THE
REAL PROPERTY ACT of 1877
41 Vic. No. 18

Amended by
Land Surveyors Act of 1908, 8 Edw. 7 No. 3
Statute Law Revision Act of 1908, 8 Edw. 7 No. 18
Trade Unions (Property) Act of 1922, 13 Geo. 5 No. 1
Real Property Acts Amendment Act of 1942, 6 Geo. 6 No. 14
Real Property Acts Amendment Act of 1952, 1 Eliz. 2 No. 43
Real Property Acts Amendment Act of 1963, No. 25

An Act to Amend “The Real Property Act of 1861”
[Assented to 5 November 1877]

[Preamble repealed by Statute Law Revision Act of 1908, s. 2]

1. Act to be read as part of “The Real Property Act of 1861.” This Act shall be read and construed with and as an amendment of “The Real Property Act of 1861.”

See also the definition of “this Act” in s. 3.

2. Short title. This Act may be cited for all purposes as “The Real Property Act of 1877.”

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

“The Principal Act” shall mean “The Real Property Act of 1861”
“This Act” shall mean “The Real Property Act of 1861” as amended by this Act
“Proprietor” shall include any person possessed of or entitled to any charge upon any land
“Appraiser” shall mean and include any person appointed by the Registrar-General under this Act to value land.

“This Act”—See also s. 1.
“Proprietor”—See also the Real Property Act of 1861, s. 3, p. 634, ante.
“Charge” includes only charges in the nature of a right to property, not the rights conferred on a judgment debtor by registration of his writ under s. 91 of the Real Property Act of 1861, p. 695, ante, Bond v. McClay, [1903] St. R. Qd. 1. For “registered proprietor”, see Real Property Acts, 1861 to 1963, s. 34, p. 654, ante.

4. (Repealed.)
Repealed by Statute Law Revision Act of 1908, s. 2.

5. (Repealed.)
Repealed by Act of 1952, 1 Eliz. 2 No. 43, s. 39.
6. Sworn appraisers to be appointed. The Registrar-General may from time to time subject to the approval of the Governor in Council 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 Act.

"This Act" includes Real Property Acts, 1861 to 1963 (see s. 3). See s. 41 of that Act, p. 658, ante.

7. Oath of sworn appraiser. Every appraiser shall before performing any duties under this Act take the following oath before the Registrar-General or some Justice of the Peace who are hereby respectively authorised 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 Real Property Act of 1861" and "The Real Property Act of 1877."

8. Effect of conveyance before grant. When any person claiming to be entitled beneficially to land for an estate of freehold in possession shall apply to have such land brought under the provisions of this Act it shall not be lawful for the Registrar-General to reject such application by reason only that a conveyance by the original grantee of the said land forming part of the title appears to have been executed by such grantee prior to the issue of the grant.

Applications to bring land under these Acts are made under ss. 16 et seq. of Real Property Acts, 1861 to 1963, p. 642, ante.

9. Application when third party interested only to be withdrawn with his consent. It shall not be lawful for any applicant to withdraw or materially alter his application without the consent of every person who would in the event of such application being granted be entitled to a certificate of title on such application.

Such consent shall be evidenced by an endorsement upon the request mentioned in section twenty-nine of the Principal Act signed by such person or his solicitor.

10. Supplementing defective applications. When the Registrar-General shall be of opinion that any application to bring land under the Principal Act is defective on account of want of legal or equitable title in the applicant he may instead of rejecting the same accept the concurrence of the parties entitled to any legal or equitable estate therein.

Such concurrence shall be endorsed on the application or refer thereto by number or other sufficient description and shall be sufficient if in the following form or in a form to the like effect—

I concur in the above [or within] application.
Dated
A.B.

Witness

or—

I concur in the application of "The Real Property Act." to bring land [describing it] under
Dated
A.B.

Witness

For the title necessary to enable a person to apply, see Real Property Acts, 1861 to 1963, ss. 16, 36-39, 93, pp. 642, 656, 657, 697, ante.
11. Leases not exceeding three years good. Notwithstanding the provisions of section 44 of the Principal Act the estate of a registered proprietor shall not be paramount or have priority over 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 such registered proprietor.

As to validity and registration of leases not exceeding three years, see s. 18, and notes to s. 52 of Real Property Acts, 1861 to 1963, p. 668, ante.

As to leases for more than three years, see Real Property Acts, 1861 to 1963, s. 52, p. 668, ante.

This section does not render binding on a registered mortgagee leases not exceeding three years executed after registration of the mortgage, English and Australian Bank Ltd. v. City National Bank Ltd., [1933] St. R. Qd. 81. See also the proviso to s. 52 of Real Property Acts, 1861 to 1963, p. 668, ante.

An option for removal contained in an unregistered lease for a term of three years cannot be effectively exercised by the lessee after a purchaser for value of the land, even though with notice of the lease and the option, has become the registered proprietor without conduct actually fraudulent. See Friedman v. Barrett; Ex parte Friedman, [1962] Qd. R. 498.

The word "tenancy" is narrower in meaning than the expression "interest of any tenant", and although the latter might well be wide enough to refer to an option to renew the tenancy, the former is not. See ibid., per Gibbs, J., at p. 510.

This section is intended to protect the tenancy itself, and its protection does not extend to a right of renewal, notwithstanding that such right concerns the tenancy and is one of its incidents. Section 11 provides an exception to the fundamental rule, embodied in s. 44 of the Principal Act, that the registered proprietor shall hold his land free from unregistered interests, and should not be given an extended construction, particularly one that would render the title of the registered proprietor subject to rights of renewal that might be perpetual although those rights were contained in an unregistered lease and were not protected by caveat. Section 51 of the Act of 1877 deals with contractual rights and equitable interests, and it is to that section, rather than to s. 11, that a person who seeks to enforce a right of renewal contained in an unregistered lease must look for assistance. See ibid.

For a case in which it was held that an implied yearly tenancy was protected from the operation of s. 44 of the Principal Act by this section, see Herrmann v. MacKenzie, [1965] Qd. R. 235.

