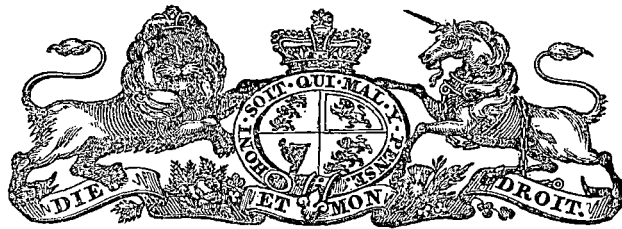


(No. 26.)



1861.

T A S M A N I A.

REGISTRAR-GENERAL'S REPORT.

SOUTH AUSTRALIA.

Laid upon the Table by Mr. Innes, and ordered by the House to be printed,
23 August, 1861.

SOUTH AUSTRALIA.



REGISTRAR-GENERAL'S REPORT.

ANNUAL REPORT of the REGISTRAR-GENERAL submitted to Parliament in accordance with the Resolution of the Legislative Council dated 12th July, 1859.

THE introduction of a measure to consolidate the Real Property Act of 1858 with the amending Act of the subsequent year, embodying such further amendments as the experience of two years has suggested, affords opportune occasion for bringing under review the entire subject of registration of title as conducted in this Province; and it is hoped that the information thus afforded will appear in a convenient form, condensed in one report.

PART I.

PRINCIPLES.

1. As the complexity, uncertainty, costliness, and delay attendant on dealings in land under the English Law of Real Property have common origin in the dependent or derivative character of titles, the South Australian Act, substituting "Registration of titles" for "Transfer by deeds," cuts off the dependent character of titles, and the occasion for investigating the retrospective history of the property.

2. In order to accomplish this, the "Indefeasibility of Title" acquired by registration, without fraud, and except as regards misdescription of boundaries, is a first principle.

3. Liability for claims of a rightful owner deprived of land by registration, is removed from the land, and converted into a pecuniary liability attaching personally to the individual benefited by the registration, and failing him is guaranteed by an Assurance Fund.

4. Entry in the register, and that alone transfers or encumbers property; the instruments signed between the parties constituting nothing more than authority for making that entry.

5. Upon transfer or transmission of the fee, the new proprietor holds that estate as from the Crown direct.

6. Under these principles, titles are freed from complication prior to being placed on the register, and are preserved free from *complication thereafter*.

7. The method by which land is brought on the register, and the position in which parties interested are thereby placed, claim consideration in the first instance.

8. Lands alienated from the Crown subsequent to the 1st July, 1858, come under the provisions of the Act upon being granted. (Sect. 14.)*

9. Other lands are brought under those provisions upon the voluntary application of the proprietor of the fee, or of a life estate in possession. (Sect. 15.)

10. If the land be mortgaged, the concurrence of the mortgagee is necessary. (Sect. 15.)

11. The application describes the boundaries, and contains, or bears annexed, a diagram of the land, drawn according to a prescribed scale. It states the value of the property—whether it be in occupation or otherwise; and the particulars of all mortgages, encumbrances, liens, leases, or other transactions limiting the interest of the proprietor; as also such rights of way or other easement as attach to the land, or to which it may be subject. These statements are verified by declaration before the Registrar-General or a Justice of the Peace. (Sect. 16 and Schedule A.)

12. These applications, together with the title-deeds of the property, are submitted to the solicitors appointed under the Act; who, after careful scrutiny and search in the General Registry Office, report to the Board of Lands Titles Commissioners.

13. The Board prescribe the extent to which the claim of each applicant shall be advertised; and the interval after expiration of which, in the event of no adverse claims being lodged, the property shall be placed upon the register. (Sect. 17.)

14. In addition to the publicity given by advertisement under direction of the Board, notice of the application is forwarded through the post to the person in occupation, and also to previous proprietors of the land, so far as the information afforded in the deeds surrendered enables. Lists of the applications are also exhibited in the Registration Office, the Land Office, the Supreme Court Office, and in the offices of the several District Councils and Corporations in the Province. (Sect. 18.)

15. Whenever adverse claim is notified by caveat, further action is stayed until the caveat is withdrawn, or the direction of the Supreme Court is had upon the case. (Sect. 20.)

16. If no claim be lodged within the period limited by the Board, the land is brought under the provisions of the Act, by the issue of certificate of title to the applicant, in exchange for the deeds delivered up. (Sect. 18.)

* The references herein made are to the clauses of the Act now before the Legislatures.

17. These deeds are then stamped as cancelled, and, together with the application, the diagram, and the solicitors' report, bearing endorsed the Board's minute on the case, are deposited in a bag, marked with the name of the applicant, the date of the application, its distinguishing number, and the volume and folio of the register-book constituted by the certificate of title. (Sect. 26.)

18. The particulars of all existing mortgages, encumbrances, leases, or other interests affecting the property are notified by memorial on certificate of title. (Sect. 35.)

19. Land thus brought upon the register is subject only to such encumbrances, liens, estates, or interests as are notified by memorial on the certificate of title; but absolutely free from all other encumbrances, liens, estates, or interests whatsoever, except in the case of fraud, or as regards the omission of any right of way or easement, or the wrong description of the boundaries, or as against a person claiming the same land under a prior grant from the Crown, or under a prior certificate, in the event of two grants or two certificates being issued for the same land. (Sect. 40.)

20. Land, in respect to which certificate of title has been obtained through fraud, may be recovered by action of ejectment, in the ordinary process of law, unless it has, in the interim, been sold for value to a purchaser not privy to the fraud; and, under direction of the Supreme Court, the certificate issued to the fraudulent proprietor would, in such case, be cancelled. (Sects. 116 and 117.)

21. If land, in respect to which certificates of title have been obtained through fraud, be subsequently sold, for a valuable consideration, to a person not privy to the fraud, the purchaser will hold the same free from liability to action of ejectment, or adverse claim, on account of the fraud; and the production of the certificate of title, issued pursuant to the sale, constitutes an absolute bar and estoppel to any action that may be brought for the recovery of any estate, lien, or interest, not appearing on the certificate, other than as above expressly excepted. (Sects. 118 and 116.)

22. A rightful owner, deprived of any land by the issue of a certificate of title through fraud, and the subsequent sale of such land for value to a *bonâ fide* purchaser; as also, a rightful owner deprived of land, or of any estate, interest, or lien, in consequence of the issue of certificate of title to another person in error, without fraud, or in consequence of any error or omission of entry in the register-book, may recover the full value of such land, estate, interest, or lien, with costs of action, from the person registered as proprietor through fraud; or, as the case may be, from the person benefited by the issue of the certificate in error, or by the omission of the entry of the estate, interest, or lien claimed. (Sects. 118 and 120.)

23. Failing recovery from the fraudulently-registered person, or from the person so deriving benefit, the full amount awarded in any such action is made good out of the assurance fund. (Sects. 34 and 119.)

24. The assurance fund is created by a percentage of $\frac{3}{4}$ d. in the pound, levied upon the value of all lands brought under the provisions of the Act, and upon the value of all land under the Act transmitted by will or intestacy. (Sect. 33.)

25. It may be advantageous in this place to contrast the South Australian method of placing land upon the register of titles with that suggested by the Bill introduced into the House of Commons by the late Attorney-General, Sir Hugh Cairns, as regards the cost and delay incident on either proceeding; and also, as regards the position in which parties interested would be placed upon completion of the procedure, in either case respectively.

26. Including contributions to the assurance fund, the amount paid by proprietors for placing 1500 separate estates upon the register of titles in this Colony was £4463—giving £3 as the average cost. The time intervening between the application and the issue of the certificate has not, on the average, exceeded two months.

27. It has been estimated, by the Law Amendment Society, and by other competent authorities, that the cost of placing land upon the register of titles under Sir Hugh Cairns's method would not be less than £150 to £200; and the time occupied from eighteen months to two years. The uncertainty which generally prevails respecting boundaries in this Colony presents obstacles to the introduction of Sir Hugh Cairns's method, far more difficult to overcome than those arising from the greater complexity of estates and interests affecting titles in Great Britain. Yet, though these difficulties should be overcome, and registration of title under that method be accomplished at half, or even a fourth, of the expenditure in time and money above estimated, still the outlay would, upon the bulk of estates in this Colony, prove prohibitory.

28. A purchaser, whether from the holder of a "Declaration of Title" under Sir Hugh Cairns's Act, or from the holder of a "Certificate of Title" under the South Australian Act, would stand in precisely the same position, and hold the land free from action of ejectment, and from all other liability or claim not appearing upon the register; but the applicant-proprietor himself, upon taking a declaration of title under Sir Hugh Cairns's Act, would stand in a very inferior position to the applicant-proprietor taking certificate of title under the South Australian Act.

29. The former would continue liable to be deprived, by ejectment, not only of the land, but also of any capital he may have invested in improvements thereon; the latter, though liable to a rightful owner, should such turn up, for compensation in money to the extent of the value of the land, at the date of the issue of the certificate of title, would hold the land itself free from liability to ejectment, and secure against the loss of any capital he may have invested thereon.

30. Again, under Sir Hugh Cairns's Act, a rightful owner, proving his title after the issue of declaration of title, in error, to another person, would recover his own inheritance, and receive, in addition thereto, the inheritance of others, innocent of fraud, invested thereon, in buildings it might be, to an amount far exceeding the value of the land itself. Should, however, the land be sold subsequent to the erroneous declaration of title, the unfortunate heir would be deprived of his inheritance absolutely, and without compensation; as the measure referred to provides no remedy for such cases, either by means of assurance fund or otherwise.

31. In contrast to this, a rightful heir or proprietor, proving his title after certificate had been issued to another person, under the South Australian Act, would, whether the estate had or had not been sold subsequent to the date of the first certificate, receive in money the full value of his inheritance, with costs of action, and no more.

32. Natural justice is satisfied by the measure which restores to the rightful owner the full value of his original inheritance, yet secures the occupier against loss of capital expended in improving the land which he erroneously, though innocently, deemed his own. Public policy is promoted, by the encouragement to investment of capital, arising out of the security thus afforded; and by restoring to its intrinsic value, as building sites, a considerable amount of property at present depreciated through technical defects, and doubts hanging upon the title.

PART II.

1. The method in which transactions in land placed on the register are conducted next claims attention.

THE REGISTER-BOOK.

2. All grants from the Crown, and certificates of title, are required to be in original and counterpart.
3. The originals, bound together in volumes, constitute the register; each grant or certificate of title forming a separate folio, on which are recorded, in the order of the date of registration, memorials of all transactions, whether affecting the fee, or any lesser estate created in the land represented by such original grant or certificate of title.
4. Upon change of ownership of the fee, whether by transfer or transmission, the grant or certificate of title is cancelled, and fresh certificate of title is executed. The counterpart is delivered to the person entitled. The original forms a new folio on the register, on which (as, also, on the counterpart) are brought forward memorials of all mortgages, encumbrances, leases, or other transactions remaining unsatisfied or current at the date of transfer.
5. On this folio, the memorials of subsequent dealings with the fee, and with the various lesser estates or interests held on the land, are recorded, until the ownership of the fee is again changed.
6. When ownership of the fee of part of the land is changed, a memorial is entered on the existing grant or certificate of title, cancelling the same as regards that part, and a separate certificate of title is issued for that part. A fresh certificate is also issued for the balance of the land, when demanded by the proprietor.

TRANSACTIONS IN GENERAL.

