

(2) Nothing contained in subsection (1) shall be construed as disqualifying the Associate Commissioners (or either of them) holding office at the commencement of this section, and such Associate Commissioners shall be entitled to continue in office for the remainder of the term for which they were appointed; but the provisions of that subsection shall apply to and in respect of any vacancy occurring after the commencement of this section in the office of such Associate Commissioners, whether such vacancy occurs by reason of the expiration of the term of office of either of such Associate Commissioners or otherwise.

REAL PROPERTY.

11 & 12 GEO. VI. No. 83.

AN ACT to amend the *Real Property Act 1862*.
[19 December, 1947.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title
and citation.

1—(1) This Act may be cited as the *Real Property Act 1947*.

(2) The *Real Property Act 1862**, as subsequently amended, is in this Act referred to as the Principal Act.

Percentage
in the pound
to be levied
for assurance
of title.

2 Section twenty-eight of the Principal Act is amended by inserting after the word "Act" (second occurring) in subsection (1) the words "acquired by possession or".

Estate of
registered
proprietor
paramount.

3 Section forty of the Principal Act is amended by inserting in paragraph I., after the word "Act", the words "not being a proprietor whose estate or interest in that land has been affected by the issue of a new certificate of title in respect of such land in pursuance of an order under section one hundred and fifty-one".

* 25 Vict. No. 16. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 1002.

4 After section forty-one of the Principal Act the following section is inserted:—

“41A.—(1) If, in the opinion of the Recorder, any instrument which is lodged with the Recorder for registration or in connection with any dealing with land is erroneous, incomplete, or defective in any particular, the Recorder may, by notice in writing to the person by whom the instrument was lodged, or his solicitor, agent, or attorney, require that person, solicitor, agent, or attorney to re-execute, complete, or correct the instrument or procure the re-execution, completion, or correction thereof, as the case may be, in such manner as may be specified in the notice.

Power of Recorder to require instruments to be re-executed, completed, or corrected.

(2) A notice under subsection (1) shall be forwarded to the person to whom it is directed by registered post in an envelope marked, on the outside, with the words ‘Lands’ Titles Office’.

(3) If any person to whom a notice under subsection (1) is forwarded in accordance with the foregoing provisions of this section, fails, within the prescribed period, to re-execute, complete, or correct the instrument to which the notice relates, or, as the case may be, to procure the re-execution, completion, or correction thereof, in accordance with the requirements of the notice, the Recorder may, if he thinks fit, refuse to deal with such instrument.

(4) If the Recorder refuses to deal with any instrument in pursuance of subsection (3) he shall, by notice in writing forwarded by registered post to the person by whom the instrument was lodged or to his solicitor, agent, or attorney, notify his refusal to deal with such instrument, and thereupon one-half of the fees paid on the lodging of the instrument may be retained by the Recorder.

(5) All fees retained by the Recorder in accordance with subsection (4) shall be paid into the Consolidated Revenue in accordance with the provisions of this Act.

(6) In subsection (3), ‘the prescribed period’ means—

- I. In the case of any caveat, surrender, discharge of incumbrance, or writ of *feri facias*, a period of twenty-one days after the date of the notice under subsection (1): and
- II. In any other case, a period of three months after the date of the notice under subsection (1).”.

5 Section forty-five of the Principal Act is amended by adding at the end thereof the following subsection:—

“(4) In any case where twelve or more transfers of any allotments forming part of the land comprised in any grant or certificate of title have been registered, the registered proprietor shall, if so directed, in writing, by the Recorder, make application for the issue of a new certificate of title in respect of that part of the land of which he remains the registered proprietor, and, in any such case, the Recorder may refuse to register any further dealings with that part of such land until the new certificate of title has been issued:

Fresh certificate of title to be issued to purchaser.

Provided that, if, after the receipt of a direction under this subsection, the registered proprietor lodges with the Recorder a statutory declaration that further transfers of parts of the land were prepared for registration before the receipt of such direction, the Recorder shall, unless he withdraws such direction, issue the new certificate of title within twenty-one days after the lodging of such statutory declaration.”.

