

CHAPTER 131
LAND TRANSFER

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

SECTION

1. Short title.
2. Interpretation.

PART II—APPLICATION

3. Laws inconsistent not to apply to land subject to this Act.
4. Scope of Act.
5. What lands subject to Act.

PART III—APPOINTMENT, POWERS AND DUTIES OF OFFICERS

6. Appointment of Registrar.
7. Deputy Registrars.
8. Seal.
9. Suitable premises to be provided.

**PART IV—CROWN GRANTS, CERTIFICATES OF TITLE AND
REGISTRATION**

10. Crown grants.
11. Certificate of title.
12. Power to combine certificates.
13. Power to divide certificates.
14. Power of Registrar to require the proprietor to take out a fresh certificate.
15. Proprietor entitled to certificate of title.
16. Power to issue new certificate of title.
17. History of dealings to be preserved.
18. Instrument of title to be evidence of proprietorship.
19. Register of Titles.
20. Presentation Book.
21. Registration of instruments of title.
22. Instrument valid though proprietor not then registered.
23. Priority of registration to give priority of title.
24. Memorial of registration.
25. Memorial to be endorsed on duplicate instrument, and certificate of time of registration to be endorsed on every instrument so registered.

26. Power of Registrar to dispense with the production of duplicate grant or other instrument.
27. Substitution for lost or defaced instrument.
28. Case of lost duplicate instrument.
29. Merger how registered.
30. Search certificates.
31. Applicant for search certificate may inspect instrument of title.
32. Stay of registration of dealings on issue of search certificate.
33. Instruments when presented together.
34. Co-ownership.
35. Registrar to be guided by provisions of Act.
36. Register to be open to search.

PART V—EFFECT OF REGISTRATION

37. Instruments not effectual until registered.
38. Registered instrument to be conclusive evidence of title.
39. Estate of registered proprietor paramount, and his title guaranteed.
40. Purchaser not affected by notice.
41. Instrument etc., void for fraud.
42. Proprietors protected against ejection.
43. Instrument of title issued in name of deceased proprietor to be void.

PART VI—TRANSFERS

44. Transfers.
45. Procedure in case of transfer of land.
46. When new certificate of title to be issued.

PART VII—RESTRICTIVE COVENANTS

47. Creation of restrictive covenants.
48. Discharge or modification of restrictive covenants.

PART VIII—EASEMENTS AND PROFITS A PRENDRE

49. Creation of easement and profits.
50. Consent of mortgagee, lessee or encumbrancee to easement or profit.
51. Surrender of easements and profits.
52. Variation of easements and profits.

PART IX—DISCHARGE AND MODIFICATION BY COURT OF RESTRICTIONS AND EASEMENTS

53. Discharge or modification by court of restrictions and easements.

* PART X—LEASES

54. Form and registration of leases.
55. Consent of mortgagee.
56. Covenant not to transfer or sublet.
57. Cancellation by Registrar.
58. Variation.
59. Consent to variation.
60. Bringing down encumbrances on registration of new lease.
61. Bringing down encumbrances on acquisition by lessee of fee simple.
62. Surrender of lease how registered.

* PART XI—MORTGAGES

63. Mortgage to have effect as security only.
64. Sub-mortgages.
65. Form of mortgage.
66. Variation of mortgage.
67. Variation of priority of mortgages.
68. Discharge of mortgage.
69. Discharge of mortgage in case of death of annuitant, etc.
70. How mortgage discharged in absence of the mortgagee from Fiji.
71. Transfer by mortgagee in exercise of power of sale.
72. Effect of registration of transfer signed by the mortgagee.
73. Application for foreclosure, how and when made.
74. Application to be advertised and Registrar to make order and register the mortgagee as proprietor.
75. Foreclosure to be in full satisfaction of mortgage debt.

PART XII—LIFE ESTATES AND REMAINDERS

76. Estates for life in reversion or in remainder.

PART XIII—TITLE BY POSSESSION TO LAND, AND REMOVAL OF ABANDONED EASEMENTS

77. Acquisition of title by virtue of adverse possession prior to commencement of Act.
78. Application for vesting order.
79. Form of application.
80. Powers and duties of Registrar.
81. Notice.
82. Person claiming interest may lodge caveat.
83. Caveat by registered proprietor of estate in fee simple, etc.
84. Caveat by person entitled to other estate or interest.
85. Caveat by person claiming as beneficial or equitable owner of any estate or interest.
86. Notice of refusal of application to be given to applicant.
87. Power of Registrar to make vesting order.
88. Certificates of title to be issued.

89. Duty to be paid.
90. Certain lands exempt.
91. Application for removal of abandoned easement.
92. Power of Registrar to cancel easement.

PART XIV—TRANSMISSION

93. Person claiming under transmission may be registered.
94. Registrar may enter caveat.
95. Change or correction of name of proprietor.
96. Trustee of bankrupt to be registered as proprietor.
97. Refusal by trustee to accept a lease to operate as a surrender.
98. Refusal to accept lease subject to mortgage to vest lease in mortgagee.
99. Surrender not to prejudice cause of action against lessee.
100. Provision in case of person holding for a deceased or bankrupt proprietor.
101. Survivorship.

PART XV—TRUSTS AND TRUSTEES

102. Trustees.

PART XVI—JUDGMENTS AND EXECUTION

103. As to proprietor preferred by court.
104. Enforcement of judgments, etc. against land.
105. Satisfaction, etc. of registered judgment.

PART XVII—CAVEATS

106. Caveat may be lodged.
107. Particulars to be stated in and to accompany caveat.
108. Entry and service of caveats.
109. Notice and opposition to caveat.
110. Removal of caveat.
111. Caveat may be withdrawn.
112. No second caveat may be entered.
113. No entry to be made in register affecting land in respect of which caveat continues in force.
114. Compensation for lodging caveat without reasonable cause.
115. Memorandum of caveats to be fixed to certificates.
116. Removal of caveat where interest protected has ceased to exist.
117. Caveat on behalf of a beneficiary under a will or settlement does not bar registration in certain cases.

PART XVIII—POWERS OF ATTORNEY

118. Registered proprietor may deal by attorney.
119. Powers of attorney to be deposited and registered.
120. Revocation of power of attorney.
121. Cancellation of power of attorney.

PART XIX—ATTESTATION, CERTIFICATION AND EXECUTION

122. Witnesses necessary in attesting documents.
123. Application to have force of statutory declaration.
124. Instruments to be certified correct for registration.
125. Consent to dealing, how given.
126. Prior encumbrances to be endorsed on instruments.
127. Appointment of liquidator of company to be entered in the register.

PART XX—GOVERNMENTS OF OVERSEA COUNTRIES

128. Governments of oversea countries may be registered proprietors.

PART XXI—SPECIAL POWERS AND DUTIES OF REGISTRAR

129. Power to call for documents.
130. To administer oaths.
131. Powers to enter caveats, to correct certificates and to destroy documents.
132. To mark or stamp instrument.
133. Exemptions from fees.
134. Registrar to keep account of moneys received.
135. Registrar to carry out order vesting trust estate.
136. Power of Registrar to make a vesting order in cases of completed purchase.
137. Certain encumbrances which have ceased to affect the title may be removed from the register.
138. Satisfaction of judgment may be entered before the expiration of four months from the entry of copy writs.

PART XXII—GUARANTEE OF TITLE

139. Indemnity.
140. Damages for mistake or misfeasance of Registrar.
141. Notice of action to be served on Attorney-General and Registrar.
142. Liability of plaintiff for costs.
143. In case of fraud compensation paid and costs recoverable.
144. Consolidated Fund to be credited or debited.
145. Judgment may be signed against absconders, etc.
146. Judgment recovered at any time.
147. Crown not liable in certain cases.
148. Value of land at time of deprivation to be measure of damages.
149. Limitation of actions.

PART XXIII—SUBDIVISIONS AND ROADS

150. Power of Registrar to require plan.
151. Crown survey boundaries as marked on the ground to be deemed the true boundaries.

152. Crown grant or lease deemed to convey land within survey boundaries marked on the ground.
153. How survey boundaries may be proved in the absence of survey marks.
154. Margin of error allowed in description of boundaries.
155. Registrar may disregard minute errors of dimensions.
156. Excess of land may be apportioned between different owners or proprietors.
157. Proprietor subdividing to deposit map if required.
158. Number of allotment on plan of subdivision sufficient description for purposes of dealings.
159. Creation of easements by certificate and deposit of plan.
160. Plan of subdivision.
161. Acquisition of land for public purposes.
162. Vesting of public roads in the Crown.
163. Power of Registrar to issue certificate of title for street.

PART XXIV—SPECIAL JURISDICTION OF THE SUPREME COURT

164. Appeal to court from order of Registrar.
165. Reference to court on legal points, etc.
166. Correction of instrument issued in error.
167. Power of court in case of refusal to deliver up instrument of title.
168. Power of court to direct Registrar.
169. Ejectors.
170. Particulars to be stated in summons.
171. Order for possession.
172. Dismissal of summons.
173. No necessity for writ of possession when order is obtained.
174. Proprietor to allow his name to be used in any action upon application of person interested.

PART XXV—MISCELLANEOUS

175. Lands belonging to Crown may be withdrawn from operation of Act.
176. Service of notices.
177. Regulations.
178. Repeal and saving.

CHAPTER 131

LAND TRANSFER

*Act No. 19 of 1971, Legal Notice No. 46 of 1972,
Acts Nos. 25 of 1974, 14 of 1975, 14 of 1976, 2 of 1979*

AN ACT TO AMEND THE LAW RELATING TO THE TRANSFER OF
LAND AND TO THE REGISTRATION OF TITLE TO LAND
[1 August 1971]

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Land Transfer Act.

Interpretation

- 2.—(1) In this Act and in all instruments made or executed in pursuance thereof, unless the context otherwise requires—
- “court” means the Supreme Court;
 - “Crown grant” or “grant” means any grant of land by the Crown;
 - “dealing” means any transaction of whatsoever nature by which land or any estate or interest therein is affected under the provisions of this Act;
 - “Director of Lands” means the Director of Lands and Surveyor-General;
 - “disability” means the legal disability of infancy or unsoundness of mind;
 - “encumbrancee” means the proprietor of any encumbrance;
 - “encumbrancer” means the proprietor of any land, or of any estate or interest therein, that is subject to an encumbrance;
 - “encumbrances” includes all prior estates, interests, rights, claims and demands which can or may be had, made or set up in respect of land, and includes a mortgage;
 - “estate or interest” means any estate or interest in land subject to the provisions of this Act, and includes any mortgage thereon;
 - “instrument” includes every document registered or capable of registration under this Act or in respect of which any memorial is by this Act directed, required or permitted to be entered in the Register Book or endorsed on any registered instrument;
 - “instrument of title” includes a certificate of title, Crown grant, lease, sublease, mortgage or other encumbrance as the case may be;
 - “land” includes land, messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description, together with all buildings and other fixtures, paths, passages, ways, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals and quarries, and all trees and timber thereon or thereunder lying or being unless any such are specially excepted;
 - “lease” includes a sublease;
 - “lessee” means the proprietor of a lease or sublease;
 - “lessor” means the proprietor of the land leased and includes a sub-lessor;
 - “memorial” means the entry relating to any instrument duly entered by the Registrar on the instrument of title;

“mortgage” means any charge on land, or any estate or interest therein, created under the provisions of this Act for securing—

- (a) the repayment of a loan or satisfaction of an existing debt;
- (b) the repayment of future advances, or payment or satisfaction of any future or unascertained debt or liability, contingent or otherwise;
- (c) the payment to the holders for the time being of any bonds, debentures, promissory notes or other securities, negotiable or otherwise, made or issued by the mortgagor before or after the creation of that charge;
- (d) the payment to any person or persons by yearly or periodical payments or otherwise or any annuity, rentcharge or sum of money other than a debt, and includes the instrument effecting the same;

“mortgage money” means all moneys, whether principal sum, annuity, rentcharge or other periodical payment, interest or other moneys whatsoever, owing under or secured by a mortgage;

“mortgagee” means the proprietor of a mortgage;

“mortgagor” means the proprietor of land, or any estate or interest therein, charged with a mortgage;

“personal representative” means the executor, original or by representation, or the administrator for the time being of the estate of a deceased person;

“person of unsound mind” has the same meaning as in the Mental Treatment Act; (Cap. 113.)

“proprietor” means the registered proprietor of land, or of any estate or interest therein;

“qualified witness” means any person prescribed as such under the provisions of paragraph (e) of section 177;

“register” means the Register of Titles to land to be kept in accordance with the provisions of this Act;

“Registrar” means the Registrar of Titles appointed under the provisions of this Act, and includes any Deputy Registrar;

“transmission” means the acquisition of title to land, or to any estate or interest therein, by operation of law and, without restricting the generality of the foregoing words, includes the acquisition of title to an estate or interest in land consequent on the death, will, intestacy or bankruptcy of a proprietor or by decree of the court or by assignment for the benefit of creditors.

(Amended by Act 24 of 1974, s.2; 14 of 1976, s.2.)

(2) In all instruments purporting to be made under the provisions of this Act, unless the context otherwise requires the description of any person as proprietor, transferor, transferee, mortgagor, mortgagee, encumbrancer, encumbrancee, lessor or lessee or as trustee or as having or taking any estate or interest in any land shall include the personal representatives and transferees of such person.

PART II—APPLICATION

Laws inconsistent not to apply to land subject to Act

3. All written laws, Acts and practice whatsoever so far as inconsistent with this Act shall not apply or be deemed to apply to any land subject to the provisions of this Act or to any estate or interest therein.

Scope of Act

4. All land subject to the provisions of the Land (Transfer and Registration) Ordinance and every estate or interest therein and all instruments and dealings affecting any such land, estate or interest shall from the commencement of this Act be deemed to be subject to the provisions of this Act. (Cap. 136.) (1955 Edition)

What lands subject to Act

5. The following freehold and leasehold land shall be subject to the provisions of this Act:—

- (a) all land which has already in any manner become subject to the provisions of the Land (Transfer and Registration) Ordinance; (Cap. 136.) (1955 Edition)
- (b) all land hereafter alienated or contracted to be alienated from the Crown in fee;
- (c) all leases of Crown land granted pursuant to the provisions of the Crown Lands Act, all leases of native land granted pursuant to the provisions of the Native Land Trust Act and all mining leases, special mining leases, special site rights and road access licences granted pursuant to the provisions of the Mining Act; (Cap. 132.) (Cap. 134.) (Cap. 146.)
- (d) all land in respect of which any order is hereafter made under the provisions of any Act now or hereafter in force which has the effect of vesting that land in any person in freehold tenure.

PART III—APPOINTMENT, POWERS AND DUTIES OF OFFICERS

Appointment of Registrar

6. The Judicial and Legal Services Commission may appoint any fit and proper person to be Registrar of Titles and such Registrar of Titles shall be charged with the administration of the provisions of this Act.

(Inserted by 25 of 1974, s. 3.)

Deputy Registrars

7.—(1) The Minister may appoint Deputy Registrars of Titles and such other officers as may be necessary for carrying out the provisions of this Act.

(2) Whenever by any law in force in Fiji anything is appointed to be done by the Registrar the same may lawfully be done by any Deputy Registrar.

Seal

8.—(1) The Registrar shall cause to be kept a seal of office, and all certificates of title and other documents purporting to be sealed with such seal and signed by the Registrar or a Deputy Registrar shall be admissible in evidence without further proof.

(2) All courts, judges and persons acting judicially shall take judicial notice of the signature of the Registrar of Titles and of any Deputy Registrar of Titles.

Suitable premises to be provided

9. There shall be provided and maintained in proper repair at the public expense substantial and fireproof premises to serve as the place of deposit and preservation of the registers and all other documents connected with the registration of titles, and such premises shall be equipped with such fireproof safes, strong-rooms and other secure places as may be necessary.

PART IV—CROWN GRANTS, CERTIFICATES
OF TITLE AND REGISTRATION

Crown grants

10.—(1) Crown grants of land in Fiji shall be grants in fee simple. Every grant in addition to proper words of description shall contain a diagram of the land. Each Crown grant shall be prepared in duplicate and shall be delivered by the Director of Lands to the Registrar, who shall register the grant in manner hereinafter provided and deliver the duplicate to the proprietor named therein.

(2) The Minister may issue a Crown grant of any whole island in any part of Fiji without a diagram of such island being contained in such Crown grant:

Provided that—

- (a) whenever any such island has been accurately surveyed and laid down on charts, maps or plans, the Director of Lands shall call in the duplicate Crown grant and add thereto a plan or diagram of the island and also add the same to the original Crown grant in the register, and the Registrar shall produce such original Crown grant for that purpose; and
- (b) where any such island has been transferred before it has been accurately surveyed and laid down on charts, maps or plans the provisions of this section with regard to adding the plan or diagram to the Crown grant shall equally apply to the certificate of title in the name of the first or any subsequent transferee.

Certificate of title

11. When a Crown grant is cancelled upon registration of a transfer or other dealing as hereinafter provided, the Registrar shall issue in duplicate a certificate of title in favour of the new proprietor in the prescribed form, the original of which he shall register in the same manner as provided for Crown grants and the duplicate he shall deliver to the new proprietor; and in like manner upon the cancellation of each certificate of title a fresh certificate of title shall be issued, and the title of the proprietor under each fresh certificate shall be as valid and effectual in every respect as if he had been the original grantee of the land contained in the certificate.

Power to combine certificates

12. Upon the application in writing of the proprietor of any land the subject of separate grants or certificates and upon such proprietor delivering up the duplicates of all such grants and certificates, the Registrar may, subject to the other provisions of this Act and to the provisions of any Act relating to the subdivision of land, issue in place thereof a single certificate of title in favour of such proprietor for the whole of such land, and upon the issue of such new certificate shall—

- (a) endorse thereon all memorials to which such land or any part thereof may, at that time, be subject; and
- (b) cancel the previous grants or certificates endorsing thereon a memorandum of the reasons for such cancellation and a reference to the new certificate of title issued in place thereof.

Power to divide certificates

13. Upon the application in writing of the proprietor of any land the subject of a grant or certificate of title and upon such proprietor delivering up the duplicate of such grant or certificate, the Registrar may in accordance with the application issue in place thereof, either—

(a) separate certificates of title in favour of such proprietor for each portion of such land, and upon the issue of such new certificate shall—

(i) endorse on each such certificate all memorials to which the land included therein may, at that time, be subject; and

(ii) cancel the previous grant or certificate endorsing thereon a memorandum of the reasons for such cancellation and a reference to the new certificate of title issued in place thereof; or

(b) a separate certificate of title in favour of such proprietor for any portion of such land, and upon the issue of such new certificate shall—

(i) endorse thereon all memorials to which the land included therein may, at that time, be subject;

(ii) endorse on the certificate of title relating to the land from which such part is taken, a memorandum partially cancelling such grant or certificate; and

(iii) either retain the duplicate of such partially cancelled grant or certificate or return the same to the proprietor,

and shall when so required by the proprietor of the land the subject of such partially cancelled grant or certificate, issue a new certificate of title in favour of such proprietor for the balance of the land the subject of such partially cancelled grant or certificate, and complete the cancellation of such partially cancelled grant or certificate endorsing thereon a memorandum of the reasons for such cancellation and a reference to the new certificate of title issued in place thereof.

Power of Registrar to require the proprietor to take out a fresh certificate

14. The Registrar may, on or before the registration of any instrument, require the proprietor of any land to take out a new certificate of title or several new certificates of title, or he may require such proprietor to combine several certificates of title in one new certificate of title.

Proprietor entitled to certificate of title

15. The proprietor of any land shall be entitled to the issue of a certificate of title in respect of such land and, if any certificate be issued in favour of a person under disability, the Registrar shall state, in such certificate, the date of birth of the minor or the nature of the disability so far as it is known to him.

Power to issue new certificate of title

16.—(1) The Registrar may, on delivery to him of a duplicate Crown grant or certificate of title and on the application of the proprietor, cancel the existing grant or certificate and issue a new certificate of title in place thereof.

(2) Where the Registrar is of the opinion that, because a Crown grant or certificate of title has become defaced or illegible or has no convenient space for further endorsements, such grant or certificate should be replaced, he may—

- (a) require the proprietor to apply for a new certificate of title; and
- (b) retain the duplicate grant or certificate required to be replaced until the issue of a new certificate of title and on such issue cancel the replaced grant or certificate.

History of dealings to be preserved

17. The Registrar shall cause to be noted on the register and on all instruments registered under the provisions of this Act, such references as will enable the title to be traced either prior or subsequent to the original instrument of title.