7. In instruments dealing with land, the description of the parcels in the existing grant or certificate must be adhered to, except when part only of the land is dealt with; and in such cases an accurate description must be given, together with a diagram, on a scale prescribed in the 114th section of the Act.
8. Instruments executed with intent to transfer, encumber, or otherwise deal with the fee, or any lesser estate or interest, are required to be in original and duplicate. They constitute the authority upon which the Registrar gives effect to the intention, by entering memorial of the instrument on the appropriate folio of the register, as above described. (Sect. 38.)
9. Upon the entry of this memorial, the land, estate, or interest passes, or becomes subject to mortgage, or other lien, as the case may be.
10. These instruments are made evidence of title in Courts of Justice, by the endorsement of registration, stating the date and hour when the memorial was entered, and the volume and folio of the register, where it may be found. They are numbered in consecutive series. The originals are filed in the Registry Office, and the counterparts delivered to the parties entitled. (Sect. 41.)
11. The counterparts of grants, and of certificate of title, must be surrendered prior to the registration of transfer or transmission of the fee. The counterparts of leases, and of bills of mortgage or of encumbrance, prior to registration of the surrender or discharge of the interests they evidence. (Sect. 45.)
12. These, with the originals bound up in the register, or filed in the Registry Office, are thereupon cancelled and withdrawn; by which means accumulation is prevented, and search freed from intricacy and labour—each estate or interest in existence being represented by a single instrument.

TRANSFERS.

13. If the fee or a life estate is intended to be dealt with, the memorandum of transfer executed by the registered proprietor authorises the Registrar to cancel the existing grant or certificate of title, and to execute a fresh one to the transferee. (Sects. 45 and 46.)
14. If a leasehold interest, or a mortgage, or encumbrance is intended to be dealt with, the form of memorandum of transfer is endorsed on the lease, bill of mortgage, on encumbrance evidencing the estate or interest to be transferred; and upon memorial thereof being entered upon the appropriate folio of the register, the estate or interest passes. The instrument of transfer is made evidence of title by certificate of registration, endorsed as before described. (Sect. 39.)

LEASES.

15. Forms of lease are provided, adapted to a variety of cases, in which much verbiage is saved by the Act declaring that certain essential covenants and powers shall be implied in these instruments, and prescribing abbreviated forms of words, the use of which shall cause certain usual covenants to be implied, as effectually as if the words recited in the 67th section for each case had been introduced at length. (Sects. 64 to 69.)
16. In addition to being entered on the register, the memorials, which create leasehold estates, are required to be entered on the counterpart grant or certificate of title; or in the case of sub-letting, on the counterpart of the original lease.
17. The mode in which leases are transferred has already been described. The endorsement of the words "surrendered and accepted," signed by the lessor and lessee, and properly attested, constitute authority for entering in the register the memorial which extinguishes the leasehold estate. (Sect. 49.)

MORTGAGES AND ENCUMBRANCES.

18. Mortgage or encumbrance under registration of title does not pass the legal estate to the mortgagee, but merely pledges the land for the money borrowed.
19. The bill of mortgage or of encumbrance, signed and attested, authorises the Registrar to enter upon the appropriate folio of the register the memorial which pledges the land. The counterpart grant, certificate, or lease, evidencing title to the estate to be pledged, must at the same time be produced, in order that the like memorial may be endorsed thereon.
20. The receipt of the mortgagee or encumbrancee for the amount secured, endorsed on the instrument, is the authority for entering upon the appropriate folium of the register the memorial which discharges the estate from the obligation. The like memorial is endorsed on the counterpart grant, certificate, or lease, when produced for that purpose. (Sect. 57.)

21. Upon proof of the death of the person in whose favour land had been encumbered, or upon proof of the occurrence of any other contingency upon which in terms of any bill of encumbrance the estate should cease to be chargeable, the Registrar enters upon the folio of the register, and also upon the counterpart instrument representing the estate, the memorial which discharges the encumbrance. (Sect. 57.)

22. If desired by the proprietor, upon the surrender of the grant or certificate of title representing an estate in fee, from which mortgage or encumbrance has been discharged, a fresh certificate is issued without any notification of the extinguished lien. In such cases the surrendered grant or certificate is cancelled, and the fresh certificate constitutes a new folio of the register. (Sect. 88.)

23. If default be made in payment of any principal sum, interest, or annuity secured by mortgage or encumbrance, and continued after legal notice, the mortgagee or encumbrancee has the same powers and remedies by entry and sale, foreclosure or distress, as are afforded by the English law. (Sects. 51 to 55.)

EQUITABLE MORTGAGE.

24. The expense, the delay, the additional clog upon the future title, involved in mortgage under the English law, in a manner necessitate resort to the practice of raising loans upon the security of title-deeds; and to such an extent is this the case, that, when the amount is small, or required but for a short date, persons are found willing to pay 20 to 30 per cent. for accommodation in this way, rather than borrow upon mortgage at 8 or 10 per cent.

25. A mortgage under the registration of titles costs but 10s., a release 5s.; the time occupied need not exceed half an hour; and the clog induced upon the future title under the English law, by the ceremony of transferring the legal estate, has no existence. Thus, therefore, the occasion for resorting to equitable deposit is effectually removed. (See Schedule R.)

26. The practice is, however, advocated upon the grounds that it enables persons to borrow, without allowing the necessitous state of their affairs to become known.

27. The argument on the other side is summed up in the preamble of several English statutes—amongst others, in that establishing a registry of warrants of attorney, as follows—“Injustice is frequently done to creditors by secret warrants of attorney, to confess judgments for securing the payment of money, whereby persons in a state of insolvency are enabled to keep up the appearance of being in good circumstances; and the persons holding such warrants of attorney have the power of taking the property of such insolvents in execution at any time, to the exclusion of the rest of their creditors;” and again, in the Act requiring the registration of bills of sale—“Frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property; and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors.”

28. The question is, therefore, open to controversy—whether, upon the whole, the advantages afforded by the sanction given to secret loans, are not more than counterbalanced by the opportunities for frauds which it affords—sapping the foundation of credit.

29. Again, it is urged that the deposit of title deeds affords facilities, which mortgage does not possess, for securing advances of fluctuating amount, by Bankers whose charters prohibit them from dealing in mortgages.

30. There is a general impression that the security afforded is equivalent to that of mortgage. This is, however, an error—based upon the supposition that the delivery or even production of title deeds is necessary to the validity of either mortgage or conveyance.

31. Numerous cases have been decided in Great Britain, in the adjacent Colonies, and in this Province establishing the rule, that the holder of title deeds on equitable deposit will be deprived of his lien upon the land in favour of a mortgagee or purchaser for value *bonâ fide*, and without notice of the lien; although such mortgagee or purchaser may never have had custody of the title deeds, or even seen them.

32. Bankers are well aware of this, and do not, as a rule, regard the deposit of title deeds otherwise than as collateral security. They know also that title deeds frequently remain in the hands of persons who have ceased to hold interest in the lands to which they relate; yet, relying mainly on the character and known circumstances of their customers, they generally accept title deeds on deposit, as security, without scrutiny.

33. Regarding the question in this point of view—that is, not as substitute for mortgage, but as a valuable collateral security; the deposit of instrument evidencing title under the South Australian Act may be shown to have advantage over the English Law in this respect, both as regards justice and security.

34. If the deposit of a grant or certificate of title does not create such a preferential lien as, in the event of insolvency, would exclude other creditors from participating in the proceeds of the land, it thereby places credit upon a sounder basis, removing the facilities for fraud indicated in the preambles above quoted.

35. The custody of the grant or certificate of title assures the Banker that the proprietor, to whom he has made advances, cannot divest himself of the estate or in any way alter it.

36. The production of grant or certificate proves indefeasible title in the proprietor named therein, and discloses every encumbrance to which it may be liable.

37. In contrast to this, it was pointed out by Mr. A. Wilson, in his evidence before the Commission on Registration, that “Title under the English Law cannot be ascertained as a fact, it can only be wrought out as an inference.”

38. The conclusion arrived at by those Commissioners upon this point is given in the 64th paragraph of the report as follows:—“It can hardly be doubted that, for the security of those who advance money under such deposits, the assurance that there could only be one title deed to the property pledged would be of much importance. In transactions of this kind, the lender is always liable to be imposed upon by the suppression or concealment of some particular deeds which may qualify the borrower's right; and we therefore concur in an opinion, expressed by one of the witnesses before the Select Committee of the House of Commons, that ‘it is probably not too much to say, that there is no point on which the proposed registration of landed property would work better than in improving the security of lenders on deposits of title deeds, and, consequently, so far as facilities in borrowing inexpensively may be deemed advantageous, in facilitating the obtaining of loans on such deposits.’”

SETTLEMENTS AND TRUSTS.

39. Upon entry in the Register of Memorial of the Instrument called “Nomination of Trustees,” the estate or interest which is the subject of settlement becomes vested in the persons named therein as Trustees; and parties

dealing with them are not concerned in any way to enquire into the nature of the trusts or to see to the appropriation of the proceeds. (Sects. 71 and 73.)

40. The trusts are not necessarily disclosed. If it is intended they should be so, they are declared in a schedule annexed to the instrument; otherwise they are declared in a deed referred to in the instrument—a duplicate or attested copy of which may be deposited in a sealed packet for safe custody and reference. (Sect. 72.)

41. Protection against fraud is afforded by the provision that whenever the words “No survivorship” are inserted, the Registrar is prohibited from giving effect to dealings with the property by a less number of Trustees than were originally nominated. (Sect. 74.)

42. As a further protection—Beneficiaries under the trust may lodge caveat forbidding dealings with the property without their concurrence. (Sect. 91.)

43. This method is identical with the recommendation of the Commissioners on Registration of Title, and its efficacy and security are vindicated by a distinguished member of that Commission in the following language:—“Neither must it be forgotten that there are nearly £800,000,000 of money in the funds, of which a full proportion (probably one-half) is already in the position in which it is alleged that land cannot safely be placed; and that millions on millions, represented by shares in railways and canals, and docks and other public companies, are similarly circumstanced. What has been found practically safe for them cannot, it is presumed, be otherwise than safe for land.”

TRANSMISSIONS.

44. The law relating to inheritance and transmission, whether by death or bankruptcy, is in no respect interfered with by the system of registration of title.

45. The transmission of any estate or interest in land, through any of these events, is required to be authenticated to the Registrar—first, by the declaration of the parties to whom the estate devolves; and, further, in the case of insolvency, by certified copy of the appointment of assignees. In case of devise, by office copy or probate of the will—in case of intestacy, by production of letters of administration. In order that the assignees, executors, administrators, or the Curator of Intestate Estates, as the case may require, may be entered upon the appropriate folio of the register. (Sects. 79 to 83.)

46. When an estate in fee simple is transmitted, under any of the above cases, the Registrar issues certificate of title to the person appointed to receive the same, by an order of the Supreme Court.

OFFICIAL BOOKS, INSTRUMENTS, SEARCHES.

47. The register-book has already been sufficiently described.

48. Instruments, when registered, are numbered in a consecutive series and endorsed with the names of the contracting parties, and the volume and folio of the register-book constituted by the grant or certificate of title to the land dealt with.

49. The originals of instruments are tied together in parcels of twenty each and deposited in compartments in the fire-proof room; each compartment containing ten parcels. Numbers on the compartments indicate the numbers of the instruments deposited in each.

50. A journal is kept with parallel columns, in which entry is made of the day and hour of the registry of each instrument, the names of the contracting parties, the nature of the transaction, the number of the instrument, and the volume and folio of the register-book where the certificate of title to the land dealt with may be found.

51. From the journal an index is compiled, in which the names of proprietors are arranged alphabetically, the several parcels of land held or dealt with, and the volume and folio of the register-book in which the certificate of title of each parcel may be found are carried out opposite each name.

SEARCHES.

52. Reference to the index will rarely be necessary, except in the case of an heir or administrator seeking to ascertain what property was held by a deceased proprietor, or in the case of a creditor or assignee seeking to ascertain what property is held by an insolvent. Persons desiring to make search are generally proprietors or persons negotiating some transaction, and, as such, have access to some registered instrument affecting the property, which will indicate the volume and folio of the register-book constituted by the grant or certificate of title on which memorials of all transactions affecting the estate are set forth, with the numbers of the instruments upon which, severally, the transactions were effected. If the person searching desires more full information than is given in the memorials of the instrument, the instruments are exhibited for perusal.

