHT-OF-CARRIAGE-WAY IN A LEASE OF
FREEHOLD LAND.

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

Section 95.

THE TENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

LEASE.

I, [name, address, and occupation] being registered as the owner of an estate [here state the nature of the estate or interest] in the land hereinafter described, subject to the encumbrances notified hereunder do hereby lease unto [name, &c., of lessee] all that piece of land containing situated in the _____ district [or township of _____] being the [whole or part as the case may be] of the land comprised in [Administration grant or certificate of title or Administration lease] dated _____, Register Book [or Register of Administration Leases], volume _____, folio _____ [these references will suffice alone if the whole land in the Administration grant, certificate, or Administration lease be leased; but if the lease be of a part a description and plan will be required setting forth the boundaries, which will then follow here with this prefix: "as delineated in the plan hereon (or hereunto annexed) and described as follows". If the plan or description be annexed the annexure should be identified as part of this instrument by a memorandum thereon referring hereto and signed by the same parties and witnesses] to be held by the said [name of lessee] as tenant for the space of _____ years computed from the _____ day of _____, 19____, at the yearly rental of _____ pounds payable [insert terms of payment of rent] subject to the following covenants, conditions, and restrictions. [Here set out all special covenants, if any, and state what covenants declared by the Ordinance to be implied against a lessor or lessee respectively are intended to be barred or modified and in what manner].

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

Lands Registration Ordinance 1924-1939.

I, [name, address, and occupation of lessee] do hereby accept this lease of the above-described lands to be held by me as tenant and subject to the covenants, conditions, and restrictions above set forth.

Dated this _____ day of _____, 19 .

Signed by the above-named _____, }
the lessor, at _____, }
this _____ day of _____, 19 }
in the presence of— _____

Signed by the above-named _____, }
the lessee, at _____, }
this _____ day of _____, 19 }
in the presence of— _____

ENCUMBRANCES REFERRED TO.

Section 102.

THE ELEVENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

SUB-LEASE.

I, [insert name, residence, and occupation], being registered as the owner of a lease numbered _____ of the land hereinafter described, subject to the encumbrances notified hereunder, hereby sub-lease unto [name, &c., of sub-lessee] all that piece of land being [if the sub-lease is of all the lands in the lease, copy here the description of the land given in the lease, but if only a part, set forth the boundaries by measurements and by abutments, making the description coincide, so far as practicable, with that in the lease, and refer to a map] being [insert, if applicable, part of] the land comprised in the said lease, to be held by the said [insert name of sub-lessee] as sub-tenant for the term of [insert term of sub-lease] at the yearly rental of _____ pounds payable [insert terms of payment] subject to the following covenants, conditions, and restrictions. [Here set out all special covenants, if any, and state what covenants declared by the Ordinance to be implied against a sub-lessor and sub-lessee respectively are intended to be barred or modified and in what manner.]

I, [insert name, address, and occupation of sub-lessee], hereby accept this sub-lease of the above-described land to be held by me as sub-tenant and subject to the covenants, conditions, and restrictions above set forth.

Dated this _____ day of _____, 19 .

Signed by the above-named _____, }
the sub-lessor, at _____, }
in the presence of— _____

Signed by the above-named _____, }
the sub-lessee, at _____, }
in the presence of— _____

ENCUMBRANCES REFERRED TO.

LAND—

Sections 106, 111.

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

THE TWELFTH SCHEDULE.

TERRITORY OF NEW GUINEA.

MORTGAGE.

I, [name, address, and occupation], being registered as owner of an estate [here state the nature of the estate or interest] subject to the encumbrances notified hereunder in that piece of land situated in the district [or town of] containing [here state area] be the same a little more or less [if the land to be dealt with contains all that is included in an existing grant, certificate of title, or Administration lease refer thereto for description of parcels and diagram; otherwise set forth the boundaries, and refer to a plan thereof on the margin of or annexed to the mortgage or deposited in the Office of Titles]. In consideration of the sum of £ this day lent to me by of [here insert description] the receipt of which sum I hereby acknowledge, do hereby covenant with the said that I will pay to him the above sum of £ on the day of , 19 .

And, secondly, that I will pay interest on the said sum at the rate of £ per centum per annum by equal payments on the day of and on the day of in every year. And, thirdly, [here set forth special covenants, if any are intended, and state what covenants, declared by this Ordinance to be implied in mortgages, are intended to be barred or modified and in what manner]. And for the better securing to the said the repayment in manner aforesaid of the said principal sum and interest I hereby mortgage to the said all my estate and interest in the land above described.

In witness whereof I have hereunto signed my name this day of , 19 .

Signed by the above-named A.B., the }
mortgagor, at }
this day of }
19 , in the presence of }

Mortgagor.

ENCUMBRANCES REFERRED TO.

Sections 106, 111.

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

THE THIRTEENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

CHARGE.