Instrument of title to be evidence of proprietorship

18. Every duplicate instrument of title duly authenticated under the hand and seal of the Registrar shall be received in all courts as evidence of the particulars contained in or endorsed upon such instrument and of such particulars being entered in the register and shall, unless the contrary be proved by the production of the register or a certified copy thereof, be conclusive evidence that the person named in such instrument or in any entry thereon as seised of or as taking an estate or interest in the land described in such instrument is seised or possessed of such land for the estate or interest so specified as from the date of such certificate or as from the date from which such estate or interest is expressed to take effect.

Register of Titles

19. The Registrar shall keep books, to be called the "Register of Titles", and shall bind up therein the originals of all instruments of title to be issued as hereinafter provided, and each instrument of title shall constitute a separate folium of the book in which such instrument is entered and the Registrar shall record, by entering a memorial thereof on the folium constituted by each such instrument of title, the particulars of every other instrument, dealing or matter affecting the same and which is required by the provisions of this Act or entered in the register.

Presentation Book

20. The Registrar shall also keep a book, to be called the "Presentation Book", in which shall be entered by a short description every instrument which is presented for registration with the day and hour and, if required by the person presenting the instrument, the minute of presentation; and, for purposes of priority only, the time of registration, notwithstanding the provisions of section 21, shall be deemed to relate back to the time of presentation for registration. The Registrar in entering memorials upon the instruments of title embodied in the register and endorsing a memorandum upon an instrument to be issued shall take the time from the Presentation Book as the time of registration.

Registration of instruments of title

21.—(1) Every instrument of title shall be deemed and taken to be registered under the provisions and for the purposes of this Act as soon as the same has been signed by the Registrar and marked with a serial number in the register, and every instrument purporting to transfer or in any way to affect land subject to the provisions of this Act, or any estate or interest therein, shall be deemed to be so registered as soon as a memorial thereof as herein described has been entered in the register upon the folium constituted by each existing instrument of title affected by such dealing.

(2) The person named in any instrument of title or other instrument registered as provided in subsection (1) as the proprietor or as becoming a proprietor, of land subject to the provisions of this Act, or of any estate or interest therein, shall be deemed and taken to be the duly registered proprietor thereof.

Instrument valid though proprietor not then registered

22. No instrument purporting to deal with any land subject to the provisions of this Act, or any estate or interest therein, shall be or be deemed to have been invalid or ineffectual by reason only that the same purports to have been executed at a time when the person executing the same was not actually registered as the proprietor of such land or of such estate or interest therein.

Priority of registration to give priority of title

23. Except as otherwise provided in this Act, every instrument presented for registration shall, unless it is a Crown grant, be attested by one witness, and shall be registered in the order of time in which the same is presented for that purpose, and instruments registered in respect of or affecting the same estate or interest shall, notwithstanding any express, implied or constructive notice, be entitled to priority according to the date of each registration and not according to the date of each instrument itself, and the Registrar, upon registration thereof, shall enter a memorial of the same in the register and, if such instrument is in duplicate as herein provided, he shall deliver the duplicate to the person entitled thereto, and as soon as it has been registered, every instrument shall, for the purposes of this Act, be deemed to be embodied in the register as part and parcel thereof.

Memorial of registration

24. Every memorial entered in the register shall state the nature of the instrument to which it relates, the day and hour of the presentation of such instrument for registration, and such other particulars as the Registrar may direct, and shall refer by number or symbol to such instrument, and shall be signed by the Registrar.

Memorial to be endorsed on duplicate instrument, and certificate of time of registration to be endorsed on every instrument so registered

25. Whenever a memorial of any instrument has been entered in the register, the Registrar shall, except as herein otherwise provided, endorse the like memorial on each duplicate grant, certificate of title or other instrument affected thereby, unless he dispenses with production of the same, as hereinafter provided; and the Registrar shall endorse on every instrument so registered a certificate of the time at which the instrument was presented for registration and shall authenticate each such certificate by signing his name and affixing his seal thereto, and such certificate shall be received in all courts as conclusive evidence that such instrument has been duly registered.

Power of Registrar to dispense with the production of duplicate grant or other instrument

26. The Registrar may dispense with the production of the duplicate of any grant, certificate of title, or other instrument for the purpose of endorsing the memorial required by the provisions of section 25 to be endorsed thereon and, upon the registration of any instrument affecting the same, the Registrar shall state in the memorial entered in the register in respect thereof that no endorsement of

such memorial has been made on the duplicate grant, certificate of title or other instrument, and the dealing effected thereby shall thereupon be as valid and effectual as if such memorial had been so entered:

Provided that, before registering such instrument, the Registrar shall require the party presenting the same for a registration to make a declaration that such grant, certificate of title or other instrument has not been deposited by way of lien or as security for any loan or other liability, and shall give at least fourteen days' notice in the Gazette and in one newspaper published and circulating in Fiji of his intention to register such dealing.

Substitution for lost or defaced instrument

27.—(1) Where the Registrar is satisfied that any original instrument of title in the register has been lost or destroyed or has become defaced or illegible he may cause another instrument to be prepared and to be endorsed with all the entries made on the original instrument so far as can be ascertained from the records on the register and from an inspection of the duplicate or such other evidence as may be available as to the contents of the original.

(2) When the Registrar has caused a new instrument of title to be prepared in accordance with the provisions of subsection (1) he shall cause to be made and sign a memorandum on such instrument stating that it is a substitute instrument to be used in place of the original and showing what has become of the original so far as is known to him and, on and after the date of such signature, the substitute shall be bound in the register book and used in place of the original for the purpose of all dealings.

Case of lost duplicate instrument

28.—(1) In the event of any duplicate instrument of title being lost or destroyed, the proprietor of the land, estate or interest to which such instrument relates, together with other persons, if any, having knowledge of the circumstances, may make a statutory declaration stating to the best of the declarant's knowledge and belief, the facts of the case, the names and descriptions of the registered owners, and the particulars of all encumbrances and other matters affecting such instrument and the land, estate or interest to which it relates, and the Registrar, if satisfied as to the truth of such declaration and the bona fides of the transaction, may issue to such proprietor a special duplicate instrument of title, which special instrument shall contain an exact copy of the original instrument of title bound up in the register and of every memorial entered or endorsed thereon and shall also contain a statement why such special duplicate instrument was issued, and the Registrar shall at the same time enter on the original instrument notice of the issuing of each special duplicate instrument and the date thereof and why it was issued, and such special duplicate instrument shall be available for all purposes and uses for which the duplicate instrument of title so lost or destroyed would have been available and as valid to all intents as such lost instrument:

Provided that the Registrar before issuing such special duplicate instrument shall give at least fourteen days' notice of his intention so to do in the Gazette and in one newspaper published and circulating in Fiji.

(2) In the event of a special duplicate instrument of title being issued under the provisions of subsection (1) and of the duplicate instrument being at any time thereafter found or recovered, such duplicate instrument shall forthwith be lodged,

by the person who finds or recovers it, with the Registrar who shall cause such duplicate instrument to be cancelled.

(3) If, in the circumstances specified in subsection (2), the duplicate instrument of title is not lodged with the Registrar for cancellation, such duplicate instrument shall, by virtue of the issue of the special duplicate instrument, become null and void and cease to have any value or effect in relation to the land comprised therein.

Merger how registered

29. When the proprietor of any estate or interest in land becomes also the proprietor of a less or greater estate or interest in the same land so that a merger occurs in law and in equity he may make application to the Registrar to note the merger and produce the duplicates of both instruments of title, and the Registrar shall thereupon make an entry in the register of the merger and shall cancel the instrument of title which merges in the greater title.

Search certificates

30.—(1) Where any person desires information as to whether a proprietor is able to deal with the land, estate or interest comprised in his instrument of title free from any caveat, instrument presented for registration, order, injunction or other cause known to the Registrar but not appearing on the instrument of title, such person may apply, in the prescribed manner and on payment of the prescribed fee, for a search certificate.

(2) Before issuing a search certificate under the provisions of subsection (1), the Registrar shall cause the necessary searches and inquiries to be made relating to the subject of the application and shall certify the result of such searches and inquiries in the prescribed form and manner.

Applicant for search certificate may inspect instrument of title

31. A search certificate issued under the provisions of section 30 shall refer to the dealing or encumbrance last noted on the instrument of title in order to show the state of the register at the time of such issue but not for the purpose of informing the applicant for such search certificate as to the contents of, or endorsements on, the instrument of title. Such applicant may inspect the instrument of title and shall be deemed to have knowledge of all that which such an inspection would have revealed.

Stay of registration of dealings on issue of search certificate

32.—(1) Any person proposing to deal with the proprietor of any land, or any estate or interest therein may, at the time of making an application for a search certificate under the provisions of section 30, with the consent in writing of such proprietor or his agent authorized in writing in that behalf and on stating the particulars of such dealing, apply in the prescribed manner for a stay of registration of any instrument affecting the land, estate or interest proposed to be dealt with, for a period of forty-eight hours from the time of issue of such search certificate; and, if the result of the search certificate shows that such proprietor is able to deal with such land, estate or interest, the Registrar shall, on payment of the prescribed fees, sign an order in the prescribed form staying registration of any instrument affecting the land, estate or interest proposed to be affected by such dealing, for a period of forty-eight hours from the time of issue of the search certificate; and such

order shall be affixed to the search certificate and a copy thereof given to the applicant.

(2) If a properly perfected instrument effecting the proposed dealing be duly presented for registration within such period of forty-eight hours, such instrument shall have priority over any other instrument which may be presented for registration after the time of issue of the search certificate and shall be registered notwithstanding any caveat, copy of writ or application by any assignee in bankruptcy which have been lodged after the time of issue of such search certificate.

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

Instruments when presented together

33. Should two or more instruments executed by the same proprietor and purporting to transfer or encumber the same estate or interest or any portion thereof in any land be presented at the same time to the Registrar for registration, he shall register the instrument presented by the person producing the duplicate instrument of title to the estate or interest purported to be dealt with.

Co-ownership

34.—(1) Subject to the provisions of any law for the time being in force relating to trusts and to the provisions of Part XV, unless the contrary intention is expressed in the instrument of title, where two or more persons are registered as proprietors of any estate or interest in land subject to the provisions of this Act, they shall be deemed to be entitled to the same as tenants in common, and on the death of any one of such proprietors there shall be no right of survivorship in the other or others and the share of such deceased proprietor shall pass to his personal representative.

(2) Where two or more person are entitled as tenants in common to any estate or interest in land subject to the provisions of this Act, they shall unless the contrary intention is expressed in the instrument of title, be deemed to hold the same in undivided equal shares.

Registrar to be guided by provisions of Act

35.—(1) The Registrar shall not register any instrument purporting to transfer or otherwise to deal with or affect any estate or interest in land subject to the provisions of this Act, except in the manner provided in this Act or unless such instrument is in the form prescribed under the provisions of this Act.

(2) The Registrar shall have power to reject any instrument that he considers unfit for registration.

Register to be open to search

36. Any person may, upon payment of the prescribed fee, have access to the register for the purpose of inspection during such hours and upon such days as the office of the Registrar is open for public business.

PART V—EFFECT OF REGISTRATION

Instrument not effectual until registered

37. No instrument until registered in accordance with the provisions of this Act shall be effectual to create, vary, extinguish or pass any estate or interest or encumbrance in, on or over any land subject to the provisions of this Act, but upon registration the estate or interest or encumbrance shall be created, varied, extinguished or passed in the manner and subject to the covenants and conditions expressed or implied in the instrument.

Registered instrument to be conclusive evidence of title

38. No instrument of title registered under the provisions of this Act shall be impeached or defeasible by reason or on account of any informality or in any application or document or in any proceedings previous to the registration of the instrument of title.

Estate of registered proprietor paramount, and his title guaranteed

39.—(1) Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, shall, except in case of fraud, hold the same subject to such encumbrances as may be notified on the folium of the register, constituted by the instrument of title thereto, but absolutely free from all other encumbrances whatsoever except—

- (a) the estate or interest of a proprietor claiming the same land, estate or interest under a prior instrument of title registered under the provisions of this Act; and
- (b) so far as regards any portion of land that may by wrong description or parcels or of boundaries be erroneously included in the instrument of title of the registered proprietor not being a purchaser or mortgagee for value or deriving title from a purchaser or mortgagee for value; and
- (c) any reservations, exceptions, conditions and powers contained in the original grant.

(2) Subject to the provisions of Part XIII, no estate or interest in any land subject to the provisions of this Act shall be acquired by possession or user adversely to or in derogation of the title of any person registered as the proprietor of any estate or interest in such land under the provisions of this Act.

Purchaser not affected by notice

40. Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any estate or interest in land subject to the provisions of this Act shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such proprietor or in any previous proprietor of such estate or interest is or was registered, or to see to the application of the purchase money or any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

Instrument etc. void for fraud

41. Any instrument of title or entry, alteration, removal or cancellation in the register procured or made by fraud shall be void as against any person defrauded or sought to be defrauded thereby and no party or privy to the fraud shall take any benefit therefrom.

Proprietors protected against ejectment

42.—(1) No action for possession, or other action for the recovery of any land subject to the provisions of this Act, or any estate or interest therein, shall lie or be sustained against the proprietor in respect of the estate or interest of which he is registered, except in any of the following cases:—

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

(2) In any case other than as aforesaid, the production of the register or of a certified copy thereof shall be held in every court of law or equity to be an absolute bar and estoppel to any such action against the registered proprietor of the land, estate or interest the subject of the action, any rule of law or equity to the contrary notwithstanding.

(3) Nothing in this Act contained shall be so interpreted as to leave subject to an action of ejectment or for recovery of damages or for deprivation of the estate or interest in respect of which he is registered as proprietor any bona fide purchaser for valuable consideration of any land subject to the provisions of this Act, or any estate or interest therein, on the ground that the proprietor through or under whom he claims was registered as proprietor through fraud or error or has derived from or through a person registered as proprietor through fraud or error; and this whether such fraud or error consists in wrong description of the boundaries or of the parcels of any land or otherwise howsoever.

Instrument of title issued in name of deceased proprietor not void

43. If any instrument of title is issued in the name of a person who has previously died, the instrument shall not be void, but the interest of such deceased person in the estate or interest in land the subject of such instrument shall devolve in like manner as if such instrument had been issued immediately prior to his death.

PART VI—TRANSFERS

Transfers

44.—(1) The proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, may transfer the same by executing a transfer in the prescribed form, which transfer shall, for description of the land intended to be dealt with, refer to the instrument to the land, with such further description as may be necessary, and shall contain a precise statement of the estate or interest intended to be transferred.

(2) Transfers shall be registered in the prescribed manner and transferees shall have priority according to the date and time of registration.

(3) Upon the registration of a transfer, the estate and interest of the transferor as set forth in the instrument of transfer, with all rights, powers and privileges thereof belonging or appertaining, shall pass to the transferee, and the transferee shall thereupon become the proprietor thereof and shall be subject to and liable for all requirements and liabilities to which he would have been subject and liable if he had been the former proprietor of such estate or interest.

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

Provided that nothing in this section shall prevent a court of competent jurisdiction from giving effect to any trusts affecting the said debt, sum of money, annuity, or damages in case the transferee holds the same as a trustee for any other person.

Procedure in case of transfer of land

45. If a transfer purports to transfer the whole or part of the land mentioned in any grant or certificate of title, the transferor shall deliver up the duplicate grant or certificate of title of the land, and the Registrar shall, when registering the transfer, enter in the register and on the duplicate grant or certificate of title a memorial cancelling the same as to the whole, or partially according as the transfer purports to transfer the whole, or part, of the land mentioned in such grant or certificate of title:

Provided that—

(a) if the whole of the land mentioned in any grant or certificate of title is transferred, the Registrar may, instead of cancelling such grant or certificate, enter in the register and on the duplicate grant or certificate of title a memorial of such transfer and deliver the duplicate to the transferee;

(b) in the case of a transfer to tenants in common, the Registrar may, and shall if the transferees so desire, issue separate certificates of title in favour of each of the transferees for their respective shares, or may issue one certificate of title for the whole of their interests, or the Registrar may enter in the register a memorial of such transfer and deliver the duplicate certificate of title or grant to the transferees;

- (c) in the case of a cancellation of a tenancy in common by transfer from tenants in common holding separate titles for their respective shares, the Registrar shall cancel the said certificates of title and issue a fresh certificate of title in favour of the transferee.

When new certificate of title to be issued

46. The Registrar, upon cancelling any grant or certificate of title either wholly or partially pursuant to any transfer, shall issue in favour of the transferee a certificate of title to the land mentioned in such transfer, and every such certificate of title shall refer to the original grant of such land and to the instrument of transfer, and the Registrar shall retain every transfer and cancelled or partially cancelled grant or certificate of title and, whenever required thereto by the proprietor of an unsold portion or balance of the land included in any such partially cancelled grant or certificate of title or by a registered transferee of such portion or of any part thereof, shall issue in favour of such proprietor or transferee a certificate of title for the whole of such portion or any part thereof of which he is the proprietor or transferee.

PART VII—RESTRICTIVE COVENANTS

Creation of restrictive covenants

47.—(1) Restrictive covenants may be created and made binding in respect of land subject to the provisions of this Act, so far as the law permits, by instruments in such form as may be approved by the Registrar, but no such covenant affecting land subject to a mortgage, lease or other encumbrance shall be binding against a registered proprietor of such mortgage, lease or other encumbrance unless he has consented in writing thereto prior to the same being registered.

(2) Upon the registration of any instrument creating a restrictive covenant, it shall not be obligatory on the Registrar to make any entry relating thereto on the instrument of title of any person entitled to the benefit thereof.

(3) Where a restrictive covenant is entered into with the consent in writing of a mortgagee, lessee or other encumbrancee the Registrar shall also enter a notification of such consent on the original and duplicate instrument of title to such mortgage, lease or other encumbrance as the case may be.

(4) A notification on a certificate of title of a restriction created by a restrictive covenant shall not give the restriction any greater operation than it has under the instrument creating.

Discharge or modification of restrictive covenants

48.—(1) Notwithstanding any other of the provisions of this Act to the contrary, any covenant or agreement affecting or restricting the use of land may be wholly or partially discharged or modified by agreement by all persons interested in the land affected by such covenant or agreement consenting to such discharge or modification.

(2) The Registrar shall, when satisfied that all parties interested have agreed to the discharge or modification of any covenant entered in the register, cause to be made an entry or memorandum of such discharge or modification in the register.

PART VIII—EASEMENTS AND PROFITS A PRENDRE

Creation of easement and profits

49. Whenever any easement or profit a prendre is created over any land, the grantor may execute a grant of easement in the prescribed form or a profit a prendre in such form as may be approved by the Registrar and the Registrar shall enter a memorial of the instrument creating such easement or profit a prendre upon the folium of the register constituted by the existing grant, certificate of title or lease of the grantor, and, except where an easement or profit a prendre is in gross, the Registrar shall also enter a memorial upon the folium of the register constituted by the existing grant, certificate of title or lease of land to which the easement is annexed or with which it is used and enjoyed.

Consent of mortgagee, lessee or encumbrancee to easement or profit

50. No easement or profit a prendre shall be binding against the proprietor of any prior registered mortgage, lease or other encumbrance unless he has consented to such easement or profit a prendre prior to the same being registered.

Surrender of easements and profits

51. When any easement or profit a prendre is surrendered in whole or in part, the proprietor of the dominant tenement with the consent of every person appearing by the register to have an interest therein shall execute a surrender and upon production of the surrender to the Registrar, he shall cancel the easement or profit a prendre or the part thereof surrendered by endorsing a memorial to that effect on the original and duplicate instruments of title affected by such surrender:

Provided that if any easement or profit a prendre or the dominant tenement thereof is subject to any encumbrance, the easement or profit a prendre shall not be surrendered without the consent of the encumbrancee.

Variation of easements and profits

52.—(1) Any term, covenant or condition of any easement or profit a prendre registered or created under the provisions of this Act may be varied, negatived or added to by a memorandum of variation in such form as may be approved by the Registrar, executed by the registered proprietor of the servient tenement and by the registered proprietor of the dominant tenement or, in the case of an easement or profit a prendre in gross, by the registered proprietor of the servient tenement and by the registered proprietor of the easement or profit a prendre, and registered before the expiry of the then current term of the easement or profit a prendre.

(2) A memorandum of variation of an easement or profit a prendre may be registered in like manner as the instrument creating the easement or profit a prendre.

(3) If the dominant tenement or servient tenement or easement or profit a prendre is subject to any encumbrance, the easement or profit a prendre shall not be varied by a memorandum of variation under this section without the consent in writing of the encumbrancee.

(4) The consent of the encumbrancee to the variation shall render the memorandum of variation binding on him and on all persons who may subsequently derive from him any interest in the servient tenement or dominant tenement or easement or profit a prendre.