53. Examples of the official books and of the instruments used in the various transactions are given in the Appendix.

54. The method in which, under the provisions of this Act, the various transactions in land are conducted, is in strict accordance with the recommendations of the Commission on Registration of Title and with the Bill of Sir Hugh Cairns, based thereon so far as that measure extends. Sir Hugh Cairns, however, makes no provision for resignation of the transfer, surrender, mortgage, or encumbrance of leasehold property, or of the discharge of such property from mortgage or encumbrance. These transactions, it is presumed, are designedly left to be conducted under the old law—involving, necessarily, the perpetuation of two systems of conveyancing in the same country.

55. The South Australian Act describes the register book, and directs the manner in which entries shall be made therein, with other important details omitted in Sir Hugh Cairns's Bill.

56. Acceding to the measure of Sir Hugh Cairns the high merit that it embodies, the sound first principles elaborated by the Royal Commission on Registration of Titles, we must claim for the South Australian Real Property Act this additional merit—that it has provided efficacious, simple, and economical machinery for carrying those principles into practical operation. The provision ensuring that the certificate of title shall bear, exhibited on the face of it, evidence of all that the purchaser or mortgagee of the fee can be concerned to know;—that, causing all memorials of transactions affecting any parcel of land to appear together on the same folium of the register book;—and that, enabling search to be made without referring to an index, are original. They are peculiar to the South Australian Act; and the signal success which has attended that measure is in a great degree attributable to the smoothness and facility in working attained through their instrumentality.

PART III.

THE PROGRESS AND WORKING OF THE REAL PROPERTY ACT.

1. The following returns show the progressive increase in the transactions under the Act, from month to month, from the commencement; and contrast the operations of each month with those of the preceding year—exhibiting an average increase of 154½ per cent.

2. The apparently small number of rejected applications, as shown in Return A, is accounted for by the consideration, firstly, that persons who hold land which in law as well as in equity belongs to others are deterred from making application by the knowledge that their titles will be subjected to careful scrutiny and search, and their claim to be recognised as owners to extensive publication; and, secondly, that should they escape detection, they would yet, if found within the jurisdiction, be held liable to pay to the rightful owner the full value of the property, with costs of action.

3. Again, thirdly—Owing to the general disinclination of conveyancers to transact business under the Act, it has been found necessary to direct the officers of the Land Titles Department to assist proprietors in filling up forms of application; and, whenever the deeds and other evidence placed before them for this preliminary process do not appear to disclose *prima facie* a good holding title, to caution the parties against proceeding with their intention. Some have been thus deterred *in limine* from becoming applicants.

4. It is also a fact, that the number of titles absolutely bad as holding titles is far less than is generally believed; the great mass being defective only as “selling titles” in consequence of informalities or technical defects, or the loss of deeds, or other primary evidence of points on which secondary evidence may be obtained.

5. These constitute appropriate material to be operated upon by the Real Property Act; and in restoring to their intrinsic value properties held under such titles, the benefits of that measure are in an especial manner exhibited.

RETURNS EXHIBITING THE PROGRESS OF THE CONVEYANCING BY REGISTRATION
OF TITLE UNDER THE REAL PROPERTY ACT.

RETURN A.

APPLICATIONS for bringing Land under the provisions of the Real Property Act during the Year ending 30th June, 1859, contrasted with those of the Year ending 30th June, 1860.

	For the year ending 30th June, 1859.	For the year ending 30th June, 1860.
July	24	91
August	35	105
September	34	81
October	27	100
November	47	82
December	17	93
January	20	77
February	35	90
March	58	102
April	45	71
May	56	104
June	61	96
	<u>459</u>	<u>1092</u>

Total applications received to 30th June, 1860..... 1551.

How disposed of.

	For the year ending 30th June, 1859.	For the year ending 30th June, 1860.
Rejected	2	0
Withdrawn	4	9
Remaining under consideration	53	43
Approved	400	1040
	<u>459</u>	<u>1092</u>

RETURN B.

RETURN showing the Value of Land brought under the Act in the Year ending 30th June, 1859, contrasted with the Value of that brought under the Act in the Year ending 30th June, 1860.

Value of Land brought under the Act by voluntary applications:—

	For the year ending 30th June, 1859.			For the year ending 30th June, 1860.		
	£	s.	d.	£	s.	d.
July	—			31,140	0	0
August	12,821	0	0	48,940	0	0
September	12,131	18	0	33,520	0	0
October	9,888	10	0	40,582	0	0
November	14,801	10	0	34,116	0	0
December	5139	10	0	33,238	0	0
January	7710	0	0	37,730	0	0
February	13,957	0	0	35,298	0	0
March	20,107	0	0	36,628	0	0
April	14,426	10	0	22,378	0	0
May	17,265	0	0	48,788	0	0
June	31,351	0	0	35,972	0	0
	<u>£159,598</u>	<u>18</u>	<u>0</u>	<u>£438,330</u>	<u>0</u>	<u>0</u>

Total value of Land brought under the Act by alienation from the Crown :—

	£	s.	d.
For the year ending 30th June, 1859.....	167,378	15	0
For the year ending 30th June, 1860.....	196,854	7	0
Total value of Land brought under the Act on 30th June, 1860.....	£962,162.		

RETURN C.

AMOUNT secured by Mortgage or Incumbrance during the Year ending 30th June, 1859, contrasted with that of the Year ending 30th June, 1860 :—

	£	s.	d.
For the year ending 30th June, 1859.....	23,248	10	0
For the year ending 30th June, 1860.....	118,872	4	9
Total amount secured on Mortgage to 30th June, 1862.....	£142,120	14s.	9d.

RETURN D.

RETURN showing the Transactions under the Real Property Act during the Year ended 30th June, 1859, contrasted with Transactions during the Year ended 30th June, 1860.

	Transfers.		Mortgages.		Leases.		Discharge of Mortgage.		Caveats.		Nomination of Trustees.		Encumbrances.		Transfer of Mortgage.		Power of Attorney.		Transfer of Lease.	
	1859	1860	1859	1860	1859	1860	1859	1860	1859	1860	1859	1860	1859	1860	1859	1860	1859	1860	1859	1860
July.....	—	14	—	15	—	3	—	—	—	—	—	—	—	—	—	—	—	—	—	—
August.....	2	21	—	28	—	6	—	1	—	—	—	—	—	—	—	—	—	—	—	—
September.....	5	16	1	26	—	10	—	2	—	—	—	—	—	—	—	—	—	—	—	—
October.....	10	24	4	29	—	8	—	4	—	1	—	—	—	—	—	—	—	—	—	—
November.....	20	15	9	33	1	2	—	—	—	—	2	—	—	—	—	—	—	—	—	—
December.....	16	20	10	29	—	7	—	—	—	2	—	—	—	—	—	—	—	—	—	—
January.....	10	26	13	53	2	7	—	1	—	—	—	—	—	—	1	—	—	—	—	—
February.....	9	19	15	29	2	4	—	1	—	3	—	—	—	—	—	—	—	—	—	—
March.....	17	33	15	40	1	6	—	3	—	2	—	—	—	—	—	—	1	—	—	—
April.....	15	25	11	34	2	4	—	1	—	1	—	—	1	—	—	—	—	—	—	1
May.....	16	39	19	42	4	2	—	6	—	1	—	1	—	—	3	—	—	—	—	—
June.....	14	26	32	41	3	2	—	5	—	1	—	—	—	—	1	—	—	—	—	—
	134	278	129	399	15	61	—	24	—	11	—	3	—	1	—	5	—	1	—	1

Total number of transactions to 30th June, 1860.....1062.

RETURN E.

FEES received during the Year ended the 30th June, 1859, contrasted with those received during the Year ended 30th June, 1860.

	Application Fees payable to Commissioners.				Fees for assurance of Title.				Registration Fees.				TOTALS.									
	For year ended 30th June, 1859.		For year ended 30th June, 1860.		For year ended 30th June, 1859.		For year ended 30th June, 1860.		For year ended 30th June, 1859.		For year ended 30th June, 1860.		For year ended 30th June, 1859.		For year ended 30th June, 1860.							
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.				
July.....	21	0	0	56	10	0	—	109	4	9½	0	10	0	160	0	0	21	10	0	325	14	9½
August.....	34	0	0	57	10	0	0 15 8½	163	17	8	2	14	0	207	16	0	37	9	8½	429	3	8
September.....	23	0	0	38	15	0	4 5 11¾	117	0	7	9	1	0	158	6	8	36	6	11¾	314	2	3
October.....	22	0	0	49	15	0	5 12 11	132	15	7	23	19	0	207	11	0	51	11	11¾	390	1	7
November.....	42	0	0	36	5	0	12 19 11¾	104	13	2	41	13	0	171	13	0	96	12	11¾	312	11	2
December.....	15	0	0	38	10	0	19 5 11¼	94	1	6	54	7	0	153	1	8	88	12	11¼	285	13	2
January.....	17	0	0	40	5	0	36 4 9	106	18	2	64	1	0	194	5	0	117	5	9	341	8	2
February.....	22	5	0	44	5	0	84 9 8	98	7	10	74	13	0	174	6	0	181	7	8	316	18	10
March.....	31	5	0	46	15	0	97 13 10½	109	10	5	102	0	0	210	6	0	230	18	10½	366	11	5
April.....	23	15	0	32	5	0	93 14 10½	75	15	4	120	8	0	150	11	0	237	17	10½	258	11	4
May.....	36	15	0	48	15	0	64 17 7	122	11	7	148	0	0	206	0	0	249	12	7	377	6	7
June.....	41	10	0	37	14	0	128 11 6	98	15	5	139	13	0	173	12	0	309	14	6	310	1	5
	329	10	0	527	4	0	548 12 9½	1333	12	0½	780	19	0	2167	8	4	1659	1	9½	4028	4	4½

	For year ended 30th June, 1859.			For year ended 30th June, 1860.		
	£	s.	d.	£	s.	d.
Amount collected under Act No. 15 of 1857-8, and No. 16 of 1858.....	1659	1	9½	4028	4	4½
Land Grant Fees under No. 3 of 1856.	668	0	0	572	0	0
	<u>£2327 1 9½</u>			<u>£4600 4 4½</u>		
Total amount of Fees to 30th June, 1860	£6927 6 1¼					

PART IV.

DEFECTS IN THE LAW PROPOSED TO BE REMEDIED BY THE BILL NOW BEFORE PARLIAMENT.

1. The observations of one of the learned Judges when pronouncing judgment in a recent case—*Hutchinson v. Leeworthy*—show that the language of the present Act does not with sufficient clearness and precision enunciate the great principle of the measure—"The indefeasibility of the title acquired by registration."

2. To remove all doubts upon this question, it is proposed, clause 35 of the Bill now before Parliament, that the certificate of title shall be *conclusive* evidence that the property comprised therein has been duly brought under the provisions of the Act, and shall not be impeached or defeasible on the grounds of want of notice, or on account of any omission or informality in the application or in the procedure thereupon. Clause 36—that the certificate of title shall be deemed to be registered when marked with folio and volume, as embodied in the register; and the person therein named, as taking estate under such registration, shall be the registered proprietor. Clause 40—that, notwithstanding the existence in any other person of any estate or interest, however derived, the registered proprietor shall hold the land, subject to such liens or estates as are noted on the grant or certificate in the register, but absolutely free from all other liens or estates whatsoever. Clause 90—that in any suit for specific performance brought by a registered proprietor, the certificate of title shall be held in every Court of Law or Equity to be conclusive evidence that the person named therein as proprietor has good and valid title, and shall entitle such proprietor to a decree. Sec. 116—that, except in the cases enumerated therein, no action of ejectment shall lie or be sustained against a registered proprietor; and the production of the certificate of title shall be held in all Courts of Law and Equity to be an absolute bar and estoppel to any such action.