Mortgage or incumbrance not to operate as transfer.

6 Section fifty-three of the Principal Act is amended by adding at the end of subsection (2) the words “, but no purchaser shall be bound to inquire whether default has been made or has continued, as provided by this subsection, or whether the notice prescribed by this subsection has been given, or otherwise as to the propriety or regularity of the sale of the land.”.

Caveat may be lodged.

7 Section eighty-two of the Principal Act is amended by adding at the end of subsection (4) the words “, or by the solicitor, agent, or attorney by whom the caveat was lodged.”.

Remainderman may apply to be registered as such.

8 Section eighty-nine of the Principal Act is amended by inserting after the word “applicant” in subsection (3) the words “, or such other person as the applicant may, by writing under his hand, appoint,”.

Registered proprietor protected against ejectment.

9 Section one hundred and twenty-four of the Principal Act is amended by inserting after the words “registered proprietor” in paragraph VI. of subsection (1) the words “(not being a registered proprietor whose estate or interest in any land has been affected by the issue of a new certificate of title in respect of that land in pursuance of an order under section one hundred and fifty-one)”.

When action may lie against Recorder as nominal defendant.

10 Section one hundred and twenty-seven of the Principal Act is amended by inserting after the word “person” (first occurring) in subsection (2) the words “, not being a person whose estate or interest in any land has been affected by the issue of a new certificate of title in respect of that land in pursuance of an order under section one hundred and fifty-one,”.

Application for title by possession.

11 Section one hundred and forty-six of the Principal Act is amended by inserting after the word “shall” in subsection (3) the words “, unless the Recorder, in any particular case, otherwise determines,”.

Effect of vesting order.

12 Section one hundred and fifty-five of the Principal Act is amended by omitting subsection (2).

13 After section one hundred and fifty-six of the Principal Act the following sections are inserted:—

Order for stay of registration.
Cf. W.A. Act, 56 Vict. No. 14, ss. 143, 149, 150.

“157.—(1) Any person proposing to deal *bona fide* for value with the registered proprietor of any land may, with the consent in writing of the registered proprietor or his

agent, and on notifying the Recorder of the particulars of the proposed dealing, lodge with the Recorder an application for stay of registration.

(2) If the Recorder is satisfied that the registered proprietor is free to deal with the applicant in the manner proposed, the Recorder shall, on payment of the prescribed fee, make an order staying registration of any instrument affecting the land referred to in the application for a period not exceeding forty-eight hours after the time specified in the order, and shall give to the applicant a copy of the order.

(3) An application under subsection (1) shall be in accordance with form XVII. in the first schedule.

(4) An order under subsection (2) shall be in accordance with form XVIII. in the first schedule, and shall be endorsed on the form of application therefor.

(5) If within the period of forty-eight hours referred to in subsection (2) a properly perfected instrument effecting the proposed dealing is lodged for registration, such instrument shall have priority over any other instrument which may be lodged for registration after the time mentioned in the order under that subsection, and the same shall be registered notwithstanding any caveat or writ of *feri facias*, or any other application which may have been lodged with the Recorder after the time mentioned in such order.

(6) Subject to subsection (5), all other instruments, and all caveats, writs of *feri facias*, and applications lodged in respect of the land to which the order under subsection (2) relates shall be dealt with in the same manner, and shall have the same priority as between themselves, and shall be as effectual, as if such order had not been made.

“158.—(1) Any registered proprietor of land held under the provisions of this Act which is subject to a mortgage or incumbrance, may, if no payment of principal moneys or interest secured thereby, or any acknowledgment thereof by the mortgagor or incumbrancer, has been made for a period of twelve years and upwards, apply to the Recorder for an order declaring that the mortgage or incumbrance is discharged and that an endorsement of such discharge be entered on the mortgage or incumbrance and on the grant or certificate of title relating to that land.

Application
for order
declaring
mortgage, &c.,
discharged.