I, A.B., being registered as the owner of an estate [here state nature of the estate or interest] subject to the encumbrances notified hereunder in that piece of land situated in the district [or town of] containing [here state area] be the same a little more or less [if the land to be dealt with includes all that is contained in an existing grant, certificate of title, or Administration lease, refer thereto for description of parcels and diagram; otherwise set forth the boundaries, and refer to a plan thereof on the margin of or annexed to the charge or deposited in the Office of Titles].

And desiring to render the said land available for the purpose of securing to and for the benefit of C.D. the [sum of money, annuity, or rent charge] hereinafter mentioned, do hereby charge the said land for the benefit of the said C.D. with the [sum, annuity, or rent charge] of £

Lands Registration Ordinance 1924-1939.

to be raised and paid at the times and in the manner following, that is to say, [here state the times appointed for the payment of the sum, annuity, or rent charge intended to be secured, the interest, if any, and the events on which the sum, annuity, or rent charge shall become and cease to be payable, and also any special covenants or powers and any modifications of the powers or remedies given to a chargee by the Ordinance]. And subject as aforesaid the said C.D. shall be entitled to all powers and remedies given to a chargee by the *Lands Registration Ordinance 1924.*

In witness whereof I have hereunto signed my }
name this day of , }
19 .

Signed by the said the chargor, at presence of in the , }

Section 121.

THE FOURTEENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

TRANSFER COMBINED WITH CREATION OF ENCUMBRANCE.

This indenture made this day of 19 , between A.B., of , registered as owner of an estate [here describe the estate or interest] in the land herein described of the one part and C.D., of , of the other part, witnesseth that in consideration of the sum of , paid by the said C.D. to the said A.B., the receipt whereof is hereby acknowledged [if there be any valuable consideration other than money it must be also specified], and in further consideration of the [mortgage or charge, or other encumbrance] hereby created the said A.B. doth hereby release and transfer unto the said C.D. and his heirs all that piece of land situated in the district [or town of] containing , more or less, commencing [here set out description] and being the land described in the Administration grant [or certificate of title or Administration lease] Register Book [or Register of Administration Leases], volume , folio , and all his estate, right, title, and interest therein, to hold the said land subject to the encumbrances notified hereunder, and subject also to the [mortgage or charge, or other encumbrance] intended to be hereby created as hereinafter expressed.

And this indenture further witnesseth that in consideration of the premises and to completely effectuate the agreement upon which these premises are executed the said C.D. doth hereby declare that he accepts the transfer hereinbefore contained subject to the following conditions:—

[Here state the particulars of the encumbrance as in a mortgage, charge, conveyance of easement, &c.]

Signed, sealed, and delivered, &c.

I desire that a certificate of title in my name may issue with memorandum of encumbrance thereon accordingly.

C.D.

ENCUMBRANCES REFERRED TO.

[or]

TERRITORY OF NEW GUINEA.

TRANSFER COMBINED WITH CREATION OF ENCUMBRANCE.

This indenture, made this day of 19 , between A.B., of , registered as owner of an estate

LAND—

[here describe the estate or interest] in the land herein described of the first part and C.D., of , of the second part, and E.F., of , of the third part, witnesseth that in consideration of the sum of paid by the said C.D. to the said A.B., the receipt whereof is hereby acknowledged [if there be any valuable consideration other than money it must be also specified] the said A.B. doth hereby release and transfer to the said C.D. and his heirs all that piece of land situated in the district [or town of] containing , more or less, commencing [here set out description], and being the land described in Administration grant [or certificate of title or Administration lease], Register Book [or Register of Administration Leases], volume , folio , and all his estate, right, title, and interest therein, to hold the said land subject to the encumbrances notified hereunder, and subject also to the [mortgage or charge or other encumbrance] intended to be hereby created as hereinafter expressed.

And this indenture further witnesseth that in consideration that E.F. hath advanced the said C.D. £ , the said C.D. doth hereby declare that the land hereby transferred shall be charged and subject to the following conditions:—

[Here state the particulars of the encumbrance as in a mortgage, charge, conveyance of easement, &c.]

Signed, sealed, and delivered, &c.

I desire that a certificate of title in my name may issue with memorandum of encumbrance thereon accordingly.

C.D.

ENCUMBRANCES REFERRED TO.

Section 124.

THE FIFTEENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

CAVEAT FORBIDDING REGISTRATION OF DEALING WITH ESTATE OR INTEREST.

To the Registrar of Titles.

Take notice that I, , claiming [here state the nature of the estate or interest claimed and the grounds on which the claim is founded] in [here describe land], forbid the registration of any transfer or other instrument affecting the said land until this caveat is withdrawn by me or removed by the order of the Court, or until days have elapsed after notice of any such intended registration has been delivered to me or left at or forwarded through the post to my address in the Territory as underwritten.

Dated this day of , 19 .

A.B.

THE SIXTEENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

NOMINATION OF TRUSTEES.