12. Priorities of registration. Subject to the proviso next hereinafter contained all instruments shall be registered in the order in which the same shall be produced to the Registrar-General for that purpose and all instruments registered in respect of or affecting the same estate interest or security shall notwithstanding any express implied or constructive notice be entitled to priority one over the other according to the dates of the production of such instruments to the Registrar-General for registration and not according to the dates of such instruments.

For the purpose of determining such priorities the Registrar-General shall endorse on every instrument registered by him the day and hour of the production of such instrument for registration.

Provided that if any instrument shall be produced to the Registrar-General for registration which cannot be registered in consequence 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 proprietor or owner and purporting to transfer or otherwise deal with the same estate or interest or the same security shall be produced to the Registrar-General for registration and shall be accompanied by the instruments of title he shall first register that instrument which shall be produced by the person producing to him the instruments of title relating to the estate or interest or security proposed to be dealt with.
Any instrument or document which, for the purposes of lodging the same in the office of the Registrar of Titles, is sent to the Registrar of Titles through the post or by medium of the office of the Commissioner of Stamp Duties, shall be deemed to be lodged in the office of the Registrar of Titles on such day and at such hour as he shall fix. A memorandum of the day and hour so fixed shall be endorsed on the instrument or document which shall be deemed to have been produced to the Registrar of Titles for registration on the day and at the hour stated in the endorsement.

As amended by Act of 1952, 1 Eliz. 2 No. 43, s. 40.

Compare ss. 14, 15, and, as to mortgages and encumbrances, Real Property Acts, 1861 to 1963, s. 56, p. 670, ante.

The memorial on the register book must also state the time of production for registration, ibid., s. 34.

Where two competing instruments are produced at the same time, see also ibid., s. 43.

13. Register of powers of attorney. A separate register of powers of attorney affecting lands under the provisions of this Act or which may be the subject of an application to bring them under such provisions shall be kept.

And whenever a power of attorney shall be brought to the Registrar-General for the first time he shall enter a memorial thereof in such register and such entry shall be considered a compliance with the provision of section one hundred and four of the Principal Act requiring that a memorial of such power of attorney shall be entered in the Register Book and no entry of such memorial after the first such entry shall be necessary.

Registrar-General not to require proof of revocation. It shall not be necessary for the Registrar-General to require proof that at the time of the execution of any instrument executed under any such power and tendered to him for registration such power was unrevoked.

As to powers of attorney, see also Real Property Acts, 1861 to 1963, ss. 93, 104, 107, 108, pp. 697, 704, 705, 707, ante; Mercantile Acts, 1867 to 1896, s. 2, title MERCANTILE LAW, Vol. 12, p. 119.

14. Instrument to take effect from date of production for registration. All instruments when registered shall take effect from the date of the production of such instruments to the Registrar-General for registration which date shall be expressed in the certificate of title or other instrument issued by him.

Compare s. 12, and, as to mortgages and encumbrances, Real Property Acts, 1861 to 1963, s. 56, p. 670, ante.

For when registration takes place, see ibid., s. 34.

This section applies to writs of execution, Re Deane’s Transfer (1898), 9 Q.L.J. 106.

A dealing gains priority over a competing dealing lodged after it but prior to its actual registration. See McGlone v. Registrar of Titles (1886), 2 Q.L.J. 182; Re Scanlan’s Application (1887), 3 Q.L.J. 43.


15. Date of instrument. The date of the production of any instrument to the Registrar-General for registration shall for the purpose of registration be deemed to be the date of such instrument.

See also ss. 12, 14, and, as to mortgages and encumbrances, Real Property Acts, 1861 to 1963, s. 56, p. 670, ante.
16. Transfers of fee-simple not in duplicate. Leases may be in triplicate. It shall not be necessary to execute transfers of an estate in fee-simple in lands under this Act in duplicate. Leases of lands subject to the provisions of this Act may be in triplicate.

For the necessity for instruments to be in duplicate, see Real Property Acts, 1861 to 1963, s. 35, p. 655, ante, and s. 25 of this Act.

17. Except in certain cases not necessary for fresh certificates of title to issue to transferees. (1) Upon the registration of any memorandum of transfer of the fee-simple comprising the whole of the land described in any grant or certificate of title it shall not (except where a tenancy in common is thereby created or cancelled) be necessary for the transferee to take out a certificate of title in his own name but he may receive the grant or certificate of title of the transferror or in the case of a sale by a mortgagee the grant or certificate of title of the mortgagor with a memorial of the transfer endorsed thereon and sealed with the seal of the Registrar-General and the Registrar-General shall not after registering any such transfer enter a memorandum cancelling such grant or certificate of title.

Each successive transferee of the whole of such land may at his option take out a certificate of title in his own name or may receive the same grant or certificate of title upon which the memorial or memorials of any previous transfer or transfers have been endorsed as aforesaid but the Registrar-General whenever in his opinion any grant or certificate of title shall be incapable of containing with convenience any further endorsement may require the last transferee to receive a certificate of title in his own name.

(2) Notwithstanding anything hereinbefore contained in this section or in any other provision of the Principal Act or this Act, the Registrar of Titles may require a new certificate of title to be taken out where the duplicate of the grant or certificate of title lodged in connection with any dealing with the land described therein is altered, defaced, mutilated, damaged, dilapidated or partly destroyed.

As amended by Act of 1952, 1 Eliz. 2 No. 43, s. 41.

This section modifies ss. 49, 50 of the Real Property Acts, 1861 to 1963, p. 666, ante.

For power of the Registrar to require surrender of a certificate of contiguous land in the same ownership, in order to issue one inclusive certificate, see Local Government Acts, 1936 to 1967, s. 34 (18), title LOCAL AUTHORITIES, Vol. 10, p. 458.

As to tenancy in common and joint tenancy in land under this Act, see Real Property Acts, 1861 to 1963, s. 40, p. 658, ante.