(2) An application under this section shall be in writing addressed to the Recorder and shall state that no payment of principal or interest moneys, or any acknowledgment thereof, has been made under the mortgage or incumbrance for twelve years and upwards and shall specify the registered number and the date of such mortgage or incumbrance, and the volume and folio of the certificate of title or grant relating to the land affected thereby, and the full name and last known address of the mortgagee or incumbrancee.

(3) Every application under this section shall be verified by the statutory declarations of the applicant and of such other persons as the Recorder may require.

(4) Upon receipt of an application under this section, the Recorder shall cause the solicitor to report on the application and shall thereafter refer the same to the Commissioners for their consideration.

(5) The Commissioners may reject the application, or may make such requisitions as to any matter relating to the application as they think fit.

(6) If an application is not rejected by the Commissioners, they shall direct that notice thereof shall be advertised in the *Gazette* and in a newspaper and be given to any persons named by them, and notice shall be given to every person appearing by the register to have any interest in the mortgage or incumbrance.

(7) The Commissioners shall appoint a period of not less than one month or more than twelve months from the publication of the advertisement or service of the notice (whichever occurs later), after the expiration of which the Recorder may, unless a caveat is lodged forbidding the same, make an order declaring that the mortgage or incumbrance is discharged.

Notice of application.

“159.—(1) A notice under subsection (6) of section one hundred and fifty-eight shall—

- I. Specify the volume and folio of the grant or certificate of title affected by the application, and the registered number and the date of the mortgage or incumbrance: and
- II. Be dated, and shall be served by being forwarded by registered post to each person to be served at his address stated in the register book or believed by the Recorder to be the last known address of that person, as the case may be, in an envelope endorsed on the outside with the words ‘Lands Titles Office’.

(2) The Recorder shall cause a copy of the notice to be filed with a memorandum of the same having been sent out, and such memorandum shall be sufficient evidence that the notice has been forwarded as required by this section.

(3) At any time prior to granting an application under section one hundred and fifty-eight, the Commissioners may, notwithstanding any direction previously given by them as to the application, reject the same if the applicant fails to comply to their satisfaction with any requisition made by them within such time as they consider to be reasonable.

Caveats by persons claiming under mortgage, &c.

“160.—(1) Any person claiming any interest in the mortgage or incumbrance in respect of which any application under section one hundred and fifty-eight is made may, before the granting thereof, lodge a caveat with the Recorder forbidding the granting of the application.

(2) A caveat under this section shall in all respects be in the same form, and be subject to the same provisions, and have the same effect with respect to the application against which it is lodged, as a caveat against an application to bring land under the provisions of this Act.

"161.—(1) Subject to sections one hundred and fifty-eight, one hundred and fifty-nine and one hundred and sixty, after the expiration of the time appointed under subsection (7) of section one hundred and fifty-eight the Commissioners may, if satisfied with the evidence supplied by the applicant, make an order declaring that the mortgage or incumbrance is discharged. Granting of application.

(2) Where an order is made under this section the Commissioners shall direct the Recorder to make such entries in the register book and such indorsements on the mortgage or incumbrance as are necessary to give effect to the order.

(3) The Recorder may, by notice in writing, require the mortgagee or incumbrancee to deliver up to the Recorder the mortgage or incumbrance and the grant or certificate of title relating to the land affected by such mortgage or incumbrance, and the grant or certificate shall be delivered up accordingly."

14 The first schedule to the Principal Act is amended— First schedule: Forms.

- (a) by omitting from form VIII. the words "I accept the above-written transfer. C.D., Transferee.";
- (b) by omitting from form XII. the word "twenty-one" and substituting therefor the word "fourteen"; and
- (c) by inserting after form XVI. the following forms:—

" Form XVII.

(Section 157.)

APPLICATION FOR ORDER FOR STAY OF REGISTRATION AS TO TITLE OF A.B.,
TO LAND COMPRISED IN , REGISTERED VOLUME , FOLIO .