PART IX—DISCHARGE AND MODIFICATION BY COURT OF
RESTRICTIONS AND EASEMENTS

Discharge or modification by court of restrictions and easements

53.—(1) Where land subject to the provisions of this Act, or any estate or interest therein, is subject to any easement or restriction arising under covenant or otherwise as to the user thereof or the right of building thereon, the court may, from time to time, on the application of any person interested in the land, by order wholly or partially discharge or modify the easement or restriction upon being satisfied—

- (a) that by reason of any change in the user of any land to which the easement or the benefit of the restriction is annexed or in the character of the property or the neighbourhood or other circumstances of the case which the court may deem material, the easement or restriction ought to be deemed to have been abandoned or to be obsolete or that the continued existence thereof would impede the reasonable user of the land subject to the easement or restriction without securing practical benefits to other persons or, as the case may be, would, unless modified, so impede such user; or
- (b) that the persons of full age and capacity for the time being, or from time to time, entitled to the easement or to the benefit of the restriction in respect of any estate or interest in the land to which the easement or the benefit of the restriction is annexed have agreed to the easement or restriction being discharged or modified or by their acts or omissions may reasonably be considered to have abandoned the easement or waived the benefit of the restriction wholly or in part; or
- (c) that the proposed discharge or modification will not substantially injure the persons entitled to the easement or the benefit of the restriction.

(2) When any proceedings by suit or otherwise are instituted to enforce an easement or a restrictive covenant affecting land subject to the provisions of this Act, or any estate or interest therein, any persons against whom the proceedings are instituted may in such proceedings apply to the court for an order under the provisions of this section.

(3) Notice of any application under the provisions of this section shall, if the court so directs be given to the Director of Lands and to such other persons or bodies and in such manner whether by advertisement or otherwise as the court either generally or in a particular instance may order.

(4) An order under the provisions of this section shall, when registered in accordance with the provisions of this Act, be binding on all persons whether of full age and capacity or not then entitled or thereafter becoming interested to the easement, or interested or thereafter becoming interested in enforcing the restriction, which is thereby discharged, modified or dealt with and whether such persons are parties to the proceedings or have been served with notice or not.

(5) The provisions of this section shall apply to easements and restrictions whether subsisting at the commencement of this Act or imposed thereafter.

(6) The Registrar shall, on application being made to him to that effect, make all necessary amendments and entries in the register for giving effect to such order in respect of all instruments of title specified therein.

(7) The costs of and incidental to an application to the court made pursuant to

the provisions of this section, shall not be awarded against the defendant or respondent in any event.

PART X—LEASES

Form and registration of leases

54.—(1) When any land is intended to be leased or demised for a life or lives or for any term exceeding one year, the proprietor shall execute in duplicate a lease in the prescribed form which shall be registered in accordance with the provisions of this Act, and every such instrument shall, for description of land intended to be dealt with, refer to the instrument of title of the lessor, and shall give such description as may be necessary to identify the land, and shall contain an accurate statement of the land intended to be leased.

(2) A lease executed in the prescribed form may be registered notwithstanding that the term thereof is for one year or less, but any lease which shall have been granted for a term not exceeding one year shall be valid without registration:

Provided that no right or covenant to purchase the land contained in any lease shall be valid as against any subsequent purchaser of the reversion unless such lease be registered.

Consent of mortgagee

55. No lease of mortgaged land shall be binding upon the mortgagee unless he has consented to such lease prior to the same being registered, and a memorial of such lease shall thereupon be endorsed by the Registrar on the original and duplicate instruments of such mortgage:

Provided that the mortgagee shall not withhold his consent unreasonably having regard to all the circumstances, and, in the event of any dispute arising, the mortgagor may, by originating summons, refer the matter to the court and the court may make such directions in the premises as the justice of the case may require, including the payment of the costs of the application.

Covenant not to transfer or sublet

56. Whenever there is contained in any lease a covenant restricting or limiting the right of the lessee to transfer or sublet, the Registrar shall refuse to register a transfer or sublease which appears to be in breach of such covenant.

Cancellation by Registrar

57. The Registrar, upon proof to his satisfaction of lawful re-entry and recovery of possession by a lessor either by process of law or in conformity with the provisions for re-entry contained or implied in the lease, shall cancel the original of such lease and enter a memorial to that effect in the register, and the estate of the lessee in such land shall thereupon determine but without releasing the lessee from his liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar shall cancel the duplicate of such lease if delivered up to him for that purpose:

Provided that—

- (a) where the right of re-entry is based upon the non-payment of rent only, the Registrar shall, where any person other than the lessee has a registered interest in the lease, give notice to such other person at his

address appearing in the register to pay the rent in arrear and, if the same is paid within one month from the date of the said notice, then the Registrar shall not cancel the original or duplicate of such lease; and

- (b) unless the re-entry and recovery of possession have been by formal process of law, the Registrar shall require notice of application to register the same to be served on all persons interested under the lease, or, failing such notice, shall give at least one calendar month's notice of the application by publication in the Gazette and in one newspaper published and circulating in Fiji before making any entry in the register.

Variation

58. If the lessor and lessee agree to a variation of the rental or of any of the covenants, conditions or restrictions contained or implied in any lease, or to an extension of the term thereof, they may execute a memorandum of variation or extension of the term of the lease, and upon such memorandum being presented to the Registrar he shall enter a memorial of such variation or extension in the register, and such variation shall have the same effect as if the same were expressed in the original lease:

Provided that where a re-assessment of the rent payable under the provisions of a Crown lease or of a native lease has taken place in accordance with the terms of such a lease, it shall not be necessary for the lessee to produce the duplicate of such lease to the Registrar for the endorsement thereon of a memorial.

Consent to variation

59. No variation or extension of a lease shall be binding against a mortgagee, of the land the subject of the lease whose mortgage was registered prior to the registration of such variation or extension, unless such mortgagee has consented thereto prior to the same being registered.

Bringing down encumbrances on registration of new lease

60.—(1) Where in the case of a lease which is registered under the provisions of this Act and is subject to any encumbrances appearing in the register, a new lease is registered against the same land and the Registrar is satisfied that—

- (a) it is in renewal of or in substitution for a lease previously registered;
(b) the lessee is the person registered as the proprietor of the prior lease at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier, or the personal representative of that person; and
(c) the lessee or the registered proprietor of any encumbrance to which the prior lease was subject at the time of its expiry or surrender or the personal representative of the registered proprietor so requests,

the Registrar shall state in the memorial of the new lease that it is in renewal of the prior lease or in substitution for the prior lease, as the case may be.

(2) In every such case the new lease shall be deemed to be subject to all encumbrances to which the prior lease is subject at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier.

(3) For the purposes of subsections (1) and (2) all references in any Act or in any agreement, deed, instrument, notice or other document whatsoever to the

prior lease or to the estate or interest of the lessee thereunder shall, unless inconsistent with the context or with the provisions of this section, be deemed to be references to the new lease or to the estate or interest of the lessee thereunder, as the case may be.

(4) Upon the registration of a new lease in any case to which subsection (1) applies, the Registrar shall enter a memorial on the new lease of all encumbrances to which it is deemed to be subject as aforesaid in the same order amongst themselves of their priority under this Act over the prior lease.

Bringing down encumbrances on acquisition by lessee of fee simple

61.—(1) Where the proprietor of a lease of any land acquires the fee simple estate in that land, the Registrar, upon the registration of the transfer of the fee simple estate to that lessee or his personal representative, and upon the request so to do by the transferee endorsed on or attached to the transfer at the time of its registration, shall enter a memorial on the certificate of title to the fee simple estate in the order among themselves of their priority under this Act of all the encumbrances to which the lease appeared by the register to be subject at the time of expiry of the term of the lease, whichever is the earlier; and thereupon the certificate of title to the fee simple estate shall be subject to those encumbrances.

(2) Notwithstanding anything contained in section 23, any encumbrances, to which the fee simple estate appeared by the register to be subject at the time of registration of the transfer shall have priority over those to which the estate is subject under the provisions of subsection (1).

(3) Where the Registrar considers it expedient so to do, he may make such entries in the register and endorsements on the duplicate certificate of title as he considers necessary to evidence any such priorities.

(4) Encumbrances appearing in the register against the certificate of title to the fee simple estate in any land pursuant to subsection (1) shall, when so appearing, no longer have effect to prevent the merger of the leasehold estate in the fee simple estate in respect of that land.

Surrender of lease how registered

62. Whenever any lease registered under the provisions of this Act is intended to be surrendered in whole or in part, and the surrender thereof is effected otherwise than by operation of law or under the provisions of any Act relating to bankruptcy, the parties may execute a form of surrender, or partial surrender, as the case may be, and upon such form being presented to the Registrar he shall enter a memorial of the surrender in the register, and thereupon the estate or interest of the lessee in such land shall vest in the lessor or in the person in whom, having regard to intervening circumstances, if any, the land would have vested if no such lease had been executed:

Provided that—

- (a) in the case of a surrender of the whole of the lease, the form of surrender may be endorsed on the duplicate instrument of such lease;
- (b) no lease subject to any mortgage or sublease or other encumbrance shall be surrendered in whole or in part without the consent of the mortgagee, sublessee or encumbrancee, as the case may be, of the lease or part thereof intended to be so surrendered, and the Registrar shall endorse on the original and duplicate instruments of such mortgage, sublease or encumbrance the fact of such surrender, and

such consent shall operate as a discharge or cancellation of such mortgage, sublease or encumbrance as to the lease or part thereof surrendered, and the Registrar shall enter a memorial of such discharge or cancellation on the instruments of title affected.

PART XI—MORTGAGES

Mortgage to have effect as security only

63. A mortgage registered in accordance with the provisions of this Act shall have effect as a security, but shall not operate as a transfer of the land, or of the estate or interest therein, charged.

Sub-mortgages

64.—(1) A mortgage subject to a sub-mortgage shall not be discharged, nor shall the terms thereof be varied, nor shall the power of sale contained or implied therein be exercised, without, the consent in writing of the sub-mortgagee.

(2) The consent of the sub-mortgagee to the variation of the terms of a mortgage shall render the instrument making the variation binding on him and on all persons who may subsequently derive from him any interest in the mortgage.

Form of mortgage

65.—(1) A mortgage of land subject to the provisions of this Act, or any estate or interest therein, shall be in the prescribed form and shall be executed by the proprietor in duplicate and shall be registered in accordance with the provisions of this Act, and every such instrument shall, for description of the land intended to be dealt with, refer to the instrument of title to the land, with such further description as may be considered necessary by the Registrar and shall contain a precise statement of the estate or interest intended to be charged.

(2) The mortgagee or first mortgagee for the time being shall be entitled to possession of the instrument of title.

Variation of mortgage

66. In the case of every mortgage under this Act—

(a) the mortgage may be varied as follows:—

- (i) the amount secured by the mortgage may be increased or reduced;
- (ii) the rate of interest may be increased or reduced;
- (iii) the term or currency of the mortgage may be shortened, extended or renewed;
- (iv) the covenants, conditions and powers contained or implied in the mortgage may be varied, negated or added to; and
- (v) unmortgaged land which becomes included in the same certificate of title as land the subject of the mortgage may be included in and made subject to the mortgage by a memorandum in the prescribed form:

Provided that it shall not be necessary for a mortgagor to execute a memorandum of reduction, or for a mortgagee to execute a memorandum of increase, of the mortgage debt or of the rate of interest payable under a mortgage;

- (b) the memorandum may include all or any of the matters mentioned in paragraph (a), and in that case the form shall be modified accordingly;
- (c) the memorandum may be registered in like manner as the original mortgage;
- (d) a memorandum varying a mortgage so as to include unmortgaged land shall be presented for registration at the same time as the application for the new certificate of title combining the unmortgaged land with the land already the subject of the mortgage is presented for registration;
- (e) a memorandum or instrument varying the terms or conditions of any mortgage of any land, or of any estate or interest therein subject to a subsequent mortgage shall not be binding on the proprietor of any such subsequent mortgage unless he has consented thereto in writing on the memorandum but that consent shall render the memorandum binding on the mortgagee so consenting, and shall be deemed to be notice to and shall be binding on all persons who may subsequently derive from him any estate or interest in the mortgaged property.

Variation of priority of mortgages

67. Notwithstanding anything to the contrary contained in section 23, the priority between themselves of mortgages affecting any land or any estate or interest therein may from time to time be varied by a memorandum of priority in the prescribed form and registered under the provisions of this Act and the following provisions shall apply:—

- (a) the memorandum of priority shall be executed by the mortgagor and also by the mortgagee under every mortgage that, by the memorandum, is postponed to any mortgage over which it previously had priority;
- (b) where any mortgage so postponed is subject to a sub-mortgage, the memorandum of priority shall not be effective unless the sub-mortgagee has consented thereto in writing on the memorandum;
- (c) Upon the registration of the memorandum of priority, there shall be implied in every mortgage so postponed, except in so far as is otherwise expressed in the memorandum of priority, the covenants, conditions and powers set out in clauses (9), (10), and (11) of the Schedule to the Property Law Act, and also a covenant that any provisions of the postponed mortgage referring to any particular mortgage having priority thereto shall be deemed to refer to any mortgage at any time having priority to the postponed mortgage;
(Cap. 130.)
- (d) upon the registration of a memorandum of priority, the Registrar shall enter a memorial thereof in the register and endorse a like memorial on any relevant instrument of title:

Provided that no person appearing by the register to have any estate or interest in the land shall be adversely affected by a memorandum registered under the provisions of this section unless he has consented to the same prior to its being registered.

Discharge of mortgage

68. Upon presentation to him of a form of discharge signed by the mortgagee and attested by a witness, discharging any land, or estate or interest therein, from the whole or part of the principal sum or other moneys secured by a mortgage, or discharging any part of the land, or estate or interest, charged by such mortgage from the whole of such principal sum or other moneys, the Registrar shall make an entry in the register noting that such mortgage is discharged wholly or partially or that part of the land, or estate or interest is discharged as aforesaid, as the case may require, and, upon such entry being so made, the land, or the estate or interest therein, or the portion thereof mentioned or referred to in such endorsement as aforesaid shall cease to be subject to or liable for such principal sum or other moneys or, as the case may be, for the part thereof noted in such entry as discharged:

Provided that, in the case of a full discharge, the discharge may be endorsed on the duplicate instrument of such mortgage.

Discharge of mortgage in case of death of annuitant, etc.

69. Upon proof of the death of the annuitant or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any mortgage, the annuity, rent charge or sum of money thereby secured shall cease to be payable, and upon proof that all arrears and interest have been paid, satisfied or discharged, the Registrar, upon the application of the proprietor, shall enter a memorial in the register noting that such annuity or sum of money is satisfied and discharged and shall cancel such instrument, and upon such entry being made, the land, or estate or interest therein, charged shall cease to be subject to or liable for such annuity, rent charge or sum of money, and the Registrar shall endorse on the duplicate instrument of title of the mortgagor a memorandum of the date on which such entry was made by him in the register.

How mortgage discharged in absence of the mortgagee from Fiji

70.—(1) If any mortgagor is entitled to pay off the mortgage money and the mortgagee is absent from Fiji and there be no person authorized to give a receipt to the mortgagor for the mortgage money, the Chief Accountant may receive such mortgage money with all arrears of interest then due thereon in trust for the mortgagee or other person entitled thereto, and thereupon the interest upon such mortgage shall cease to run or accrue and the Registrar shall, upon the application of the mortgagor accompanied by the receipt of the Chief Accountant for the amount of such mortgage money and interest, enter a memorial in the register discharging the mortgage and stating the time at which such entry was made, and such entry shall be a valid discharge of such mortgage and shall have the same force and effect as is therein given to a like entry made under the provisions of sections 68 or 69, and the Registrar shall endorse the like memorial on the duplicate instrument of the title of the mortgagor and also on the duplicate instrument of the mortgage, whenever those instruments shall be brought to him for that purpose.

(2) If it be proved to the satisfaction of the Registrar that the whole of the moneys payable under a mortgage whether as principal or as interest has been paid and that the mortgagee or his transferee is dead or absent from Fiji or cannot be found and there is no person in Fiji empowered or authorised to discharge the mortgage on behalf of such mortgagee or transferee, the Registrar shall enter a memorial in the register discharging from such mortgage the land, or estate or

interest therein, charged thereby, stating the time at which such entry was made, and such entry shall be a valid and sufficient discharge from such mortgage, and the Registrar shall endorse the like memorial on the duplicate instrument of title when produced for that purpose.

Transfer by mortgagee in exercise of power of sale

71. A transfer by a mortgagee in exercise of the power of sale conferred by the instrument of mortgage, or by any Act, made in the prescribed form may be accepted by the Registrar as sufficient evidence that the power has been duly exercised and he shall not be bound or required to call for proof that the power has been properly exercised.

Effect of registration of transfer signed by the mortgagee

72. Upon the registration of any transfer executed by a mortgagee in exercise of a power of sale, the estate and interest of the mortgagor expressed to be transferred therein shall pass to and vest in the purchaser freed and discharged from all liability on account of such mortgage, or of any other estate or interest except an estate or interest created by any instrument which has priority over such mortgage or which by reason of the consent of the mortgagee is binding on him, and the purchaser when registered as the proprietor thereof shall be deemed to be a transferee of such estate or interest.

Application for foreclosure, how and when made

73.—(1) Whenever default has been made in payment of the mortgage money and such default continues for six months after the time for payment specified in the mortgage, the mortgagee may make application in writing to the Registrar for an order for foreclosure.

(2) The application referred to in subsection (1) shall state—

- (a) that default has been made and has been continued for a period of not less than six months;
- (b) that the land, or estate or interest therein, the subject of the mortgage has been offered for sale at public auction in compliance with the provisions of section 79 of the Property Law Act, by an auctioneer licensed under the provisions of the Business Licensing Act;

(Cap. 130, Cap. 204)

(c) that amount of the highest bid at the sale referred to in paragraph (b) was insufficient to satisfy the mortgage money together with the expenses of such sale;

(d) that notice in writing of the intention of the mortgagee to make application for foreclosure has been served on the mortgagor, and on every other person appearing by the register to have any right, estate or interest in the mortgaged land, or estate or interest therein, subsequent to the mortgage, by—

- (i) being delivered to him personally; or
- (ii) in the case of the mortgagor, by being left on the mortgaged land; or
- (iii) being sent by registered post addressed to him at the address for service appearing in the register.

(3) Any application for foreclosure made under the provisions of this section shall be accompanied by a certificate of the auctioneer by whom the land, or estate

or interest therein, was put up for sale, and by such other proof as the Registrar may require testifying to the correctness of the statements made in the application and such application shall be effected by a qualified witness.

Application to be advertised and Registrar to make order and register the mortgagee as proprietor

74. Upon an application being made in pursuance of the provisions of section 73 the Registrar may cause notice of such application to be published once in the Gazette and once in each of three successive weeks in at least one newspaper published and circulating in Fiji offering such land, or estate or interest therein, for private sale, which sale if effected the mortgagee shall be bound to complete failing which his application shall be deemed to be withdrawn, and shall appoint a time not less than one month from the date of the first of such advertisements upon or after which the Registrar shall issue to such applicant an order for foreclosure unless in the interval a sufficient sum has been obtained by the sale of such land, or estate or interest therein, to satisfy the principal and interest moneys secured and all expenses occasioned by such sale and proceedings, and every such order for foreclosure under the hand of the Registrar, when entered in the register, shall have the effect of vesting in the mortgagee the land, or estate or interest therein, mentioned in such order free from all right or equity of redemption on the part of the mortgagor or of any person claiming through or under him subsequently to the mortgage, and such mortgagee shall upon such entry being made be deemed a transferee of the mortgaged land, or estate or interest therein, and become the proprietor thereof and shall be entitled to be registered as proprietor of the same.

Foreclosure to be in full satisfaction of mortgage money

75.—(1) On the registration of the mortgagee as proprietor of any land, or estate or interest therein, under the provisions of section 74, the mortgagee shall be deemed to have taken such land, or estate or interest, in full satisfaction of the mortgage money, and his right or equity to bring any action or take other proceedings for the recovery of the mortgage money from the debtor, surety or other person shall be extinguished, and the right or equity of the mortgagor to redeem such land, or estate or interest, shall be extinguished.

(2) Nothing contained in this section shall be deemed to disentitle a mortgagee from obtaining foreclosure of any other property over which he holds security by way of mortgage for the same money or part thereof or to enforce all or any rights, powers and remedies expressed or implied in such mortgage, except the right to sue the mortgagor or any surety for the mortgagor either for the mortgage money or on any bill or note given as security for the mortgage money, as if this section had not been enacted.

PART XII—LIFE ESTATES AND REMAINDERS

Estates for life in reversion or in remainder

76.—(1) The registered proprietor of land subject to the provisions of this Act, or of any estate or interest therein, may create and execute any powers of appointment or limit any estates, whether by remainder or in reversion or by way of executory limitation and whether contingent or otherwise, and for that purpose may modify or alter any form of transfer accordingly.