18. Leases for less than three years valid and same may be registered. Any lease of any land under the provisions of this Act for a term not exceeding three years shall be and be deemed to have been valid to all intents and purposes. If such lease be executed in the form E or to the purport or effect of form E of the schedule to the Principal Act it may be registered.

As to leases not exceeding three years, see also s. 11.

As to leases exceeding three years, see Real Property Acts, 1861 to 1963, s. 52, p. 668, ante.

As to cancellation of registration of leases of extinct corporations, see Real Property Acts Amendment Act of 1956, p. 765, post.
19. Case of purchase of land by mortgagee. Whenever any land subject to any charge or encumbrance shall have been transferred to the person entitled to such charge or encumbrance such person shall be entitled to demand and obtain a certificate of title to the land discharged from such charge or encumbrance.

A transfer of mortgaged land by the mortgagor to the mortgagee has the effect of extinguishing the mortgage, *Fink v. Robertson* (1907), 4 C.L.R. 864, at p. 877.

20. Application of proceeds of sale under mortgage, etc. In case of any sale taking place under the provisions of section fifty-seven of the Principal Act by reason of default in payment of interest only or of any instalments the mortgagee or encumbrancee may retain out of the purchase money received all principal moneys intended to be secured by the mortgage or bill of encumbrance in pursuance of which such sale shall have taken place whether the same shall actually be due or not.

21. Rights in respect of moneys lent on a joint account to survive. Whenever there shall be inserted in any bill of mortgage or bill of encumbrance the words “The money intended to be secured belongs to the mortgagees (or encumbrancees as the case may be) upon joint account” there shall be transmitted to the survivors and survivor of the mortgagees or encumbrancees the joint right at law as well as in equity to recover and receive and give discharges for the money and the interest thereon or the annuity or rent charge secured by the registered bill of mortgage or bill of encumbrance and to exercise and enjoy in respect of the registered bill of mortgage or bill of encumbrance all the powers and privileges vested in mortgagees or encumbrancees by the Principal Act.

Provided that such transmission shall not take effect until the same shall have been registered in manner hereinafter provided.

See generally as to mortgages under these Acts, *Real Property Acts, 1861 to 1963, ss. 56 et seq., p. 670, ante.*

As to transmission on death, see ss. 32, 32A of this Act.

As to the effect of this section, see 27 Halsbury’s Laws of England, 3rd ed., p. 201.

For a case of a mortgage to persons advancing money severally, see *Drake v. Templeton* (1913), 16 C.L.R. 153.

22. Mortgages to building societies and trade unions. The treasurer trustees or other officer of every society or trade union constituted or to be constituted under the Acts for the time being in force in this colony relating to benefit building or friendly societies or trade unions shall forward from time to time to the Registrar-General the names of the treasurer trustees or other officers in whom the property of the society or trade union may by law be or become vested and also notice of the death resignation or removal of existing and the appointment of new officers and a copy of the rules of the society or trade union.

Land under this Act shall be mortgaged or encumbered to such societies or trade unions only by bill of mortgage or encumbrance made to such officers denoted by their official style and not by their own proper names and the persons in whom the property of the society or trade union shall for the time being be vested shall be deemed to be the registered proprietors of such mortgages or encumbrances.
When any instrument which shall be presented for registration affecting the land included in any such mortgage or encumbrance shall purport to be executed by the persons in whom the property of the society or trade union and right to deal with such land appears to the Registrar-General to have been vested at the time of the execution of such instrument he shall register the same and no persons claiming under any such instrument shall be affected by notice express implied constructive or otherwise that the property of the society or trade union was not vested in the person executing the same or that such instrument was executed in contravention of the rules of the society or trade union or the terms of the mortgage and no claim on the assurance fund shall arise from the fact that the property was not so vested or that such instrument was so executed as aforesaid.

As amended by Trade Unions (Property) Act of 1922, s. 2 (1).

This section does not apply to building societies registered under the Building Societies Acts, 1886 to 1968, title SOCIETIES. See ss. 46 (1), 9, 10 of that Act.

As to vesting in trustees of property of friendly societies, see Friendly Societies Acts, 1913 to 1965, s. 30, title SOCIETIES, and of trade unions, see Industrial Conciliation and Arbitration Acts, 1961 to 1964, s. 67, title LABOUR, Vol. 8, p. 474.

With respect to mortgages to primary producers' co-operative associations, see Primary Producers' Co-operative Associations Acts, 1923 to 1965, Schedule Part II, r. 36, title PRIMARY PRODUCE, Vol. 13, p. 776.

Generally with respect to mortgages under this Act, see Real Property Acts, 1861 to 1963, ss. 56 et seq., p. 670, ante.

23. Land to be transferable subject to a charge or easement. Land under the provisions of this Act may be transferred subject to a charge or security or subject to any easement.

A right to the uninterrupted access and enjoyment of light and air to the doors and windows of buildings erected or to be erected constitutes an easement, Commonwealth v. Registrar of Titles (1918), 24 C.L.R. 348.

In Copeland v. Greenhall, [1952] Ch. 488; [1952] 1 All E.R. 809, a suit for injunction, it was held that, although it was no objection to what was alleged to be an easement that it related only to the trade or business of the defendant, a wheelwright, who for many years had used the land for parking vehicles, etc., awaiting repair or removal after repair, the right which he claimed was virtually one of joint user with the plaintiff but too wide and ill-defined to constitute an easement.

For examples of an implied grant of an easement, see Ford v. Heathwood, (1949) Q.W.N. 11 (banana farm; lease for three years; windbreak of natural timber surrounding subject land and necessary for cultivation of bananas maliciously cut down by defendants; £700 damages awarded), and Barry v. Haseldine, [1952] Ch. 835 (way of necessity implied notwithstanding that the land granted was not entirely enclosed by the land of the grantor).

Generally on the implied reservation of an easement, see Re Webb; Sandom v. Webb, [1951] 2 T.L.R. 530; [1951] 2 All E.R. 131, where the Court of Appeal reviewed the authorities in separate judgments.