I, C.D., of , now dealing *bona fide* for value with the abovenamed A.B., as to land comprised within the above [certificate of title or grant, as the case may be] in order to protect such dealing hereby apply for a stay of registration of any instrument affecting the land proposed to be dealt with for forty-eight hours from [here specify time from which the period of forty-eight hours is to run].

The particulars of the proposed dealing are as follows:—

1. The transaction is—(state whether sale, mortgage, exchange, lease, or other dealing for value).
2. The consideration is—(state the price to be paid, or amount lent, rent to be paid, or other consideration).
3. The land to be comprised in the dealing is all the land comprised in the above [certificate of title or grant, as the case may be]—(if only part of the land is to be dealt with, strike out all the words after 'is' and describe the land in such a manner as to identify it distinctly).

Signature of applicant or his solicitor.

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

Signature of proprietor or his agent.

“ Form XVIII.

(Section 157.)

ORDER FOR STAY OF REGISTRATION.

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

Dated this _____ day of _____, 19____.
 Recorder of Titles.”

Second
 schedule:
 Fees.

15 Part III. of the second schedule to the Principal Act is amended—

	£	s.	d.
(a) by inserting after the item			
“ For every other certificate of title	1	0	0 ”
the following items:—			
“ For every folio of 72 words (or part of any such folio) in a certificate of title, after the first six folios, an additional fee of	0	2	0
“ For every diagram after the first in a certificate of title	0	1	0 ”;
(b) by omitting the items			
“ For every search (not exceeding two titles), each title	0	2	0 ”
and			
“ For general search (exceeding two titles)	0	5	0 ”
and substituting therefor the following items:—			
“ For every search (not exceeding two titles) where volumes and folios are supplied, each title ..	0	2	0
For general search (exceeding two titles) where volumes and folios are supplied	0	5	0
For every search (not exceeding two titles) where volumes and folios are not supplied, each title	0	3	0
For general search (exceeding two titles) where volumes and folios are not supplied	0	10	0
For every notice under section 41A, per document	0	1	0 ”.

16 Section eleven of the *Real Property Act 1886** is amended by inserting after the word "Treasurer" in subsection (1) the words "the Surveyor-General, or the Manager of the Agricultural Bank of Tasmania,".

Dealings may be registered prior to issue of Crown grants.

17 After section twenty-seven of the *Real Property Act 1886** the following sections are inserted:—

"27A. Whenever any transfer or certificate of title contains the words 'together with (or subject to, as the case may be) a right of drainage over' (specifying or describing the piece or pieces of land over which the easement is created, and referring to a diagram endorsed whereon such piece or pieces of land is or are distinguished by a coloured line), such words shall have the same effect and shall be construed as if there had been inserted in the transfer or certificate the words contained in form II.A in the schedule.

Creation of right of drainage.

"27B. Whenever any transfer or certificate of title contains the words 'subject to fencing condition', such words shall have the same effect and shall be construed as if there had been inserted in the transfer or certificate the words contained in form II.B in the schedule."

Short form of fencing condition.

18 *The Real Property Act 1886** is amended by inserting after form II. in the schedule thereto the forms set forth in the schedule to this Act.

Consequential amendment.

19 After section seventeen of the *Real Property Act 1893†* the following section is inserted, after the heading "Production of Title":—

"17A. Where any transfer by a mortgagee or any transfer under section ninety-four of the Principal Act has been lodged with the Recorder, or where the Recorder considers it necessary so to do for the purpose of rectifying or cancelling any grant or certificate of title issued under the provisions of the Principal Act, or for the purpose of inspection in case of the loss, destruction, or obliteration of any original grant or certificate of title, the Recorder may, by requisition in writing under his hand, require the mortgagor or mortgagee, judgment debtor, or proprietor of the land comprised in any duplicate or triplicate grant, certificate of title, mortgage, lease, or other instrument to bring such grant, certificate, mortgage, lease, or other instrument into the office of the Recorder before such date, not being less than seven days after the date of the requisition, as may be specified in the requisition, for the purpose of having the same endorsed, rectified, cancelled, or otherwise dealt with as the case may require."