(2) In case of the limitation of successive interests in accordance with the provisions of subsection (1), the Registrar may cancel the grant or certificate evidencing the title of the transferor and may issue a certificate in the name of the person entitled to the freehold estate in possession, for such estate to which he is entitled, and the persons successively entitled in reversion or in remainder or by way of executory limitation shall be entitled to be registered by virtue of the limitations in their favour in the instrument expressed, and each such person upon his estate becoming vested in possession shall, if he so requests, be entitled to a separate certificate of title for the same.

PART XIII—TITLE BY POSSESSION TO LAND, AND REMOVAL OF ABANDONED EASEMENTS

Acquisition of title by virtue of adverse possession prior to commencement of Act

77.—(1) Subject to the provisions of this Part, no person shall have or acquire any right, title or interest in any land subject to the provisions of this Act or to the possession thereof by virtue of possession adverse of the proprietor for any period prior to the commencement of this Act unless within one year from the commencement of this Act he has made application to the Registrar for a certificate of title pursuant to Part IX of the Land (Transfer and Registration) Ordinance as in force immediately prior to such commencement and within three years from that commencement he has obtained a certificate of title to that land.

(Cap. 136.) (1955 Edition)

(2) The provisions of this section shall apply notwithstanding any rights which but for this Act have accrued to any person by reason of possession of land adverse to the proprietor.

(3) For the purpose of any application under Part IX of the Land (Transfer and Registration) Ordinance in respect of part only of any land the subject of an existing instrument of title, the plan referred to in paragraph (e) of section 84 of that Ordinance shall not be accepted by the Registrar unless it has been approved by the city or town council in the case of land included within the boundaries of any city or town to which the provisions of the Local Government Act apply or in any other case by the Director of Town and Country Planning under the provisions of the Subdivision of Land Act. (Cap. 136.) (1955 Edition) (Cap. 125.) (Cap. 140.)

(Amended by 14 of 1975, s. 72.)

Application for vesting order

78.—(1) Where—

- (a) Any person is in possession of any land subject to the provisions of this Act, for which a certificate of title has been issued or a Crown grant registered under the provisions of this Act; and
- (b) such possession has been continuous for a period of not less than twenty years, and is such that he would have been entitled to an estate in fee simple in the land on the ground of possession if the land had not been subject to the provisions of this Act,

he may apply to the Registrar in the manner hereinafter provided for an order vesting the land in him for an estate in fee simple or for such other estate or interest as may be claimed by him:

Provided that, unless such person has been in possession of such land for a

continuous period if not less than thirty years, no such application may be made in respect of any land or any part thereof, if the registered proprietor of, or any person appearing by the register to be entitled to the benefit of, any estate or interest therein is under any disability.

(2) For the purposes of this Part, possession of any land by any other person through or under whom any person making application under the provisions of this section (hereinafter in this Part referred to as "the applicant") claims, shall be deemed to be possession by the applicant.

Form of application

79. Every application made under the provisions of section 78 shall—

- (a) be in writing in the prescribed form or in a form to like effect and shall include the several particulars therein mentioned or referred to;
- (b) be signed by the applicant or, in the case of a corporation, by a person authorized in that behalf in writing under the seal of the corporation;
- (c) be attested by a qualified witness;
- (d) be accompanied by a survey plan (with field notes) of the land certified by a registered surveyor:

Provided that the requirements of this paragraph may be waived in a case where the land the subject of the application is the whole of an island.

Powers and duties of Registrar

80.—(1) On receipt of any application made under the provisions of section 78, the Registrar—

- (a) if satisfied that the applicant has been in possession of the land in the manner and for the period therein specified and that the application is otherwise in order, shall accept the application; or
- (b) if not so satisfied, may refuse the application either wholly or in part or may, by notice to the applicant, require the applicant to furnish him with such additional information or documents relating to the application as the Registrar thinks fit within such reasonable time as may be specified in such notice.

(2) If—

- (a) the applicant fails to comply to the satisfaction of the Registrar with any of the requisitions contained in any notice given under the provisions of paragraph (b) of subsection (1) within the time specified in such notice or within such extended time as the Registrar, in his discretion, may allow; or
- (b) after compliance by the applicant with the requisitions contained in such notice, the Registrar is not satisfied that the applicant has been in possession of the land in the manner or for the period specified in section 78 or that the application is otherwise in order,

the Registrar shall refuse the application either wholly or, as the case may be, as to the part thereof in respect of which he is not satisfied as aforesaid.

(3) If an application is accepted by the Registrar he shall direct that notice thereof in the prescribed form be—

- (a) advertised in the Gazette and at least twice at such intervals and in such one or more newspapers as he thinks fit, including at least one newspaper circulating in the locality in which the land is situated; and

- (b) served on every person who appears by the register to have, or who in the opinion of the Registrar has or may have, any estate or interest, or any claim to have any estate or interest, in the land or any part thereof; and
- (c) published in such other manner, or served on such other persons, as the Registrar may direct; and
- (d) posted in a conspicuous place on the land or at such other place as the Registrar may direct and kept so posted for a period of not less than twenty-one days before the expiration of the time appointed under the provisions of paragraph (b) of subsection (1) of section 81.

Notice

81.—(1) Every notice required under the provisions of subsection (3) of section 80 shall—

- (a) specify the number of every grant or certificate of title affected by the application and of every mortgage, lease or other encumbrance registered thereon, together with the name and address appearing in the register of every registered proprietor thereof; and
- (b) appoint a time, specified or approved by the Registrar, being not less than one month nor more than twelve months after the date of the first publication of any advertisement of such notice under the provisions of paragraph (a) of subsection (3) of section 80 after the expiration of which the Registrar may, unless, on or before the expiration of that time, a caveat has been lodged as hereinafter provided, grant the application; and
- (c) where the application has been refused as to part of the land to which it relates, be given only in respect of the remaining part of the land to which the application relates.

(2) Any notice required to be served on any person under the provisions of section 80 shall be served on him by delivering it to him personally or by sending it to him by registered post addressed to his address (if any) appearing in the register, or, at his last known place of abode or business in Fiji.

(3) The Registrar may at any time before granting the application extend for such period as he thinks fit the time appointed by any notice in accordance with the provisions of paragraph (b) of subsection (1).

Person claiming interest may lodge caveat

82.—(1) Any person claiming any estate or interest, whether legal, equitable or beneficial, in any land, or any part thereof, to which any application made under the provisions of section 78 relates may, at any time before the expiration of the time appointed in the notice given under the provisions of subsection (3) of section 80, or any extension thereof, lodge a caveat with the Registrar forbidding the granting of the application in respect of that land or part thereof, as the case may be.

(2) A caveat lodged under the provisions of subsection (1) shall, subject to the provisions of this Part, in all other respects be in the same form, be subject to the same provisions and have the same effect with respect to the application against which it is lodged as a caveat lodged under the provisions of Part XVII.

Caveat by registered proprietor of estate in fee simple, etc.

83.—(1) Where the Registrar is satisfied that the person executing a caveat, lodged under the provisions of section 82, is the registered proprietor of an estate in fee simple or an estate for life or in remainder, contingent or otherwise, or an estate by way of executory limitation that has not lapsed in the land, or any part thereof, to which the application relates, the Registrar shall refuse the application in respect of the land to which the caveat relates.

(2) Where a caveat lodged under the provisions of section (1) is executed by any person purporting to be the agent of the caveator thereunder, and the Registrar is satisfied that the caveator is the registered proprietor of any of the estates referred to in subsection (1), then unless the Registrar is satisfied by evidence produced to him at the time of the lodging of the caveat that the person executing it has been duly authorised to do so, the Registrar shall give notice to him requiring him to satisfy the Registrar, within the time specified in such notice, by confirmation of the registered proprietor or otherwise, that he has been duly authorised as aforesaid, and—

- (a) if the Registrar is not so satisfied within the time specified in such notice or within such extended time as the Registrar, in his discretion may allow, the caveat shall be deemed to have lapsed at the expiration of that time or extended time, and the Registrar shall mark it as having lapsed under the provisions of this subsection; or
- (b) if the Registrar is so satisfied, he shall refuse the application in respect of the land to which the caveat relates.

Caveat by person entitled to other estate or interest

84. Where—

- (a) the Registrar is satisfied that the caveator under a caveat lodged under the provisions of section 82 is the registered proprietor of, or a person appearing by the register to be entitled to, any estate or interest in the land, or any part thereof, to which the application relates (other than an estate in fee simple, or an estate for life or in remainder, contingent or otherwise, or an estate by way of executory limitation); and
- (b) the application has not been refused, as to the whole of the land or as to that part, pursuant to any other of the provisions of this Part, the Registrar shall—
 - (i) notify the applicant that he will not proceed with the application unless and until the applicant agrees in writing to accept a certificate of title subject, to the same extent as the existing instrument of title, to the estate or interest of the caveator; and
 - (ii) take no further action in respect of the application until the applicant so agrees or until the estate or interest of the caveator is discharged, surrendered or otherwise extinguished; and, if the applicant so agrees, the caveat shall be deemed to have lapsed, and the Registrar shall mark it as having lapsed under the provisions of this section; and any certificate of title issued in favour of the applicant shall be made subject to every such estate or interest as aforesaid.

Caveat by person claiming as beneficial or equitable owner of any estate or interest

85.—(1) Where—

(a) the caveator under a caveat lodged under the provisions of section 82 claims to be the beneficial or equitable owner of any estate or interest in the land, or any part thereof, to which the application relates; and
(b) the application has not been refused, as to the whole of the land or as to that part pursuant to any other of the provisions of this Part, the Registrar shall, unless he is of the opinion that the estate or interest claimed is sufficiently evidenced by the register, give notice to the caveator requiring him, within the time specified in such notice, being not less than three months after the giving of the notice, either—

- (i) to establish such claim in law and cause himself to be registered as the proprietor of the estate or interest claimed; or
- (ii) to satisfy the Registrar that such claim is valid but is of such a nature that it is not capable of being converted into a registered estate or interest.

(2) If, within the time specified in any notice given under the provisions of subsection (1), or within such extended time as the Registrar, in his discretion, may allow, the caveator neither causes himself to be registered as the proprietor of the estate or interest claimed nor satisfies the Registrar as aforesaid, the caveat shall be deemed to have lapsed, and the Registrar shall mark it as having lapsed under the provisions of this subsection.

(3) If—

- (a) the Registrar is of the opinion that the estate or interest claimed in any caveat referred to in subsection (1) is sufficiently evidenced by the register; or
- (b) within the time specified in any notice given under the provisions of subsection (1) or within such extended time as the Registrar, in his discretion, may allow, the caveator causes himself to be registered as the proprietor of the estate or interest claimed, or satisfies the Registrar that such claim is valid but is of such a nature that it is not capable of being converted into a registered estate or interest,

then,

- (i) the Registrar shall in cases where the estate or interest claimed is an estate in fee simple or an estate for life or in remainder, contingent or otherwise, or an estate by way of executory limitation which has not lapsed, refuse the application in respect of the land to which the caveat relates; and
- (ii) in the case of any other estate or interest, the provisions of section 84, as far as they are applicable and with any necessary modifications, shall apply as if the caveator were the registered proprietor of, or a person appearing by the register to be entitled to, that estate or interest at the date of the lodging of the caveat.

Notice of refusal of application to be given to applicant

86. Where, under any of the provisions of this Part, the Registrar refuses any application made under the provisions of section 78 either as to the whole or any part of the land to which it relates, the Registrar shall give written notice of such refusal to the applicant.

Power of Registrar to make vesting order

87. Where the Registrar is satisfied in respect of any application made under the provisions of section 78, that—

- (a) the applicant has been in possession of the land, or any part thereof, in the manner and for the period therein specified and would, if such land, or part thereof, had not been subject to the provisions of this Act, be entitled to an estate in fee simple therein on the grounds of possession; and
- (b) the applicant has complied to the satisfaction of the Registrar with all requisitions contained in any notices given to him by the Registrar under the provisions of this Part; and
- (c) all notices required by or under the provisions of this Part to be advertised or given have been advertised or given in accordance with the provisions of this Part and with all directions of the Registrar made under the authority thereof; and
- (d) all times, required by the provisions of this Part to expire, have expired, and that—
 - (i) no caveat has been lodged under the provisions of section 82 against the granting of the application; or
 - (ii) every caveat so lodged has lapsed or been withdrawn as to the whole of the land, or part thereof, to which the application relates; or
 - (iii) all caveats so lodged that have neither lapsed or been withdrawn affect part only of the land to which the application relates; and
- (e) no sufficient reason to the contrary otherwise appears,

he shall grant the application and make an order vesting the land remaining subject to the application, or, as the case may be, of such part of the land as is not, or has ceased to be, affected by any caveat lodged under the provisions of section 82, in the applicant or any other person entitled thereto for an estate in fee simple, or for such other estate or interest as may be claimed by him, freed of all prior encumbrances affecting such land or part thereof except those to which any certificate of title to be issued in favour of the applicant is to be made subject pursuant to any agreement by the applicant under the provisions of section 84 or 85.

Certificates of title to be issued

88.—(1) Where a vesting order is made under the provisions of section 87, the Registrar shall, subject to compliance by the applicant or other person entitled thereunder, with the provisions of section 89—

- (a) cancel the existing grant or certificate of title and every instrument, entry or memorial relating thereto in the register to such extent as is necessary to give effect to the vesting order; and
- (b) issue a new certificate of title in favour of the applicant or other person entitled thereto for such estate or interest and subject to such encumbrances as may be necessary to give effect to the vesting order.

(2) Every certificate of title issued under the provisions of subsection (1) shall be dated with the date upon which the vesting order was made and the person named in such certificate of title as the proprietor of the estate or interest therein described shall be deemed to have been the registered proprietor thereof as from that date.

(3) Where a certificate of title is issued under the provisions of this section in respect of land the subject of a Crown or native grant and the Registrar is satisfied that, by reason of erroneous measurements in the original grant, the actual dimensions as marked on the ground exceed or fall short of the dimensions stated in the grant, the certificate of title issued under the provisions of this section may be issued as if the dimensions marked on the ground had been the dimensions stated in the original grant.

Duty to be paid

89.—(1) Before any certificate of title is issued under the provisions of section 88 the person in whose favour such certificate of title is to be issued shall pay to the Registrar a duty, calculated at the rate applicable to a transfer on sale of the land under the provisions of the Stamp Duties Act. (Cap. 205.)

(2) For the purposes of subsection (1) the value of the land shall be as declared by the applicant in the application made under the provisions of section 78:

Provided that if the Registrar is not satisfied as to the correctness of such valuation he may require such applicant to produce a certificate of such value under the hand of a valuer approved by the Registrar, which certificate shall be received as conclusive evidence of such value.

Certain lands exempt

90. The provisions of sections 78 to 89 inclusive shall not apply with respect to—

- (a) any land owned or occupied by the Crown;
- (b) any native land as defined in section 2 of the Native Land Trust Act; (Cap. 134.)
- (c) any land the registered proprietor of the fee simple of which is a local authority as defined in section 10 of the Public Health Act; or (Cap. 111.)
- (d) any land held in trust for any public purpose, of which trust the Registrar has notice.

Application for removal of abandoned easement

91.—(1) The registered proprietor of any land subject to the provisions of this Act, in respect of which any easement or profit a prendre is registered under the provisions of this Act, may apply to the Registrar in the manner hereinafter provided for the cancellation of any such easement or profit a prendre on the ground that such easement or profit a prendre has been abandoned by virtue of its not having been used or enjoyed for a period of not less than twenty years:

Provided that, unless such easement or profit a prendre has not been used or enjoyed for a period of not less than thirty years, no such application may be made for the cancellation thereof, if the registered proprietor, or any person appearing by the register to be entitled to the benefit thereof, is under any disability.

- (2) Every application made under the provisions of this section shall—
- (a) be in writing and dated and shall include or contain a plan showing the extent to which such easement is affected;
 - (b) be signed by the applicant or, in the case of a corporation, by a person authorised in that behalf in writing under the seal of the corporation; and
 - (c) be attested by a qualified witness.

(3) On receipt of any application made under the provisions of this section, the Registrar—

(a) if satisfied that the easement or profit a prendre in respect of which the application is made has not been used or enjoyed for the period specified in subsection (1) and the application is otherwise in order, shall accept the application; or

(b) if not so satisfied, may refuse the application or may, by notice to the applicant, require the applicant to furnish him with such additional information or documents relating to the application as the Registrar thinks fit within such reasonable time as may be specified in such notice.

(4) If—

(a) the applicant fails to comply to the satisfaction of the Registrar with any of the requisitions contained in any notice given under the provisions of paragraph (b) of subsection (3), or within such extended time as the Registrar, in his discretion may allow; or

(b) after compliance by the applicant with the requisitions contained in such notice, the Registrar is not satisfied that the easement or profit a prendre has not been used or enjoyed for the period specified in subsection (1) or that the application is otherwise in order,

the Registrar shall refuse the application.

(5) If an application made under the provisions of this section is accepted by the Registrar, he shall direct that notice thereof in the prescribed form be served on every person appearing by the register to have any estate or interest in the land, to which the easement or profit a prendre is appurtenant, and on any other person appearing to the Registrar to be interested therein.

(6) Every notice required under the provisions of subsection (5) shall—

(a) specify the number of every instrument of title affected by the application and of every mortgage, lease or other encumbrance registered thereon; and

(b) appoint a time specified or approved by the Registrar, being not less than one month or more than three months after the date of such notice, after which the Registrar may, unless, on or before the expiration of that time, any objection has been lodged as hereinafter provided, grant the application; and

(c) be served on every person upon whom it is required to be served under the provisions of subsection (5) by delivering it to him personally or sending it to him by registered post addressed to his address (if any) appearing in the register, or, at his last known place of abode or business in Fiji.

(7) Any person upon whom notice is required to be served under the provisions of subsection (5), may, at any time before the expiration of the time appointed in such notice, lodge objection in writing with the Registrar against the granting of the application.

Power of Registrar to cancel easement

92.—(1) If, at the expiration of the time appointed in any notice required under the provisions of subsection (5) of section 91 the Registrar is satisfied that the easement in respect of which the application is made has not been used or enjoyed for the period specified in subsection (1) of section 91 and has been abandoned and

that there are no valid objections to the easement being cancelled, the Registrar shall cancel such easement by entering a memorial to that effect, stating the circumstances and authority under which such cancellation is made, in the register and shall also endorse a like memorial on the duplicate instrument of title when produced to him for that purpose or for the purpose of any dealing thereon.

(2) For the purpose of cancelling any endorsement on any duplicate instrument of title under the provisions of subsection (1), the Registrar may call in such duplicate and may retain it until such cancellation is effected, and may refuse to register any dealing with any estate or interest in the land to which it relates until such duplicate instrument of title has been produced to him for the purpose of effecting such cancellation.

(3) For the purposes of this section, the estate or interest of a registered proprietor of any estate or interest in land shall be deemed to be affected by the cancellation of an easement whether in the position of a dominant or servient tenement.

PART XIV—TRANSMISSIONS

Person claiming under transmission may be registered

93.—(1) Any person claiming to be entitled to any estate or interest in land subject to the provisions of this Act by virtue of any transmission, whether as the result of the death of the registered proprietor of such estate or interest or otherwise, may make application in the prescribed form to the Registrar to be registered as the proprietor of such estate or interest.

(2) Every application made under the provisions of subsection (1) shall be signed by the applicant and attested by a qualified witness and shall accurately define the estate or interest claimed by the applicant, and shall state that he is entitled to the estate or interest in respect of which he is applying to be registered as proprietor; and the statements in such application shall be supported by the production to the Registrar of the original or certified true copies of all documents under which the applicant claims to be entitled to such estate or interest.

(3) If on any application made under the provisions of subsection (1), and upon the evidence adduced in support thereof, the Registrar is satisfied that the applicant is entitled to the estate or interest claimed, the Registrar shall register the applicant as the proprietor thereof, and the person so registered shall hold such estate or interest subject to all equities affecting the same, but for the purpose of any dealing therewith shall be deemed to be the absolute proprietor thereof.

(4) The title of every personal representative of a deceased proprietor registered under the provisions of this section shall relate back to and take effect from the date of death of the deceased proprietor.

Registrar may enter caveat

94. Upon registration of the transmission of any estate or interest in land under the provisions of section 93 the Registrar may enter a caveat for the protection of the interests of any persons whom he is satisfied are beneficially interested in such estate or interest.