24. Transfer subject to a charge. When land under the provisions of this Act is intended to be transferred subject to a charge or a security or subject to any easement the transferrer and transferee shall execute a Memorandum of Transfer and Charge in one of the forms T of the schedule hereto and every such memorandum shall be attested by a witness and shall for description of the land intended to be transferred refer to the grant or certificate of title of such land or shall give such description as may be sufficient to identify the part or portion of land intended to be
transferred and shall contain a statement of the estate or interest intended to be transferred and of the charge or security intended to be created and a memorandum of all mortgages and other encumbrances affecting the same and if such land be leased the name and description of the lessee with a memorandum of the lease.

As to attestation, see Real Property Acts, 1861 to 1963, ss. 115, 116.
For certificate of correctness to be endorsed, see ibid., s. 139.
As to necessity for registration of the transfer, see ibid., s. 43.
As to transfers generally, see ibid., s. 48.

25. Transfers subject to a charge to be in duplicate. Every Memorandum of Transfer and Charge creating a charge or security shall be in duplicate, and the Registrar-General shall register the same and after such registration the Registrar-General shall retain one of such Memoranda and shall deliver the other to the person in whose favour the charge or security shall have been created.

26. Transfer subject to charge when registered to be equivalent to a bill of mortgage. Every memorandum of transfer and charge when registered shall have the same effect so far as relates to the charge or security therein mentioned as a bill of mortgage would have had executed by the transferee to the person in whose favour the charge or security shall have been created.

For the effect of a bill of mortgage, see Real Property Acts, 1861 to 1963, ss. 56 et seq., p. 670, ante.
A charge under this section is a property right the improper dealing with which may be restrained by injunction, Broadfoot v. Foxwell (1896), 7 Q.L.J. 4.

27. Certificate of title to transferee under a transfer subject to a charge to be noted as subject to such charge. The Registrar-General shall note on the certificate of title made out to the transferee under any registered Memorandum of Transfer and Charge particulars of the charge security or easement created by such Memorandum.

28. A certificate of title to an easement may be issued on cancellation of transfer subject thereto. Whenever an easement is created by a Memorandum of Transfer and Charge or otherwise it shall be lawful for the Registrar-General at any time upon the application of the transferrer or other person in whose favour the land shall be charged with such easement to deliver to him a certificate of title for such easement.

See also Real Property Acts, 1861 to 1963, ss. 33, 51, pp. 653, 667, ante.

29. Husband consenting to his wife's bill of mortgage to be liable on implied covenants. Whenever any bill of mortgage or bill of encumbrance or memorandum of transfer and charge executed by a married woman shall have been executed by her with the consent of her husband a memorandum of such consent signed by such husband shall be endorsed thereon and whenever a bill of mortgage or bill of encumbrance or Memorandum of Transfer and Charge executed by a married woman having endorsed thereon such consent as aforesaid shall be registered the husband of such married woman shall be bound by all the covenants expressed in such instrument or implied therein by virtue of the sixty-ninth section of the Principal Act in the same manner and to the same extent as if he had been a party to and had executed such instrument.
Such memorandum of consent shall be in the following words or words to the like effect—

I consent hereto and to be liable for covenants.

The concurrence of the husband is not necessary in a dealing with land which is separate property, Married Women's Property Acts, 1890 to 1952, ss. 11, 24, title MARRIAGE AND DIVORCE, Vol. 11, pp. 401, 409.

30. Equitable mortgage may be created. And be it enacted and declared that an equitable mortgage or lien upon land or any estate or interest in or security upon land under the provisions of this Act or any instrument affecting any such land may be created by deposit of the instrument of title and such deposit shall subject to the provisions hereinafter contained have the same effect on the estate interest or security sought to be charged as a deposit of title deeds would have had before the passing of this Act

Caveat may be lodged. Any equitable mortgagee may lodge a caveat against any dealings with the estate interest or security except subject to such mortgage or lien. Every such caveat shall state the amount and nature of the charge or lien.

Prior to enactment of this Act it had been held that an equitable mortgage might be created by deposit of instruments of title, Re Wildash and Hutchison (1877), 5 S.C.R. 46; 1 Q.L.R., Pt. II. 47; Burrell v. Hope (1871), 2 S.C.R. 155; Chambers v. Bonar (1867), 1 S.C.R. 160. The application generally of the principles of equity to land under these Acts is now preserved by s. 51, post.

As to caveats, see Real Property Acts, 1861 to 1963, ss. 98 et seq., p. 699, ante. This section does not operate to take away the right of an equitable mortgagee by deposit of title deeds to lodge a caveat under s. 98 of that Act, forbidding registration of any dealing with the mortgaged land, Ex parte Hill and Dodgson, [1903] St. R. Qd. 101.


See Real Property Acts, 1861 to 1963, ss. 56 et seq., p. 670, ante, as to registered mortgages.


31. If buildings destroyed rent and obligation to repair to be suspended. Whenever any buildings erected upon any demised property under the provisions of this Act shall be 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 it shall be by the lease otherwise stipulated the covenant to pay rent and to keep and yield up the demised property in good and tenantable repair specified in the seventy section of the Principal Act shall be suspended until the lessor shall have reinstated the buildings in good and tenantable repair.

This section does not apply to a lease of settled land made by a tenant for life under the Settled Land Act of 1886, title SETTLED LAND, ibid., s. 69 (7).

As to application of this section to unregistered leases for less than three years, see Hill v. Cox (1882), 1 Q.L.J. 78.

This section imposes no liability on the lessor to rebuild, Hawke v. McGrath (1900), 10 Q.L.J. 83.

If the damage is repaired by any person and the lessee takes the benefit, semble, the covenants revive, ibid.