Power of Recorder to call in duplicate, &c., certificate, &c., in certain cases.

* 50 Vict. No. 8: See Reprint of Statutes, Vol. V., p. 1103.

† 57 Vict. No. 5: See Reprint of Statutes, Vol. V., p. 1116.

20 After section eighteen of the *Real Property Act 1893** the following section is inserted:—

Lists of grants, &c., called in by Recorder.

“18A. Lists of grants or certificates of title called in by the Recorder in pursuance of section seventeen A and not brought into the office of the Recorder in accordance with that section shall be published in the *Gazette* at such times and at such intervals as the Recorder may think necessary and copies of all lists so published shall be exhibited in the office of the Recorder.”

Limitation of investigation of title.

21 The Commissioners shall not, in respect of any application to bring land under the provisions of the Principal Act made after the first day of January, 1948, be concerned to investigate the title to the land in respect of any period before—

(a) the first day of January, 1960; or

(b) if a good root of title is not shown by the applicant at that date, the last date prior to that date at which a good root of title to the land is shown by the applicant,

or to require any proof of title in respect of any period prior to that date, unless the investigation of the title since that date discloses the existence of any outstanding estate or interest created or arising before such date.

Destruction of duplicate memoranda in certain cases.

22 At any time after making any entry in the register book in accordance with the provisions of the Principal Act recording the surrender of any lease or demise or the discharge of any mortgage or incumbrance, the Recorder may, if he thinks fit, cause to be destroyed any counterpart of a memorandum of lease or duplicate of a memorandum of mortgage or of incumbrance, as the case may be, which may have been produced to him for the purpose of enabling him to make such entry.

THE SCHEDULE.

(Section 18.)

New forms inserted in the schedule to the *Real Property Act 1886*.

“Form II.A

(Section 27A.)

CREATION OF RIGHT OF DRAINAGE.

TOGETHER with a right of drainage (including the right of construction of drains) for the owner or owners for the time being of the said _____ for the purpose of carrying away storm water and other surplus water from the said _____ over or under the strip of land _____ the position of which strip of land is marked ‘Reserve for Drainage’ on the said diagram hereon and

* 57 Vict. No. 5: See Reprint of Statutes, Vol. V., p. 1116.

through all sewers and drains which may hereafter be made or passing under through and along the said strip of land and the right of the said owner or owners and his and their surveyors and workmen from time to time and at all times hereafter if he or they should think fit to enter into and upon the said strip of land and to inspect repair cleanse and amend any such sewer or drain without doing unnecessary damage to the said strip of land.

“ Form II.B

(Section 27B.)

SHORT FORM OF FENCING CONDITION.

SUBJECT to the following condition, namely, that notwithstanding anything contained or implied in the *Boundary Fences Act 1908*, the Transferrer shall not be required to contribute to the cost of erecting repairing or maintaining any boundary fences between the land hereby transferred and any adjoining land belonging to the Transferrer and that the Transferrer shall at all times be indemnified and kept indemnified by the Transferee his personal representatives and assigns against all claims and demands in respect of any such boundary fences: Provided always that this covenant shall cease and determine when and so soon as the adjoining land of the Transferrer shall be sold for valuable consideration.”.

PUBLIC SERVICE (NO. 2).

11 & 12 GEO. VI. No. 84.

AN ACT to amend the *Public Service Act 1923*.
[19 December, 1947.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Public Service Act* (No. 2) 1947. Short title and citation.

(2) The *Public Service Act 1923**, as subsequently amended, is in this Act referred to as the Principal Act.

13 Geo. V. No. 25. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 263. Subsequently amended by 2 Geo. VI. No. 29, 4 Geo. VI. No. 18, 5 Geo. VI. Nos. 6 and 84, 6 Geo. VI. Nos. 9 and 54, 7 Geo. VI. No. 18, 7 & 8 Geo. VI. No. 104, 8 & 9 Geo. VI. No. 30, 9 & 10 Geo. VI. No. 60, and 11 Geo. VI. No. 22.