Change or correction of name of proprietor

95. Where it appears to the Registrar that the proprietor of any estate or interest in land subject to the provisions of this Act has changed, by marriage or in

any other way, his, her or its name, or that the name of any such proprietor is incorrectly stated in the register, the Registrar may, on the application of such proprietor and on payment of the prescribed fee, enter a memorial of such change of name on, or make the necessary change in, the register, and endorse a like memorial or make the like change as the case may be, on the duplicate instrument of title of such proprietor:

Provided that no fee shall be payable where any such correction is rendered necessary by reason of a mistake made by the Registrar or by any of his officers.

Trustee of bankrupt to be registered as proprietor

96. Upon the bankruptcy of the proprietor of any estate or interest in land subject to the provisions of this Act, the Registrar, upon the application in writing of the trustee of such bankrupt, accompanied by an office copy of the appointment of such trustee or such other evidence of the appointment as may be required by law for the time being in force, shall register such trustee as the proprietor of such estate or interest.

Refusal by trustee to accept a lease to operate as a surrender

97. Upon the bankruptcy of the proprietor of any lease, the Registrar, unless such lease be subject to a mortgage, shall upon the application in writing of the lessor accompanied by a statement in writing signed by the trustee of such bankrupt disclaiming the lease enter in the register a note of such disclaimer and such entry shall operate as a surrender of such lease.

Refusal to accept lease subject to mortgage to vest lease in mortgagee

98. Upon the bankruptcy of the proprietor of any lease subject to a mortgage, the Registrar, shall upon the application in writing of the mortgagee, accompanied by a statement in writing signed by the trustee of the bankrupt disclaiming the lease, enter in the register a note of the disclaimer, and subject to the provisions of section 56 the entry shall operate as a transfer to the mortgagee of the estate or interest of the bankrupt in the lease.

Surrender not to prejudice cause of action against lessee

99. No entry of discharge or surrender under the provisions of sections 97 or 98 shall operate to prejudice any action or cause of action which has been previously commenced or has accrued in respect of any breach or non-observance of any of the covenants in such lease or mortgage respectively.

Provision in case of persons holding for a deceased or bankrupt proprietor

100. The personal representatives of a deceased proprietor or the trustee of a bankrupt proprietor shall hold the estate or interest in land in respect of which they are so registered under the provisions of this Part upon the trusts and for the purposes to which the same is applicable by law and subject to any trusts and equities upon which the deceased or bankrupt proprietor held such estate or interest but for the purpose of any dealings therewith under the provisions of this Act they shall be deemed to be the absolute proprietors thereof.

Survivorship

101. Upon the death of any person registered together with any other person as joint proprietors of the same estate or interest in any land where there is right of

survivorship, the Registrar may, upon the application of the person entitled and upon proof to his satisfaction of such death and production of a certificate from the Commissioner of Estate and Gift Duties certifying that all duties payable under the provisions of any law relating to estate duties have been paid, or have been secured to his satisfaction, or that no duties are payable, register such person as proprietor of such estate or interest in the manner herein provided for the registration of a like estate or interest upon a transfer of the land.

PART XV—TRUSTS AND TRUSTEES

Trustees

102.—(1) Except as provided in subsection (2), no entry shall be made in the register of any notice of trusts, and no such entry, if made, shall have any effect:

Provided that a provision in any instrument to the effect that the person executing the instrument assumes liability only to the extent of any estate or interest of which he is trustee shall not be deemed to be a notice of trust.

(2) Every memorial entered in the register or endorsed on any duplicate instrument of title of any transfer of any estate or interest in land subject to the provisions of this Act in favour of any trustees shall, if the instrument of transfer is supported by lodgment with the Registrar of the originals or certified true copies of all instruments creating or evidencing the trust, include the words “as trustees” after the names and designations of the persons registered as the proprietors thereof, and the Registrar shall not make any other entry relating to any such trust in the register; but shall preserve in the registry the original or certified true copies as the case may be, of the instruments creating or evidencing the trust produced to him under the provisions of this subsection.

(3) The inclusion of the words “as trustees” in a memorial or in any instrument of title shall not prejudice or restrict the operation of section 40.

(4) Where a trustee desires to retire under the provisions of the Trustee Act, he may execute a form of retirement, and the consents required by the provisions of that Act shall be endorsed on the form of retirement, and the Registrar shall enter a memorial of the retirement in the register, and the trustee shall be deemed to have retired from the trust and shall be discharged therefrom. (Cap. 65.)

(5) Where it is desired to appoint a new trustee or new trustees under the provisions of the Trustee Act, the person or persons empowered by that Act to appoint a new trustee or new trustees may execute a form of appointment, and the new trustee or trustees shall endorse his or their consent on the form of appointment, and the Registrar shall enter a memorial of the appointment in the register and the land, or estate or interest therein, shall thereupon vest in the new trustee or new trustees and the surviving or continuing trustees. (Cap. 65.)

PART XVI—JUDGMENTS AND EXECUTION

As to proprietor preferred by court

103. Whenever the court has given any judgment, decree or order preferring as proprietor of any estate or interest in land subject to the provisions of this Act, any person other than the registered proprietor thereof, the Registrar, on being served with an office copy of such judgment, decree or order, shall enter a memorial thereof in the register and shall state in such memorial the date of such

judgment, decree or order, the date and hour of its production to him, and the name and description of the person in whom such judgment, decree or order purports to vest such estate or interest, and such person shall thereupon be deemed to be the registered proprietor of such estate or interest, and unless and until such entry is made, the said judgment, decree or order shall have no effectual operation.

Enforcement of judgments, etc. against land

104.—(1) No judgment, decree or order for the payment of money, the sale of land or a sale in pursuance of an execution under any such judgment, decree or order issued prior to or after the commencement of this Act shall bind, charge or affect any estate or interest in land subject to the provisions of this Act unless and until the Registrar has been served with a copy of such judgment, decree or order certified by the court and accompanied by a statement signed by any party interested or his barrister and solicitor or agent specifying—

- (a) the estate or interest sought to be affected thereby;
- (b) the name, address and description of the person by whom or on whose behalf the same is lodged; and
- (c) an address or place within Fiji at which notices and proceedings relating thereto may be served.

(2) The Registrar, on being served with a copy of a judgment, decree or order under the provisions of subsection (1) shall, after marking upon such copy the time of service, enter the same in the register; and with effect from the time of service thereof upon the Registrar such judgment, decree or order shall, subject to the provisions of subsection (2) of section 105, have the effect of, and be deemed to be, a caveat lodged under the provisions of section 106, subject to any prior registered mortgage or charge forbidding the registration of any person as transferee or proprietor of and of any interest affecting, the estate or interest affected by such judgment, decree or order other than in pursuance of such judgment, decree or order.

(3) Upon the estate or interest in respect of which a judgment, decree or order has been registered under the provisions of subsection (2) having been sold pursuant to such judgment, decree or order, the Registrar shall, on receiving a transfer thereof in the prescribed form (which transfer shall have the same effect as if made by the proprietor) enter a memorial of such transfer in the register; and on such entry being made the purchaser shall become the transferee and be deemed to be the registered proprietor of such estate or interest.

(4) After the commencement of this Act, no unregistered instrument, document or writing and no equitable mortgage by deposit or otherwise without writing affecting any estate or interest in land shall prevail against a sale under the authority of a judgment, decree or order unless a caveat in respect of such unregistered instrument, document or writing or equitable mortgage shall have been lodged with the Registrar in pursuance of the provisions of section 106 before the service of the copy of the said judgment, decree or order on the Registrar but, in the absence of a caveat, all of the estate and interest of the judgment debtor as well as of any unregistered purchaser, transferee, mortgagee or other person claiming through or under him shall be extinguished and shall pass to the purchaser by virtue of a transfer under the provisions of this section.

(5) The Registrar may register a transfer under the authority of a judgment, decree or order without requiring the production of the duplicate instrument of title:

Provided that the Registrar shall give such notice of intention to register the transfer, at the cost of the transferee, and cause the same to be published, as in the case of the production of a duplicate certificate being dispensed with under the provisions of section 26.

Satisfaction, etc. of registered judgment

105.—(1) Upon production to the Registrar, by way of application, of sufficient evidence of the satisfaction of any judgment, decree or order registered under the provisions of section 104, he shall direct an entry to be made in the register of a memorial to that effect, and on such entry having been made, such judgment, decree or order shall be deemed to be satisfied.

(2) Every judgment, decree or order shall cease to bind, charge or affect any estate or interest in land in respect of which it is registered unless a transfer upon a sale under such judgment, decree or order shall be presented to the Registrar for registration within six months, or such extended period as the court by order made on application to it upon summons shall determine, from the day on which the copy of such judgment, order or decree was served.

PART XVII—CAVEATS

Caveat may be lodged

106. Any person—

(a) claiming to be entitled or to be beneficially interested in any land subject to the provisions of this Act, or any estate or interest therein, by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise howsoever; or

(b) transferring any land subject to the provisions of this Act, or any estate or interest therein, to any other person to be held in trust,

may at any time lodge with the Registrar a caveat in the prescribed form, forbidding the registration of any person as transferee or proprietor of, and of any instrument affecting, such estate or interest either absolutely or unless such instrument be expressed to be subject to the claim of the caveator as may be required in such caveat.

Particulars to be stated in and to accompany caveat

107. Every caveat shall state the name, address and description of the person by whom or on whose behalf the same is lodged and, except in the case of a caveat lodged by order of the court or by the Registrar, shall be signed by the caveator or his agent and attested by a qualified witness and shall state with sufficient certainty the nature of the estate or interest claimed and how such estate or interest is derived.

Entry and service of caveats

108.—(1) No caveat shall be accepted by the Registrar unless some address or place within Fiji shall be appointed therein as the place at which notices and proceedings relating to such caveat may be served.

(2) Every caveat shall be entered in the register as of the day and hour of its receipt by the Registrar.

(3) Every notice relating to a caveat and any proceedings in respect thereof if served at the address or place appointed in the caveat in accordance with the provisions of subsection (1) shall be deemed to be duly served.

Notice and opposition to caveat

109.—(1) Upon the receipt of any caveat, the Registrar shall give notice thereof to the person against whose application to be registered as proprietor of, or, as the case may be, to the registered proprietor against whose title to deal with, the land, estate or interest, the caveat has been lodged.

(2) Any such applicant or registered proprietor, or any other person having any registered estate or interest in the estate or interest protected by the caveat, may, by summons, call upon the caveator to attend before the court to show cause why the caveat should not be removed, and the court on proof of service of the summons on the caveator or upon the person on whose behalf the caveat has been lodged and upon such evidence as the court may require, may make such order in the premises, either *ex parte* or otherwise as to the court seems just, and, where any question of right or title requires to be determined, the proceedings shall be followed as nearly as may be in conformity with the rules of court in relation to civil causes.

Removal of caveat

110.—(1) Except in the case of a caveat lodged by the Registrar the caveatee or his agent may make application in writing to the Registrar to remove the caveat, and thereupon the Registrar shall give twenty-one days' notice in writing to the caveator requiring that the caveat be withdrawn and, after the lapse of twenty-one days from the date of the service of such notice at the address mentioned in the caveat, the Registrar shall remove the caveat from the register by entering a memorandum that the same is discharged unless he has been previously served with an order of the court extending the time as herein provided.

(2) Every such application shall contain an address in Fiji at which notices and proceedings may be served.

(3) The caveator may either before or after receiving notice from the Registrar apply by summons to the court for an order to extend the time beyond the twenty-one days mentioned in such notice, and the summons may be served at the address given in the application of the caveatee, and the court, upon proof that the caveatee has been duly served and upon such evidence as the court may require, may make such order in the premises either *ex parte* or otherwise as the court thinks fit.

Caveat may be withdrawn

111. Any caveat may be withdrawn by the caveator or by his agent under a written authority, and either as to the whole or any part of the land affected, or the consent of the caveator may be given for the registration of any particular dealing expressed to be made subject to the rights of the caveator.

No second caveat may be entered

112. When any caveat has been removed under the provisions of section 109 or 110, it shall not be lawful for the Registrar to receive any second caveat affecting the same land, estate or interest by the same person, or in the same right and for the same cause, except by order of the court.

No entry to be made in register affecting land in respect of which caveat continues in force

113.—(1) Subject to the provisions of subsection (2), except in the cases referred to in section 117, so long as any caveat shall remain in force prohibiting absolutely any registration or dealing, the Registrar shall not enter in the register any change in the proprietorship of or any transfer or other instrument purporting to transfer or otherwise deal with or affect the estate or interest in respect of which such caveat may be lodged.

(2) Where an instrument is presented for registration and a caveat is lodged after the time of the presentation of the instrument, the caveat shall not have the effect of preventing registration of the instrument but the caveat shall take effect as if lodged after registration of the instrument.

Compensation for lodging caveat without reasonable cause

114. Any person lodging any caveat with the Registrar without reasonable cause shall be liable to make, to any person who may have sustained damage thereby, such compensation as the court shall order and such compensation may be recovered by proceedings at law if the caveator has withdrawn such caveat and no proceedings have been taken by the caveatee as herein provided but, if proceedings have been taken by the caveatee, then such compensation shall be decided by the court acting in the same proceedings.

Memorandum of caveats to be fixed to certificates

115. The Registrar shall cause a memorial to be entered in the register of every caveat lodged under the provisions of section 106 and a copy of such caveat or so much thereof as the Registrar shall deem material to the person notified shall be sent with the notification required by the provisions of section 109.

Removal of caveat where interest protected has ceased to exist

116.—(1) Where it appears to the Registrar that the estate or interest claimed by any caveator has ceased to exist, he may, either of his own motion or on the application of any person claiming any estate or interest in the land, serve notice on the caveator requiring him within twenty-one days from the date of such notice to withdraw such caveat or within such time to commence proceedings in court to substantiate his claim, and in the event of the caveator failing to comply with the requirements of such notice within the time therein limited, the Registrar may direct the removal of such caveat from the register and forward notice of such removal to the caveator.

(2) In any proceedings by a caveator to substantiate his claim under the provisions of this section, he shall, unless otherwise ordered by the court, join as parties the Registrar, the registered proprietor and any other person or persons affected by the existence of such caveat.

Caveat on behalf of a beneficiary under a will or settlement does not bar registration in certain cases

117. Where a caveat has been lodged by or on behalf of a beneficiary claiming under a will or settlement and a change in the proprietorship of or a transfer or other dealing with or affecting the land, estate or interest in respect of which the caveat was lodged is presented for registration, the same may, notwithstanding the provisions of section 113, be registered without the caveat being withdrawn and without determining the operation of the caveat, if the Registrar is of the opinion that such change of proprietorship or such transfer or other dealing is authorised by

the will or settlement and the caveator either consents to the registration or does not lodge a written protest against such reservation within twenty-one days after being served with notice as such caveator.

PART XVIII—POWERS OF ATTORNEY

Registered proprietor may deal by attorney

118. The registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, may by power of attorney in the prescribed form or such other form as may be approved by the Registrar, and either in general terms or specially, authorise and appoint any person on his behalf to execute transfers of, or other dealings with, such land, estate or interest, or to sign any consent or other document required under the provisions of this Act, or to make any application to the Registrar or to any court or judge in relation thereto.

Powers of attorney to be deposited and registered

119. Every power of attorney intended to be used under the provisions of this Act, or a duplicate or certified copy thereof, verified to the satisfaction of the Registrar, shall be deposited with the Registrar who shall register the same by entering in the register to be known as the "Powers of Attorney Register" a memorandum of the particulars therein contained and of the date and hour of its deposit with him.

Revocation of power of attorney

120.—(1) The grantee of any revocable power of attorney may by notice to the Registrar in the prescribed form revoke the power of attorney either wholly or as to the land, estate or interest specified in the notice, and upon receipt of such notice the Registrar shall enter a memorial thereof in the Powers of Attorney Register and endorse a like memorial on the original, duplicate or certified copy of such power of attorney filed in his office.

(2) No power of attorney shall be deemed to have been revoked by reason only of a subsequent power of attorney being deposited without express notice of revocation given under the provisions of subsection (1), nor shall any such revocation take effect as to instruments executed prior to receipt of such notice by the Registrar.

(3) No power of attorney shall be deemed to have been cancelled or revoked by the bankruptcy of the grantee or by the marriage of a female grantee.

Cancellation of power of attorney

121. When the authority of the grantee of a power of attorney is determined otherwise than by notice of revocation by the grantor, the Registrar may, upon production of satisfactory evidence to that effect, enter a memorial thereof in the Powers of Attorney Register and endorse a like memorial on the original, or duplicate or certified copy of the power of attorney filed in his office.

PART XIX—ATTESTATION, CERTIFICATION AND EXECUTION

Witnesses necessary in attesting documents

122.—(1) Every instrument required to be registered under the provisions of this Act shall be witnessed by one person who shall attest such document in the

prescribed form, and, in case such witness shall not be a qualified witness, the person so attesting shall appear before a qualified witness who shall endorse upon the instrument a certificate in the prescribed form.

(2) In any case where an official holding a seal of office attests any application or instrument under the provisions of this section, such official shall authenticate his signature by such seal.

(3) In case any instrument, the execution whereof by any person by whom it purports to be executed is not attested or endorsed in accordance with the provisions of subsection (1), is presented to the Registrar for registration, filing or noting, the Registrar may, in his discretion, register, file or note such instrument if the genuineness of such execution is proved to his satisfaction by the statutory declaration of a person well acquainted with the person executing the instrument and with the signature and handwriting of such person.

(4) A corporation, instead of signing any instrument, may execute the same by affixing thereto the common seal of the corporation or the official seal for use in Fiji, or by attorney appointed under the common seal, and any such seal affixed to any instrument shall be sufficient proof to the Registrar that the same was affixed under proper authority, and the instrument is binding on the corporation whose seal it bears.

(5) The signature of every person by whom any application, instrument or other document is required to be signed or attested shall be written in ink or, if the person signing such application, instrument or other document is unable to sign his name, then such signature shall be made by the left thumb print of the person executing the same or by other sufficient mark to the satisfaction of the Registrar.

Application to have force of statutory declaration

123.—(1) Every application under the provisions of this Act, when attested by a qualified witness, shall have the same force and effect as a statutory declaration.

(2) Any person who knowingly and wilfully in any such application makes a statement false in any material particular shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or to a fine not exceeding two hundred dollars or to both such imprisonment and fine.

Instruments to be certified correct for registration

124.—(1) Subject to the other provisions of this Act, the Registrar shall not receive any instrument purporting to deal with or affect any land subject to the provisions of this Act, or any estate or interest therein, unless there is endorsed thereon a certificate that the same is correct for the purposes of registration under the provisions of this Act, signed by the party claiming under or in respect of such instrument or by his barrister and solicitor or by a person authorised in that behalf by the Chief Justice:

Provided that—

- (a) if the person claiming under or in respect of such instrument is illiterate, the certificate shall be signed by his barrister and solicitor or by a person authorised in that behalf by the Chief Justice;
- (b) in the case of a lease of any land from the native owners thereof or from the Crown which is not required to be endorsed on the lessor's instrument of title, or any extension of any such lease, the certificate required by the provisions of this subsection shall not be necessary.

(Amended by 25 of 1974, s. 5.)

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

(3) An person who falsely or negligently certifies to the correctness of any such instrument shall be guilty of an offence and liable to a fine not exceeding one hundred dollars:

Provided that such fine shall not prevent any person who has sustained damage or loss in consequence of any error or mistake in any certified instrument or a duplicate thereof from recovering damages against the person who has certified the same.

(4) It shall be lawful for a corporation to appoint by writing under the common seal of the corporation any person on its behalf to sign the certificate of correctness for the purposes of this section, and if any such person falsely or negligently so certifies he shall be guilty of an offence and liable to a fine not exceeding one hundred dollars:

Provided that such fine shall not prevent any person who has sustained damage or loss in consequence of any error or mistake in any such certified instrument or a duplicate thereof from recovering damages against the corporation on whose behalf the same has been certified.

Consent to dealing, how given

125. Where in this Act the consent of any person is required for the registration of any instrument, such consent shall be endorsed on the instrument or annexed thereto and the signature of the person giving such consent shall be attested in the manner prescribed for the verification of instruments under this Part or to the satisfaction of the Registrar.

Prior encumbrances to be endorsed on instruments

126. Every instrument presented for registration shall refer to all prior registered encumbrances subsisting against the land, estate or interest affected thereby.

Appointment of liquidator of company to be entered in the register

127. Upon the winding up of any company which is registered as the proprietor of any land, or any estate or interest therein, the liquidator shall serve notice of his appointment in such form as may be approved by the Registrar and shall produce a copy of the appointment of such liquidator if appointed under a voluntary winding up, or an office copy of the order appointing such liquidator if appointed by the court, and the Registrar shall enter a memorial of such appointment in the register:

Provided that in the case of a voluntary winding up the notice shall be supported by such evidence of the appointment having been legally made as the Registrar may require.