As to destruction, before date fixed for completion, of premises sold with vacant possession, where there is no express bargain as to flood or fire, see Cook v. Taylor (1942), 58 T.L.R. 278; [1942] 2 All E.R. 85.
32. **Heir at law or devisee may apply to Registrar-General to be registered as proprietor.** The heir at law devisee tenant by the curtesy or dower or other person claiming to be entitled to any estate or interest in land of a deceased proprietor may make application in writing to the Registrar-General to be registered as proprietor of such estate or interest and shall deposit with him the certificate of the death the will or an office copy or probate of the will of the deceased proprietor or any settlement under which such applicant claims or in the case of intestacy such evidence of heirship as he may be enabled to produce and such application shall state the estate or interest in such land claimed by him and the nature of every estate or interest held by other persons at law or in equity in such land within the applicant's knowledge and that he verily believes himself to be entitled to the estate or interest in such land in respect of which he applies to be registered and the statement made in such application shall be verified by the oath or statutory declaration of such applicant.

Provided always that the applicant shall surrender the existing grant or certificate or other instrument of title of the land in respect to which he claims to be registered prior to his being entered in the register book as hereinafter mentioned unless the production of such grant or certificate or other instrument of title be duly dispensed with.

See also s. 32A.

See also Real Property Acts, 1861 to 1963, s. 89, p. 694, ante.

As to vesting on intestacy, see Intestacy Act of 1877, ss. 12, 14, 25, title SUCCESION; Public Curator Acts, 1915 to 1957, s. 30, title TRUSTEES AND EXECUTORS.

As to transmission to the Public Curator, see ibid., ss. 27, 113.

As to contribution to be made to Consolidated Revenue in respect of the land, see Real Property Acts, 1861 to 1963, s. 41, p. 658, ante, and notes thereto.

As to "heir-at-law", see Intestacy Act of 1877, s. 27, title SUCCESION.

The legal estate in land under this Act is conveyed by will without registration, Holt v. Deputy Federal Commissioner of Land Tax (1914), 17 C.L.R. 720.

As to when death will be presumed, see Ex parte Genge (1873), 3 S.C.R. 165.

As to application by the personal representatives of a deceased executor or administrator, see Maddock v. Registrar of Titles (1915), 19 C.L.R. 681.

As to whether application under this section is the proper course where a person claims land under an agreement that he shall be entitled thereto on the death of the registered proprietor, see Wolfson v. Registrar-General (1934), 51 C.L.R. 300.

The notification of registration on the certificate of title should not be accompanied by a notification of subsisting equities. The proper way of protecting such rights is by caveat, ibid.


See also Power on The Real Property Acts of Queensland, p. 118.

32A. **Transmission of land in intestacy.** In the case of the death (whether before or after the passing of "The Real Property Acts Amendment Act of 1942") of a registered proprietor of any estate or interest in land under "The Real Property Acts, 1861 to 1942," the registrar may, on application made to him in that behalf, and if satisfied that—

(a) No will has been left by such registered proprietor and no administration of his estate has been taken out within six months after his death; and
(b) The value of his estate does not exceed two thousand dollars, cause transmission as administrator of such estate or interest in the land concerned to be entered up in the register book in favour of such one or more as the Master of Titles may determine of the person or persons who would have been entitled upon the grant of such administration to be entered up as administrator.

Thereupon such person or persons shall have all the rights, powers, and liabilities in respect of the land as if administration of the estate of the deceased person had been granted to him or them:

Provided that the applicant shall surrender the existing grant or certificate or other instrument of title of the land in respect of which such application is made prior to such transmission as mentioned aforesaid being entered up, unless the production of such grant or certificate or other instrument of title be duly dispensed with.

(2) Subsequent grant of probate or administration. Compare the Act 31 Vic. No. 9, s. 39. Notwithstanding anything to the contrary contained in this section, in any case where the court, in the exercise of its powers, authorities, and jurisdiction, shall grant probate or administration in respect of the estate of any such deceased person aforesaid subsequent to the entry up in the register book of such transmission of his estate and interest in the land concerned, all acts, matters, and things done by, and all payments bona fide made by and to, the person or persons in whose favour such transmission has been entered up, up to the date of such grant, which if made by and to a person to whom a grant of probate or administration had been made would have been lawfully done and made, shall be and be deemed to have been so lawfully done and made.

Moreover, on the grant of such probate or administration, the person or persons in whose favour such transmission has been entered up shall take all necessary steps and perform all necessary acts to hand over to and account to the grantee for any property in his or their hands at the date of such grant, and to render an account of all property passing through his or their hands from the entry up of transmission to the date of such grant.

Inserted by Act of 1942, 6 Geo. 6 No. 14, s. 5; as amended by Act of 1952, 1 Eliz. 2 No. 43, s. 42; Act of 1963, No. 25, s. 10.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

Acts referred to:

Real Property Acts Amendment Act of 1942, not reprinted.


See also s. 32.

Entry of transmission under this section divests land from the Public Curator. See In the Lands of Reibelt, [1946] Q.W.N. 17.

33. Provisions of Principal Act as to bringing land under it to apply to applications for transmission. The several provisions of the Principal Act respecting applications to bring land under the provisions thereof shall so far as the same are applicable extend and apply to all applications made under sections thirty-two and 32A of this Act.

As amended by Act of 1963, No. 25, s. 11.

See Real Property Acts, 1861 to 1963 ss. 17 et seq., p. 643, ante.
The Registrar is not bound to enter up transmission to a person who appears to him not to be entitled notwithstanding that he has advertised his intention to do so and no caveat has been lodged, *Queensland Trustees Ltd. v. Registrar of Titles* (1893), 5 Q.L.J. 46.

The Registrar is not guilty of misfeasance by refusing to receive a caveat after the period advertised, ibid.

In *Re Glasby*, [1954] Q.W.N. 33, Philp, J., upon proof by affidavits of the contents of a lost will, made an order directing the Registrar of Titles to register the applicant devisee as the proprietor of an estate in fee simple, subject to notice by advertisement of the order and of the rights of persons desiring to oppose the registration thereof. That decision was followed by Stanley, J., in *Re Simpson*, [1954] Q.W.N. 42.