3. It has been decided in the case *Johnson v. Torrens*, that shut-up roads, sold under the provisions of the Road Act, do not come under the provisions of the Real Property Act upon alienation from the Crown.

4. In consequence of this decision, a clause has been introduced into the Bill expressly declaring that lands set apart as roads or as reserves for public purposes shall, when alienated, be subject to the provisions of this Act.

5. Powers of Attorney, executed prior to the 1st July, 1858, though extending to authorise the sale and absolute disposal of the fee, and expressing intention to warrant dealing with the property in every manner in which the principal, if present, could deal with it, are nevertheless held to be insufficient to authorise the bringing of land under the Real Property Act.

6. Cases are constantly occurring in which absent proprietors suffer loss and inconvenience through their agents being unable to avail themselves of the secure, economical, and expeditious methods of mortgaging and leasing provided under the Act in question. Provision is made for the cases in the 87th section of the Bill.

7. The question has arisen, whether a power of attorney, not in the form prescribed by the Act, but purporting to authorise dealing with the estate of the proprietor generally, would be effectual. Inconvenience would sometimes be occasioned were parties absolutely restricted to the use of the prescribed form. The language, however, is permissive in this case; and the use of the ordinary form of power of attorney included personal and other property, as well as land under the Act, does not appear to be inconsistent with the general provisions of the measure: provided that a duplicate or certified copy of such power be deposited in the Lands Titles Office before being acted upon. A provision to that effect is introduced in the 97th section of the Bill.

8. Clause 95 of amending Act of last Session has greatly impeded the general adoption of the measure. The object of this clause was to secure to the legal profession a monopoly of the business in dealing under the Act when agency is employed; yet some members of the profession have refused, absolutely, to transact that business. Others, though relieved from the labor and responsibility of retrospective investigation of title, demand higher remuneration for dealing under the Real Property Act than for conducting transactions of like nature under the old law; and others have demanded sums which seem excessive in proportion to the work required to be performed. I have thus been in a measure compelled to allow the clerks in the office to aid proprietors who are unable to transact their own business; and the result is, that out of 2613 transactions, not over five per cent. have been conducted by the profession.

9. Under the Real Property Act, conveyancing—from a tedious, costly, and intricate science, uncertain withal in its results—has been rendered a simple, expeditious, and certain mechanical process. There appears, therefore, no necessity for restricting the business to the professionally educated. And since dealing with land has been assimilated to dealing with property in the funds (except that a careful description of parcels is essential, giving work for the surveyor and draughtsman rather than for the legal practitioner), the expediency of admitting licensed land-brokers to conduct those dealings, in the same manner that stock-brokers act for persons dealing in the funds and other securities, naturally suggests itself, and experience in the Hans Towns and other States, in which a similar law obtains, warrants this course.

10. Provision to that effect is made in Clause 131 of the present Bill.

11. It has been suggested that, considering the careful investigation to which titles are subjected, and the extensive advertisement of the application prior to the issue of certificate of title, the period—during which, in accordance with the 80th section of the amending Act of last Session, the party to whom the certificate of title is issued shall be liable for compensation in money to a rightful heir or owner deprived of remedy by action of ejectment—might, with advantage, be limited to six years. This is embodied in the 118th section of the Bill.

PART V.

IMPEDIMENTS IN THE WAY OF THE GENERAL ADOPTION AND WORKING OF THE ACT.

1. Insufficient or erroneous descriptions of parcels given in the title deeds exhibited has occasioned difficulty in bringing old titles under the Real Property Act.

2. This objection lies against the greater portion of instruments prepared in this Colony; the diagrams usually given in the margin being rarely drawn to scale, and generally inaccurate, are of little value.

3. It is a usual practice in drawing conveyances, when the property dealt with consists of allotments in townships, to give the numbers of the allotments, referring to some map for the description of boundaries, and sometimes also for the area contained; but it too frequently happens that the map referred to is not to be found, and in other cases, several maps are extant differing each from the other—yet all having claims to be recognised as authentic. Many of these township maps are inaccurate; several, though not drawn to scale, omit to give the contents of the allotments, and in some instances, the ground laid out is found not to contain the area shown in the sum of allotments and streets conveyed or set apart.

4. The utmost confusion has arisen from these causes, and cases are numerous in which it would be difficult or impossible to prove that the land in possession, and on which buildings have been erected, is that referred to in the title deeds.

5. The original land grants are by no means free from objection on the above score. Some of the older surveys have been proved incorrect, and the land granted in accordance with the original plans does not correspond with the boundaries marked on the ground, or with the natural features of the country. The diagrams also on the earlier grants, even when correct, are on too small a scale to be of much value when the length of the boundary lines is not given; and, in many cases the Survey Office authorities are unable to supply diagrams on a sufficient scale, pleading want of reliable information.

6. The difficulty of obtaining material for accurate description of the land with diagram to be given on certificate of title constitutes the chief impediment to the more general adoption of the measure; as many persons, when required to give adequate and accurate description of the lands they propose to bring under the Act, and to furnish diagrams drawn to a scale by competent surveyors, complain that they are subjected to trouble and expense in a manner not required in conveyancing under the old Property Law; and abandon their intention in disgust. This evils is, however, preferable to the abandonment of a principle held to be of paramount importance.

7. The uncompromising hostilities of the legal profession as a body has, without doubt, had considerable effect as an impediment to the general adoption of the measure; the severe agricultural distress during the last two years has placed landowners generally in the class of borrowers; and, as the bulk of the capital available for investment in mortgage is under the control of the conveyancers, proprietors, fearing the hostility of men in a position of such power, have abstained from availing themselves of the advantages the Act affords.

8. The Solicitors to the Lands Titles Commissioners when requiring to examine title deeds in custody of conveyancers have been opposed by difficulties and obstructions of such a nature, as in some cases to prevent land being brought under the provisions of the Act.

9. No great improvement, whereby any process useful and necessary may be rendered facile and cheap, can be introduced without, to some extent, interling with the interests of those whose occupation and subsistence are derived from that process. In all ages, and in all countries, those whose interest has thus been interfered with have combined in vigorous and uncompromising resistance to the proposed reform and improvement. It is not to be wondered at that the South Australian conveyancers do not, in this respect, afford an exception to the general principle which actuates mankind. The only matter of surprise is, that, in the face of such opposition, the measure has progressed in the manner exhibited in the returns accompanying this report.

10. The impediments encountered arise, not from any defects in the measure itself, but from the defects and complications of titles under the previous law, and from relations thence arising, which have to be overcome and removed before titles can be brought under the new system.

11. When land is once placed upon the register, no difficulty is experienced in conducting transfers, and other dealings with it, upon the same principles and by the same methods that have, for so many years, proved satisfactory when applied to property in shipping and in the funds.

PART VI.

RESULTS OF CONVEYANCING BY REGISTRATION OF TITLE UNDER THE REAL PROPERTY ACT, CONTRASTED WITH THOSE OF CONVEYANCING, ACCOMPANIED BY REGISTRATION OF INSTRUMENTS UNDER PREVIOUS STATUTES AND COLONIAL ACTS.

1. The laws in force in this Colony relative to registration of instruments prescribe three distinct systems: First, that by memorial, which is, or should be, a brief abstract of the material points in the instruments: Secondly, by enrolment, which is, copy of the instrument, with a certificate authenticating the signature of the parties: Thirdly, by deposit of the original instrument.

2. The proportion in which these systems are acted upon is shown in the following figures, being the average result of the experience of three years:—Memorials 6550; enrolments 368; deposits 528.

3. In practice, it is found that memorials do not always contain the material points of the instruments. The covenant for power of entry and sale given in mortgage, and for right of purchase given in lease, are sometimes omitted. The 24th clause of the Registration Act of the 5th Victoria, No. 8, which declares that the memorial shall

be evidence in the absence of the original instrument, is, consequently, a nullity (see the decision of His Honor the Chief Justice, Sir Charles Cooper, in the recent case of *Boothby v. Cleve*), and registration by memorial, which constitutes, as shown above, eighty-six per cent. of the entire amount, is useless.

4. Mischievous results follow from registration of instruments, under whichever of the three methods described: 1st. In that it lulls parties in a false idea of security; imagining that careful search has disclosed all deeds affecting the property subsequent to the commencement of the system of registration.

5. The following case, one out of many from actual experience, illustrates the consequences of this dangerous error:—In January 18, A sells to B, who immediately, and without registering his conveyance, transfers to C, who registers; two years afterwards, A, whether fraudulently or by oversight, sells the same piece of land to D, who registers his conveyance, builds a house upon the land, and mortgages to E, who also registers. In this case, neither the deeds produced nor the index to the register afford any clue to guide the most careful and astute solicitor to the discovery of the prior registered conveyance to C.

6. 2ndly. It has been established by decisions in England, in New South Wales, and recently in Victoria, in a case involving a large amount, that a registered mortgage shall take precedence of an unregistered equitable mortgage by deposit of title deeds, unless it can be proved that the registered mortgagee was privy to the fraud; a circumstance which the non-possession of title deeds is by no means sufficient to establish.

7. Whilst the utility of registration of instruments is thus proved to be (to say the least) very questionable, it entails upon the community an expense of some £15,000 per annum, of which £12,000 goes for professional services, in making search, preparing memorials, enrolments, and attending to register, &c.; £1500 pays the cost of the department, and the remainder is net revenue.

8. In a previous report it was shown, that, at the present rate of increase, the accumulation under the system of registration of instruments would, in twenty years, fill 620 volumes of memorials and enrolments, besides 60,000 instruments deposited, requiring an index of 100 volumes; showing that this system of registration, even if desirable, cannot be perpetuated, but must eventually break down of its own weight—an objection urged upon the high authority of Mr. Justice Gwynne, and of several eminent members of the legal profession.

9. The opinion of Lord St. Leonards upon registration of instruments in Great Britain is equally applicable to the same system in this Colony, and is as follows:—"By the negligence of an agent, a purchaser or mortgagee may lose an estate if the seller or mortgagor fraudulently sell or mortgage to another person whose deed is the first registered." Again—"The number of deeds requiring registry would destroy the plan by its own weight." The report of the Commission on Registration of Title condemns the system of conveyancing by deed with registration of instrument in the following language:—"We concur in the opinion of one of the witnesses, that, considering the cumbrous forms employed in conveyancing, it would be extremely impolitic to establish a register that would, as it were, stereotype a decaying system."

10. In contrast to this, the results actually realised in this Colony under the system of conveyancing by registration of title, are, 1st. Titles being indefeasible, proprietors may invest capital on land secure against risk of deprivation, and the no less harassing contingency of a chancery suit; mortgagees also, having no further occasion to look to validity of title, may confine their attention to the adequacy of the security. 2nd. A saving, amounting on the average to ninety per cent., or eighteen shillings in the pound sterling, has been effected in the cost of transfers and other dealings, irrespective of the contingent liability to further expenses resulting from suits at law and in equity, the grounds of which are cut off by the alteration of tenure. 3rd. The procedure is so simple as to be readily comprehended, so that men of ordinary education may transact their own business. 4th. Dealings in land are transacted as expeditiously as dealings in merchandize or cattle—fifteen minutes being the average time occupied in filling up the forms and completing a transaction.

11. Prospective advantages, certain to be realised so soon as the Real Property Act comes into universal operation, are: 1st. The value of land, especially of such land as was previously held under blistered titles, will be enhanced in proportion to the increased security and facility of transfer: 2nd. So soon as the fact is generally understood and realized that the risks, costs, and impediments which heretofore attended the system of mortgage, and placed landed securities without the pale of banking transactions, are entirely swept away, the use of money will be obtained on landed securities in South Australia, as it is now in Frankfort and other parts of Europe, at a cost not exceeding the amount paid for the use of money advanced on Government or first-class mercantile securities.