PART XX—GOVERNMENTS OF OVERSEA COUNTRIES

Governments of oversea countries may be registered proprietors

128.—(1) The Government of any oversea country shall be deemed to be and to have always been capable of being registered as the proprietor of any land

subject to the provisions of this Act or any estate or interest therein, in the same manner as if such Government were a corporation.

(2) Any transfer or other instrument purporting to transfer or in any way to affect land subject to the provisions of this Act, or any estate or interest therein may be executed, or certified correct under the provisions of section 124, on behalf of any Government of any oversea country by a representative in Fiji of that country.

(3) The fact that any transfer or other instrument that has been presented for registration purports to have been executed on behalf of a Government of an oversea country by a representative in Fiji of that country shall, in the absence of proof to the contrary, be sufficient evidence to the Registrar that the instrument was executed under proper authority and is binding on such Government.

(4) In this section—

“oversea country” means any country other than Fiji;

“representative” means any diplomatic or consular representative of any foreign state or Commonwealth country, and includes any person lawfully acting for any such representative.

PART XXI—SPECIAL POWERS AND DUTIES OF REGISTRAR

Power to call for documents

129.—(1) The Registrar may require the proprietor of or any other person interested in any land or any estate or interest therein in respect of which any instrument is about to be registered under this Act to produce any grant, certificate of title, mortgage, lease, or other instrument in his possession or within his control affecting such land, estate or interest or the title thereto.

(2) The Registrar may summon any such person to appear and give any explanation respecting such land, estate or interest, or the instruments affecting the title thereto.

(3) If, upon requisition in writing made by the Registrar, such person refuses or wilfully neglects to produce any such instrument or refuses or wilfully neglects to give any information or explanation which he is required to give, or knowingly misleads or deceives any person authorised to demand any such explanation or information, he shall be guilty of an offence and liable to a fine not exceeding two hundred dollars and the Registrar, if the information or explanation so withheld appears to him material, shall not be bound to proceed with the registration of the instrument sought to be registered.

(4) Every summons issued by the Registrar under the provisions of this section shall be in the prescribed form, and may be enforced by him in like manner and by the like proceeding as provided in sections 166 and 167 for the case of any instrument issued in error or wrongfully retained.

To administer oaths

130. The Registrar shall have power to administer oaths or take a declaration in lieu of an oath for the purposes of this Act.

Powers to enter caveats, to correct certificates and to destroy documents

131.—(1) The Registrar may enter a caveat on behalf of the Crown or on behalf of any person who is under any disability, to prohibit any transfer of, or other dealing with, any land, or any estate or interest therein, belonging or

supposed to belong to the Crown or to any such person, and also to prohibit any dealing with any land, or any estate or interest therein, in any case in which it appears to him that an error has been made by misdescription of such land or otherwise in any instrument, or for the prevention of any fraud or improper dealing.

(2) The Registrar may, upon such evidence as shall appear to him sufficient in that behalf, correct errors in certificates of title, or in the register, or in entries made therein respectively, and may supply entries which have been omitted to be made:

Provided that in the correction of any such error he shall not erase or render illegible the original words, and shall insert the date upon which such correction was made or entry supplied, and shall affix his initials thereto, and every certificate of title so corrected and every entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted except as regards any entry made in the register prior to the actual time of correcting the error or supplying the omitted entries.

(3) The Registrar may, notwithstanding any other of the provisions of this Act, with the approval of the Minister destroy any record, document, instrument, plan, diagram, book or paper, or any other paper writing whether of the same kind as those above enumerated or not, that is deposited with or registered at his office, the retention of which in his opinion serves no useful purpose.

To mark or stamp instrument

132. The Registrar may mark or stamp any instrument produced to him with a memorandum indicating such production and the number distinguishing the application in reference whereto the same was produced.

Exemptions from fees

133.—(1) No fees shall be chargeable in respect of the registration, lodgment or filing of any instrument or other document executed by or on behalf of or in favour of the Government in cases where, but for this exemption, the Government would be liable to pay the fees chargeable in respect of such instrument or other document.

(2) No fees shall be chargeable in respect of any grant or lease by the Crown to any *mataqali* under the provisions of the Native Lands Act. (Cap. 133.)

Registrar to keep account of moneys received

134. The Registrar shall keep a correct account of all such sums of money as shall be received by him in accordance with the provisions of this Act, and shall pay the same to the Chief Accountant at such times and in such manner as may be directed by the Minister.

Registrar to carry out order vesting trust estate

135.—(1) Whenever any person interested in land subject to the provisions of this Act, or any estate or interest therein, shall appear to the court or to the Registrar to be a trustee of such land, estate or interest within the intent and meaning of any Act now or hereafter in force relating to trusts and trustees, and any vesting order shall be made in the premises by the court or by the Registrar, which order he is hereby empowered to make concurrently with the said court, the Registrar shall cause a memorial to be entered in the register and endorsed on the

duplicate instrument of title the date of the said order, the time of its production to him and the name and description of the person in whom the said order purports to vest the said land, estate or interest; and upon such entry in the register such person shall become the transferee and be deemed to be the proprietor thereof. Unless and until such entry shall be made, such order shall have no effect or operation in transferring or otherwise vesting the said land, estate or interest.

(2) The provisions of this section shall apply to any estate or interest in land which stands registered in the name of any deceased person who was at the time of his death a trustee thereof.

Power of Registrar to make a vesting order in cases of completed purchase

136. Where it is proved to the satisfaction of the Registrar that any land subject to the provisions of this Act or any lease thereof has been sold by the proprietor thereof and the whole of the purchase money paid and that the purchaser or those claiming under him have entered and taken possession under such purchase and such entry and such possession have been acquiesced in by the vendor or by his personal representatives but that no transfer has ever been executed by the vendor and cannot be obtained by reason that the vendor is dead or residing out of the jurisdiction or cannot be found, the Registrar may, in his discretion, make a vesting order in the premises and cause to be made the entries directed to be made by section 135 in the case of vesting orders, and the making of or the omission to make such entries shall be attended by the same results as in respect of the vesting orders in such section mentioned.

Certain encumbrances which have ceased to affect the title may be removed for the register

137. Where it is proved to the satisfaction of the Registrar that any right or interest notified as an encumbrance on an instrument of title has been fully satisfied, extinguished or otherwise determined and no longer affects the land, estate or interest to which such instrument relates, the Registrar may either direct a statement to that effect to be endorsed on the instrument of title or permit any subsequent instrument of title dealing with the said land, estate or interest to be issued or made free from such encumbrance.

Satisfaction of judgment may be entered before the expiration of four months from the entry of copy writs

138. Where it is proved to the satisfaction of the Registrar that any judgment, decree or order entered under the provisions of section 104 has been satisfied before the period for which such entry is binding or effective has elapsed, the Registrar may write the word "satisfied" with his signature and the date of the signing upon or below the entry and thereupon such judgment, decree or order shall cease to affect the land, estate or interest in respect of which the entry was made.

PART XXII—GUARANTEE OF TITLE

Indemnity

139. Neither the Registrar nor any person acting under his authority shall be individually liable to any action, suit or proceeding for or in respect of any act or matter bona fide done or omitted to be done in the exercise or supposed exercise of the powers conferred on him by or under the provisions of this or any other Act.

Damages for mistake or misfeasance of Registrar

140. Any person who either before or after the commencement of this Act—

- (a) sustains loss or damages through any omission, mistake or misfeasance of the Registrar or of any of his officers or clerks in the execution of their respective duties; or
- (b) is deprived of any land subject to the provisions of this Act, or of any estate or interest therein, by the registration of any other person as proprietor of such land, estate or interest, or by any error, omission or misdescription in any instrument of title, or in any entry or memorial on the instrument of title, or has sustained any loss or damage by the wrongful inclusion of land in any instrument as aforesaid, and who by this Act is barred from bringing an action for possession or other action for the recovery of such land, estate or interest,

may bring an action against the Registrar as nominal defendant for the recovery of damages.

Notice of action to be served on Attorney-General and Registrar

141.—(1) Notice in writing of every action against the Registrar and of the cause thereof and of the amount claimed shall be served upon the Attorney-General, and also upon the Registrar, one month at least before the commencement of such action.

(2) If the Attorney-General and the Registrar concur that such claim ought to be admitted as to the whole or any part thereof without suit or action and jointly certify to that effect, the Chief Accountant may make payment accordingly.

(3) If, after notice of such admission has been served on the claimant, his barrister and solicitor or agent, the claimant proceeds with such action and recovers no more than the amount admitted, he shall not be entitled to recover any costs as against the Registrar and shall be liable to such defendant for the costs of defending the action in like manner as if judgment had been given for the defendant in such action.

Liability of plaintiff for costs

142. If in any action under the provisions of section 141, judgment is given in favour of the Registrar or the plaintiff discontinues or is nonsuited, the plaintiff shall be liable to pay the full costs of defending such action, and the same when taxed shall be levied in the name of the Registrar by the like process of execution as in other actions.

In case of fraud compensation paid and costs recoverable

143.—(1) Where any sum of money has been lawfully paid out of the Consolidated Fund as compensation for any loss occasioned by fraud on the part of any person causing or procuring himself to be registered as a proprietor by virtue of any dealing with or transmission from a registered proprietor, the amount of such compensation together with all costs incurred in testing or defending any claim or action in relation thereto shall be deemed a debt due to the Crown from the person legally responsible for such fraud, and may be recovered from him or his personal representatives by action at law in the name of the Registrar or, in case of bankruptcy, may be proved as a debt due from his estate.

(2) A certificate signed by the Chief Accountant verifying the fact of such

payment out of the Consolidated Fund shall be prima facie proof that such payment was duly made.

Consolidated Fund to be credited or debited

144.—(1) All moneys recovered under the provisions of section 143 shall be paid to the credit of the Consolidated Fund.

(2) All costs incurred by the Registrar with the sanction of the Attorney-General in prosecuting, testing or defending any claim or action under this Act shall be paid out of the Consolidated Fund.

Judgment may be signed against absconders, etc.

145.—(1) Where any amount has been paid out of the Consolidated Fund on account of any person who has absconded or who cannot be found within the jurisdiction of the court and who has any real or personal estate within Fiji, the court, upon the application of the Registrar and upon the production of a certificate signed by the Chief Accountant certifying that the amount has been paid in satisfaction of a judgment against the Registrar as nominal defendant, may allow the Registrar to sign judgment against such person forthwith for the amount so paid out of the Consolidated Fund together with the costs of the application.

(2) Any judgment signed under the provisions of subsection (1) shall be final and shall be signed in like manner as a final judgment by consent or default in a suit, and execution may issue immediately.

Judgment recovered at any time

146. If the person referred to in section 145 has no real or personal estate within Fiji sufficient to satisfy the amount for which execution has been issued as aforesaid, the Registrar may recover such amount or the unrecovered balance thereof by action against such person whenever he may be found within the jurisdiction of the court.

Crown not liable in certain cases

147. The Crown shall not under any circumstances be liable for compensation for any loss, damage or deprivation occasioned by any of the following things notwithstanding that effect may have been given to the same by entry on the register—

- (a) by the breach by a registered proprietor of any trust; or
- (b) by the same land having been included in two or more Crown or native grants; or
- (c) by the improper use of the seal of any corporation or company; or
- (d) by the registration of any instrument executed by any person under any disability unless the fact of such disability was disclosed on the instrument by virtue of which such person was registered as proprietor; or
- (e) by the improper exercise of any power of sale or re-entry.

Value of land at time of deprivation to be measure of damages

148. No person shall, as against the Registrar or the Consolidated Fund, be entitled to recover any greater amount for compensation in respect of the loss or deprivation of any land or of any estate or interest therein than the value of such land, estate or interest at the time of such deprivation, together with the value of

the messuages and tenements erected thereon and improvements made thereto, if any, prior to the time of such deprivation, with interest at the rate of five per cent per annum to the date of judgment recovered.

Limitation of actions

149.—(1) No action for recovery of damages under the provisions of this Part shall lie or be sustained against the Registrar unless such action is commenced within the period of six years from the date when the right to bring such action accrued, but any person being under any disability may bring such action within three years from the date on which such disability ceased.

(2) For the purposes of this section, the date when the right to bring an action accrues shall be deemed to be the date on which the plaintiff becomes aware, or but for his own default might have become aware, of the existence of his right to make a claim.

PART XXIII—SUBDIVISIONS AND ROADS

Power of Registrar to require plan

150. The Registrar may require the proprietor of any land subject to the provisions of this Act, or any estate or interest therein, desiring to transfer or otherwise to deal with the same or any part thereof to deposit with the Registrar a plan of such land on such scale and with such measurements thereon as may be prescribed and with such further information as the Registrar may require, and every such plan shall be certified by a surveyor registered under the provisions of the Surveyors Act. (Cap. 260.)

Crown survey boundaries as marked on the ground to be deemed the true boundaries

151. The survey boundaries of any Crown or native land marked on the ground at the time of the survey thereof and shown by survey posts, pegs, trenches or other survey marks shall, as to any such land granted or demised whether before or after the commencement of this Act, be and be deemed to have been the true boundaries of such parcel of land whether such boundaries upon a measurement are or are not found to be of the same dimensions or to include the same area as the boundaries or description of such parcel given in the grant or lease, as the case may be.

Crown grant or lease deemed to convey land within survey boundaries marked on the ground

152. Every Crown or native grant or lease purporting to grant or demise any land whether describing it by a distinguishing number or letter or by metes and bounds or otherwise shall be deemed to grant or demise the land included within the survey boundaries of the area they include and the dimensions or area expressed in such grant or lease, as the case may be, or shown in any plan used in connexion with the grant or demise of such land:

Provided that nothing in this or section 151 shall apply to any such land where an actual patent mistake or error has been made.

How survey boundaries may be proved in the absence of survey marks

153. When the survey marks of the boundaries of any land have been removed or obliterated, the survey shall be reconstituted in accordance with recognized survey practice approved by the Surveyor-General but if it is proved in a court of

competent jurisdiction or to the satisfaction of the Registrar in any proceeding or application in which the boundaries of such land have to be determined that any buildings, fences, walls or other improvements of a permanent nature, or a succession of such improvements—

- (a) have, ever since the removal or obliteration of such survey marks indicated the position of the boundaries originally marked on the ground by the survey marks so removed or obliterated; or
- (b) have, for a period of twenty years without interruption, been used and regarded by the owner or occupier or successive owners or occupiers of such parcel of land as marking or agreeing in position with the boundaries of the parcel of land comprised in the instrument of title under or by virtue of which such land is or has been occupied,

such proofs as aforesaid shall be deemed and received as sufficient evidence of the true positions of the original survey boundaries of such land.

Margin of error allowed in description of boundaries

154.—(1) From and after 1 August 1971 the dimensions of the boundaries of any land as stated in any instrument of title now made or hereafter to be made relating to such land or as represented on any plan drawn on and referred to in any such instrument shall, unless such construction is expressly negated or modified by such instrument of title or any contract, be construed as though the phrase “a little more or less” followed immediately thereafter and referred to the dimensions so stated or represented; and such phrase shall in all cases, whether so implied or expressed, be deemed to cover any difference between the dimensions so stated or represented and the actual dimensions of such boundaries as found by admeasurement on the ground when such difference does not exceed the limits of error prescribed by any regulations for the time being in force relating to survey for the class of land the subject of the survey.

(2) No action shall be brought by reason or in respect of any such difference (whether of excess or deficit) where such difference does not exceed such limits; and in any case where such difference does exceed such limits an action for damages or compensation in respect thereof shall only lie in respect of such excess.

Registrar may disregard minute errors of dimensions

155. In dealing with any application involving the amendment of an instrument of title or adjustment of boundaries, the Registrar may disregard any difference in the dimensions of boundaries or any encroachment excess or deficit which does not exceed the limits specified in section 154.

Excess of land may be apportioned between different owners or proprietors

156. Where land has been sub-divided and by reason of erroneous measurements in the original survey the area of the land as marked on the ground exceeds the sum of the areas of all the sub-divisions and road ways (if any) as shown by any plan or description used at the time of sub-division or by the grants or certificates of title of such sub-divisions, the total excess of area of the land shall be deemed originally apportionable amongst the sub-divisions and road ways (if any) proportionate to their relative dimensions, and, if the area of the land included in any application for an amended certificate of title is in the applicant's possession and was in the possession of the applicant or of him and those through whom he claims, for a period of not less than twenty years previous to the application and

does not exceed the area attributable to the sub-division or sub-divisions or fraction of a sub-division represented by the land included in such application after apportionment of such excess, the Registrar may, without ascertaining the dimensions of the other sub-divisions or fractions of sub-divisions, and without the consent of the proprietors thereof, issue a new certificate of title in respect of the land included in such application as if the whole of it had been included by metes and bounds in the original grant or certificate of title thereof.

Proprietor sub-dividing to deposit map if required

157. Any proprietor sub-dividing any land subject to the provisions of this Act for the purpose of selling or leasing the same in sub-divisional lots shall lodge with the Registrar a map or plan of such land if so required. Such map shall exhibit distinctly delineated all roads, streets or ways appropriated or set apart for any other public purpose, and all permanent drains and also all sub-divisional lots into which the said land may be divided, marked with distinct numbers or symbols, and shall also show the areas and shall comply in every respect with the prescribed requirements for plans. In case a portion only of the land comprised in any certificate of title shall be sub-divided, the existing certificate of title shall be cancelled to the extent of such portion and a fresh certificate of title shall be issued for the same.

Number of allotment on plan of sub-division sufficient description for purposes of dealings

158. After the sub-division of land and deposit of a map or plan under the provisions of section 157, the numbers of the sub-divisional lots marked upon such plan may be used as sufficient description of the land for the purpose of dealing with any one or more of such sub-divisional lots on the sub-division and on any subsequent dealings comprising the whole of one or more sub-divisional lots.

Creation of easements by certificate and deposit of plan

159.—(1) A proprietor of any land subject to the provisions of this Act may when depositing a map or plan of such land under the provisions of section 158 create an easement, other than an easement in gross or an easement of access of light or air, over so much of the land on such map or plan as is shown and marked as such thereon by executing a certificate of easement in the prescribed form.

(2) The certificate of easement shall describe the land to be subject to the easement and the sub-divisional lots on such map or plan and any other areas of land to which it is intended that the easement is to be appurtenant and shall set out the nature of the easement and the conditions of the grant thereof. (*Amended by Act 2 of 1979, s.2.*)

(3) The certificate of easement shall be lodged for registration with the Registrar at the same time as the map or plan is deposited, or at such other time as the Registrar shall, in his absolute discretion, allow, and the Registrar shall enter a memorial of the certificate of easement on the folium of the register constituted by the instrument of title. (*Amended by Act 2 of 1979, s.2.*)

(4) On the transfer or lease of any sub-divisional lot mentioned in the certificate of easement as one to which the easement is to be appurtenant a grant of such easement shall be deemed to have been made by the transferor to the transferee or the lessor to the lessee, as the case may be, on the conditions contained in the certificate of easement in the same manner and having the same force and effect as if a grant of the easement had been executed by both transferor and transferee or the lessor and lessee, as the case may be, and registered under the provisions of this Act and the Registrar shall enter a memorial of the certificate of

easement on the folium of the register constituted by the certificate of title to the land the subject of the transfer or lease and on the duplicate instrument of title.

(5) No grant of easement arising by virtue of this section shall bind the proprietor of any encumbrance to which the land is subject unless he shall have consented in writing on the certificate of easement or on the relevant transfer or lease.

Plan of sub-division

160.—(1) If the map or plan referring to the sub-division of land contains any road or street not referred to in the grant or certificate of title, the proprietor shall make application to the Registrar to register the dedication of the road or street, and the Registrar shall enter a memorial of the dedication in the register and on the duplicate certificate of title or grant:

Provided that if the land be leased, mortgaged or otherwise encumbered, the Registrar shall not register the dedication unless the lessee, mortgagee or other encumbrancee surrenders or discharges, as the case may be, the portion of the land the subject of the dedication.

(2) If any map or plan referred to in this section purports to sub-divide any land the sub-division of which requires the approval of any city or town council or other authority under the provisions of any Act, such plan shall not be accepted by the Registrar unless it has been endorsed with the approval of such city or town council or other authority;

Provided that no map or plan shall be registered by the Registrar unless it has been certified as correct in every respect by the Director of Lands.

Acquisition of land for public purposes

161.—(1) When the Minister resolves under the provisions of the Crown Acquisition of Lands Act that any land subject to the provisions of this Act is required for public purposes, the Director of Lands shall file with the Registrar, within fourteen days of the publication in the Gazette of the notice of intention required under the provisions of section 5 of the Crown Acquisition of Lands Act, a notice of intention to acquire in the prescribed form and shall attach thereto a copy of the Gazette notification together with, if available, a plan of the area proposed to be acquired or resumed. The Registrar shall thereupon, without fee, enter a memorial of the notice of intention upon the instrument of title relating to the land so intended to be acquired. (Cap. 135.)