34. Transmission by registered adjudication of insolvency subsequently annulled. Whenever transmission shall take place by reason of an adjudication of insolvency on which a transmission has been entered under the eighty-sixth section of the Principal Act being annulled an office copy or other duly certified copy of the order annulling the adjudication shall be left with the Registrar-General and he shall thereupon enter a memorandum of the particulars of such order in the register book against any property undisposed of under the previous entry and upon such entry being made the person named in that behalf in the order annulling the adjudication or if no person be so named then the person who was adjudged insolvent shall be deemed to be the proprietor of the property so undisposed of.

As to annulment of a sequestration order and its effect, see Bankruptcy Act 1924-1965, s. 124 (Commonwealth).

35. Sheriff’s sales. Whenever any land under the provisions of this Act or any estate or interest therein or security thereon shall have been sold under any writ of execution registered under the ninety-first section of the Principal Act the Sheriff or the Registrar of the District Court (as the case may be) shall execute a transfer thereof to the purchaser in form U of the schedule hereto.

Such transfer shall be subject to all equitable mortgages and liens notified by any caveat lodged with the Registrar-General prior to the date of the registration of the writ of execution and to all other encumbrances liens and interests notified by memorandum entered on the register and the Registrar-General shall on receiving such transfer make an entry thereof in the register book and on the making of such entry the purchaser shall subject as aforesaid be deemed the transferee or owner of such land estate interest or security.

As amended by Act of 1952, 1 Eliz. 2 No. 43, s. 43.

When land is sold in execution of a judgment of a Magistrates Court, see Magistrates Courts Rules, 1960, rules 240, 241, title MAGISTRATES COURTS, Vol. 11, p. 140.

With respect to land not under these Acts, see Common Law Process Acts, 1867 to 1960, s. 58, title SUPREME COURT; Magistrates Courts Rules, 1960, rule 241.

Prior to this Act there was no means by which the Sheriff could convey land under this Act to the purchaser, who had an equitable title merely. See *Bond v. McClay*, [1903] St. R. Qd. 1, at p. 9.

The Sheriff cannot transfer any greater interest than the debtor could, but for the writ, have transferred, *Bond v. McClay*, supra. See further, notes to Real Property Acts, 1861 to 1963, s. 91, p. 695, ante.

As to the effect of transfer by the Sheriff where sale is made in execution of a judgment against one of several personal representatives of a deceased person, see *Union Bank v. Harrison, Jones & Devlin Ltd.* (1910), 11 C.L.R. 492.
An injunction against the registration of a transfer by the Sheriff must be directed to the proposed transferee, not to the Registrar of Titles, *Ex parte Hunter* (1892), 9 Q.L.J. (N.C.) 59.

36. Caveats to state addresses of persons to whom the same are to be notified. Every caveat left under the provisions of the Principal Act with the Registrar-General shall state so far as the caveator can do so the name and address of the person to whom the same is required to be notified by the Registrar-General under the ninety-ninth section of the Principal Act.

37. Notification of caveat to be posted. Notifications under the said ninety-ninth section may be sent through the post in a prepaid registered letter addressed to the person entitled to notice at his last known place of abode and if so sent shall be sufficient.

38. Persons interested may procure removal of caveat. Any person interested presently prospectively or otherwise in land or any estate or interest in or security upon land or any instrument affecting land whose right to deal therewith or to have any entry made in the register with respect thereto is forbidden by any caveat or who is otherwise prejudicially affected by such caveat may proceed to procure the removal of such caveat in the manner provided by the ninety-ninth section of the Principal Act.

39. Caveats to lapse unless proceedings taken. After the expiration of three calendar months from the lodgment with the Registrar-General of any caveat under the ninety-eighth section of the Principal Act such caveat shall be deemed to have lapsed unless it shall have been lodged with the written consent of an equitable mortgagee or the registered proprietor of the land affected thereby or unless the person by whom or on whose behalf the same was lodged shall within that time have taken proceedings in any court of competent jurisdiction to establish his title to the estate or interest therein specified and shall have given written notice thereof to the Registrar-General.

The consent of the registered proprietor to a caveat does not prevent the court from making an order for its withdrawal in a proper case, *Re Hill and Dodgson*, [1903] St. R. Qd. 101.

It appears to be sufficient if the proceedings are commenced within the three months. See notes to s. 25 of Real Property Acts, 1861 to 1963, p. 650, *ante*.

As to waiver of the right to regard a caveat as lapsed, see notes to s. 25 of Real Property Acts, 1861 to 1963, p. 650, *ante*.

40. Second caveat not to be lodged on same grounds. Whenever any caveat shall have lapsed under the last preceding section or shall have been ordered to be removed by any order made by the Supreme Court or a Judge thereof it shall not be lawful for the same person to lodge another caveat on directly or substantially the same grounds upon which the caveat so lapsed or ordered to be removed was lodged.

As amended by Act of 1952, 1 Eliz. 2 No. 43, s. 44.

For right of action against a person lodging a caveat without reasonable cause, see Real Property Acts, 1861 to 1963, s. 103, p. 703, *ante*.

See *Ex parte Davenport* (1873), 3 S.C.R. 117; *Ex parte Davenport* (1873), 3 S.C.R. 121, both cited under Real Property Acts. 1861 to 1963, s. 99, p. 700, *ante*.

41-45. (Repealed.)

Repealed by Land Surveyors Act of 1908, s. 2.
46. Vesting order to be registered. Whenever the Supreme Court shall make any order that any land under the provisions of this Act or any estate or interest therein or security thereon shall vest in any person for all the estate of the registered proprietor of such land estate or interest or security the Registrar-General shall on production of such order to him enter the particulars thereof in the register book and make and issue all such certificates of title or other instruments as may be necessary to give full effect to such order.

See also Real Property Acts, 1861 to 1963, s. 83, p. 690, ante.

Vesting orders are made under Trustees and Executors Acts, 1897 to 1964, title TRUSTEES AND EXECUTORS. See ss. 27 et seq., thereof.

Vesting orders may also be made under Encroachment of Buildings Act of 1955, s. 8, p. 627, ante.

Upon appointment of the Public Curator as trustee or personal representative, see Public Curator Acts, 1915 to 1957, s. 53 (3), title TRUSTEES AND EXECUTORS.