12. An eminent writer on political economy, Mr. J. S. Mill, has remarked,—"To make land as easily transferable as stock, would be one of the greatest economical improvements which could be bestowed upon the country." The English Law Reform Association, in their publication "On Registration of Transfers of Land," remarks—"It has been estimated by persons of experience and authority in such matters, that a cheap, simple, expeditious, and accurate system of transfers of land, would add four or five years' purchase (some will say ten) to the marketable value of land." The Commissioners appointed, pursuant to resolution of the House of Commons, to report upon the subject of "Registration of Title," state the object of their inquiry to be—"By what means, consistently with the preservation of existing rights, can we now obtain such a system of registration as will enable owners to deal with land in as simple and easy a manner, as far as title is concerned, and the difference in the nature of the subject matter may allow, as they can now deal with movable chattels and stock?" This is no longer a *problem for solution*, it is a realised fact. The South Australian Legislature has provided means of escape from the grievous yoke of the English Property Law, and the Colonists are rapidly availing themselves of those means.

ROBT. R. TORRENS, *Registrar-General*.

APPENDIX.

Application.		Name.	Residence.	Description of Property.	Date of Advertisement in Gazette.	No of Advertisement.	Period within which after Date of Advertisement, Caveat may be lodged.	Caveat.		Time for issue of Certificate.	When issued.	Vol.	Folio.
No.	Date.							By whom lodged.	Date.				
1354	1860. Jan. 10.	John Adam ..	Adelaide	Part of Town Acre, 210 ..	Jan. 21, 1860.	3	March 3	—	—	March 6	March 8	x	120
1365	Feb. 1.	Amos Brown ..	Ditto	Section 1420, Hundred of Onkaparinga	Feb. 28, 1860.	3	June 16	—	—	July 1	July 2	xii	20
1374	March 8.	Benjamin Jones	Ditto	Section 420, Hundred of Port Lincoln	—	—	—	John Jones	April 28, 1860				

Date.	Hour.	Name.	Capacity.	Opposite Party.	Property.	No. of Instrument.		Vol. and Fol. of Register Book.	
1860. January 1	—	Adam, John	—	—	Section 500, Hundred of Adelaide	C	—	xv	1
3	Noon.	Adam, John	Lessor	Amos Brown	Part Section 500, Hundred of Adelaide	L	2000	xv	1
4	—	Adam, John	Vendor	Joseph Smith	Part Section 500, Hundred of Adelaide	T	2010	xv	1
6	—	Smith, Joseph.....	Mortgagor	Morgan Thomas.....	Part Section 500, Hundred of Adelaide	M	2015	xv	30
10	—	Adam, John	—	Mary Adam	Part Section 500, Hundred of Adelaide	F	2020	xv	50

INDEX.

Nature of Instrument.		Property.	No. of Instrument.	Register Book.	
				Vol.	Folio.
M		ADAMS, JOHN—			
L		Section 18, Hundred of Tungkillo	113	v	72
		Town Acre 4	217	v	90
E		ABRAHAMS, JONATHAN—			
C		Lot 73, Port Adelaide	1000	x	40
		Section 400, Hundred of Alma	—	x	50
G		BROADSTOCK, PETER—			
M		Section 52, Hundred of Grace	—	xi	62
L	D	Part Section 500, Hundred of Adelaide	—	xv	100
	SL	Town Acre 54	—	xiv	20

SOUTH



AUSTRALIA.

CERTIFICATE of Title.—Register Book, Volume XV., Folio 1.

JOHN ADAM, of Eden, Gardener, is now seized of an estate in fee simple, subject, nevertheless, to such encumbrances, liens, and interests, as are notified by memorandum endorsed hereon, in that Section of land situated in the Hundred of Adelaide, County of Adelaide, numbered 500, and containing eighty acres or thereabouts, which said Section is bounded, as appears in the plan in the margin hereof, and is delineated in the public map of the said Hundred deposited in the Office of the Surveyor General, and was originally granted the second day of June, 1838, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to the said John Adam.

In witness whereof, I have hereunto signed my name and affixed my seal, this first day of January, one thousand eight hundred and sixty-one.

R. R. TORRENS, *Registrar-General.* (L.S.)

Signed, sealed, and delivered, the 1st day }
of January, 1861, in the presence of } W. B. T. A.

Lease, No. 2000, dated 2nd day of January, 1861, produced to me the 3rd January, 1861, at noon, from the above named John Adam to Amos Brown, of Eden, farmer, of the southern moiety of the above described land. Term, seven years, from 1st of January, 1861. Rent, £20 per annum, payable half yearly, on 30th June and 31st December.

Entered 3rd January, 1861.

R. R. TORRENS, *Registrar-General.*

(Plan)

Memorandum of Transfer, No. 2010, dated the 3rd day of January, 1861, produced to me the 4th day of January, 1861, at noon, from the above named John Adam to Joseph Smith, of Adelaide, gentleman, of the southern moiety of the above described land, subject to the Lease, No. 2000. Consideration money paid, £40.

Entered the 4th day of January, 1861, at noon.

R. R. TORRENS, *Registrar-General.*

This Certificate is cancelled as regards the said southern moiety, for which a fresh Certificate is issued. Vol. XV., Folio 30.

R. R. T., *Registrar-General.*

SOUTH



AUSTRALIA.

CERTIFICATE of Title.—Register Book, Volume XV., Folio 30.

PURSUANT to Memorandum of Transfer, No. 2010, dated the third day of January, 1861, from John Adam, Joseph Smith, of Adelaide, gentleman, is now seized of an estate in fee simple, subject, nevertheless, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the southern moiety of that Section numbered 500 in the said Hundred, and bounded as appears in the plan in the margin hereof, and therein colored green, which said piece of land contains forty acres or thereabouts, and is all that portion of the said Section which lies to the south of a line drawn from a point on the eastern boundary of the said Section, distant fourteen chains and twenty links or thereabouts, from the south-eastern corner thereof to a point on the western boundary of the said Section, distant fourteen chains and twenty links or thereabouts, from the south-western corner thereof, which said Section is delineated in the public map of the said Hundred, deposited in the office of the Surveyor General, and was originally granted the second day of June, 1838, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to the said John Adam.

In witness whereof, I have hereunto signed my name and affixed my seal this sixth day of January, one thousand eight hundred and sixty-one.

R. R. TORRENS, *Registrar-General.* (L.S.)

Signed, sealed, and delivered the 6th day }
of January, 1861, in the presence of } H. P. D.

Lease, No. 2000, dated 2nd day of January, 1861, produced to me 3rd January, 1861, at noon, from John Adam to Amos Brown, of Eden, farmer, of the above described land. Term, seven years, from 1st January, 1861. Rent, £20 per annum, payable half yearly, on 30th June and 31st December.

Entered 3rd January, 1861, at noon.

R. R. TORRENS, *Registrar-General.*

Bill of Mortgage, No. 2015, dated 6th day of January, 1861, produced to me the same day, at noon, from the above-named Joseph Smith to Morgan Thomas, of Adelaide, gentleman. Principal sum secured, £30. Date appointed for redemption, 6th January 1862. Rate of interest £10 per centum per annum, payable half-yearly, on 6th of July, and 6th of January.
Entered 6th January, 1861, at noon.

R. R. T., *Registrar-General*.

(Plan.)

Power of Attorney, No. 2080, dated 1st day of February, 1861, from the above-named Joseph Smith to Marmaduke Williams, of Adelaide, gentleman, produced to me the same day, at noon.

Entered 1st day of February, 1861, at noon.

R. R. T., *Registrar-General*.

Memorandum of Transfer, No. 3050, dated the 1st day of March, 1861, produced to me the 2nd day of March, 1861, at noon, from the within-named Joseph Smith to Joseph Bell, of Mitcham, farmer, of the within-described land, subject to the within-mentioned lease, No. 2000, and to the Bill of Mortgage, No. 2015. Consideration money paid, £100.

Entered the 2nd day of March, 1861, at noon.

R. R. T., *Registrar-General*.

This Certificate is cancelled, and fresh Certificate issued. Vol. XVI., Folio 230.

R. R. T., *Registrar-General*.

SOUTH



AUSTRALIA.

CERTIFICATE of Title.—Register Book, Vol. XVI., Folio 230.

PURSUANT to Memorandum of Transfer, No. 3050, dated first day of March, 1861, from Joseph Smith, Jonas Bell, of Mitcham, farmer, is now seised of an estate in fee simple, subject, nevertheless, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the southern moiety of the Section numbered 500, in the said Hundred, and bounded as appears in the plan of the margin hereof, and therein colored green. Which said piece of land contains forty acres or thereabouts, and is all that portion of the said Section which lies to the south of a line drawn from a point on the eastern boundary of the said Section, distant fourteen chains and twenty links, or thereabouts, from the south-eastern corner thereof, to a point on the western boundary of the said Section, distant fourteen chains and twenty links, or thereabouts, from the south-western corner thereof. Which said Section is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the second day of June, 1838, under the hand and seal of James Hurtle Fisher, Esq., Resident Commissioner of the said Province, to John Adam.

In witness whereof I have hereunto signed my name and affixed my seal, this fourth day of March, one thousand eight hundred and sixty-one.

R. R. TORRENS, *Registrar-General, (L.S.)*

Signed, sealed, and delivered, the 4th day
of March, 1861, in the presence of } W. B. T. A.

Lease No. 2000, dated 2nd day of January, 1861, produced to me the 3rd January, 1861, from John Adam to Amos Brown, of Eden, farmer, of the above described land, Term, seven years from 1st January, 1861. Rent, £20 per annum, payable half-yearly, on the 30th June and 31st December.

Entered 3rd January, 1861, at noon.

R. R. T., *Registrar-General*.

Bill of Mortgage, No. 2015, dated 6th January, 1861, produced to me the same day at noon, from the above-named Joseph Smith to Morgan Thomas, of Adelaide, gentleman. Principal sum secured, £30. Date appointed for redemption, 6th January, 1862. Rate of interest, £10 per centum per annum, payable half-yearly, on 6th July, and 6th January.

Entered 6th January, 1861, at noon.

R. R. T., *Registrar-General*.

(Plan.)

Surrender of the above-mentioned Lease, No. 2000, on the 6th day of January, 1862, by Amos Brown, to the above-named Jonas Bell.

Entered the same day at noon.

R. R. T., *Registrar-General*.

Discharge of the above-mentioned Bill of Mortgage, No. 2015, as appears by the receipt endorsed thereon for the whole of the money thereby secured. Dated 6th day of January, 1862.

Entered same day at noon.

R. R. T., *Registrar-General*.

Nomination of Trustees, No. 4000, dated 7th day of January, 1862, produced to me the 8th day of January, 1862, at noon, by the within-named Jonas Bell, of John Jones and John Smith, both of Adelaide, grocers, as trustees of the within-described land.

Entered the 8th day of January, 1862, at noon.

R. R. T., *Registrar-General*.

This Certificate is cancelled and fresh Certificate issued. Vol. XVII., Folio 20.

R. R. T., *Registrar-General*.

SOUTH



AUSTRALIA.

CERTIFICATE of Title.—Register Book, Vol. XVII., Folio 20.

NO SURVIVORSHIP. R. R. T., Registrar-General.

PURSUANT to nomination of Trustees, No. 4000, dated seventh day of January, 1852, by Jonas Bell, John Jones, of Adelaide, grocer, and John Smith, of Adelaide, grocer, are now seised of an estate in fee simple, subject, nevertheless, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the southern moiety of the Section numbered 500 in the said Hundred, and bounded as appears in the plan in the margin hereof, and therein coloured green; which said piece of land contains forty acres or thereabouts, and is all that portion of the said Section which lies to the south of a line drawn from a point in the eastern boundary of the said Section, distant fourteen chains and twenty links, or thereabouts, from the south-eastern corner thereof, to a point on the western boundary of the said Section, distant fourteen chains and twenty links, or thereabouts, from the south-western corner thereof; which said Section is delineated in the public map of the said Hundred, deposited in the Office of the Surveyor General, and was originally granted the second day of June, 1838, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province to John Adam.