I, A.B., being registered as the owner of an estate [*here state nature of the estate or interest*] subject to the encumbrances notified hereunder in that piece of land situated in the _____ district [*or town of* _____], containing _____, more or less [*here also state rights of way, privileges, or easements, if any are intended, to be conveyed in trust; and if the land to be dealt with contains all that is included in an existing grant or certificate or Administration lease refer thereto for description of parcels and diagram, but otherwise set forth the boundaries, and refer to a plan in the margin or annexed to instrument or deposited in the Office of Titles*], do hereby transfer all my estate or interest in the said land to C.D., of _____, E.F., of _____, and G.H., of _____, as trustees of the said land under the provisions of the *Lands Registration Ordinance 1924*.

In witness whereof I have hereunto signed my {
* name, at _____, this _____ day } A.B.
of _____, 19 _____, in the presence {
of—

Accepted—

C.D., E.F., G.H.

Signed in the presence of—

SCHEDULE OF TRUSTS.

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

THE SEVENTEENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

POWER OF ATTORNEY.

I, A.B., being registered as owner of an estate [*here state nature of the estate or interest*] subject to the encumbrances notified hereunder in [*here refer to schedule for description and area of the several parcels of land to be affected, which schedule must refer to the existing Administration grant, certificate of title, or Administration lease of each parcel*], do hereby appoint C.D., of _____, to be my true and lawful attorney, and on my behalf to [*here state the nature and extent of the powers to be conferred, as whether to sell, lease, or mortgage, &c.*], the lands described in the said schedule, subject to the restrictions and limitations set forth at the foot hereof, and to execute all instruments and do all acts, matters, and things which may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants, and conditions binding upon any lessee or occupier of the said lands or upon any other person in respect of the said

LAND—

lands, and for the taking and maintaining possession of the said lands, and for protecting the said lands from waste, damage, or trespass.

I declare that the said lands [or my estate or interest in the said lands] shall not be sold for less than £ [here insert conditions to be imposed, if any].

I declare that the amount of money to be raised by mortgage on the security of the said lands under this power shall not exceed £ , or be less than £ , and that the rate of interest at which the said amount is raised shall not exceed £ per centum per annum.

I declare that the said lands shall not be leased for any term of years exceeding , or at a less rent than £ [here insert conditions such as whether right of purchase may be given and at what price, &c.]

I declare that this power shall not be exercised after the expiration of from the date hereof.

In witness whereof I have hereunto subscribed my name this day of , 19 .

Signed by the above-named A.B., }
at , this }
day of , 19 , }
in the presence of—

SCHEDULE REFERRED TO.

Section 166.

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

THE EIGHTEENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

REVOCATION OF POWER OF ATTORNEY.

I, A.B., of , being seised of an estate [here state the nature of the estate or interest] in all that piece of land [here describe the land referring to the existing grant, certificate, Administration lease, or other instrument of title], hereby revoke the power of mortgaging [or as the case may be] the said land given by me to C.D., of , by a power of attorney dated the day of , 19 , and registered No.

In witness whereof I have hereunto subscribed my name, this day of , 19 .

Signed by the above-named , at , in the presence of—

I, , Registrar of Titles, hereby certify that this revocation was produced to me at o'clock on , the day of , 19 , and that the particulars thereof are entered in the register of powers of attorney.

(Signed)

Registrar of Titles.

Lands Registration Ordinance 1924-1939.

Section 191.

THE NINETEENTH SCHEDULE.

TERRITORY OF NEW GUINEA.

TRANSFER UNDER WRIT OF EXECUTION.

Amended by
No. 22 of 1925,
s. 3 and
Schedule.

I, [insert name], as [insert title of officer executing the transfer or else the words "the person appointed to execute the writ hereinafter mentioned"], in pursuance of a writ of execution dated the _____ day of _____, 19____, and issued out of the Central Court in an action wherein _____ is the plaintiff and _____ the defendant, which said _____ is registered as the owner of an estate [here state nature of the estate or as the case may be] in the land [or as the case may be] hereinafter described, do hereby, in consideration of the sum of £ _____ paid to me by E.F., of _____, transfer to the said E.F. and his heirs all the estate and interest of the said _____ in all that piece of land situated in the _____ district [or town of _____], containing _____, more or less, commencing [here set out description], and being the land described in Administration grant [or certificate of title or Administration lease], Register Book [or Register of Administration Leases], volume _____, folio _____, to hold the said land subject to the encumbrances notified hereunder.

In witness whereof I have hereunto subscribed my name this
day of _____, 19____.

Signed by the said [officer] at _____, }
on the day above-named, in the presence }
of—

ENCUMBRANCES REFERRED TO.

Section 193.

THE TWENTIETH SCHEDULE.

TERRITORY OF NEW GUINEA.

CERTIFICATE OF AUTHORIZED WITNESS TAKING DECLARATION
OF ATTESTING WITNESS.

Appeared before me, at _____, the _____ day of _____, 19____, C.D., of _____, attesting witness to this instrument, and acknowledged his signature to the said instrument, and further declared that A.B., the party executing the said instrument, was personally known to him, the said C.D., and that the signature of the said instrument is in the handwriting of the said A.B.

(Signed)

Registrar of Titles.

[or as the case may be].