47. In case of ejectment of defendant who has made improvements their value may be assessed. Whenever an action of ejectment shall be brought against a registered proprietor or any person holding a grant or certificate of title in any case other than the case of a fraudulent proprietor in which an action of ejectment is not barred by the Principal Act if the defendant or any person through whom he claims shall have made improvements on the land since obtaining a certificate of title thereto then whether he admit or deny the plaintiff's title he may give notice to the plaintiff of the fact of such improvements being made and may set a value thereon and also on the land as distinct therefrom and give evidence thereof at the trial

and if a verdict be found for the plaintiff or his title be admitted the jury shall assess the value of the alleged improvements and shall also separately assess the value which the land would have possessed if the said improvements had not been made

And no writ of possession shall issue in such case unless the plaintiff shall first pay into court for the use of the defendant the value of the improvements so assessed deducting only the costs (if any) to which he shall be entitled in the action

The plaintiff shall either pay for improvements or be entitled to damages for the loss of the improved land. And if the plaintiff shall fail to make such payment 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 and in either case the Registrar-General shall be entitled under the powers in the Principal Act contained to require to be delivered up any certificate of title which shall be held by the party whose right to the land shall have determined

Registrar-General to be made a co-defendant. Assurance fund to be liable only for actual loss sustained by defendant. Provided that in every case in which the defendant shall be entitled to indemnity from the assurance fund the Registrar-General shall be made a co-defendant as trustee of such fund and may defend the action either severally or jointly or may leave the defence wholly to his co-defendant as he shall see fit
and in no case shall the assurance fund be liable to the principal defendant for any greater damages than he shall actually sustain as the result of such action after using all reasonable diligence in the defence thereof.

As to actions for recovery of land under these Acts, see Real Property Acts, 1861 to 1963, s. 123, p. 715, ante.

For power of the Registrar of Titles to require a certificate of title to be delivered up, see ibid., s. 132.

Compare deduction of value of improvements made after deprivation from value of land in determining liability of Assurance Fund, as to which see Hayes v. Bourne (1895), 7 Q.L.J. 146.

48. Unregistered instrument to confer claim to registration. Every instrument signed by a proprietor or by others claiming through or under him purporting to pass an estate or interest in or security upon land for the registration of which provision is made by this Act shall until registered be deemed to confer upon the person intended to take under such instrument or other person claiming through or under him a right or claim to the registration of such estate interest or security

And the Registrar-General upon application made for that purpose by any person other than the person immediately claiming under or in respect of the instrument signed by a proprietor may either reject such application altogether or register the applicant as proprietor of the land estate interest or security forthwith or at the expiration of some defined period of time and may further direct such other entries to be made as may be in his opinion necessary

Provided that no such registration or entry as last aforesaid which would interfere with the right of any person claiming under any instrument previously registered under this Act shall be made except subject thereto.

As to necessity for registration of instruments, see Real Property Acts, 1861 to 1963, s. 43, p. 659, ante, and notes thereto. As to creation of equitable interest by unregistered instruments, see notes to Real Property Acts, 1861 to 1963, S5. 115, 116, p. 710, ante, certified as correct ibid., s. 139, p. 722, ante, and delivered, Brunker v. Perpetual Trustee Co. Ltd. (1937), 57 C.L.R. 555.

A voluntary instrument not in the form required by this Act will not pass any interest either at law or in equity, Anning v. Anning (1907), 4 C.L.R. 1049; Finucane v. Registrar of Titles, [1902] St. R. Qd. 75. A transfer is not in registrable form where it does not contain a memorandum of encumbrances affecting the land, Brunker v. Perpetual Trustee Co. Ltd., supra. A voluntary transfer in registrable form will not be effective where it has not been delivered by the person executing it, Brunker v. Perpetual Trustee Co., supra: Macedo v. Stroud, [1922] 2 A.C. 330; Re Skinner (1894), 6 Q.L.J. 68. As to whether delivery of the certificate of title also is necessary to make the gift enforceable against the transferor, see Brunker v. Perpetual Trustee Co. Ltd., supra. Where, however, all these requirements are satisfied, the transferor has done everything which it is necessary for him to do to perfect the gift, and the voluntary transferee is entitled to be registered as proprietor, O'Regan v. Commissioner of Stamp Duties, [1921] St. R. Qd. 283; [1921] Q.W.N. 41; Milroy v. Lord (1862), 4 De G. F. & J. 264.

An instrument otherwise ineffective to pass any interest in land will not be enforced as a declaration of trust unless it shows an intention on the part of the maker to constitute himself a trustee, Macedo v. Stroud, [1922] 2 A.C. 330; Anning v. Anning (1907), 4 C.L.R. 1049; Finucane v. Registrar of Titles, [1902] St. R. Qd. 75.

For an example of a declaration that the defendants were bound to sign and complete a memorandum of grant of easement prepared by the plaintiff's solicitor in accordance with the agreement between the parties, see Hancock v. Wilson, [1956] St. R. Qd. 266.
49. Provision for transmission of land of deceased proprietor and dealing with unregistered instruments and other documents. If any person entitled to be registered as the proprietor of any land estate or interest under the provisions of this Act shall die before becoming registered such land estate or interest shall be transmitted in like manner as if such deceased person had actually been registered as the proprietor thereof.

And any person claiming an estate or interest in land under the provisions of this Act by virtue of unregistered instruments or other documents purporting to pass such estate or interest shall be deemed a person entitled to be registered within the meaning of this section and the Registrar-General upon application to register an estate or interest so claimed may either reject such application altogether or register the applicant as proprietor of the land estate interest or security forthwith or at the expiration of some defined period of time and may further direct such other entries to be made and notices to be published as may be in his opinion necessary.

Provided that no such registration or entry as last aforesaid which would interfere with the right of any person claiming under any instrument previously registered under this Act shall be made except subject thereto.

See ss. 32, 32A, p. 746, ante, and Real Property Acts, 1861 to 1963. ss. 88, 89, p. 692, ante.