(2) Upon completion of an acquisition, a notice to that effect in the Gazette shall be sufficient evidence of the acquisition and the Director of Lands shall file with the Registrar within seven days of the publication in the Gazette of such notice, a notice of acquisition in the prescribed form. The Registrar shall thereupon, without fee, enter a memorial of such acquisition in the register and on such of the duplicate instruments of title affected thereby as may be produced for endorsement.

Vesting of public roads in the Crown

162. When any road, street or other land is vested in the Crown under the provisions of any Act for the time being in force relating to roads the Registrar shall, without fee, upon the application of the Director of Lands, enter a memorial of such vesting in the register and on such of the duplicate instruments of title affected thereby as may be produced for endorsement.

Power of Registrar to issue certificate of title for street

163. When any road, street or other land is vested in any municipality under the provisions of the Local Government Act and no certificate of title has been issued to such municipality in respect thereof, the Registrar may, upon application by the council of the municipality, issue a certificate of title in favour of such council in respect thereof. (Cap. 125.)

(Substituted by 14 of 1975, s. 72.)

PART XXIV—SPECIAL JURISDICTION OF THE SUPREME COURT

Appeal to court from order of Registrar

164.—(1) If, upon the application of any person interested to have any instrument registered, or to have any instrument, instrument of title, foreclosure order, vesting order or other document issued under the provisions of this Act, or to dispense with the production of any instrument of title, or to have any act or thing done or performed by the Registrar, which the Registrar refuses so to do, such person interested may require the Registrar to state in writing the grounds of his refusal and such person may, if he thinks fit, at his own cost, summon the Registrar to appear before the court to substantiate and uphold the grounds of his refusal, such summons to be issued out of the court and to be served upon the Registrar six clear days at least before the day appointed for hearing the complaint of such person.

(2) Upon the hearing of any complaint under the provisions of this section, the Registrar shall have the right of reply and the court may, if any question of fact is involved, direct an issue to be tried to decide such fact, and thereafter the court shall make such order in the premises as the circumstances of the case require and the Registrar shall obey such order, and all expenses attendant upon any such proceedings shall be borne and paid by the person preferring such complaint unless the court orders the same to be paid out of the Consolidated Fund.

Reference to court on legal points, etc.

165. Whenever any question arises with regard to the performance of any duties or the exercise of any of the functions by this Act conferred or imposed upon the Registrar or, in the exercise of any of the duties of the Registrar, any question arises as to—

- (a) the true construction or legal validity or effect of any instrument; or
- (b) as to the persons entitled or to the extent and nature of the estate, right or interest, power or authority, of any person or class of persons; or
- (c) the mode in which any entry ought to be made in the register or any endorsement made on any instrument of title; or
- (d) any doubtful or uncertain right or interest stated or dealt with by the Registrar,

it shall be competent for him to refer the same to the court in the prescribed form, which shall require all the parties interested to appear and show cause in relation thereto, and if, upon such reference, the court, having regard to the parties appearing before it, shall think proper to decide the question, it shall have power so to do or to direct any proceedings to be instituted for that purpose or, at the discretion of the court, and without deciding such question, to direct such particular form of entry or endorsement to be made in the register or on the instrument of title, as the case may be, as in the circumstances shall appear to be just.

Correction of instrument issued in error

166. If it appears to the Registrar that any grant, certificate of title or other instrument of title has been issued in error or contains any misdescription of land or of boundaries, or that any entry or endorsement has been made in error on any such instrument, or that any such instrument, entry or endorsement has been fraudulently or wrongfully obtained, or that any such instrument is fraudulently or wrongfully retained, he may summon the person to whom such instrument has been so issued, or by whom it has been so obtained or is retained, to deliver up the same for the purpose of being cancelled or corrected as the case may require, and, in case such person refuses or neglects to comply with such summons or cannot be found, the Registrar may apply to the court to issue a summons for such person to appear before the court and show cause why such instrument should not be delivered to be so cancelled or corrected, and, if such person when served with such summons neglects or refuses to attend before the court at the time therein appointed, it shall be lawful for the court to issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the court for examination.

Power of court in case of refusal to deliver up instrument of title

167. Upon the appearance before the court of any person summoned or brought up by virtue of a warrant issued under the provisions of section 166, the court may examine such person upon oath and may order such person to deliver up such grant, certificate of title or other instrument of title, and, upon refusal or neglect by such person to deliver up the same pursuant to such order, to commit such person to prison for any period not exceeding six months unless such instrument shall be sooner delivered up, and in such case, or in case such person has absconded so that the summons cannot be served upon him as hereinbefore provided, the court may direct the Registrar to cancel or correct any such instrument of title or any entry or memorial in the register or of any endorsement relating to the land, estate or interest therein contained, and to substitute and issue such other instrument of title or make such entry or endorsement as the circumstances of the case may require, and the Registrar shall give effect of such order.

Power of court to direct Registrar

168. In any proceedings respecting any land subject to the provisions of this Act, or any estate or interest therein, or in respect of any transaction relating thereto, or in respect of any instrument, memorial or other entry or endorsement affecting any such land, estate or interest, the court may by decree or order direct the Registrar to cancel, correct, substitute or issue any instrument of title or make any memorial or entry in the register or any endorsement or otherwise to do such acts as may be necessary to give effect to the judgment or decree or order of such court.

Ejectors

169. The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:—

- (a) the last registered proprietor of the land;
- (b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one

month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;

- (c) a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.

Particulars to be stated in summons

170. The summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the summons.

Order for possession

171. On the day appointed for the hearing of the summons, if the person summoned does not appear, then upon proof to the satisfaction of the judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent, the judge may order immediate possession to be given to the plaintiff, which order shall have the effect of and may be enforced as a judgment in ejectment.

Dismissal of summons

172. If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit:

Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:

Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.

No necessity for writ of possession when order is obtained

173. When an order for possession has been obtained under the provisions of this Part, the plaintiff or his bailiff may enter and take possession of the land named in such summons without issuing out any writ of possession if such plaintiff or his bailiff find no person in possession of the land or the person or persons in possession voluntarily gives and surrenders possession to such plaintiff or his bailiff.

Proprietor to allow his name to be used in any action upon application of person interested

174. The proprietor of any land or of any estate or interest therein shall, on the application of any beneficiary or person interested therein, be bound to allow his name to be used by such beneficiary or person in any action, suit or proceeding which it may be necessary or proper to bring or institute in the name of such proprietor concerning such land, estate or interest or for the protection or benefit of the title vested in such proprietor, or of the interest of any such beneficiary or person, but nevertheless such proprietor shall in any case be entitled to be indemnified in like manner as if, being a trustee, he would before the passing of this Act have been entitled to be indemnified in a similar case of his name being used in any such action, suit or proceeding by his cestui que trust.

PART XXV—MISCELLANEOUS

Lands belonging to Crown may be withdrawn from operation of Act

175. The Minister may, by notification, withdraw any lands, of which the Crown is registered as the proprietor, from the operation of this Act, whereupon the Registrar shall cancel the certificate of title of the land specified in such notification and call in and cancel the duplicate of such certificate.

Service of notices

176.—(1) Any notice required by or under the provisions of this Act to be served or given to any person may be served or given by being sent by registered post to that person at his address for service.

(2) The address of any person as entered in the register shall, until amended or altered, be his address for service.

(3) The address or place in Fiji appointed in a caveat as the address or place at which notices relating to the caveat may be served shall be the address for service of the caveator for the purposes of this section.

(4) The Registrar shall cause a copy of each notice so sent to be filed with a memorandum of the same having been sent and such memorandum shall be sufficient proof that the notice was duly sent.

(5) The Registrar shall on request in writing made by any person whose address is entered in the register or in the Powers of Attorney Register and on production to him of the duplicate instrument of title and on payment of the prescribed fee amend or alter such address.

(6) The Registrar shall on request in writing by a caveator and on payment of the prescribed fee amend or alter the address appointed in the caveat at which notices may be served and the additional address (if any) given by the caveator.

(7) When any notice is sent by registered post to any person at his address for service and the letter is returned by the post office the Registrar may if in the circumstances and having regard to the provisions of this Act he thinks fit—

(a) direct any further notice to be given; or

(b) direct substituted service in such manner as he considers appropriate in the circumstances; or

(c) proceed without notice.

(8) The provisions of this section shall apply notwithstanding any other of the provisions of this Act relating to the service of notices.

Regulations

177. The Registrar, with the approval of the Minister may make regulations for the purpose of giving better effect to the purposes and provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations—

(a) prescribing the parcels of land which may be included in any one certificate of title;

(b) prescribing the medium in which documents presented for registration, lodgment or filing shall be written and executed and the kind or size of paper or other medium on which they shall be written;

(c) prescribing the forms to be used;

(d) prescribing the fees to be charged;

(e) prescribing the persons who, in Fiji or elsewhere, may be qualified witnesses;

- (f) prescribing the procedures to be followed in the execution and attestation of instruments;
- (g) regulating the practice and conduct of business under the provisions of this Act;
- (h) regulating the scale of, and the details and information to be included in survey plans used in connection with the registration of titles and other matters under the provisions of this Act.

Repeal and saving

178. The Land (Transfer and Registration) Ordinance and the Statute of Limitations Declaration Ordinance are hereby repealed:

Provided that—

- (a) subject to the provisions of section 77 of this Act, such repeal shall not affect any document made or anything whatsoever done before 1 August 1971 under the provisions of Ordinances so repealed or under any corresponding former provisions, and every such document or thing, so far as it is subsisting or in force at that date and could have been made or done under the provisions of this Act, shall continue and have effect as if it had been made or done under the corresponding provisions of this Act or, subject to any provision to the contrary contained in that Act, of the Property Law Act as if those provisions had been in force when the document was made or the thing was done; *(Cap. 130.)*
- (b) such repeal shall not affect the provisions of the Third Schedule* of the Land (Transfer and Registration) Ordinance, which provisions shall remain in force and shall be deemed to have been made by the Chief Justice by rules under the provisions of the Legal Practitioners Ordinance; and
- (c) all moneys standing to the credit of the Land Assurance Fund Account under the provisions of section 159 of the Land (Transfer and Registration) Ordinance, shall as from 1 August 1971 be transferred to and form part of the Consolidated Fund and shall be paid into the Consolidated Revenue Account.

* The Third Schedule to the Land (Transfer and Registration) Ordinance was repealed by Legal Notice No. 158 of 1976.

CHAPTER 131

LAND TRANSFER

SECTION 177—LAND TRANSFER REGULATIONS

*Regulations 21st Jun., 1971, 21st Aug., 1972,
25th Nov., 1974, 1st Sept., 1977*

Made by the Registrar of Titles and approved by the Attorney-General

Short title

1. These Regulations may be cited as the Land Transfer Regulations.

2.—(1) Every instrument, application or document intended for registration, lodgment or filing with the Registrar shall be engrossed on good quality paper of size 9·84" x 13·90" (250 x 353 millimetres) or thereabouts.

(Substituted by Regulations 21st August, 1972.)

(2) All documents shall be clearly and legibly written, printed or typewritten.

(3) Instruments, applications or documents which are wholly or partly carbon impressions shall not be accepted as originals for retention in the Titles Office upon registration, lodgment or filing.

(4) All documents, whether printed or otherwise, shall have margins of 2" on the top, bottom and left hand sides and at least half an inch on the right hand side. Where use is made of the reverse side of the paper the side margins shall conform with those on the front.

(5) No writing shall appear in the margin of any document except initialling when required.

(6) All handwriting on documents including all signatures shall be in ink.

(7) Where an instrument, application or document comprises two or more sheets of paper, those sheets shall be securely sewn or otherwise fastened together.

(8) A sum of money shall be expressed both in figures and in words where it is set out for the first time in the instrument.

(9) A transfer of a partial interest in land or portion of land shall refer clearly to the undivided share or interest concerned or to the particular lot number or part thereof and plan number of a deposited plan.

(10) Applications for balance titles shall be preceded by the lodgment of balance plans where considered necessary by the Registrar.

(11) Where a document deals with more than one class of title to land the title references shall be arranged to appear in the following order:—

(a) Native Leases,

(b) Crown Leases,

(c) Certificates of Title,

and the title numbers in each class shall be shown in strict numerical order.

Documents to be lodged manually

3. All documents shall be lodged manually at the public counter of the Titles Office. No documents shall be received through the post.

Certificates under section 124

4. The certificate required by section 124 of the Act, if given by a barrister and solicitor, shall be signed by the barrister and solicitor in his own name and not in the name of any firm with which he may be connected, and shall show that he is acting for the party claiming under the instrument.

Names and descriptions

5.—(1) Names of Indians, male and female, shall be followed by their father's name.

(2) Females may be described by reference to their occupations or marital or other status.

(3) "Retired" alone is not a sufficient description.

Applications

6. All applications (except requests for new certificates of title or an application to remove caveats) shall set out the grounds of the application and shall be attested by a qualified witness.

Alterations, etc. to be initialled

7. Before documents are presented for registration they should be carefully examined to see that they are properly prepared. All blanks shall be ruled out and all interlineations, alterations and corrections shall be properly initialled in any place in the document before the date thereof by the party adversely affected. If such party is illiterate, then it shall be initialled by the witness to his signature. Where alterations are made of a material nature, the Registrar may require the document to be withdrawn.

No alterations after lodgment

8. No alteration or amendment of a material nature to any document shall be made after lodgment. If necessary the document may be withdrawn from registration, for which purpose a special office "Form of Request" shall be used.

Execution by illiterate parties

9. Where a party is illiterate, a clear impression of his left thumb mark shall be made. The impression shall be rolled and not just "dabbed" on the document.

Execution by attorneys

10. When a document is executed by an attorney, acting under a power of attorney, the usual certificate as to non-revocation of the power of the attorney may be made in the body of the document, before the date thereof, in which case no special attestation clause is required. Where, however, the certificate is not incorporated in the body of the document then it shall be placed elsewhere on the form and after the attestation of the signatures to the document and shall be dated and signed by the attorney whose signature shall be attested by a qualified witness. No certificate or part of the attestation clause shall be placed in the margin.

Transfers

11.—(1) The consideration shall be expressed in every transfer.

(2) A transfer purporting to transfer separate parcels of land to separate

transferees shall not be accepted, except in the case of a partition between co-proprietors when separate registration fees shall be charged.

(3) Transfers by separate registered proprietors of separate parcels of land to one transferee in one instrument shall not be accepted. In such a case, separate transfers shall be prepared.

Fiduciary and beneficial interests to be separate

12. A person holding a fiduciary interest in a piece of land may not deal with that land in the same instrument as any other land beneficially owned by that person.

Mortgages

13. Separate pieces of land owned by separate registered proprietors shall not be mortgaged by the same instrument, whether to the same mortgagee or otherwise.

Caveats

14. Every estate or interest in land claimed by a caveator shall be clearly expressed in all caveats.

Leases

15.—(1) Leases or sub-leases from separate registered proprietors to one lessee or sub-lessee shall not be contained in one instrument.

(2) Transfers of undivided interest in a lease or sub-lease may be accepted for registration, but no transfer of a divided interest shall be accepted.

Deposited plans

16.—(1) When a deposited plan is registered in the Titles Office covering part or the whole of a parcel of land the subject of a previous Deposited Plan registered in the Titles Office, the earlier plan shall be cancelled as to that part of the land the subject of the later subdivision.

(2) All plans deposited in the Titles Office shall comply with the requirements of the Fourth Schedule.

Forms

17.—(1) The forms set out in the First Schedule are prescribed for use under the provisions of the Act and shall be followed as nearly as circumstances permit.

(2) In cases where no forms are prescribed, an instrument or document may be in any form approved by the Registrar.

Qualified Witnesses

18. The persons specified in the Second Schedule shall be qualified witnesses for the purposes of section 23 of the Act.

Fees

19.—(1) The fees payable to the Registrar shall be as set out in the Third Schedule.

(2) Any of the fees set out in the Third Schedule may be remitted by the Minister in his discretion.

FIRST SCHEDULE
(Regulation 17)

Under section	Form No.	Form
11	1	Certificate of Title.
30	2 (a)	Application for Search Certificate.
	3 (b)	Search Certificate.
32	4 (a)	Application for Stay of Registration.
	5 (b)	Order for Stay for Registration.
44	6 (a)	Transfer of Land in fee simple.
	7 (b)	Transfer of Lease, Mortgage etc.
49	8	Form of Easement.
54	9	Lease.
65	10	Mortgage.
67	11	Memorandum of Priority of Mortgages.
71	12	Transfer by mortgagee in exercise of power of sale.
79	13	Application for Vesting Order.
93	14	Transmission by Death.
106	15	Caveat.
131	16	Registrar's Caveat.
118	17	Power of Attorney.
120	18	Revocation of Power of Attorney.
122	19 (a)	Certificate of Attesting Witness.
	20 (b)	Certificate of person taking declaration of attesting witness.
129	21	Summons.
159	22	Grant of Easement by registered proprietor.
165	23	Application to Court.

Section 11

Form 1

Reference to previous

(Fiji Arms)

No.

C.G., N.G., or C.T.

FIJI

CERTIFICATE OF TITLE

A.B. (insert name, address and occupation) pursuant to (transfer, or as the case may be) No. _____ is now the proprietor of an estate in fee simple subject to the provisions and reservations contained in the original _____ Grant No. _____ and subject to such encumbrances as are notified by memorial underwritten or endorsed hereon in ALL THAT piece of land delineated by the plan hereon known as _____ containing _____ (area) be the same a little more or less and being Lot. _____ on Deposited Plan No. _____ and situated in the _____ of _____ in the island of _____

Dated this _____ day of _____, One thousand nine hundred and _____

(Seal of Office)

REGISTRAR OF TITLES

Encumbrances referred to.

Section 30

Form 2

Application for Search Certificate

The Registrar of Titles,
Government Buildings,
Suva.

Date.....

I hereby request to be informed whether there is any and if any what obstacle to a dealing by (give name of proprietor and number of certificate or lease)—with the land comprised in (certificate of title or lease)

Signature of Applicant

Section 30

Form 3

Search Certificate No.

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

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

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

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

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

Section 32

Form 4

The Registrar of Titles,
Government Buildings,
Suva.

Application for Stay of Registration as to Title of A.B. to land comprised in Certificate of Title or Lease No..... as to which Search Certificate No..... has been applied for.

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

The transaction is—(State whether sale, mortgage, exchange, lease or other dealing for value). The consideration is—(State the price to be paid or amount be lent, to be paid or other consideration).

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

Signature of the applicant or his
barrister and solicitor.

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

Signature of the proprietor or of
his authorised agent.

Section 32

Form 5

Order for Stay of Registration.

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

Registrar of Titles.

Section 44

Form 6

TRANSFER OF LAND IN FEE SIMPLE

I, A.B. (add full name, residence and occupation or other description of the transferor) being the proprietor of an estate in fee simple, subject, however, to such leases, mortgages and other encumbrances as are notified by memorandum underwritten or endorsed hereon of the following land:—

(Here describe the land)

In consideration of the sum of _____ paid to me by E.F. (add residence, occupation or other description of the transferee) the receipt of which sum I hereby acknowledge do hereby transfer to the said E.F. all my estate and interest in the said land.

In witness whereof I have hereunto subscribed my name this
day of _____, 19 _____.

A.B., Transferor.

Attestation Clause

Section 44

Form 7

TRANSFER OF LEASE, MORTGAGE OR ENCUMBRANCE

I, A.B. (add full name, address and occupation or other description of the transferor) being the registered proprietor of a lease (or mortgage or as the case may be) numbered.....subject, however, to such leases, mortgages and

other encumbrances as are notified by memorandum underwritten or endorsed hereon of the following land:—

(Here describe the land)

In consideration of the sum of paid to me by C.D. (add full name, address and occupation or other description of the transferee) the receipt whereof I hereby acknowledge (or as the case may be) do hereby transfer to the said C.D. all my estate and interest in the said land.

In Witness whereof I have hereunto subscribed my name this day of , 19

A.B., Transferor.

Attestation Clause

C.D., Transferee.

Attestation Clause

Form 8

Section 49

FORM OF EASEMENT

A.B. (insert addition), hereinafter called the grantor, being proprietor, subject however to such leases, mortgages and other encumbrances as are notified by memorandum underwritten or endorsed hereon of the following land (here describe land) in consideration of the sum of (or as the case may be) paid to the grantor by C.D. (insert addition), hereinafter called the grantee, the receipt of which sum the grantor hereby acknowledges, hereby transfers and grants to the grantee (here describe fully the nature of the easement created and the land for the benefit of which such easement is created).