In witness whereof, I have hereunto signed my name and affixed my seal this tenth day of January, one thousand eight hundred and sixty-two.

R. R. TORRENS, Registrar-General. (L.S.)

Signed, sealed, and delivered the 10th day } H. P. D.
of January, in the presence of

(Plan.)

Caveat dated the 10th day of January, 1862, by Amy Williams, spinster.
Received by me on the 10th day of January, 1862, at noon.

R. R. T., Registrar-General.

SOUTH



AUSTRALIA.

CERTIFICATE of Title.—Register Book, Vol. XV., Folio 50.

JOHN ADAM, of Eden, gardener, is now seised of an estate in fee simple, subject, nevertheless, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the northern moiety of the Section numbered 500 in the said Hundred, and bounded as appears in the plan in the margin hereof, and therein colored green; which said piece of land contains forty acres or thereabouts, and is all that portion of the said Section which lies to the north of a line drawn from a point on the eastern boundary of the said Section, distant fourteen chains and twenty links, or thereabouts, from the north-eastern corner thereof to a point on the western boundary of the said Section, distant fourteen chains and twenty links, or thereabouts, from the north-western corner thereof; which said Section is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the second day of June, 1838, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to the said John Adam.

In witness whereof, I have hereunto signed my name and affixed my seal, this eighth day of January, one thousand eight hundred and sixty-one.

R. R. TORRENS, Registrar-General. (L.S.)

Signed, sealed, and delivered, the 8th day } H. P. D.
of January, 1861, in the presence of

Bill of Encumbrance, No. 2020, dated the 10th day of January, 1861, produced to me the same day, at noon, by the above-named John Adam, in favour of his wife Mary Adam. Annuity secured, £100. Period of commencement, death of the said John Adam.

Entered 10th day of January, 1861.

R. R. T., Registrar-General.

Bill of Encumbrance, No. 2021, dated the 10th day of January, 1861, produced to me the same day, at noon, by the above-named John Adam, in favour of his daughter Jane Adam. Sum secured, £1000. Time of payment, attainment of the age of 21 years.

Entered 10th January, 1861, at noon.

R. R. T., Registrar-General.

(Plan.)

The estate of the within-named John Adam, in the land above described, became transmitted by death of the said John Adam, on the 3rd day of March, 1861, intestate, as appears by a declaration in writing, dated the sixth day of March, 1861, made by Henry Adam, as the heir at law of the said John Adam, and by an order of the Supreme Court of this Province, dated the sixth day of March, 1861, produced to me the same day, at noon, ordering the Registrar-General to register the said Henry Adam as the proprietor of the within described land.

Entered the sixth day of March, 1861.

R. R. T., Registrar-General.

This Certificate is cancelled as regards the within described land and fresh Certificate issued to Henry Adam. Vol. XV., Folio 240.

R. R. T., Registrar-General.

SOUTH



AUSTRALIA.

CERTIFICATE of Title.—Register Book, Vol. XV., Folio 240.

PURSUANT to an order of the Supreme Court, dated the sixth day of March, 1861, HENRY ADAM, of Eden, gardener, heir at law of John Adam, late of Eden, gardener, deceased, is now seised of an estate in fee simple, subject, nevertheless, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the northern moiety of the Section numbered 500 in the said Hundred, and bounded as appears in the plan in the margin hereof, and therein colored green; which said piece of land contains forty acres or thereabouts, and is all that portion of the said Section which lies to the north of a line drawn from a point on the eastern boundary of the said Section, distant fourteen chains and twenty links, or

thereabouts, from the north-eastern corner thereof to a point on the western boundary of the said Section, distant fourteen chains and twenty links, or thereabouts, from the north-western corner thereof; which said Section is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the second day of June, 1838, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to the said John Adam.

In witness whereof, I have hereunto signed my name and affixed my seal, this eighth day of March, one thousand eight hundred and sixty-one.

Signed, sealed, and delivered, the 8th day }
of March, 1861, in the presence of } H. P. D.

R. R. TORRENS, *Registrar-General*. (L.S.)

Bill of Encumbrance No. 2020, dated the 10th day of January, 1861, produced to me the same day at noon, by the above-named John Adam, in favour of his wife Mary Adam. Annuity secured, £100. Period of commencement, death of the said John Adam.

Entered 10th January, 1861, at noon.

R. R. T., *Registrar-General*.

Bill of Encumbrance No. 2021, dated the 10th day of January, 1861, produced to me the same day at noon, by the above-named John Adam, in favour of his daughter Jane Adam. Sum secured, £1000. Time of payment, attainment of the age of 21, or marriage.

Entered 10th day of January, 1861, at noon.

R. R. T., *Registrar-General*.

(Plan.)

Discharge of the above-mentioned Bill of Encumbrance, No. 2020, by the death of the said Mary Adam, on the 15th day of January, 1862, as appears by the certificate of her death, under the hand of the Registrar-General of Births, Deaths, and Marriages.

Entered the 16th day of January, 1862, at noon.

R. R. T., *Registrar-General*.

Discharge of the within-mentioned Bill of Encumbrance, No. 2021, by the receipt dated 13th day of June, 1862, endorsed thereon for the sum of £1000, thereby secured.

Entered the 13th day of June, 1862, at noon.

R. R. T., *Registrar-General*.

Appointment of Archibald Boyd, of Adelaide, gentlemen, and Cornelius Donovan, of Adelaide, merchant, as the Assignees of the within-named Henry Adam, as appears by an office copy of such appointment, dated the 2nd day of July, 1862, and produced to me the same day, at noon.

Entered the 2nd day of July, 1862, at noon.

R. R. T., *Registrar-General*.

LEASE.

[SOUTH AUSTRALIA.]

I, JOHN ADAM, of Eden, farmer, being registered as the proprietor of an estate in fee simple (certificate of title, Vol. 15., folio 1), subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the southern moiety of the Section 500, in the said Hundred, and bounded as appears in the plan in the margin hereof, and therein coloured green, which said piece of land contains forty acres, or thereabouts, and is all that portion of the said Section which lies to the south of a line drawn from a point on the eastern boundary of the said Section distant fourteen chains and twenty links, or thereabouts, from the south-eastern corner thereof, to a point on the western boundary of the said Section, distant fourteen chains and twenty links, or thereabouts, from the south-western corner thereof, which said Section is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the second day of June, one thousand eight hundred and thirty-eight, under the hand and seal of James Hurtle Fisher, Esq., Resident Commissioner of the said Province, to the said John Adam, do hereby lease the said piece of land above described to Amos Brown, of Eden, farmer, from the first day of January, one thousand eight hundred and sixty-one, as tenant for the space of seven years, at the yearly rent of twenty pounds, payable by equal half-yearly payments, on 30th June, and 31st December, subject nevertheless to the following covenants, conditions, and restrictions, hereinafter contained.

Dated this second day of January, 1861.

Witness—C.D.

JOHN ADAM, *Lessor*.

I do hereby accept this Lease of the above-described lands, to be held by me as tenant, for the term and subject to the conditions, restrictions, and covenants above set forth.

Dated this second day of January, 1861.

Witness—C.D.

AMOS BROWN, *Lessee*.

[ENDORSEMENT TO THE ABOVE LEASE.]

No. 2000.—Lease of part Section 500, situate in Hundred of Adelaide.

JOHN ADAM, *Lessor*.
A. BROWN, *Lessee*.

Particulars entered in the Register-Book, Vol. xv., folio 1, the 3rd day of January, 1861, at noon.

R. R. T., *Registrar-General*.

Surrendered the 6th day of January, 1862.

Witness—E. G. W.

AMOS BROWN.
JONAS BELL.

Entered in the Register-Book, Vol. xvi, folio, 230, the 6th day of January, 1862, at noon.

R. R. T., *Registrar-General*.

Correct for purposes of Registration—A. BROWN.

[SOUTH AUSTRALIA.]

MEMORANDUM OF SALE.

I, JOHN ADAM, of Eden, gardener, being registered as the proprietor of an estate in fee simple (certificate of title, Vol. xv., folio 1), subject however to such encumbrances, liens, and interests, as are notified by memoranda endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the southern moiety of the Section numbered 500, in the said Hundred, and bounded as appears in the plan in the margin hereof, and therein coloured green; which said piece of land contains forty acres, or thereabouts, and is all that portion of the said Section which lies to the south of a line drawn from a point on the eastern boundary of the said Section, distant fourteen chains, or thereabouts, from the south-eastern corner of the said Section to a point on the western boundary of the said Section distant fourteen chains, or thereabouts, from the south-western corner thereof, which said Section is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the second day of June, one thousand eight hundred and thirty-eight, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to the said John Adam, in consideration of the sum of forty pounds (£40) paid to me by Joseph Smith, of Adelaide, gentleman, the receipt of which sum I hereby acknowledge, do hereby transfer to the said Joseph Smith, of Adelaide, gentleman, all my estate and interest in the said piece of land above described, subject, nevertheless, to the lease No. 2000, dated the second day of January, 1861, from the said John Adam to Amos Brown.

(Plan.)

In witness whereof, I have hereunto subscribed my name, this third day of January, 1861.

JOHN ADAM.

Signed by the said John Adam, in the presence of—JOHN JONES.

[ENDORSEMENT TO THE ABOVE MEMORANDUM OF SALE.]

No. 2010.—*Memorandum of Sale of part Section 500, situate in Hundred of Adelaide.*JOHN ADAM, *Vendor.*
JOSEPH SMITH, *Purchaser.*

Particulars entered in the Register-Book, Vol. xv., folio 1, the 4th day of January, 1861, at noon.

R. R. T., *Registrar-General.*

Correct for purposes of Registration.—JOSEPH SMITH.

Lease No. 2000, dated 2nd day of January, 1861, from the within-named John Adam, to Amos Brown, of Eden, farmer, of the within-described land. Term, seven years. Rent £20 per annum; payable half yearly, on 30th June, and 31st December.

BILL OF MORTGAGE.

[SOUTH AUSTRALIA.]

I, JOSEPH SMITH, of Adelaide, gentleman, being registered as the proprietor of an estate in fee simple, subject however to such encumbrances, liens, and interests, as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being portion of the Section numbered 500, in the said Hundred, and bounded as appears in the plan drawn in the margin of Certificate of Title, Register Book, Volume xv., folio 30; and which said piece of land contains forty acres or thereabouts.

In consideration of the sum of Thirty pounds (£30), on the 6th day of January, 1861, lent to me by Morgan Thomas, of Adelaide, gentleman, the receipt of which sum I hereby acknowledge, do hereby covenant with the said Morgan Thomas, that I will pay to him, the said Morgan Thomas, the above sum of Thirty pounds, on the 6th day of January, 1862: Secondly, that I will pay interest on the said sum at the rate of £10 for every £100 by the year, by equal half-yearly payments on the sixth day of July and the sixth day of January in every year. The first of such half-yearly payments to be made on the sixth day of July, 1861.

And for the better securing to the said Morgan Thomas the repayment, in manner aforesaid, of the said principal sum and interest, I hereby mortgage to the said Morgan Thomas all my estate and interest in the said land above described.

In witness whereof I have hereunto signed my name this 6th day of January, 1861.

JOSEPH SMITH, *Mortgagor.*
MORGAN THOMAS, *Mortgagee.*

Signed by the above-named Joseph Smith, Mortgagor, this 6th day of January, 1861, in the presence of E. G. W.
Signed by the above-named Morgan Thomas, Mortgagee, this 6th day of January, 1861, in the presence of E. G. W.

[ENDORSEMENT TO THE ABOVE BILL OF MORTGAGE.]

No. 2015.—*Mortgage of part Section 500, situated in Hundred of Adelaide.*JOSEPH SMITH, *Mortgagor.*
MORGAN THOMAS, *Mortgagee.*

Particulars entered in the Register Book, Vol. xv. folio 30, the 6th day of January, 1861, at noon.