As to application by the personal representatives of a deceased executor or administrator, cf. Maddock v. Registrar of Titles (1915), 19 C.L.R. 681.

50. Searches and copies of registered instruments. Any person shall upon payment of the fees prescribed by the Principal Act be entitled to search for demand and obtain copies of any instrument affecting land under the provisions of this Act which shall have been lodged or deposited in the office of the Registrar-General whether the same shall have been cancelled or not.

See also Real Property Acts, 1861 to 1963, ss. 121, 122, p. 714, ante. This section appears to modify s. 46 of that Act.

For rights of the Public Curator and Local Authorities to search and inspect, see Public Curator Acts, 1915 to 1957, s. 27 (4), title TRUSTEES AND EXECUTORS; Local Government Acts, 1936 to 1967, s. 52 (5), title LOCAL AUTHORITIES, Vol. 10, p. 548.

51. Equitable jurisdiction not abolished. Nothing contained in this Act shall be construed to take away or affect the jurisdiction of the courts of law and equity on the ground of actual fraud or over contracts or agreements for the sale or other disposition of land or over equitable interests generally.

And the intention of this Act 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 Act on proprietors of land or of any estate or interest in or security upon land under the provisions of this Act equities may be enforced against such proprietors in respect of their estate interest or security in the same manner as equities may be enforced against proprietors in respect of land not under the provisions of this Act.

Provided that no unregistered estate interest security contract or agreement shall prevail against the title of any subsequent purchaser for valuable consideration duly registered under this Act.

See also ss. 30, 48; Real Property Acts, 1861 to 1963. ss. 66. 79, pp. 681, 688, ante.
Prior to this Act it had been held that equitable interests might exist in land under the Real Property Acts, 1861 to 1963, Re Wildash and Hutchison (1877), 5 S.C.R. 46; 1 Q.L.R., Pt. II, 47, and this section constitutes an express recognition of the position as it would be apart from this section, Barry v. Heider (1914), 19 C.L.R. 197, at p. 207.

This section allows of the enforcement of a personal equity against a registered proprietor, Conroy v. Knox (1901), 11 Q.L.J. 112. An unregistered instrument gives the right to have any subsequent dealing with the land, even though registered, set aside on the ground of the fraud of the person taking under it. McEllister v. Biggs (1883), 8 App. Cas. 314; Conroy v. Knox, supra. An equitable mortgagee can exercise a power of sale in his mortgage, Coakley v. Chalmers, [1930] Q.W.N. 30.

In determining priority as between equitable interests the principles applicable to land not under this Act are in general to be applied, Lynch v. O'Keefe, [1930] St. R. Qd. 74. See further, notes to Real Property Acts, 1861 to 1963, s. 43, p. 659, ante.

Under the proviso to this section, the title of a purchaser for value, who becomes registered, prevails over an unregistered equitable estate or interest previously created even though the purchaser had notice of it, except in the case of actual fraud—dishonesty of some sort—not constructive or equitable fraud.

Where there is notice of an unregistered interest and nothing more, it is not a fraud to take a transfer that will defeat the interest. See Friedman v. Barrett; Ex parte Friedman, [1962] Qd. R. 498. See further this case noted to s. 11, ante.


See also Power on The Real Property Acts of Queensland, p. 106.

52. Commencement of Act. This Act shall commence and take effect on and from the first day of January one thousand eight hundred and seventy-eight.

THE SCHEDULE

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

Generally as to the application of the forms, see the Real Property Act of 1861, ss. 35, 9, pp. 655, 638, ante. For power of the Registrar of Titles to alter forms, see ibid., ss. 9, 3, pp. 638, 634, ante.

[s. 24]

T

QUEENSLAND

MEMORANDUM OF TRANSFER COMBINED WITH CREATION OF CHARGE

This indenture made this day of , 19 , between A.B. of registered as proprietor of the fee-simple of 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 charge 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 county of parish of containing more or less commencing [here set out description] and being the land described in the Crown grant [or certificate of title] No. register book volume folio and all his estate right title and interest therein to hold the same subject to such encumbrances liens and interests as are notified by memorandum endorsed hereon and subject also to the charge [or easement] 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 presents are executed the said C.D. doth hereby declare that he accepts the transfer hereinbefore contained subject to the following conditions viz.—

[Here state the particulars of the charge or easement as in a bill of mortgage or conveyance of an easement.]

Signed sealed and delivered etc.

I desire that a certificate of title in my name may issue with memorandum of encumbrance thereon accordingly.

C.D.

[Queensland]

MEMORANDUM OF TRANSFER COMBINED WITH CREATION OF CHARGE

This indenture made this day of , 19 , between A.B. of registered as proprietor of the fee-simple of the land herein described of the first part and C.D. of of the second part and E.F. 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 transfer unto the said C.D. and his heirs all that piece of land situated in the county of parish of containing more or less commencing [here set out description] and being the land described in Crown grant [or certificate of title] No. register book volume folio and all his estate right title and interest therein to hold the same subject to such encumbrances liens and interests as are notified by memorandum endorsed hereon and subject also to the charge [or easement] 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 charge or easement as in a bill of mortgage.]

Signed sealed and delivered etc.

I desire that a certificate of title in my name may issue with memorandum of encumbrance thereon accordingly.

———

[s. 35]

U

QUEENSLAND

MEMORANDUM OF TRANSFER UNDER WRIT OF FI. FA.

I [insert name] as the Sheriff of Queensland [the person appointed to execute the writ hereinafter mentioned] in pursuance of a writ of fi. fa. tested the day of and issued out of the Supreme Court [or as the case may be] in an action wherein is the plaintiff and the defendant which said is registered as the proprietor of an estate [here state nature of the estate 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 dollars paid to me by E.F. [insert addition] bargain sell release and transfer from 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 county of parish of containing more or less commencing [here set out description] and being the land described in Crown grant [or certificate of title] No. register book volume folio to hold the same subject to such encumbrances liens and interests as are notified by memorandum endorsed hereon.

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

Signed on the day above named by the said [Sheriff] in the presence of

Mortgages and Encumbrances referred to.