In witness whereof the grantor has hereunto subscribed his name this day of , 19

A.B., Transferor.

Attestation Clause

Form 9

Section 54

LEASE

A.B. (insert addition), hereinafter called the lessor, being proprietor, subject to such leases, mortgages, and other encumbrances as are notified by memorandum endorsed hereon, of the following land (here describe land) do hereby lease to C.D. (insert addition), hereinafter called the lessee, all the said land to be held by the lessee as tenant for the period of from the day of, 19 , at the yearly rental of payable

Subject to the following covenants, conditions and restrictions (Here set out all special covenants etc., if any).

The lessee hereby accepts this lease of the above-described land to be held by the lessee as tenant and subject to the conditions, restrictions and covenants above set forth.

In Witness whereof the lessor has hereunto subscribed his name this
day of _____, 19 _____

A.B., Lessor.

Attestation Clause

C.D., Lessee.

Attestation Clause

Form 10

Section 65

MORTGAGE

A.B. (insert addition), hereinafter called the mortgagor, being proprietor, subject to such leases, mortgages and other encumbrances as are notified by memorandum underwritten or endorsed hereon, of the following land (here describe land) in consideration of the sum of _____ lent to the mortgagor by C.D. (insert addition), hereinafter called the mortgagee, the receipt of which sum the mortgagor doth hereby acknowledge, doth hereby covenant with the mortgagee that he will pay to the mortgagee the above sum of _____ on the _____ day of _____, 19 _____ (or as the case may be).

Secondly that the mortgagor will pay interest on the said sum at the rate of _____ dollars per cent (\$ _____ %) per annum by equal payments on the _____ day of _____ and on the _____ day of _____ in every year.

Thirdly (here set forth special covenants, if any). And for the better securing to the mortgagee the repayment in manner aforesaid of the principal sum and interest the mortgagor hereby mortgages to the mortgagee all his estate and interest in the said land above described.

In witness whereof the mortgagor has hereunto subscribed his name this
day of _____, 19 _____

A.B., Mortgagor.

Attestation Clause

Form 11

Section 67

MEMORANDUM VARYING PRIORITY OF MORTGAGES

The priority of the following mortgages in so far as they affect the land described in the Schedule is hereby varied as follows:—

Mortgage No. _____ dated _____ in favour
of E.F. as mortgagee and securing the principal sum of _____
shall rank as first mortgage.

Mortgage No. _____ dated _____ in favour
of C.D. as mortgagee and securing the principal sum of _____
shall rank as second mortgage.

(Insert necessary additional particulars if there are more than two mortgages).

SCHEDULE

All that piece of land (Here describe the land).

Dated this day of , 19
A.B., Mortgagor.
Attestation Clause
C.D., Mortgagee.
Attestation Clause

Form 12

Section 71

TRANSFER BY MORTGAGEE IN EXERCISE OF POWER OF SALE

I, A.B. (add residence, occupation or other designation of mortgagee), being the mortgagee under mortgage No. over the following and of which C.D. (name, residence, occupation or other description of registered proprietor) is the registered proprietor subject, however, to such leases, mortgages and other encumbrances as are notified by memorandum underwritten or endorsed hereon:—(here describe the land in full giving the title number and area).

In consideration of (write amount both in words and figures and if the consideration be not pecuniary alter accordingly) paid to me by E.F. (name, residence, occupation, or other designation of transferee), the receipt whereof I hereby acknowledge, do hereby in exercise of any power of sale as such mortgagee, transfer to the said (if to two or more, state whether as joint tenants or tenants in common) all the estate and interest of the said (repeat name of registered proprietor) in the said land.

In witness whereof, I have hereunto subscribed my name this day of , 19 .

Transferor.

In the case of a transfer of a lease add—Accepted:

Transferee.

Attestation Clauses

NOTE—A declaration by the mortgagee setting out the facts relating to the exercise of the power of sale and default up to date of transfer must be furnished.

Form 13

Section 79

APPLICATION FOR VESTING ORDER

I, A.B. (insert addition) hereby apply for a vesting order vesting in me the following land (here describe land) which land is numbered as Lot No. on Deposited Plan No. for an estate in fee simple in possession free from encumbrances (other than any special reservation exception or condition in the original Grant) and I declare:—

1. (Set forth particulars of the possession on which the claim is based—
 - (a) the date and circumstances in which the possession commenced;
 - (b) the name of the person by whom the possession was commenced;
 - (c) the duration of his possession and the nature thereof; and
 - (d) the subsequent history and nature of the possession up to the time of lodging the application.)
2. That there are no documents or evidence of title affecting such land in my possession or under my control other than those included in the Schedule hereto.
3. That there are no leases, mortgages or encumbrances registered on the above-mentioned title save and except the following (set out short particulars and state whether these leases, mortgages and encumbrances have been extinguished or ceased to affect the land and, if so, how).
4. That same as aforesaid I am not aware of any lease, mortgage or encumbrance affecting the said land or that any person other than myself has any estate or interest therein (if there be any, add) save and except (and set out same).
5. That the names and addresses so far as is known to me of the occupants of all lands contiguous to the said land are as follows:—
6. That the present value of the land including all improvements thereon is dollars () and no more.

Dated this day of , 19 at
A.B., Applicant.

Attestation Clause.

Form 14

Section 93

TRANSMISSION BY DEATH

I, A.B. (insert full name, address and occupation or other description) hereby apply to be registered as proprietor as (administrator, or executor or trustee or as the case may be) of the estate of C.D. deceased in respect of the following land:—

(here describe the land)

subject to such leases, mortgages and other encumbrances as are notified by memorandum underwritten or endorsed hereon.

1. The said C.D. died at on or about day of , 19 .

2. Probate of the will (or Letters of Administration of the estate) of the said deceased was granted to me by the Supreme Court of Fiji (or as the case may be) at in on the day of , 19 as appears in the copy of the said Probate (Letters of Administration) annexed hereto.

Dated this day of , 19 .
Signature of applicant

Attestation Clause.

Section 106

CAVEAT

Dealing with Land

TO THE REGISTRAR OF TITLES.

Take notice that I (Name of Caveator, residence, occupation or other description in full)

claiming an estate or interest as (here state nature of the estate or interest claimed)

by virtue of (here state the grounds upon which such claims are founded) in the land described as follows:—(here describe the land)

forbid the registration of any transfer or other instrument affecting the said land absolutely (or unless such transfer or instrument be expressed to be subject to my claim or until this Caveat is withdrawn by me or by order of the Supreme Court or until the same has been removed under section 110 (1) of the Land Transfer Act, and I appoint the following address or place within Fiji at which notices and proceedings relating to this caveat may be served. Caveator's address for service of notice is:—

Name and address of Caveatee.

Dated this _____ day of _____, 19 _____

.....
Signature or left thumb mark
of Caveator or Agent.

Attestation Clause.

A declaration under the Statutory Declarations Act saying that the allegations in the above caveat are true in substance and in fact either from personal knowledge or information and belief.

Section 131

Form 16

FIJI COAT OF ARMS
LAND TRANSFER ACT,
REGISTRAR'S CAVEAT

TAKE notice that I, the Registrar of Titles, Fiji in order to protect the interests of

in the land described as follows:—(here describe the land)

forbid the registration of any person as transferee or proprietor of and of any instrument affecting the said estate or interest absolutely and appoint the Titles Office, Government Buildings, Suva as the place at which notices and proceedings relating to this caveat may be served.

Dated this _____ day of _____, 19 _____

Signed in the presence of

.....
Titles Office,
Suva

.....
Registrar of Titles.

Section 118

Form 17

POWER OF ATTORNEY

I, A.B. (add addition), hereby appoint C.D., of (address and occupation), attorney on my behalf to (here state the nature and extent of the powers intended to be conferred, such as to sell, lease, mortgage, lands, etc.) 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 my lands, and for the enforcement of all contracts, covenants, or conditions binding upon any lessee or occupier of the said land 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 or trespass.

In witness whereof I have hereunto subscribed my name this _____ day of _____, 19. _____

A.B.

Attestation Clause.

Section 120

Form 18

REVOCAION OF POWER OF ATTORNEY

I, A.B. (add addition), hereby revoke the power of attorney given by me to C.D., of (add addition), dated the _____ day of _____, 19 _____ and registered under No. _____

Dated this _____ day of _____, 19 _____

A.B.

Attestation Clause.

Section 122

Form 19

CERTIFICATE OF ATTESTING WITNESS

The signature (or mark) of A.B. was made in my presence and I verily believe that such signature is the proper handwriting (or, left thumb mark) of the person described as A.B. (insert addition) the transferor (or, as the case may be), and I certify that the contents hereof were read over and explained to _____ in the _____ language and he appeared to understand the meaning and effect thereof.

C.D., Justice of the Peace
(or, as the case may be).

Section 122

Form 20

CERTIFICATE OF PERSON TAKING DECLARATION OF ATTESTING
WITNESS

Appeared before me at _____ the _____ day of _____, 19____, C.D. (insert addition) the attesting witness to this instrument, and declared that he personally knew A.B., the person signing the same, and whose signature the said C.D. attested and that the name purporting to be the signature of the said A.B. is his own handwriting or left thumb mark and that he is the person therein described as A.B. (insert addition) the transferor (or, as the case may be).

E.F., Justice of the Peace
(or, as the case may be).

Section 129

Form 21

SUMMONS

In the matter of the Land Transfer Act, A.B. (insert address and occupation) is hereby summoned to appear before me at _____ on the _____ day of _____ 19____ at _____ o'clock in the (fore or after) noon then and there to be examined at the instance of C.D. (insert address and occupation) concerning _____ and the said A.B. is hereby required to bring with him and produce at the time and place aforesaid (describe documents) and all other writings and documents in his custody or power otherwise relating to the premises.

Given under my hand this _____ day of _____ 19____

Registrar of Titles.

Section 159

Form 22

EASEMENT CERTIFICATE

A.B. of (address and description) being the proprietor of the land described in the First Schedule hereto hereby CERTIFIES:

1. That the easements specified in the said First Schedule, the servient tenements in relation to which are shown on a plan of survey lodged for deposit with the Registrar of Titles under No. _____, are the easements which it is intended shall be created by the operation of section 159 of the Land Transfer Act.
2. That the said easements shall be of the nature described in the said First Schedule and the conditions of the grant of the said easements and the rights and powers of the grantees thereunder shall be those set out in the Second Schedule in respect of each easement.

FIRST SCHEDULE

DEPOSITED PLAN NO.

Nature of Easement	Servient Tenement		Dominant Tenement Lot Number(s)	Title Reference
	Lot No.	Colour or other means of identification of part subject to easement		
<i>(For example)</i>				
Right of Way				
Right of Convey Water				
Right to Drain Water				

SECOND SCHEDULE

CONDITIONS OF THE GRANT OF EASEMENTS AND THE RIGHTS AND POWERS DEEMED TO BE VESTED IN GRANTEEES THEREOF

1. Rights and powers of grantee under Easement of Right of Way—The full, free, uninterrupted, and unrestricted right, liberty and privilege for the grantee, his servants, tenants, agents, workmen, licensees, and invitees (in common with the grantor and any other person lawfully entitled so to do) from time to time and at all times by day and by night to go pass and repass, with or without horses and domestic animals of any kind and with or without carriages, vehicles, motor vehicles, machinery, and implements of any kind over and along the land over which the right of way is granted.

2. Rights and powers of grantee under Easement of Right to Convey Water—The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and the grantee's tenants (in common with the grantor, the grantor's tenants, and any other person lawfully entitled so to do) from time to time and at all times to take, convey and lead water through pipes of a sufficient internal diameter and of suitable material for the purpose in a free and unimpeded flow (except when the flow is halted for any reasonable period necessary for essential repairs) and in any quantity, consistent with the rights of other persons having the same or similar rights, from the source of supply or point of entry, as the case may be, and following the stipulated course (where a course is stipulated) across the land over which the easement is granted, together with the additional rights incidental thereto set out in clause 4.

3. Rights and powers of grantee under Easement of Right to Drain Water—The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and the grantee's tenants (in common with the grantor, the grantor's tenants, and any other person lawfully entitled so to do) from time to time and at all times to drain and discharge water (whether rain, tempest, spring, soakage, or seepage water) in any quantities along the stipulated course (where a course is stipulated) across the land over which the easement is granted, together with the additional rights incidental thereto set out in clause 4.

4. Additional rights attaching to Easements of Right to Convey Water and of Right to Drain Water—The full, free, uninterrupted and unrestricted right, liberty, and privilege for the grantee and the grantee's tenants (in common with the grantor, the grantor's tenants, and any other person entitled so to do) for the purposes of the easement concerned—

- (a) to use any line of pipes already laid on the proposed course or in the case of an open drain already constructed on the proposed course to use that drain and any line of concrete inverts laid therein or to use any pipe or pipes or invert or inverts in replacement or in substitution for all or any of those pipes or inverts, as the case may require;
- (b) where no open drain or line of pipes exists, to construct and maintain, or to have constructed and maintained, an open drain, with or without concrete inverts therein, or to lay, place and maintain or to have laid, placed, and maintained, a line of pipes of a sufficient internal diameter and of suitable material for the purpose, in the case of an open drain, in and under, and in the case of a line of pipes, in and under or over, the surface of the land over which the easement is granted and along the line defined for the purpose where such a line has been so defined;
- (c) in order to construct or maintain the efficiency of any such pipe line or open drain, the full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee, the grantee's tenants, servants, and workmen, with any tools, implements, machinery, vehicles, or equipment of whatsoever nature necessary for the purpose to enter upon the land over which the easement is granted (or, where only the position of the pipe line or drain is defined in the easement, upon such part of the land of the grantor and by such route as is reasonable in the circumstances) and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, and renewing the pipe line or any part thereof or the drain or any part thereof or the line of inverts therein or any part thereof and of opening up the soil of that land to such extent as may be necessary and reasonable in that regard, subject to the condition that as little disturbance as possible is caused to the surface of the land of the grantor and that the surface is restored as nearly as possible to its original condition and any other damage done by reason of the aforesaid operations is repaired.

5. (Here set out terms, conditions, covenants or restrictions, if any, in respect of the easements.)

Dated the

day of

19

Proprietor's signature.

Attestation Clause.

NOTE

The easements specified in the first column of the First Schedule and the clauses set out in the Second Schedule are given as examples only and are not part of the prescribed form.

Section 165

Form 23

IN THE SUPREME COURT OF FIJI

(Date)

In the matter of the registration of transfer (or as the case may be) A.B. to C.D.

Pursuant to section 165 of the Land Transfer Act, the Registrar hereby humbly refers the following question to the Court, to wit:—

(here state briefly the difficulty that has arisen)

The parties interested so far as the Registrar knows or has been informed are
(here give names)

Registrar of Titles.

[L.S.]

SECOND SCHEDULE
(Regulation 18)

QUALIFIED WITNESSES

For the purpose of section 122 the following shall be qualified witnesses—

(a) within Fiji—

- (i) the Registrar or Deputy Registrar of Titles;
- (ii) the Director or Deputy or Assistant Director of Lands;
- (iii) in the Department of Lands—
 - (a) a Lands Officer,
 - (b) a Leases Inspector,
 - (c) a land clerk,
- (iv) a registered surveyor;
- (v) the Secretary of the Native Land Trust Board;
- (vi) the Conveyancing Clerk of the Native Land Trust Board;
- (vii) the Land or Assistant Land Agent of the Native Land Trust Board;
- (viii) a magistrate;
- (ix) the Commissioner of a division or a district officer;
- (x) a barrister and solicitor of the Supreme Court of Fiji;
- (xi) a commissioner for oaths of the Supreme Court of Fiji;
- (xii) a notary public;
- (xiii) a justice of the peace;
- (xiv) a bank officer, including an officer of the Fiji Development Bank;
- (xv) any person specially appointed by the Registrar of Titles.

(b) in any Commonwealth country other than Fiji—

- (i) a Registrar-General, a Deputy Registrar-General or a Registrar or Deputy Registrar or Recorder or Deputy Recorder of titles or deeds;
- (ii) a notary public;
- (iii) a commissioner empowered to take affidavits in such country;

- (iv) a commissioner for oaths of the Supreme Court of Fiji;
- (v) a barrister and solicitor or a barrister or a solicitor of the court in such country;
- (vi) the mayor or recorder or other chief officer of any city or municipal corporation;
- (vii) a stipendiary magistrate;
- (viii) any person specially appointed by the Registrar of Titles;
- (c) in any foreign country—
 - (i) any Commonwealth Consular officer;
 - (ii) a notary public;
 - (iii) any person specially appointed by the Registrar of Titles.

THIRD SCHEDULE

(Regulation 19)

(Amended by Regulations 25th November, 1974.)

FEES

	\$	c
1. On every application for vesting order under Part XIII		20-00
2. On lodgment for registration of any lease, mortgage, or encumbrance, or discharge of a mortgage or encumbrance wholly or partially or surrender of a lease lodged		2-00
(a) any transfer on sale for consideration—		
Not more than	\$	\$ c
" "	600	2-00
" "	1,000	2-50
" "	2,000	3-00
" "	4,000	3-50
" "	6,000	4-00
" "	8,000	4-50
" "	10,000	5-00
" "	12,000	5-50
" "	16,000	6-00
" "	20,000	6-50
" "	40,000	7-00
" "	60,000	7-50
" "	80,000	8-00
" "	100,000	8-50
Over	100,000	9-00
(b) any transfer carrying out exchange of lands, the same fee as on a transfer on sale		
(c) any transfer other than a transfer on sale or exchange		2-00
3. On lodgment for registration of a transfer by direction—for each direction		2-00
4. For every certificate of title—		
(a) single form and including one simple diagram		10-00
(b) double form		20-00
(c) including more than one simple diagram—for each additional diagram		1-00

	\$	c
(d) including any diagram other than a simple one, such extra fee as may be fixed by the Registrar		
5. On every application for the consolidation in one certificate of lands included in more than one grant or certificate or on a request for a new certificate of title for each certificate—for each grant or certificate to be consolidated	2-00	
6. On every application for entry of an executor or administrator or trustee of a bankrupt as a transferee or proprietor, or for entry of survivors or other persons as proprietors in cases of joint proprietorship	2-00	
7. On every application for entry of notice of death	2-00	
8. On lodgment of a caveat	2-00	
9. On lodgment of a withdrawal of caveat	1-00	
10. On requesting 21 days notice on a caveat on registration of a dealing	2-00	
11. On judgment writ, <i>fieri facias</i> , decree or order of any Court	2-00	
12. For each memorial required in respect of any instrument or document lodged	1-00	
13. On lodgment of an application for entry of foreclosure of a mortgage	4-00	
14. On lodgment of an application for order dispensing with production of any duplicate grant, certificate or instrument affected	3-00	
15. On every application for statement of grounds under section 166	4-00	
16. On every plan of subdivision deposited	10-00	
17. For each lot on such plan of subdivision	1-00	
18. For furnishing diagrams—fee to be fixed by Registrar		
19. For taking affidavit or statutory declaration	-50	
20. For every search certificate requested	2-00	
21. For every order staying registration	2-00	
22. For every search for first title where volume and folium are supplied	-40	
23. For every title search after the first in one name or one set of names where volume and folium are not supplied	-30	
24. For every search for first title where volume and folium are not supplied	-50	
25. For every title search after the first in one name or one set of names where volume and folium are not supplied	-40	
26. For search of each power of attorney, revocation of power of attorney, plan or index	-30	
27. For every certified copy, first folio of seventy-two words	1-00	
28. For every folio or part of a folio after the first	-50	
29. For every summons	-50	
30. For examination thereunder	1-50	
31. On lodgment of an application for the issue of a special duplicate instrument to title	5-00	
32. For every instrument of title issuing upon such application	5-00	
33. On every subpoena or demand to produce documents	5-00	
34. Change of address for service of notices under section 176	2-00	
35. Any other instrument or application not otherwise provided for	2-00	

FOURTH SCHEDULE
(Regulation 16)

DEPOSITED PLANS

All plans which are intended to be deposited in the Titles Office must comply with the provisions contained in the regulations made under the provisions of the Surveyors Act.

2. Every plan must be complete in its information and proof of the correctness of the location of a parcel of land must not be dependent upon a reference to some earlier or subsequent plan furnished to this office.

3. Diagrams shall be used in plans to show small details which cannot be clearly shown in the body of the plan.

4. No deposited plan shall be registered by the Registrar which shows—

- (a) leasehold land together with freehold land, or two or more pieces of land registered in the names of different proprietors, unless the whole of the land is being acquired by the Crown or local authority for the purpose of any public work;
- (b) any private street, road, lane, way or reserve over which the proprietor has no registered (or implied) rights.

Controlled by Ministry of the Attorney-General