R. R. T., *Registrar-General.*

Received from Jonas Bell, this 6th day of January, 1862, the sum of Thirty Pounds (£30), being in full satisfaction and discharge of the within obligation.

Witness—JOHN JONES.

MORGAN THOMAS, *Mortgagee.*

Correct for purposes of Registration—MORGAN THOMAS.

BILL OF ENCUMBRANCE.

[SOUTH AUSTRALIA.]

I, JOHN ADAM, being registered as proprietor of an estate in fee simple, subject however to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the northern moiety of the Section numbered 500, in the said Hundred, containing forty acres or thereabouts, and bounded as appears in the margin of Certificate of Title, Vol. xv., folio 50; which said Section is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, which was originally granted the second day of June, 1838, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to the said John Adam, and desiring to render the said land available for the purpose of securing to and for the benefit of my wife Mary Adam the annuity hereinafter mentioned, do hereby encumber the said land for the benefit

of the said Mary Adam with the annuity of one hundred pounds (£100), to be raised and paid to my said wife during her widowhood, by equal half-yearly payments; the first of such half-yearly payments to be made within six months after my decease: And, subject as aforesaid, the said Mary Adam shall be entitled to all powers and remedies given to an encumbrancee by the Real Property Act of 1860.

In witness whereof, I have hereunto signed my name, this 10th day of January, 1861.

JOHN ADAM.

Signed by the above-named John Adam, in the presence of E. J. H.

[ENDORSEMENT OF THE ABOVE BILL OF ENCUMBRANCE.]

No. 2020.—*Bill of Encumbrance. J. Adam to Mary Adam, of part Section 500, situated in Hundred Adelaide.*

Particulars entered in the Register Book, Vol. xv., folio 30, the 10th day of January, 1861, at noon.

R. R. T., Registrar-General.

This Bill of Encumbrance is cancelled by the death of the within named Mary Adam, on the fifteenth day of January, 1862. Entered in the Register Book, Vol. xv., folio 240, on the 16th day of January, 1862, at noon.

R. R. T., Registrar-General.

BILL OF ENCUMBRANCE.

[SOUTH AUSTRALIA.]

I, JOHN ADAM, being registered as proprietor of an estate in fee simple, subject however to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the northern moiety of section numbered 500 in the said Hundred, containing forty acres or thereabouts, and bounded as appears in the plan drawn in the margin of Certificate of Title, Vol. xv, folio 50, which said Section is delineated in the public map of the said Hundred, deposited in the office of the Surveyor General, which was originally granted the second day of June, 1838, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to the said John Adam; and desiring to render the said land available for the purpose of securing to and for the benefit of Jane Adam, my daughter, the sum of money hereinafter mentioned, do hereby encumber the said land, for the benefit of the said Jane Adam, with the sum of one thousand pounds (£1000), to be raised and paid to the said Jane Adam, in case she shall survive me, upon her attaining the age of twenty-one years or marriage, whichever shall first happen.

In witness whereof I have hereunto signed my name, this tenth day of January, 1861, in the presence of E. J. T.

JOHN ADAM.

[ENDORSEMENT TO THE ABOVE.]

No. 2021.—*Bill of Encumbrance. J. Adam to Jane Adam, of part Section 500, situated in Hundred Adelaide.*

Particulars entered in the Register book, Vol. xv., folio 50, the tenth January, 1861, at noon.

R. R. T., Registrar-General.

Received from Henry Adam, the heir at law of the within named John Adam, deceased, the sum of £1000, in full discharge of the within Bill of Encumbrance, this thirteenth day of June, 1862.

Witness—JOHN STOKES.

JANE ADAM.

Entered in the Register Book, Vol. xv., folio 240, on the thirteenth day of June, 1862, at noon.

R. R. T., Registrar-General.

POWER OF ATTORNEY.

[SOUTH AUSTRALIA.]

I, JOSEPH SMITH, of Adelaide, gentleman, being registered as the proprietor of an estate in fee simple, subject however to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land described in the Schedule hereto annexed, and containing in the whole forty acres, plans of which said piece of land are drawn in the margin of the Certificates of Title relating the same respectively, as specified in the said Schedule, do hereby appoint Marmaduke Williams, of Adelaide, gentleman, attorney on my behalf, to sell the lands described in the aforesaid Schedule, subject nevertheless to the restrictions and limitations declared and set forth at the foot hereof, and to execute all such instruments, and do all such acts, matters, and things as 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, or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage, and trespass.

I declare the said lands shall not be sold for less than £100 (one hundred pounds), or unless upon the following conditions, that is to say:

I declare that this power shall not be exercised after the expiration of one year from the date hereof.

[SCHEDULE.]

Southern moiety of Section 500, Hundred of Adelaide, County of Adelaide, Certificate of Title, Register Book, Vol. xv., folio 30.

In witness whereof I have hereto signed my name this first day of February, 1861.

JOSEPH SMITH.

Signed by the above-named Joseph Smith, this first day of February, 1861, in the presence of E. G. W.

[ENDORSEMENT TO THE ABOVE.]

No. 2880.—*Power of Attorney, Joseph Smith to M. Williams.*

Particulars entered in the Register Book, Vol. xv., folio 30, the first day of February, 1861, at noon.

W. B. T. A., Deputy Registrar-General.

MEMORANDUM OF SALE.

[SOUTH AUSTRALIA.]

I, JOSEPH SMITH, of Adelaide, gentleman, being registered as the proprietor of an estate, in fee simple, (Register Book, Vol. xv., folio 30), subject however to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the southern moiety of the Section numbered 500 in the said Hundred, and bounded as appears in the plan drawn in the margin of Certificate of Title, Register Book, Vol. xv., folio 30; which said piece of land contains forty acres or thereabouts.

In consideration of the sum of one hundred pounds (£100) paid to me by Jonas Bell, of Mitcham, farmer, the receipt of which sum I hereby acknowledge, do hereby transfer to the said Jonas Bell, of Mitcham, farmer, all my estate and interest in the said piece of land above described, subject nevertheless to the Lease, No. 2000, dated the second day of January, 1861, from John Adam to Amos Brown, and to a Bill of Mortgage, No. 2015, dated the sixth day of January, 1861, from me, the said Joseph Smith, to Morgan Thomas.

In witness whereof I have hereunto subscribed my name this first day of March, 1861.

JOSEPH SMITH, *by his Attorney Marmaduke Williams.*

Signed by the said Joseph Smith, by his Attorney, Marmaduke Williams, in the presence of G. J. H.

[ENDORSEMENT TO THE ABOVE MEMORANDUM OF SALE.]

No. 3050.—*Memorandum of Sale of part Section 500, situated in Hundred Adelaide.*

JOSEPH SMITH, *Vendor.*
JONAS BELL, *Purchaser.*

Particulars entered in the Register Book, Vol. xv., folio 30, second day of March, 1861, at noon.

W. B. T. A., *Deputy Registrar-General.*

Correct for purpose of Registration.—JONAS BELL.

Lease dated second day of January, 1861, from John Adam to Amos Brown, of Eden, farmer, of the within-described land. Term, seven years, from 1st January, 1861. Rent, £20 per annum, payable half-yearly, on 30th June and 31st December.

Mortgage dated sixth day of January, 1861, from the within-named Joseph Smith to Morgan Thomas, of Adelaide, gentleman. Principal sum secured, £30. Date appointed for redemption, 6th January, 1862. Rate of interest, £10 per centum per annum, payable half-yearly, on 6th July and 6th January.

NOMINATION OF TRUSTEES.

[SOUTH AUSTRALIA.]

I, JONAS BELL, of Mitcham, farmer, being registered as the proprietor of an estate in fee simple, subject however to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the Southern moiety of the Section numbered 500 in the said Hundred, and bounded as appears in the plan in the margin of Certificate of Title, Vol. xvi., folio 230, which said piece of land contains forty acres, do hereby transfer all my estate or interest in the said land above described, to John Jones, of Adelaide, grocer, and John Smith, of Adelaide, grocer, as Trustees of the same under the provisions of the Real Property Act. (No. Survivorship.)

In witness whereof, I have hereunto signed my name this seventh day of January, one thousand eight hundred and sixty-two.

In the presence of E. G. W.

JONAS BELL.

Schedule of Trusts.

It is agreed that the above described land shall be held by the above-named Trustees upon the Trusts following, that is to say :

[ENDORSEMENT TO THE ABOVE.]

No. 4000.—*Nomination of Trustees part Section 500, situated in Hundred Adelaide.*

JONAS BELL, *Settler.*
JOHN JONES, & JOHN SMITH, *Trustees.*

Particulars entered in the Register Book, Vol. xvi., folio 230, the 8th day of January, 1862, at noon.

W. B. T. A., *Deputy Registrar-General.*

Correct for purpose of Registration.—

CAVEAT FORBIDDING REGISTRATION OF CONTRACT FOR DEALING WITH ESTATE OR INTEREST IN FUTURE.

To the Registrar-General of South Australia.

TAKE notice that I, Amy Williams, of Le Fevre-terrace, North Adelaide, claiming estate or interest as a person beneficially interested under Deed of Settlement, dated the seventh day of January, 1862, deposited with the Registrar-General, in that piece of land situated in the Hundred of Adelaide, County of Adelaide, being the southern moiety of the Section numbered 500 in the said Hundred, and bounded as appears in the margin of Certificate of Title, Vol. xvii., folio 20, which said piece of land contains forty acres or thereabouts, forbid the registration of any memorandum of sale, or other instrument, made, signed, or executed by John Jones and John Smith, the trustees named in instrument of nomination, No. 4000, dated the 7th day of January, 1862, affecting the said land, until this caveat be by me, or by the order of the Supreme Court, or some Judge thereof, withdrawn. Dated this tenth day of January, 1862.

AMY WILLIAMS.

Signed in my presence this 10th day of January, 1862.—TOM MILLS.

[ENDORSEMENT TO THE ABOVE.]

No. 4005.

Particulars entered in the Register Book, Vol. xvii., folio 20, the tenth day of January, 1862.

R. R. T., *Registrar-General.*



ANNO VICESIMO-TERTIO ET VICESIMO-QUARTO

VICTORIÆ REGINÆ. A. D. 1860.

No. 11.

AN ACT to consolidate and amend certain Acts relating to the Transfer and Encumbrance of freehold and other Interests in Land. [Assented to 17th October, 1860.]

ABSTRACT OF CLAUSES.

1. Repeal of previous Acts.
2. Short Title.
3. Interpretation of certain terms.
4. Functions of the Registrar-General and his Department.
5. Appointment of Registrar-General.
6. Oaths of Office.
7. Certificates and documents purporting to be signed and sealed in a given manner to be received as evidence.
8. Seal of Office.
9. Registrar-General, with sanction of Governor, to issue forms of instruments, &c.
10. Penalty for counterfeiting Seal, fraudulently altering forms, and for not using forms issued by the Registrar-General.
11. Powers of Registrar. To inspect documents. To summon and examine witnesses. To administer oaths. To correct errors. To enter caveats.
12. Appointment of Land Titles Commissioners.
13. Style. Remuneration. Form of procedure.
14. Solicitors to be appointed.
15. Land alienated after this Act to be subject to provisions of this Act.
16. Lands granted prior to the day on which this Act comes into operation may be brought under the operation of this Act. Undivided shares and mortgaged lands may not be brought under Act except upon conditions.
17. Applicant to deposit instruments of title, and abstract, if required.
18. Lands granted subsequent to Registration Act of 1842, when applicant proprietor is original grantee, and no transactions have taken place. Lands granted prior to Registration Act of 1842, when applicant proprietor is not original grantee, or mortgages are satisfied, or parties thereto are also parties to application, and no transmissions have taken place. When evidence of title is not clear, or transmissions have taken place, or parties interested in unsatisfied mortgages are not parties to the application.
19. Notice of application to be published. Lands brought under the Act.
20. Parties interested may enter caveat.
21. If caveat be received within time limited, proceedings stayed.
22. Caveats lapse unless proceedings taken within Three months.
23. Applicant proprietor may summons Registrar-General to show cause if dissatisfied.
24. Case may be argued by Counsel. Expense to be borne by applicant.
25. Applicant proprietor may withdraw his application.
26. Caveats in certain cases not to bar the bringing of land under this Act.
27. Instruments of title, if they include other property, to be returned to applicant proprietor.
28. Certificate of title to issue in name of deceased applicant proprietor. Succession not interfered with thereby.
29. Registrar-General to keep Register-book.
30. Remaindermen may be registered as such. Name of remainderman to be endorsed on certificate of title.
31. Remainderman, registered as such, prohibited from dealing with estate, except in manner prescribed in this Act. Provision not to apply to unregistered remainderman.
32. Certificate of title to be issued to remainderman as soon as his estate shall revert into an estate in possession, and to purchaser entitled to a present estate in simple.
33. Persons registered as joint proprietors to be joint tenants. Tenants in common to receive each a distinct certificate of title.
34. Per centage in the pound to be levied for assurance of title.
35. Assurance fund to be invested in Government securities.
36. Certificate of title to be in duplicate, and to be bound up in Register.
37. Grants and certificates of title registered when embodied in Register-book.
38. Upon entry of particulars, instrument deemed to be part of Register-book.
39. Instruments not effectual until entry in Registry-book.
40. Instruments not to be registered unless in accordance with prescribed forms.
41. Estate of registered proprietor paramount.

42. Memorial to be recorded on duplicate grant or other instrument. Endorsement signed by Registrar-General to be evidence.
43. Surrendered deeds and instruments, dated prior to existing certificate of title, not to be produced.
44. Transfer.
45. Easements and incorporeal rights to be registered.
46. If estate in fee-simple be transferred, certificate of title to be delivered up and cancelled, so far as regards the portion of land transferred.
47. Fresh certificate to be issued to purchaser. A certificate for the balance, if any untransferred, to be issued to proprietor when demanded, or to a registered transferee thereof.
48. Lands under the provisions of this Act—how leased. No lease of mortgaged land valid without consent of mortgagee.
49. Right of purchase may be granted or covenant stipulated.
50. Lease may be surrendered by endorsement by lessee with concurrence of lessor.
51. Lands under this Act—how mortgaged or encumbered. Bill of mortgage or encumbrance to be recorded in order of time of production. Priority of mortgages and encumbrances.
52. Remedy when mortgagor or encumbrancer is in default. Power to sell. Appropriation of proceeds.
53. Registrar-General to give effect to sale by mortgagee or encumbrancee.
54. Payments by instalments. Power to vary time of enforcing payment.
55. Bill of mortgage or bill of encumbrance not a transfer. In case of default, mortgagee or encumbrancee may enter and take possession or may distrain. May bring action for ejectment or may foreclose right of redemption.
56. Mortgagee or encumbrancee may distrain on tenant or occupier for arrears not exceeding the amount of rent due by such tenant or occupier. No lessee liable for greater sum than the amount of rent actually owing by him.
57. Mortgagee or encumbrancee of leasehold entering into possession of rent and profits becomes liable lessor.
58. Discharge of mortgages and encumbrances.
59. Mortgage money may be paid to Registrar-General if mortgagee be absent from the Colony, and mortgage discharged.
60. Transfer of mortgage and of encumbrance and of lease.
61. Transfer of mortgage or lease includes transfer of right to sue thereunder. Saving powers to Courts of Equity to give effect to trusts.
62. General covenants to be implied in instruments.
63. Transferee of land subject to mortgage or encumbrance to indemnify transferor.
64. Covenants to be implied in every bill of mortgage.
65. Covenants to be implied in every lease against the lessee.
66. Powers to be implied in lessor.
67. Registrar-General to note particulars of re-entry in Register-book.
68. Abbreviated form of words for expressing covenants to be as effectual as if such covenants were set forth in words at length. Insure. Paint outside. Paint and paper inside. Fence. Cultivate. Not use as a shop. Offensive trades. Assign or sublet. Cut timber. Business of publican in orderly manner. Apply for renewal of licence. Facilitate the transfer of licence.
69. Such covenants may be set forth in declaration in actions for breach.
70. Covenants declared to be implied, to have the same force as if the same had been expressed.
71. Covenants declared to be implied, may be negatived or modified.
72. Lands may be vested in trust by instrument of nomination.
73. Trusts may be declared either by schedule to instrument of nomination, or by separate deed or instrument. Instrument declaring trusts to be deposited, but not registered.
74. No entry of trusts to be made in Register-book. Trustees to receive certificate of title, and deal with same, as if beneficial owners.
75. The words "no survivorship," in any instrument of appointment, shall operate to prevent a less number of trustees than are named in such instrument dealing with the land. In such case, Supreme Court to give direction for appointment to any vacancy, or for securing moneys. Receipt of trustees valid discharge, and purchaser or mortgagee not bound to see after application of money. Continuing trustees may nominate co-trustees, in case of vacancy. Appointment of new trustees to be noted in Register-book.
76. The words "no survivorship" to be written on certificate of title, if on instrument of nomination.
77. Proprietor may vest estate jointly in himself and others without limiting any use or executing any assignment.
78. Registrar-General to carry out order of Supreme Court, vesting trust estate.
79. Action may be brought by person claiming beneficiary interest in name of trustee. Trustee to be indemnified.
80. Transmission of land to be authenticated by declaration of party claiming before registered. Declaration before whom made.
81. Transmission by bankruptcy or insolvency. Certified copy of appointment of assignee to be deposited with Registrar-General. Upon entry of such appointment assignees empowered to deal with lands. Bankruptcy or insolvency of trustees not to affect beneficiaries.
82. Marriage of female proprietor to be certified to Registrar-General by declaration. Particulars to be entered in Register-book. Instruments to be registered giving effect to dealings in land by married women.
83. Transmission, will, and probate, or letters of administration, to be produced. Particulars to be registered.
84. Heir-at-law or devisee may apply to Judge of Supreme Court to order the Registrar-General to issue certificate of title to him.
85. Powers of Supreme Court, under Statute of the 6th Queen Anne, applicable to registration under this Act.
86. Sales by Sheriff, or under order of Supreme Court.
87. Partition of coparcenership, or joint tenancy, or tenancy in common.
88. Agent holding power of attorney to sell or dispose of the fee, may apply to bring land under Act, and receive certificate of title in the name of his principal.
89. Upon surrender of existing grants or certificates of title, the proprietor may obtain a single certificate for all the land included therein.

90. Registrar-General may dispense with production of duplicates of certificates of title and other instruments in certain cases.
 91. Registered proprietor bringing suit for specific performance to be entitled to decree.
 92. Vendor to have no equitable lien by reason of balance of purchase-money unpaid. No contract for sale or dealing with land *in futuro* to be registered.
 93. Caveat may be lodged.
 94. Notice of caveat to parties. Person lodging caveat may be summoned to show cause.
 95. Caveats to contain the names and description of parties, and a sufficient description to identify the land. Caveator to leave an address, at which notice may be served.
 96. No entry to be made in Register-book affecting lands in respect to which caveat continues in force.
 97. Registrar-General may cancel caveat upon proof that the interest of parties have been satisfied, or that the interest of the caveator is inadequate to warrant the caveat.
 98. Compensation for lodging caveat without reasonable cause.
 99. Power of attorney.
 100. Registration abstract for registering dealings without the limits of the Province.
 101. Mode of procedure under registration abstract.
 102. General rules applicable to powers of attorney and registration abstracts. Revocation of power of attorney.
 104. Transferee not affected by notice.
 105. Consent may be given by endorsement.
 106. Provision for cases of infancy, or other incapacity.
 107. Acknowledgment of married women interested in land under this Act may be taken by Registrar-General as well as by Judge or Master of Supreme Court. Memorandum of such acknowledgment to be endorsed on instrument in form of Schedule and entered in Register-book.
 108. Rights and liabilities during coverture.
 109. Seal of Corporation substituted for signature.
 110. Attestation of instruments. Execution of instruments before whom to be proved.
 111. Mode of proving instruments.
 112. Provisions in case of lost grant.
 113. Duplicates of future public maps to be deposited.
 114. Proprietor may deposit map.
 115. Registrar-General may require map to be deposited.
 116. Search allowed.
 117. Certified copies signed and sealed to be furnished by Registrar-General and to be received in evidence.
 118. No action of ejectment to lie except in cases mentioned in this Act.
 119. Supreme Court may order the cancelling of any entry in the Register-book obtained through fraud and the substitution of any other entry.
 120. Persons defrauded may bring action against fraudulent proprietor for damages. Saving the case of a purchaser or mortgagee for valuable consideration.
 121. If registered proprietor be dead action to be against Registrar-General as nominal defendant.
 122. Actions for recovery of damages may, in certain cases, be brought against the Registrar-General as nominal defendant. Treasurer on receipt of warrant from Governor to pay amount of award. Notice of action to be served on Registrar-General and Attorney-General. Process and notice to be served on Attorney-General.
 123. If action discontinued or plaintiff nonsuited the nominal defendant entitled to costs.
 124. Registrar-General may summon person by whom a certificate of title or entry has been fraudulently or wrongfully obtained. If summons disregarded Registrar-General may apply for a warrant for such person to be apprehended and brought before a Judge of the Supreme Court.
 125. In case person summoned keeps out of the way summons may be served upon any servant or inmate of his last known place of abode.
 126. Party appearing may be examined on oath. Registrar-General or Court may order the delivery of the instrument to the Registrar-General. In case of neglect or refusal Registrar-General may issue a fresh certificate or other instrument.
 127. If party abscond proceedings to be conducted as in the case of party attending upon summons or warrant.
 128. Registrar-General or Court to award costs and expenses.
 129. Costs unpaid may be levied by distress.
 130. No distress to be trespass for want of form.
 131. Indemnity of Registrar-General.
 132. Witnesses to have expenses tendered.
 133. Registrar-General may license Land Brokers.
 134. Authority to register. Penalty for registering incorrect instruments.
 135. Fees to be charged.
 136. Registrar-General to pay moneys into Treasury and to render accounts. Parties entitled to be paid by Treasurer upon proper warrant.
 137. Penalty for falsifying Register-book or procuring entries or instruments by fraud or misrepresentations. Person making false oath or affirmation, guilty of perjury, and liable to be imprisoned, in addition to damages recoverable by the party damnified.
 138. Jurisdiction.
 139. Commencement of Act.
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ALPHABETICAL Series of Forms, from A to S, in the Schedule referred to.

- A. *Application to bring Land under the Provisions of the Real Property Act of 1860.*
 - B. *Caveat forbidding Lands to be brought under the Real Property Act of 1860.*
 - C. *Certificate of Title.*
 - D. *Memorandum of Transfer.*
 - E. *Lease.*
 - F. *Bill of Mortgage.*
 - G. *Bill of Encumbrance for securing a sum of Money.*
 - H. *Transfer of Mortgage, Lease, or Encumbrance, to be endorsed on Original Mortgage, Bill of Encumbrance, or Lease.*
 - I. *Nomination of Trustees. Schedule of Trusts.*
 - K. *Caveat forbidding registration of dealing with estate or interest.*
 - L. *Power of Attorney.*
 - M. *Registration Abstract for sale or lease without the limits of the Colony.*
 - N. *Revocation Order.*
 - O. *Certificate of Registrar-General upon acknowledgment of instrument to be made by a Married Woman.*
 - P. *Certificate of Registrar-General, Justice of the Peace, &c., taking declaration of attesting witness.*
 - Q. *Certificate of Registrar-General or Justice of the Peace before whom instrument may have been executed by the parties thereto.*
 - R. *Fees payable for the performance of the several acts, matters, and things herein specified.*
 - S. *Scale of Charges for Land Brokers under the Real Property Act of 1860.*
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